Implementation of Investment Firms Prudential Regime

Policy Statement
PS21/9

July 2021

This relates to

Consultation Paper 21/7
which is available on our website at
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1 Summary

Introduction

1.1 This policy statement (PS) is about the UK Investment Firm Prudential Regime (IFPR), a single prudential regime for all FCA investment firms that simplifies our current approach. The IFPR will shift the focus of prudential requirements and expectations away from the risks that firms face, to address the harm that firms can pose to consumers and markets. This is our second PS on the IFPR and it aims to streamline the prudential requirements for solo-regulated investment firms in the UK (FCA investment firms).

1.2 In April 2021 we consulted, in CP21/7, on the second set of our proposals to introduce the IFPR. This is a new prudential regime for UK investment firms authorised under the UK Markets in Financial Instruments Directive (MiFID). This is the second policy statement (PS) we are issuing to introduce the IFPR. It summarises the feedback we received to CP21/7, our response and sets out near-final rules.

1.3 The new regime represents a major change for FCA investment firms and it is critical that they adequately prepare for the regime. We expect the IFPR to take effect in January 2022.

Who this applies to

1.4 The rules will apply to:

- Any MiFID investment firm authorised and regulated by the FCA that is currently subject to any part of the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR) including:
  - investment firms that are currently subject to BIPRU and GENPRU
  - 'full scope,' 'limited activity' and 'limited licence' investment firms currently subject to IFPRU and CRR
  - 'local' investment firms
  - matched principal dealers
  - specialist commodities derivatives investment firms that use the current exemption on capital requirements and large exposures including:
    - oil market participants (OMPS)
    - energy market participants (EMPS)
  - exempt CAD-firms
  - investment firms that would be exempt from MiFID under Article 3 but have 'opted-in' to MiFID
- Collective Portfolio Management Investment firms (CPMIs)
- regulated and unregulated holding companies of groups that contain an investment firm authorised and regulated by the FCA and that is currently authorised under MiFID and/or a CPMI

1.5 The rules on capital requirements for trading firms' activities might also be of broader interest to exchanges, central counterparties and clearing members.

The wider context of this policy statement

Our consultation

1.6 This is the second in a series of PSs that will set out our rules to introduce the IFPR. It summarises the feedback we received to CP21/7.

1.7 We published the first CP (CP20/24) in December 2020 and the accompanying PS (PS21/6) in June 2021. We intend to publish a further CP and PS this year. The third PS will bring together all our final rules. Table 1, in this chapter, lays out our IFPR consultation roadmap.

1.8 When the UK was a member of the EU, we were heavily involved in the policy discussions to create the Investment Firm Directive (IFD) and Investment Firm Regulation (IFR). We support the aims of the EU's IFD and IFR. The IFPR will achieve the same overall outcomes.

1.9 However, we are introducing our regime after the UK has exited the EU. We believe it is right that we consider any appropriate changes to account for the specifics of the UK market and our duties to have regard to certain factors, including those set out in the Financial Services Act 2021 (FS Act).

1.10 Given this context, our baseline approach is for consistency with the EU regime unless we have specific reasons for diverging to reflect the nature of the UK market or otherwise to comply with our duties under Part 9C of FSMA (as inserted by the FS Act).

1.11 We note that when CP21/7 was published the FS Bill was still going through the parliamentary process. Our proposals were based on the draft legislation in the form in which it stood at that time. In April 2021, Royal Assent was obtained and the FS Act is now on the statute book. In most cases, the finalised provisions of the Act have not changed since CP20/24 was published. However, where applicable, we have updated our near-final rules to take account of any amendments made to the legislation during its passage through Parliament. We expect that the Treasury will publish secondary legislation in connection with the exercise of its delegated powers under Part 9C of FSMA in due course.

How it links to our objectives

Market integrity

1.12 Our near-final rules require FCA investment firms to consider the potential harm they can cause to clients, markets and others, by the type and scale of activities they undertake. This is a change from the previous regime which was based on these firms mainly considering the risks to their own balance sheet.

Competition

1.13 Our near-final rules will ensure there is 1 overarching regime for all FCA investment firms. They are proportionate according to the firm's size and the type and scale of their activities. This is a significant improvement on the 11 regimes that currently exist for these firms. FCA investment firms with similar business models will now have similar prudential standards, rather than very different standards due to historical quirks. This will help to improve competition between existing firms and simplify matters for new entrants.

Protecting consumers

1.14 Our near-final rules require FCA investment firms to consider the potential harm they can cause to their retail customers, as well as their wholesale and financial services clients. Our requirements place more focus on the MiFID investment services that these firms provide to consumers, although certain requirements will apply in relation to all activities undertaken by a firm.

What we are changing

1.15 The current prudential regime for FCA investment firms is based on requirements designed for globally active systemically important banks. The main aim of this regime is to protect depositors by ensuring that it is difficult for a bank to fail. Investment firms do not have depositors that need to be protected. This means that the current requirements are not designed to address the potential harm posed by these investment firms to their clients and the markets in which they operate.

1.16 By contrast, the IFPR considers the harm these firms can cause to others based on the activities that they carry out. It also considers the amount of own funds and liquid assets a firm should hold so that if it does have to wind down, it can do so in an orderly manner.

1.17 Introducing the IFPR means that there will be a single prudential regime for all FCA investment firms. It should reduce barriers to entry and allow for better competition between investment firms. Some FCA investment firms will have meaningful capital and liquidity requirements for the first time, commensurate with the potential harm they can cause.

The outcome we are seeking

1.18 The final rules we plan to publish after issuing our 3 CPs will address different topics in the proposed regime. Across the consultations and final rules, the outcomes we are seeking are:

- The prudential regime for FCA investment firms is more aligned to the way that investment firms run their business. The regime will take account of the different business models of these firms, and better protect consumers and markets from the harm these firms may pose.

- All FCA investment firms are subject to meaningful and consistent prudential requirements, not just those subject to the current UK CRR regime. This will help reduce their potential to cause harm to consumers and markets, and ensure a more level playing field between these firms.
- Firms spend less time on complex capital requirement calculations that do little to help them to manage risk. This will free up management time to focus on running the business and managing and mitigating any harm and risk. The FCA will also be able to focus on how a firm is managing itself.
- The relevant prudential rules for FCA investment firms are understandable and accessible, with most rules brought into a new single prudential sourcebook (MIFIDPRU).

Measuring success

1.19 Once the rules are in place, there will be a single prudential regime for all FCA investment firms. This will simplify the current approach and should reduce barriers to entry and allow for better competition between firms. In line with our objectives and our Mission, the regime will move the focus of prudential requirements and expectations away from the risks firms face, to also consider and look to mitigate the potential for harm that the firm can pose to consumers and markets. Our aim is to improve trust in the resilience of these firms, while ensuring that their requirements are proportionate to their size and complexity.

1.20 Prudential requirements that better align with an FCA investment firm's business model should be a positive step for consumer protection. A more orderly market exit (including wind-down) of an investment firm may reduce the costs and distress to clients associated with discontinuity of service and economic losses in drawn-out insolvency proceedings. It should also reduce any disruption to markets.

Summary of feedback and our response

1.21 We received 63 responses to CP21/7. Most respondents supported our proposals. In some cases, they asked us to clarify how the rules would apply. In a small number of cases, they opposed our proposals or suggested changes to the proposed rules.

1.22 In general, we have implemented our proposals as consulted on. We have made amendments to provide more clarity in response to some of the feedback received. As our near-final legal instrument does not differ significantly from the version in CP21/7, we consider that the original CBA remains appropriate.

1.23 Chapter 15 of this PS provides a detailed summary of the amendments to the Handbook text consulted on in CP21/7. This includes those that are described throughout the PS and those that we have made so that the rules work as intended.

1.24 Below we provide a high-level summary of the contents of this PS. We cover the specific feedback we received to our proposals, and our responses, in more detail in the corresponding chapters.

1.25 Under section 143H FSMA, we are required to publish an explanation of how we have had regard to various matters and how we have addressed certain risks when we make our final IFPR rules. Our consultation papers contain explanations of how we have had regard to the relevant matters and risks when formulating our original proposals. Alongside or shortly after publication of the policy statement responding to our third consultation, we will publish a summary of the purpose of the complete set of final rules, and explanations about how we have complied with the requirements under this section.

How these rules will apply

1.26 Chapter 2 summarises the feedback we received on our proposals for the application of the IFPR to different types of FCA investment firm. Our key proposal is that the definition of an FCA investment firm would include CPMIs and that MIFIDPRU would apply to them.

1.27 We list the criteria that we would use when assessing an application from an overseas investment firm and we explain when and how MIFIDPRU would apply to tied agents.

1.28 In this chapter, we also highlight a change we have made to the definition of a small and non-interconnected (SNI) investment firm following feedback we received on K-DTF and K-COH. We include an updated list of the quantitative criteria for being an SNI.

Own funds arrangements

1.29 Chapter 3 provides a summary of the feedback we received on our own funds requirements proposals

1.30 We covered several own funds requirements components in CP21/7. They were:

- that a fixed overheads requirement (FOR) would apply to all FCA investment firms to allow them to wind-down or exit the market and we set out how the FOR should be calculated
- our proposals for calculating the remaining K-factor requirements (KFR) which are: assets safeguarded and administered (K-ASA), client money held (K-CMH), assets under management (K-AUM) and client orders handled (K-COH)
- how delegation of portfolio management affects the measurement of assets under management (AUM) and the interaction between the K-AUM and the K-COH requirements
- updating our proposals on how to adjust the coefficient for the daily trading flow (K-DTF) own funds requirement in periods of market stress

Firms acting as clearing members and indirect clearing firms

1.31 Chapter 4 summarises the feedback we received to our proposals for the treatment of FCA investment firms that are clearing members and indirect clearing members, specifically that:

- these firms should automatically be non-SNI firms as they are interconnected with other financial institutions
- K-DTF would apply to them
- they should include pre-funded contributions to a central counterparty (CCP) default fund as part of the trading counterparty default (K-TCD) requirements

Basic liquid assets requirement

1.32 Chapter 5 provides a summary of the feedback we received to our proposals that a basic liquid assets requirement will apply to FCA investment firms and the type of assets that can be used to meet this requirement.

Risk management, ICARA and SREP

1.33 Chapter 6 summarises the feedback we received to our proposals on firms' risk management and Internal Capital Adequacy and Risk Assessment (ICARA) process under the IFPR, and our approach to the Supervisory Review and Evaluation Process (SREP).

1.34 Our key proposals were to:

- introduce an Overall Financial Adequacy Rule (OFAR)
- establish the ICARA process as the centrepiece for investment firms' risk management
- set out expectations and standards around the assessment of the adequacy of own funds and liquid assets
- introduce notification and intervention points to clarify our expectation of firms facing challenges to their financial resilience
- link oversight of the ICARA to responsibilities under the Senior Managers & Certification Regime (SM&CR)
- introduce the ICARA questionnaire to support the re-orientation of our approach to SREP and risk monitoring
- allow firms that are part of investment firm groups the option of conducting the ICARA process on a group basis

1.35 We have clarified the types of firms that should conduct more in-depth stress testing and reverse stress testing, as well as what would be an 'imminent and credible' recovery. We also provide an example on how a firm might determine the potential harm caused by a cyber incident.

1.36 We set out what firms with existing individual capital guidance (ICG) or individual liquidity guidance (ILG) should do and when they need to submit their first ICARA questionnaire, MIF007. We also let these firms know that we will be sending them a transitional questionnaire to help us assess if their existing guidance remains appropriate.

MIFIDPRU Remuneration Code

1.37 Chapter 7 summarises the feedback we received on our proposals on the scope and application of a new remuneration regime for FCA investment firms.

1.38 In response to this feedback, the changes we have made include clarifying:

- how the MIFIDPRU Remuneration Code applies to FCA investment firm consolidation groups
- how the requirements apply in situations where a firm or material risk taker (MRT) is subject to more than 1 remuneration code
- how non-SNI firms should calculate the metrics they will use to determine whether they are subject to the extended remuneration requirements

1.39 Chapter 8 covers our proposed basic remuneration requirements that will apply to all FCA investment firms, including SNI firms.

1.40 Following the feedback we received, we have clarified that the MIFIDPRU Remuneration Code applies to carried interest. We have also added a rule which means that some variable remuneration requirements do not apply to carried interest arrangements that meet certain conditions.

1.41 We have made some other minor changes to enhance clarity.

1.42 Chapter 9 summaries the feedback we received on our proposals for standard remuneration requirements that will apply to all non-SNI firms.

1.43 We have clarified our expectations in relation to several of our proposals, for example on setting a ratio between variable and fixed remuneration, the annual review of remuneration policies, malus and clawback, severance pay and buy-out awards.

1.44 Chapter 10 covers the additional rules that we proposed should apply to the largest non-SNI firms.

1.45 In response to the feedback, we have changed our proposal on interest and dividends. If certain conditions are met, we will permit MRTs to accrue interest and dividends during the deferral period, and firms to pay it out from the point of vesting.

1.46 We have also clarified our proposals on the use of shares and instruments issued by a parent entity and on the situations in which it may be appropriate to have a deferral period longer than the minimum of 3 years.

Governance

1.47 Chapter 11 of this PS summarises the feedback we received to our proposals for all FCA investment firms to apply some high-level governance requirements, and for the largest non-SNI firms to establish risk, remuneration and nomination committees.

1.48 Following stakeholder feedback, we have made changes to:

- permit a non-SNI firm to rely on a group level remuneration committee where the firm is part of an FCA investment firm consolidation group, and where the remuneration committee of the UK parent entity meets certain criteria
- clarify how non-SNI firms should calculate the metrics they will use to determine whether they are subject to the committees requirement

Regulatory reporting

1.49 Chapter 12 provides a summary of the feedback we received to our further proposals for regulatory reporting (beyond those consulted upon in our first consultation paper, CP20/24). This covered the reporting forms for

- the liquid assets requirement
- the ICARA process
- remuneration
- additional reporting for CPMIs – FIN067

1.50 Chapter 12 also explains some minor changes that we have made to the content and layout of other reporting forms (which we originally consulted on in CP20/24) as a result of feedback received to CP21/7.

Interaction of MIFIDPRU with other prudential sourcebooks

1.51 Chapter 13 summarises the feedback we received on our proposals for the interaction of MIFIDPRU with other prudential sourcebooks.

Applications and notifications

1.52 Chapter 14 provides a summary of the feedback we received on our proposals for a separate form each MIFIDPRU permission application and notification. We also provide more information on:

- fees for those applications where our costs are likely to be material
- the publication of MIFIDPRU permissions on the Financial Services Register, once they are granted

Equality and diversity considerations

1.53 We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement.

1.54 Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during our remaining consultation period, and will revisit them when making the final rules.

1.55 In the meantime we welcome your input on this.

Next steps

1.56 As we explained in PS1, accompanying this PS are the consolidated near-final rules for both PS1 and PS2. This is so firms have the key IFPR material in 1 location, reflecting the overall position that we have adopted across the first 2 consultations. These rules will be made final once the relevant FS Act statutory instruments are in place. We do not expect to make any changes to these rules before they are made final, unless this is essential due to ongoing policy work, and feedback received, for the final IFPR CP.

1.57 Table 1 provides a summary of our publication timetable for the IFPR.

Table 1: Our consultation roadmap

CP20/24 – published December 2020	CP21/7 – published April 2021	CP3 – Q3 2021
MIFIDPRU1: Application (aspects of)	MIFIDPRU1: Application (remainder)	MIFIDPRU8 – Disclosure
MIFIDPRU2: Prudential consolidation and the group capital test	MIFIDPRU4 – Own funds requirements (remainder)	OTHER – Consequential amendments to Handbook and CRR technical standards
MIFIDPRU3 – Own funds resources	MIFIDPRU6 – Liquidity	OTHER – Approach to existing BRRD and FICOD provisions
MIFIDPRU4 – Own funds requirements (aspects of)	MIFIDPRU7 – Risk Mngt & Governance, ICARA and SREP	OTHER – Final overall application provisions
MIFIDPRU5 – Concentration risk	MIFIDPRU9 – Regulatory reporting (remainder)	
MIFIDPRU9 – Regulatory reporting (aspects of)	OTHER – Remuneration requirements	
	MIFIDPRU10 – Clearing members and Indirect clearing Firms – own firm requirements	
	OTHER – Interaction between MIFIDPRU and other prudential sourcebooks	
	OTHER – Permissions and application forms	
PS21/6 – published June 2021	**PS2 – This Policy Statement**	**PS3 – Q4 2021**

** Please note that the content of CP3 and PS3 and their publication dates is provisional and subject to change*

2 How these rules will apply

2.1 In this chapter, we summarise the feedback to our proposals for how MIFIDPRU will apply to different types of FCA investment firm. The types of firm covered were CPMIs, international firms and tied agents. We also highlight a change that we have made to the definition of an SNI firm following feedback we received on K-DTF and K-COH.

Key proposals

2.2 We proposed that the definition of an FCA investment firm would include CPMIs and that MIFIDPRU would apply to them. We proposed that the fixed overheads requirement (FOR) will apply to the whole firm. CPMIs do not have to apply a MIFIDPRU requirement to their collective portfolio management activities where this only applies to MiFID business.

2.3 We said that we need to be satisfied that an overseas investment firm that is applying for authorisation in the UK will be subject to broadly equivalent prudential supervision to MIFIDPRU in its home jurisdiction before giving it a Part 4A permission. We also provided a list of criteria that we propose to consider when assessing an application.

2.4 We explained that some of the provisions in MIFIDPRU would also apply to tied agents. We defined what we mean by a tied agent in MIFIDPRU and that an appointed representative would need to meet this definition to be a tied agent.

2.5 In CP21/7, we asked a question about the application of MIFIDPRU requirements to the MiFID business of CPMIs.

> **Q1:** ***Do you agree that CPMIs should apply MIFIDPRU requirements to their MiFID business? If not, please provide details of an appropriate prudential regime for the MiFID business of a CPMI.***

Feedback and responses

2.6 We received 11 responses to this question. We did not receive any comments on international firms. We received one comment about tied agents. Tied agents is the term used for appointed representatives that undertake MiFID business. Where an appointed representative does not conduct MiFID business, it is not a tied agent.

Collective Portfolio Management Investment firms (CPMIs)

General comments

2.7 One respondent asked us about the treatment of small authorised alternative investment fund managers (small AIFMs) that had MiFID top-up permissions would be treated under the MIFIDPRU.

2.8 One respondent asked about the application to Article 3 MiFID exempt investment firms.

2.9 One respondent suggested that the requirements for CPMIs should be in a separate chapter as is currently the case.

2.10 One respondent asked if CPMIs could make use of any of the transitional provisions within MIFIDPRU.

Our response

Small AIFMs that also have MiFID permissions are not collective portfolio managers (CPMs) or CPMIs. They are directly authorised under MiFID, will become MIFIDPRU investment firms and MIFIDPRU will apply to them. K-ASA and K-CMH only apply to MiFID business and need to be calculated where there is a non-zero balance and the firm is above one of the SNI thresholds.

As previously stated, MIFIDPRU only applies to investment firms that are authorised under MiFID. Where a firm is exempt from MiFID under Article 3 MIFIDPRU does not apply. They will remain on Chapter 13 of IPRU-INV. They should also note that Chapter 13 of IPRU-INV will be amended to remove references to exempt-CAD firms.

Chapter 11 of IPRU-INV is being updated to refer CPMIs to the MIFIDPRU requirements that apply to them in parallel. This is consistent with our existing approach.

We have amended MIFIDPRU TP 2.7 to make it clear that it can also be used by CPMIs. This transitional relates to the fixed overheads requirement (FOR) and K-factor requirement (KFR). We have also now added a transitional provision for the permanent minimum requirement (PMR) for CPMIs. This will be relevant to CPMIs that will have a PMR of £150,000 and will allow them to gradually increase their PMR from €125,000, the base own funds requirement under IPRU-INV 11.3.1R, to £150,000 over 5 years. CPMIs that would have a PMR of £75,000 do not need a transitional provision as the base own funds requirement is already higher.

Where an existing transitional provision applies to an aspect of MIFIDPRU that is relevant to CPMIs they can make use of that provision. One example is that related to the calculation of K-AUM before having 15 months-worth of data.

Own funds and liquid assets requirements

2.11 Most respondents agreed that the FOR and liquid asset requirement in MIFIDPRU should apply to the whole firm. Several welcomed the alignment of the FOR calculation with that in AIFMD/UCITS.

2.12 Two respondents raised concerns about the different definition of liquid assets in MIFIDPRU from those in AIFMD/UCITS, and 1 about the different definition of own funds under each regime.

2.13 One respondent was concerned that firms would find it cumbersome to separate their CPM business from their MiFID business and that there was the potential for there to be double counting.

2.14 One respondent noted that our requirements for CPMIs were more than would be required of similar firms operating in the EU, and that UK firms would be at a disadvantage. They suggested that the requirements for CPMIs should be the higher of MIFIDPRU and AIMFD/UCITS.

Our response

CPMIs should already be applying different requirements to their CPM business and their MiFID business (GENPRU/BIPRU/IFPRU). Only having to look to MIFIDPRU should make it more straightforward for firms to know what their requirements are. The proposed requirement here is a continuation of the existing requirement.

The requirements for the CPM part of the business apply in parallel to the requirements for MiFID business. Where appropriate, own funds and liquid assets can be counted towards each requirement.

We note that there is an added complication in that the definition of own funds and liquid assets is not the same in each regime. This is something that we will look to address in the future.

Our treatment of CPMIs under MIFIDPRU is consistent with our treatment of them currently under IFPRU or BIPRU. AIFMD/UCITS do not contain any prudential requirements for the MiFID activities that portfolio managers authorised under those regimes can undertake. We consider it prudent to take account of the potential for harm that might arise from the MiFID activities of CPMIs. These activities are the same as those carried out by MiFID investment firms and the potential for harm is the same.

ICARA, risk management, governance and remuneration

2.15 Several respondents did not agree that ICARA, risk management, governance or remuneration requirements should apply to CPMIs. They were concerned about differences between the MIFIDPRU requirements and those in AIFMD/UCITS and that it would be complex for firms to apply both.

2.16 One respondent noted that the application of remuneration requirements to the whole of a firm's business was different to the approach taken in other areas of the regime. They suggested that CPMIs should be able to apply the higher of the regimes they were subject to or to be allowed to split remuneration according to the work being done, if they were able to.

Our response

Our ICARA, risk management and governance requirements are proportionate to the size and complexity of the firm. They take account of the potential risks to the MiFID business of the firm from the non-MiFID business of the firm. This is no different to our expectations that all MIFIDPRU investment firms will consider the risks from non-MiFID business.

The application of remuneration requirements to CPMIs is covered in more detail in Chapter 7 of this PS.

Changes to the definition of an SNI firm

2.17 Following feedback about calculating client orders handled (COH) and the daily trading flow (DTF), we have amended DTF so that it now also applies to firms that trade in their own name on an agency basis. These are firms that might not have permission to deal as principal. There is no change to the application of DTF to firms that deal in their own name, for themselves as well as clients. The revised definition of DTF is explained in more detail in Chapter 3 of this PS.

2.18 We have amended the definition of an SNI firm to reflect this change. The revised thresholds are in Table 2. Any firm that has a non-zero value of average DTF cannot be an SNI firm.

2.19 Firms that have permission to deal as principal are automatically non-SNI firms.

We have amended MIF003 to allow us to monitor this new measure. See Chapter 12 of this PS for details of the change. The updated form and completion instructions are published alongside this PS.

Table 2: Revised quantitative criteria for being an SNI

Measure*	Threshold
Assets under management	< £1.2 billion
Client orders handled – cash trades	< £100 million per day
Client orders handled – derivative trades	< £1 billion per day
Assets safeguarded and administered	zero
Client money held	zero
Average daily trading flow – cash trades	zero
Average daily trading flow – derivative trades	zero
On- and off-balance sheet total	< £100 million
Total annual gross revenue from investment services and activities	< £30 million

* *These thresholds, with the exception of the on- and off-balance sheet total, only relate to the MiFID activities undertaken by the firm. A firm may manage assets without undertaking portfolio management or ongoing investment advice under MiFID, or hold client money or client assets in relation to non-MiFID activities. These should be excluded from the threshold measurement.*

3 Own funds requirements

3.1 In this chapter, we summarise the feedback to our proposals for part of the own funds requirements that would apply to FCA investment firms, and our responses.

Key proposals

3.2 We proposed that a fixed overheads requirement (FOR) would apply to all FCA investment firms to allow them to be able to wind-down or exit the market. The FOR will be an amount equal to a quarter of its relevant expenditure in the previous year based on its most recent audited annual financial statements. We explained these firms should first determine their total expenditure. We then explained which other expenses can be deducted to calculate the relevant expenditure. We also confirmed that commodity and emission allowance dealers can deduct expenditure on raw materials where these underly the derivatives they trade.

3.3 We set out our proposals for the K-factor requirements (KFR) not already consulted on. These cover the following activities:

- assets safeguarded and administered (K-ASA)
- client money held (K-CMH)
- assets under management (K-AUM)
- client orders handled (K-COH)

3.4 We explained how delegation of portfolio management affects the measurement of assets under management (AUM) and the interaction between the K-AUM and the K-COH requirements.

3.5 We also updated our proposals on how to adjust the coefficient for the daily trading flow (K-DTF) own funds requirement in periods of market stress and included a worked example.

3.6 In CP21/7 we asked 7 questions:

Q2: ***Do you have any specific comments on our proposed approach to the calculation of the FOR and the specific items of expenditure that may be deducted from total expenses? If yes, what items would you suggest are/are not deducted, and why?***

Q3: ***Do you agree with our proposals for calculating K-ASA and that this should address the potential risk of harm from an FCA investment firm's direct safeguarding responsibilities, including where it is safeguarding assets delegated to it by another entity ASA? If you disagree, please explain why.***

Q4: ***Are our proposals on the calculation of K-CMH, especially when amounts of CMH should be treated as being in a segregated account, sufficiently clear? If not, what specific suggestions do you have for improvement?***

Q5: ***Do you agree with our proposals on how the value of assets should be calculated, and for when formal delegation takes place, when calculating K-AUM? If not, please explain any alternative suggestions you may have.***

Q6: ***Do you agree with our proposals for calculating K-COH? Especially for measuring the value of cash trades, and for when certain transactions may be excluded from the measurement of COH? If not, please explain why and provide evidence to support any alternative suggested treatments.***

Q7: ***Are our proposals that cover the interaction between K-AUM and K-COH clear and prudent? If not, what specific suggestions do you have to improve this?***

Q8: ***Do you foresee any issues with our proposals for how to calculate an adjusted coefficient for use in times of stressed market conditions? If so, how might we address them, or what alternative practical suggestions do you have for achieving the desired outcome without unnecessary complexity?***

Feedback and responses

3.7 We received 28 responses to question 2, 11 responses to question 3, 13 responses to question 4, 21 responses to question 5, 19 responses to question 6, 14 responses to question 7 and 9 to question 8.

Fixed overheads requirement

3.8 Most respondents were in favour of having a single way of calculating the FOR that would apply to all firms and thought that the list of deductions was clear. Some asked for clarification or to confirm their understanding of the requirements. Others made suggestions for amending the FOR calculation.

3.9 One respondent asked us to clarify if 'total expenditure' included operating costs, financing costs and the cost of revenue generation. They also asked us to provide examples of 'other appropriations of profits', if 'payments into a fund for general banking risk' included payments to a banking levy or an insurance policy, and for clarity and examples on what would be included in 'payments related to contract-based profit and loss transfer agreements'.

3.10 One respondent asked us to clarify what we meant by 'after any distribution of profits' and did we only mean this to refer to partnerships and limited liability partnerships (LLPs). Another asked if payments to members of an LLP would fall under the FOR. They suggested that distributions based on the ownership of an LLP should be treated in the same way as dividends, rather than being considered remuneration.

3.11 Five respondents wanted more details on what would be a 'non-recurring expenses from non-ordinary activities'. One suggested defining both 'non-recurring expenses' and 'non-ordinary activities' in the Glossary. One respondent asked us to provide examples of various expenses to allow for a consistent approach.

3.12 Two respondents asked to be able to deduct interest paid to counterparties, and not just interest paid on client money, as is currently the case under GENPRU.

3.13 One respondent thought that the FOR should only be based on the expenditure related to investment activities and not to the whole firm. They suggested that firms would set up subsidiaries to reduce their FOR.

Our response

As set out in MIFIDPRU 4.5.2R (1), the starting point for calculating relevant expenditure is audited annual financial statements. (Or where not available, unaudited financial statements may be used instead until the audited figures are finalised). In this way all items that are reported as part of total expenditure will be caught. It is not possible to list all such items and if firms are in any doubt about their financial statements they should talk to their auditors.

It was clear from the overall nature of responses received that the wording of MIFIDPRU 4.5.3R (1) was leading to potential confusion in understanding the nature of various deductions allowed from total expenditure, when calculating relevant expenditure. We have amended MIFIDPRU 4.5.3R (1) (a) so that relevant expenditure is to be calculated <u>before</u>, not after, distribution of profits. This is a more natural way to reflect how items of expenditure are recorded in financial statements, before considering any items for which that may not be the case. Chapter 15 of this PS summarises all the changes we are making to our proposals in CP21/7 as a result of consultation.

The ability to deduct 'payments related to contract-based profit and loss transfer agreements' from total expenditure covers situations such as where a firm has an obligation to transfer any residual profit for an accounting period to another group company. As we have clarified that total expenditure is now calculated before the distribution of profits (under MIFIDPRU 4.5.3R (1) (a)), such arrangements would be unlikely to impact expenditure. However, this item can be a feature found in some other jurisdictions, where it is possible for payments from residual profits to be accounted for as an expense. Where so, it may be more relevant where third-country entities are included within a prudential consolidation under MIFIDPRU 2.5.

The item 'other appropriations of profits' is simply a 'catch-all'. This is in case there may be an allocation that reduces the retained profits of the firm but is not technically recorded as a "distribution of profits". If so, then to be deductible from the firm's total expenditure, the item must be included in expenditure in the accounts and must also be fully discretionary. This item may also be more relevant to where third-country entities are included within a prudential consolidation under MIFIDPRU 2.5. It is not possible to list such items. But the general principle is that this covers items that are recorded as an expense, represents the appropriation of profits and are fully discretionary.

We have amended point MIFIDPRU 4.5.3R (2) (a) (ii) to include limited liability partnership members' shares in profits. The original drafting only referred to 'partners' and the defined Glossary term for this does not include LLPs. Our addition now provides the same treatment of deduction from total expenditure for LLPs as for ordinary and limited partnerships. This is where any such (employees', directors' or partners') shares in profits are (i) fully discretionary, and (ii) have been included in total expenditure. See also Chapter 15.

'Non-recurring expenses from non-ordinary activities' covers exceptional one-off items that would not be expected to re-occur and are not related to the normal or expected on-going activities of the FCA investment firm. It is therefore not necessary to define this or possible to give an exhaustive list. But an example might be one-off expenses relating to the disposal of a non-financial subsidiary. If a firm is unclear on whether an item falls within this category, they should contact our Supervision function in the normal way to discuss it. We will, however, consider publishing any examples as they come to light during implementation of the IFPR.

We consider the deduction of interest paid to customers on client money is easily identifiable and is subject to the condition that there is no obligation of any kind to pay such interest. Extending this treatment to interest paid to counterparties generally is too broad and would not be aligned with our baseline. It could also lead to false incentives to reduce a firm's own funds requirements.

The item 'payments into a fund for general banking risk' relates to funds for general banking risk that count as common equity tier 1 capital under point (f) of article 26(1) to the UK CRR – ie what are generally known as general provisions against credit risk. It does not include payments for an insurance policy. We would not generally expect FCA investment firms to hold such an item or to make payments to a banking levy. Although such amounts could occur when calculating consolidated FOR under MIFIDPRU 2.5.25R where an investment firm group includes a third country credit institution or a financial institution that grants credit.

A key purpose of the FOR is to help provide for own funds to help support an FCA investment firm wind-down or exit from the market in an orderly manner. It is therefore important that the relevant expenditure covers the whole firm. This is consistent with how a FOR is used in other prudential regimes (eg in IPRU-INV Chapter 11 for collective portfolio management firms).

In general, firms are entitled to structure themselves to suit their business needs. Having MiFID investment business in a separate entity could help simplify winding-down an FCA investment firm. However, FCA investment firms are remined of MIFIDPRU 4.5.6R, which addresses where expenses are incurred on behalf of the firm by third parties. And, if the FCA investment firm is part an investment firm group, then the requirements of MIFIDPRU 2 may apply. This could include the application of a consolidated FOR (under MIFIDPRU 2.5.25R).

Deductions of fees, brokerage and other charges when executing, registering and clearing transactions

3.14 Two respondents wanted to be able to deduct fees and brokerage whether the charges were passed on to customers or not. Firms that did not have customers would otherwise be disadvantaged. One respondent thought that in the event of wind-down for a firm without customers, these costs would fall to zero as they are only incurred when a firm is operating. They also said that the treatment in the IFPR was different to that in CRD IV legislation. The other thought that including them made the FOR more of a proxy for harm from ongoing operations than for wind-down. They suggested that fees and brokerage needed during wind-down should be included as part of the ICARA process and wind-down planning.

Our response

Our proposals in CP21/7 provided for fees, brokerage and other charges paid to central counterparties, exchanges and other trading venues and intermediate brokers to be deducted from relevant expenditure. This is where they are for the purpose of executing, registering and clearing transactions. But deduction was only allowed where they are passed directly on and charged to customers. This was because the relevant transaction expense would then be borne by the customer and not the firm.

We recognise that firms that do not have customers would not be able to benefit from this. Yet if only trading for themselves, such firms would generally be free to decide to reduce their transactions without the need to consider obligations to customers. However, we do not agree that such transaction costs would necessarily reduce to zero during a wind-down. Trading firms may still have open positions to manage down or to hedge, while protecting their value. As a result, we have inserted a new point (f) within MIFIDPRU 4.5.3R (2). This provides for 80% of the value of the relevant fees, brokerage and other charges to be excluded from relevant expenditure where the FCA investment firm is dealing on own account (even without customers). See also Chapter 15.

By including 20% of the value within relevant expenditure, the FOR will then capture a quarter, or 5%, of this amount. On average, this is roughly equal to 2 weeks' trading. We believe this is a reasonable minimum standard under MIFIDPRU 4, while maintaining a focus on wind-down. FCA investment firms are reminded to consider whether the amount of dealing transaction costs that remains to be included within their FOR is sufficient for their own circumstances under their ICARA process in MIFDPRU 7.

It is noted that this new deduction does not include any fees or charges to which MIFIDPRU 4.5.4R applies, for example amounts necessary to maintain membership of trading venues.

Material increase or decrease in relevant expenditure

3.15 We proposed that an FCA investment firm should recalculate it's FOR where there was a material increase in relevant expenditure during a financial year. We proposed that a material increase would be either:

- a projected increase in relevant expenditure for the current year of 30% or more, or
- an increase in the FOR of £2 million or more based on projected relevant expenditure for the current year

3.16 Eight respondents thought having an increase in the FOR of £2 million as 1 of the thresholds for a material increase was not large enough for larger firms. They said that they would expect to have to recalculate their FOR at least once during every year. A few also mentioned that the basic liquid asset requirement would also change. Respondents suggested just having a percentage-based definition of a material increase or that the £2 million threshold should be substantially increased. One respondent suggested using the higher of the 2 thresholds that we consulted on.

3.17 One respondent thought that basing 1 threshold on the relevant expenditure and the other on the FOR was confusing for firms. They suggested that both should be related to relevant expenditure. This would mean an increase in relevant expenditure of £8 million would be the threshold.

3.18 One respondent asked us to confirm that where the FOR did increase, the firm did not need to wait for our approval. Another thought that permission to decrease the FOR should be deemed granted after 30 calendar days unless we specified otherwise. Two respondents thought that all firms should be able to use budgeted or forecast expenditure for the current year where this showed a material increase or decrease on the actual expenditure of the previous year.

Our response

The threshold of £2 million reflects what is already applied under a regulatory technical standard implementing the UK CRR (and represents an increase on the EUR 2 million used there). We also note that the 30% threshold is an increase on the 20% used in the current standard.

If we were to apply the proposed thresholds as a 'higher of' test it would mean that for larger non-SNI firms, large absolute increases could still occur but not be reflected in their current own funds requirements. No evidence was provided as to what could be a more suitable alternative to keeping with our baseline. We may, however, review this in future in the light of experience, given that under IFPR all larger FCA investment firms will be subject to this threshold (compared to just current IFPRU firms subject to the UK CRR).

If the absolute threshold for a material increase was set in terms of (annual) relevant expenditure (ie £8 million) then this would yield the same result, as the increase in FOR would be a quarter of this (ie £2 million). It is also expressed in terms of the FOR because if we were to ever to issue a direction to an FCA investment firm to apply a different requirement than the standard calculation, this is likely to be in terms of the FOR and so any subsequent material absolute change (of £2 million or more) would be based upon this (and not relevant expenditure).

The requirement under MIFIDPRU 4.5.7R is to immediately recalculate and substitute a revised FOR where a material increase (as defined by the relevant thresholds) occurs. Our approval is not needed. Whereas our permission is needed where a material decrease occurs. This need reflects the importance of the FOR in setting the own funds requirements, including its wind-down trigger under MIFIDPRU 7. We do not believe it prudent to allow firms to apply an immediate decrease without our specific permission having first been granted.

As set out in MIFIDPRU 4.5.2R (1), the starting point for calculating relevant expenditure is audited annual financial statements (or until audited figures are available, unaudited financial statements may be used instead). The procedure for where a material change is projected during the year is set out in MIFIDPRU 4.5.7R to MIFIDPRU 4.5.10G. Taken altogether, we believe this is a prudent approach.

See also the section below concerning losses for the current financial year and material changes in relevant expenditure.

Deduction of expenses where the value has already been deducted from own funds

3.19 Seven respondents thought that expenses related to the amortisation of other intangible assets should be able to be deducted from total expenditure where those assets had already been deducted from own funds.

3.20 Two respondents asked if losses from non-trading book financial instruments could be deducted from relevant expenditure. Another 2 respondents asked about deducting foreign exchange losses when trading on own account. One referred to the existing ability to do this in GENPRU. The other mentioned foreign exchange derivatives used for hedging purposes.

Our response

In CP21/7 we proposed that expenses reflecting the amortisation of prudently valued software assets could be deducted when calculating relevant expenditure, where the FCA investment firm has already deducted these assets from own funds as an intangible asset. This was driven by our stance towards deduction of such assets from own funds.

However, we have considered the points made by respondents and agree that applying the same treatment to expenditure relating to other intangible assets, where those assets had already been deducted from own funds, is appropriate.

In MIFIDPRU 4.5.3R (2) we have amended what is now point (l) so that it is no longer referring to just the amortisation of software assets. Instead it now provides for (other) expenses, to the extent that their value has already been reflected in a deduction from own funds, to be deducted when calculating relevant expenditure. See also Chapter 15.

We would generally not expect to see losses from items such as non-trading book financial instruments and foreign exchange trading classified as 'expenditure'. Our current regulatory returns for the income statement, FSA002 and FSA030, show losses as negative trading income and negative dealing profit respectively. Such losses would, in effect, reduce own funds. However, to the extent that losses from trading on own account in financial instruments are included under 'expenditure' in financial statements then their deduction is covered by what is now re-numbered point (i) in MIFIDPRU 4.5.3R (2) consistent with our baseline. Expenditure relating to hedging foreign exchange would be included within relevant expenditure.

We note that 1 of the items required to be deducted from own funds under (article 33 of) the UK CRR is 'losses for the current financial year'. So, under our amendment, to the extent that an item of expenditure did relate to losses in the current financial year, it would not count towards measuring against the thresholds for a material current year increase or decrease in relevant expenditure.

K-ASA (assets safeguarded and administered)

3.21 We received 11 responses on the calculation of K-ASA for assets safeguarded and administered. Seven agreed with our proposals.

3.22 Two respondents suggested that the calculation should be aligned with the CASS rules for consistency. One of these was concerned about non-MiFID investment firms that acted as depositories for alternative investment funds but would be caught if part of a group that included an FCA investment firm. Another respondent asked us to confirm that K-ASA did not apply to firms that had the permission of 'arranging safeguarding and administration of assets'.

3.23 Two respondents did not agree with the delegation proposals and were concerned that it would lead to 'double-counting', whereas 2 respondents noted that delegation can present a risk to clients.

Our response

The definition of assets safeguarded and administered refers to the value of assets belonging to a client that a firm holds in the course of MiFID business. Permission to carry on the activity of 'arranging safeguarding and administration of assets' by itself would not allow a firm to hold those assets.

The application to MiFID business is also set out in MIFIDPRU 4.9.2R and follows through to MIFIDPRU 2.5 for consolidated K-ASA requirements. So where depositary business does not fall to be MiFID business, the relevant assets would not be included within average ASA. However, as stated in MIFIDPRU 4.9.5G (3), an FCA investment firm should consider any risk of harm arising from safeguarding for non-MiFID business under the ICARA process.

MIFIDPRU 4.9.10G says that the values of ASA used should be consistent with any records maintained in accordance with CASS 6.6. While we would not generally expect any major differences from how these records feed through into client assets reporting, we note that there may be differences because of the way in which MIFIDPRU 4.9 operates. For example as explained in MIFIDPRU 4.9.5G (2), where applicable, client funds placed with qualifying money market funds may need to be included within CMH and not in ASA (even though treated as client assets for the purposes of our custody rules). There may also be differences where reporting for CASS purposes also includes non-MiFID business. The references to values being 'consistent' with information in a firm's regulatory reports and reconciliations does not therefore mean that the values used will always be identical. Instead, the intention of the guidance in MIFIDPRU 4.9.10G is that firms should be comparing their ASA calculations with their regulatory reports and reconciliations to check that the ASA amounts are accurate and sensible when compared with the amounts in those reports. Where the amounts used differ, this should be because a rule or guidance provision in MIFIDPRU directs a firm to take a different approach.

As noted specifically by 2 respondents, delegation of safeguarding can present a risk to clients. We believe that the risk of harm can arise from where an FCA investment firm has delegated the safeguarding and administration of assets to another entity and where another entity has delegated it to the FCA investment firm. So both situations need to be included when measuring ASA.

We confirm that there are no changes to the rules for K-ASA we proposed in CP21/7.

K-CMH (client money held)

3.24 We received 13 responses on K-CMH. Ten respondents agreed that our proposals were clear and either had no further comments or requested minor clarifications. Some of these appreciated the clarification that CMH reporting should be consistent with CASS reporting.

3.25 Three respondents queried the method used to identify client money, which figure to use and how it related to reporting for the Client Money and Assets return (CMAR). One respondent asked what was intended by 'segregated accounts' and asked whether this included pooled accounts.

3.26 One respondent didn't think that client money that had been placed into money market funds (MMFs) should be treated as client money but rather as client assets. They said that firms would move their clients out of investments and into cash during times of volatility in the markets. As the coefficient for K-CMH is higher than that for K-ASA, the own funds requirement would also be higher. They suggested that we consider having an adjusted coefficient for K-CMH, in the same way that we do for K-DTF, for use during times of market stress.

3.27 One respondent asked if we could confirm that we were no longer considering having a 'prudential margin buffer' as part of the CASS rules as this would be double counting.

Our response

MIFIDPRU 4.8.14R says that a firm must measure client money held (CMH) in accordance with, to the extent applicable, any records, accounts and reconciliations that it maintains to comply with the requirements of CASS 7.15. However, there may be differences because of the way in which MIFIDPRU 4.8 operates. For example as explained in MIFIDPRU 4.8.5G (2), where applicable, client funds placed with qualifying money market funds may need to be included within CMH (and not in ASA even though treated as client assets for the purposes of our custody rules). There may also be differences where reporting for CASS purposes also includes non-MiFID business. So the amount used for calculating CMH may not necessarily be identical to the reporting of client money held under the CMAR.

Under MIFIDPRU 4.8.13R(1), an FCA investment firm must measure its CMH at the end of each business day. To provide clarity, we have added guidance in MIFIDPRU 4.8.16G. The relevant amount should reflect any subsequent adjustment that the firm is required to apply as a result of any requirement to carry out reconciliations in relation to client money (for example, under CASS 7.15). Therefore, where a reconciliation subsequently identifies that the amount of CMH recorded for a specific business day is incorrect, the firm should update the relevant amount to reflect the correct figure of CMH for that day's observation. And use the updated, correct figure when calculating the average CMH. See also Chapter 15.

A segregated account for the purposes of MIFIDPRU is defined in the Handbook Glossary term as an account that meets the conditions set out in MIFIDPRU 4.8.8R. These conditions were summarised in paragraph 4.44 of CP21/7. These conditions apply equally to pooling arrangements.

The definition of MiFID client money for MIFIDPRU (and as confirmed in MIFIDPRU 4.8.5 G 2(b)) includes money originally received in connection with MiFID business which a firm has placed in a qualifying money market fund (QMMF) in accordance with CASS 7.13.3R (4). QMMFs act as an alternative method of meeting the segregation obligations that would otherwise need to be met by depositing client money in a client bank account. This means that while the units or shares in the relevant QMMF must still be treated by the firm as client assets under CASS, the value of those units or shares must be included in CMH under MIFIDPRU. And MIFIDPRU 4.7.7R (1)(b) provides that when measuring the amount of its assets under management (AUM), a firm must exclude any amounts that are included in its calculation of CMH.

However, there might be a switch within a client's existing investment portfolio (eg from equities) into a money market fund (MMF) as the result of discretionary management or non-discretionary arrangements when providing investment advice of an ongoing nature. Where placing of money in an MMF is not for the purpose of meeting the firm's segregation obligations under CASS but is instead for general investment purposes on behalf of the client, we do not consider this to count as CMH under MIFIDPRU. Instead the amount of the investment in MMFs should form part of the AUM of the FCA investment firm. This approach will not interfere with investment decisions and advice on portfolio composition (which must continue to be made in the best interests of clients) at times of any market uncertainty. We believe that this approach does not require any change to our proposed rules.

We would note that in addition to including such investments in MMFs within AUM, the amount should also be included within ASA where the FCA investment firm is also responsible for safeguarding and administering those assets. However, where QMMFs are included within CMH, under MIFIDPRU 4.9.4R that amount does not form part of the investment firm's ASA.

By 'prudential margin buffer' we take the respondent to mean alternative approach mandatory prudent segregation under CASS 7.13.65R. The definition of MiFID client money for MIFIDPRU (and as confirmed in MIFIDPRU 4.8.5G 2(c)) includes such an amount and it must be included when calculating CMH. The alternative approach mandatory prudent segregation in CASS and the K-CMH in MIFIDPRU serve different purposes. The first deals with ensuring there is no client money shortfall for segregation purposes, the second with maintaining capital against the risk of harm arising from operational events when holding client money. MIFIDPRU 4.8 does not change any CASS obligations.

K-AUM (assets under management)

3.28 We received 21 responses on K-AUM. Most respondents agreed with at least some of our proposals, although many had queries, or disagreed with or wanted clarification on specific aspects. We received queries that appeared to be specific to the respondent. We have provided additional clarity where we think that is helpful to a wider audience.

3.29 If an FCA investment firm is unsure how a particular arrangement should be treated, it should refer to the overarching guidance we included in MIFIDPRU 4.6. A purposive approach should be applied, drawing appropriate analogies with other arrangements that are clearly included in, or excluded from, the relevant requirement. In addressing the responses below, we first deal with several general points raised before covering the main themes under separate headings.

3.30 One respondent disagreed with using net asset value (NAV). They thought it would mean that firms with strategies that the respondent considered riskier (such as those using short positions) would need lower own funds than other firms. However, most other respondents thought it was appropriate, reflected industry practice and was in line with other FCA requirements.

3.31 One respondent was concerned that K-AUM would deter new firms and affect competition. They suggested that as soon as a new firm stopped being an SNI due to the AUM threshold, it would face an additional own funds requirement for K-AUM and that the requirement did not scale in line with the potential additional harm. They proposed some amendments to K-AUM that they thought would address this.

3.32 One respondent asked what would happen if (through a change in business model) they stopped needing to measure K-AUM and had to measure K-COH instead. They asked whether they should continue to calculate K-AUM or move to calculating just K-COH. They also asked what figures to use for calculating K-COH if they didn't have historical information that they could use.

Our response

While we recognise that the use of derivatives and other items that could lead to negative values carries risk, it also helps to manage risk within a portfolio. Overall, we believe that the use of NAV as the measure of AUM better reflects how FCA investment firms monitor the value of their clients' investments and is a suitable measure for the purpose of calculating K-AUM. However, we may keep under review the extent to which the use of NAV for AUM is impacted by items with a negative value.

We do not think that it is prudent to make any changes to how the K-AUM requirement is calculated. We note that the potential harm may not necessarily scale in a linear manner with the value of AUM at all levels. But the approach of applying a single linear coefficient to the amount of the average AUM reflects our baseline and is simple to operate. Using a non-linear coefficient is, however, something we may consider in any future review of MIFIDPRU, in the light of data and experience of the new regime.

Firms will need, for their own business purposes, to know the value of the assets they have under management. Even where they do not need to calculate K-AUM unless they move above any of the SNI thresholds. And when an FCA investment firm crosses 1 or more of the thresholds to become a non-SNI, the calculation of its KFR (including K-AUM) may not be the driver of its own funds requirements. Instead, for many firms, the FOR will remain higher than their KFR. But if the change from SNI to non-SNI is caused by exceeding the average AUM threshold of £1.2 billion, and the firm's KFR then exceeds its FOR, we believe that the application of K-AUM is appropriate.

The non-exposure based K-factor requirements such as K-AUM are calculated using various degrees of averaging and lagging. (For K-AUM an FCA investment firm is required to look at the amount of AUM at the end of each of the last 15 months, ignore the 3 most recent monthly figures, and then average the remaining 12 to calculate average AUM). This process smooths the effect of any sudden increase or decrease in AUM over a 15 month period. Under MIFIDPRU 4.7.1R the K-AUM is calculated using average AUM, and the same approach (using different averaging periods) also applies to the other relevant volume-based K-factors (eg K-COH uses average COH).

So, where an FCA investment firm was calculating K-AUM, but then no longer provides a MiFID activity that gives rise to AUM, this does not mean that it immediately stops having any K-AUM. The firm is still required to calculate its average AUM – and hence also a K-AUM requirement – both of which will gradually reduce, down to zero 15 months later. This is shown by the worked example below (which assumes that the firm has historically been managing £10 billion worth of assets for an extended period and then ceases its portfolio management activities in April 2023). This approach ensures that the FCA investment firm still has some own funds based upon the AUM that it used to manage, to deal with the potential for harm. That harm might only come to light after the firm has ceased to manage those assets on behalf of clients. This also helps ensure that changes in a firm's own funds requirements are more gradual and reduces the need to hold additional own funds to address any subsequent harm under its ICARA.

Worked example

Month	Date	End of month AUM to be used (£bn)	Average AUM (£bn)	Average AUM calculation	K-AUM (£000s)
1	Jan-23	10	10.00	120/12	2,000
2	Feb-23	10	10.00	120/12	2,000
3	Mar-23	10	10.00	120/12	2,000
4	Apr-23	0	9.17	110/12	1,834
5	May-23	0	8.33	10/12	1,666
6	Jun-23	0	7.50	90/12	1,500
7	Jul-23	0	6.67	80/12	1,334
8	Aug-23	0	5.83	70/12	1,166
9	Sep-23	0	5.00	60/12	1,000
10	Oct-23	0	4.17	50/12	834
11	Nov-23	0	3.33	40/12	666
12	Dec-23	0	2.50	30/12	500
13	Jan-24	0	1.67	20/12	334
14	Feb-24	0	0.83	10/12	166
15	Mar-24	0	0	0/12	0

Similarly, where an FCA investment firm ceases to undertake MiFID activity that gave rise to AUM, but was only a non-SNI firm due to being above the average AUM threshold (of £1.2bn), it would remain a non-SNI firm until it notifies us that its average AUM has remained below that threshold for at least six months. (Note that under MIFIDPRU 1.2.13R a non-SNI firm shall only be reclassified as an SNI firm after a period of six months from the date on which it met all the relevant conditions to be SNI – in the case above, driven by average AUM, being below £1.2bn for at least six months).

As noted, the relevant rules for a non-exposure based K-factor apply (varying degrees of) averaging and lagging. MIFIDPRU TP4 deals with the situation of how to calculate each average metric for firms already authorised upon introduction of the IFPR. This is until they have built up enough data points to operate the averaging and lagging according to the relevant MIFIDPRU 4 rules. However, that transitional provision does not apply to where an FCA investment firm receives permission – whether by authorisation or variation of permission – to undertake a MiFID activity for the first time after the IFPR begins to apply. And that activity leads to a K-factor requirement. That requirement will apply immediately, and our proposals sought to deal with this through us specifying to the firm how to replace missing data points using business projections (eg in MIFIDPRU 4.7.12R for average AUM). In order to make things clearer we have amended MIFIDPRU 4.7.12R (for average AUM) to make use of a similar approach to the modified calculation in MIFIDPRU TP 4.11R (1), but with appropriate adjustments. We have also amended the rules to replicate this change for calculating average COH, CMH, ASA and DTF in the same circumstances. See also Chapter 15.

We are not able to provide through this PS individual guidance to firms on specific aspects of their business model and what is and isn't included within specific MiFID services and activities. Chapter 13 of PERG in our Handbook sets out how firms should determine if they fall with the scope of the UK provisions that implement MiFID. Firms should seek advice if they remain unclear how their activities relate to MiFID or the RAO.

K-AUM and delegation

3.33 Three responses were concerned with possible 'double counting' of assets under management and asked for clarification. One example was managing funds that were delegated to it by a UK firm that is not subject to an AUM-based financial resources requirement. The recipient firm also managed investments on behalf of its own clients in those funds. The respondent asked whether the AUM of its own clients need to be added to the delegated AUM.

3.34 Two respondents asked for clarification on investing in a 'fund of funds'. In cases where an individual client's portfolio is invested in the pooled fund of another fund manager, both fund managers will have to calculate K-AUM. But the respondent asked whether, if this is then further invested into another fund, it would be 'double counting' if that fund manager also had to calculate K-AUM.

3.35 Four respondents wanted to clarify what happened when an insurance company delegated the management of a fund to an FCA investment firm. In this case the delegating firm is not subject to an AUM-based own funds requirement. But it is subject to another prudential regime, Solvency II. They thought that this should be enough that they didn't have to also calculate K-AUM.

3.36 We received 4 responses asking how firms were to determine whether a third country entity was subject to an AUM-based financial resources requirement that is similar to the K-AUM requirement. Two suggested that we publish a list of regimes that we considered to have a sufficiently robust and mature regulatory regime, or where there were comparable own funds and liquid asset requirements. One wanted to be able to exclude the value of assets delegated from countries that had comparable investor protection to the UK.

Our response

In the example given in paragraph 3.33 above, the firm managing the assets is carrying out, and being paid to carry out, 2 distinct tasks.

i. It has been delegated the management of the entire portfolio by another firm and needs to decide where this should be invested.
ii. It manages assets on a delegated basis on behalf of its own clients. It happens that some of these clients have assets in those funds for which it is also a delegated manager.

There is no overlap between the 2 tasks. In i) the firm needs to consider the mandate it has been set by the delegating firm. In ii) the firm needs to consider the mandate it has been set by its own clients. We do not consider this to be 'double counting'.

We also do not consider the example given in paragraph 3.34 to be 'double counting'. Each investment firm exercising discretionary management has its own obligations and this should be reflected when measuring their own amounts of AUM.

The same general consideration should be applied to other possible scenarios (eg with co-mingled funds) according to their specific circumstances – ie is there more than 1 discretionary management obligation occurring? While in some cases this may mean that, mathematically, the total of client investments could be less than the amount of AUM the FCA investment firm or firms need to record for calculating K-AUM, we believe this is justified. K-AUM should be calculated at every level where a firm has obligations in respect of discretionary portfolio management (and non-discretionary arrangements constituting investment advice of an on-going nature) that could lead to the potential for harm. It should be remembered that if this was not captured under the MIFIDPRU 4.7 requirement, the potential harm (arising from multiple obligations) would have to be addressed under MIFIDPRU 7 anyway. Our approach is simpler and standardised.

Our proposal in MIFIDPRU 4.7.9R to exclude assets from the measurement of AUM by an FCA investment firm where a financial entity has formally delegated the management of assets to the firm is a specific concession. It is not based upon the financial entity concerned simply being subject to a prudential regime that includes capital requirements (eg Solvency II). As noted in MIFIDPRU 4.7.10G (4), it relies upon that entity being subject to an AUM-based capital requirement that is similar to the K-AUM requirement The aim is to provide a comparable focus upon the harm that a discretionary management entity can cause to clients whose investments are being managed (not balance sheet risk to that entity).

However, we have amended the definition of 'financial entity' and MIFIDPRU 4.7.10G. This extends the exclusion to where the delegating entity is an insurance undertaking and, together with the FCA investment firm, forms part of the same financial conglomerate for which we are the co-ordinator. And we have also extended the exclusion to where the delegating entity forms part of the same investment firm group as the FCA investment firm and both are included within the scope of prudential consolidation under MIFIDPRU 2.5. In the first case, this is because we can address the potential risk of harm relevant to AUM through supplementary supervision of the financial conglomerate. In the second case, the parent undertaking will capture the harm through the requirement to calculate consolidated K-AUM. See also Chapter 15.

We appreciate that it will be easier for firms to determine the financial resources regime of some third countries than others. However, we do not intend to publish such a list as we believe it is for firms to make the determination if they want to take advantage of the exclusion in MIFIDPRU 4.7.9R from having to calculate K-AUM for portfolios delegated from those jurisdictions. Firms may seek the assistance of the delegating entity or suitable third-party help to do so. Where it is not clear what the basis is for a third country firm's financial resources requirement, FCA investment firms should assume that it is not based in part on AUM. In that case, they will need to include such delegated portfolios within their own AUM calculation.

K-AUM and sub-delegation

3.37 Four respondents thought that where fund management had been sub-delegated only the original delegating firm, that is the firm closest to the investor, should have to calculate K-AUM. They considered that to do otherwise would be unnecessary 'double counting'. They wanted to understand the rationale behind this as sub-delegation is very common especially in cross-border business and would result in capital being held in 2 places for all AUM sub-delegation.

Our response

The exclusion in MIFIDPRU 4.7.9R from the measurement of AUM by an FCA investment firm where a financial entity has formally delegated the management of assets to the firm is a specific concession. We believe this exclusion is justified where there is only 1 level of delegation. Here it is reasonable to expect the 2 firms to be in close communication about the management of the funds. The more removed the firm managing the funds is from the end client, the greater the operational complexity of the arrangements and the more chance there is that harm may occur along the line.

When delegating firms should remember that they still retain responsibility to their client (including for any specialist investment needs), and they will need to continue to monitor sub-delegation arrangements. And if more than 1 firm in the chain is charging (the client) for the service then this suggests that each is conducting activity that could give rise to harm. Further, it could lead to a situation where there is a chain of sub-delegations with ultimately a large amount of AUM covered by only 1 firm in the chain holding capital against the potential for harm from discretionary portfolio management. This would be imprudent.

Given this, we have decided to proceed with our proposed rules for K-AUM where sub-delegation is used.

K-AUM for non-discretionary arrangements constituting investment advice of an ongoing nature

3.38 Five respondents did not agree that assets under ongoing advice should be included as part of the K-AUM requirement. Their concerns were that advisers, to for example a pension fund, might only have been tasked with looking at 1 aspect or gave advice on strategy rather than on specific stocks or funds. Potentially, several advisers could be appointed to give advice on the same set of funds.

3.39 They also raised concerns about how they would measure the value of assets under ongoing advice. An adviser might advise multiple different funds over a year and would not usually be kept up to date with changes in the funds value. Two respondents suggested that firms already held professional indemnity insurance against the risk of giving bad advice. One also requested more clarity on what we meant by 'ongoing' and by 'advice'. Another asked when did advice become ongoing and was receiving a retainer enough.

3.40 One respondent asked us to clarify what should be included in K-AUM, to confirm that it excluded advice given on a transactional basis only, and where advice is being given on a client's wider financial planning needs.

3.41 One respondent asked very specific questions about what would be included in MIFIDPRU 4.7.3G and what was meant by, 'advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings'. This is the ancillary service in paragraph 3 of Part 3A of Schedule 2 of the Regulated Activities order (RAO).

Our response

The definition of AUM or assets under management includes 'non-discretionary arrangements constituting investment advice of an ongoing nature'.

We would remind FCA investment firms that the K-AUM requirement and measurement of AUM only apply to their MiFID business. And we remind firms of our current Handbook definition of investment advice, which reflects the MiFID activity, 'the provision of personal recommendations to a client, either upon the client's request or at the initiative of the firm, in respect of one or more transactions relating to designated investments.' Firms may also find Chapter 13 of PERG in our Handbook helpful in deciding what may fall to be MiFID investment advice.

We do not consider that it is necessary to provide any further clarification on the ancillary service in paragraph 3 of Part 3A of Schedule 2 to the RAO. As the wording of that activity suggests, this is advice that is typically given to an undertaking in relation to a merger or acquisition or in the context of other corporate finance activities.

Firms should therefore first determine if the type of advice they are providing really is MiFID business that fits within the definition of investment advice above. If not, the value of assets subject to that advice would not fall under AUM.

The next stage is to work out if the investment advice given falls within the definition of 'investment advice of an ongoing nature'. Here we have clarified the definition so that it is either of

i. the recurring provision of investment advice; or
ii. investment advice given in the context of the continuous or periodic assessment and monitoring or review of a client portfolio of financial instruments, including of the investments undertaken by the client on the basis of a contractual arrangement.

We have added detailed guidance in MIFIDPRU 4.7.14G to 4.7.16G on all these aspects, covering what may or may not be included when measuring AUM. We have also clarified that genuinely 'one-off' or sporadic investment advice that does not constitute the recurring provision of investment advice (as described in the additional guidance we have added) is not included within the K-AUM requirement.

In addition, in MIFIDPRU 4.7.17G through to MIFIDPRU 4.7.22G using a mixture of rules and guidance we provide details on how to measure the relevant values of AUM. This includes a worked example in the case of the recurring provision of investment advice.

Our changes for the new detailed rules and guidance noted above on 'investment advice of an ongoing nature' are summarised in Chapter 15.

K-COH

3.42 We received 19 responses on K-COH. The majority agreed broadly with our proposals for K-COH, although some asked for clarification on specific points. A few appeared to have misunderstood our proposals. Points were also raised that concern the interaction of K-COH with K-AUM and so are dealt with in the next section.

3.43 Three respondents agreed that we should exclude transactions that are only caught within the description of reception and transmission of client orders as a result of the situation described in recital 44 of MiFID.

3.44 One respondent agreed with the treatment for operation of organised trading facilities (OTFs) and multilateral trading facilities (MTFs). Another respondent wanted guidance on this.

3.45 The main point of disagreement was on the length of time over which the K-COH is to be calculated. Two respondents thought that using 3 months of data was not enough and would lead to volatility where trading activity was seasonal. One suggested using 12 months of data instead. Another respondent suggested that the approach was not risk sensitive to the nature of the underlying transactions and asked whether the details, such as calibration, would be kept under review.

3.46 One respondent sought clarification on the use of exchange rates when converting the value of COH into their functional currency. They asked should this be at the end of each business day or just at the end of each month.

3.47 Two respondents drew attention to a possible unintended gap in K-COH. Our Glossary definition of 'client orders handled' covered (i) reception and transmission of client orders, and (ii) execution of orders on behalf of clients. Under MIFIDPRU 4.10.4R a firm is not required to include in COH orders it executes in its own name, including where it does so on behalf of a client. And MIFIDPRU 4.11.4R only applies K-DTF to a firm that deals on own account. But it was possible for an investment firm to execute in its own name without dealing on own account. It was suggested that, as drafted, our proposed rules would not capture this under either COH or DTF.

Our response

The exclusion of transactions described in recital 44 of MiFID from measurement of COH is covered in MIFIDPRU 4.10.4R (3) and MIFIDPRU 4.10.7 G. We note that for this exclusion to apply the FCA investment firm's role should not go beyond the 'extended' definition of reception and transmission (see also PERG 13.3).

Guidance on the treatment of orders when a firm is operating a trading venue (ie OTFs and MTFs) is already provided in MIFIDPRU 4.10.13G to 4.10.15G. As MIFIDPRU 4.10.14G sets out, the exclusion from COH only applies where a firm is acting in the capacity of the trading venue operator. Where an FCA investment firm simply executes client orders on an OTF or MTF then such transactions will be included within its measurement of K-COH (or where applicable, in DTF when executing in its own name).

Under MIFIDPRU 4.10.19R average COH is calculated from 6 months'-worth of daily values but excluding the daily values from the most recent 3 months. This means that the value of average COH used for the calculation of K-COH each month is based upon 3 months' worth of daily values. This is in line with our baseline approach for the implementation of the IPFR. The longer averaging period for DTF (compared to COH) reflects an intention not to disincentivise market making. We do not have any compelling reasons to deviate from this. It is something we may review in future in the light of experience of operating the IFPR.

COH is concerned with the value of client orders handled – ie orders received and transmitted, and orders executed in the name of the firm. It is not intended to reflect any position risk attaching to the underlying instrument. But MIFIDPRU 4.10.25R provides for the use of a duration adjustment for the notional amount of interest rate derivatives.

To calculate average COH the total COH for each business day is used. Orders that are handled in a foreign currency must be converted into the firm's functional currency daily using an appropriate exchange rate for that day. This will give the firm a value of COH in its functional currency for that day. The value of COH arrived at for this date should be used to calculate average COH for as long as it is needed. There is no need to recalculate the value for past dates in subsequent months.

We have clarified this in MIFIDPRU 4.10.19R and have provided guidance in MIFIDPRU 4.10.21G on the effect of this rule including how to select a conversion rate.

We have also made corresponding amendments in MIFIDPRU 4.15 for the treatment of foreign currency transactions when calculating DTF. See Chapter 15 for details.

We are grateful to the 2 respondents that identified the need to clarify how the execution of orders in the name of the firm, including where on behalf of a client, should be treated. The intention is that generally a transaction that the firm has executed would fall to be considered under either COH or DTF. This is to be regarded as a binary decision and there should be no 'gap' between them. COH if in the name of the client, and DTF if in the name of the firm even if on behalf of a client. We expect firms to know, when entering into a transaction, if it is contractually in their name (or not).

We confirm that no change to our rules for COH is required for this – ie orders executed in the name of the firm, including where on behalf of a client, are not included within COH. Instead, we have amended the general provision in MIFIDPRU 4.11.4R and added a new provision underneath it. This is so that K-DTF is not limited to an FCA investment firm that deals on own account. It will now also apply to a firm that executes orders on behalf of clients in its own name – ie there will be firms to which K-DTF may apply even if those firms do not hold, or otherwise need to hold, dealing on account permission. For example, a portfolio manager might execute a trade in its own name with the intention of subsequently allocating the relevant financial instruments among multiple client portfolios. Irrespective of whether such a trade constitutes dealing on own account, following the clarification in our rules, the value of the trade would always be recorded in K-DTF as it was executed in the name of the firm. See also under the section on K-DTF below and Chapter 15.

Interaction between K-AUM and K-COH

3.48 We received 14 responses on whether the interaction between K-AUM and K-COH was clear. Six respondents agreed that this was clear and most respondents found Table 2 in CP21/7 helpful. One respondent asked if we could reproduce the table in the Handbook.

3.49 Three respondents thought that we were taking a different approach to the EU and that it would lead to 'double counting'. This was where a firm was managing under a delegated mandate and did not have to calculate K-AUM (because that was being calculated by the delegating firm) but still had to calculate K-COH where it executed the transactions. One respondent thought that firms should not have to calculate K-COH where there was more than 1 level of delegation when managing assets. One respondent asked if FCA investment firms needed to capture trades under K-COH where the discretionary portfolio management had been delegated to them by a non-UK firm within the same group. Two respondents asked about the treatment of client orders under K-COH when carried out on behalf of a Solvency II insurance firm.

3.50 Six respondents wanted more information on how the interaction between K-AUM and K-COH should be treated within a prudential consolidation group. Another 3 respondents thought the treatment was unfair on groups that had centralised the 'dealing' (ie execution function) within 1 investment firm to ensure best execution under MiFID.

3.51 One respondent suggested agency trading performed as a member of a stock exchange should not count towards COH.

Our response

We have reproduced Table 2 from CP21/7, which illustrates the interaction between K-AUM and K-COH, in Annex 12 to MIFIDPRU 4. This table is only illustrative and not an exhaustive description of ways of doing business. If necessary, firms should consider GEN 2.2.1R, which requires that every provision in the Handbook must be interpreted in the light of its purpose, when determining if an activity is caught within K-AUM or K-COH.

Carrying out discretionary portfolio management (or non-discretionary arrangements for investment advice of an ongoing nature) creates obligations. And the execution (or reception and transmission) of client orders creates separate obligations. Both could give rise to harm for clients. The first activity is addressed through K-AUM and the second activity through K-COH. It follows that we do not view there to be any 'double counting'.

There is a specific exception, as set out in MIFIDPRU 4.10.28R. This exception recognises that where an FCA investment firm is providing both activities together and includes the relevant portfolio within its calculation of K-AUM, it does not also need to include within its measurement of COH the orders it generates in the course of providing that portfolio management or investment advice of an ongoing nature. But this is an exception to the general approach.

We have dealt with K-AUM and delegation in a previous section of this chapter, including where the delegation is received from a financial entity. Where an FCA investment firm is managing on a delegated basis and is required to include the assets delegated to it under its measurement of AUM, the execution of those orders by the same firm is not required to be included under COH. This applies the exemption (in MIFIDPRU 4.10.28R) noted above. But where an FCA investment firm is not required to include the assets under AUM (under MIFIDPRU 4.7.9R), the value of the orders executed will be included within the firm's measurement of COH. We believe this to be an appropriate way to address the potential for harm arising when carrying out portfolio management under delegation. Our approach is a departure from the baseline but something which we continue to believe is prudent.

For example, new limb (5) of our amended definition of 'financial entity' covers where an FCA investment firm is delegated the management of assets from an undertaking that forms part of the same investment firm group and prudential consolidation is applied under MIFIDPRU 2.5. This would include where that other undertaking is a non-UK firm. In this case the FCA investment firm does not have to include the amount of assets delegated within the measurement of its AUM. But if the FCA investment firm also executes the orders, it must include the value of those orders within its measurement of COH. A comparable situation will apply where the delegating entity is an insurance undertaking, but only where the conditions of new limb (4) of the definition of 'financial entity' are met – ie both entities form part of a financial conglomerate for which the FCA is the coordinator. See Chapter 15 for details.

Where an FCA investment firm is part of an investment firm group, prudential consolidation may apply under MIFIDPRU 2.5. Prudential consolidation operates on the basis of the 'consolidated situation'. This treats the prudential consolidation group as if it was a single, large investment firm. But consolidation does not replace solo supervision of the authorised FCA investment firm. It is therefore possible that an individual FCA investment firm may have to include transactions it carries out on behalf of another entity within the group when calculating K-COH at solo level. This reflects the obligations of the authorised firm and we believe this is prudent.

However, where prudential consolidation applies under MIFIDPRU 2.5 and includes both entities, the application of the consolidated situation will view this as if the 'single, large investment firm' is managing assets and executing client orders. As the client orders are being executed as result of managing the assets within the same deemed single entity, the value of those orders will not need to be included within the measurement of consolidated COH for the purposes of the parent entity's consolidated K-COH requirement. This may mean that where there is more than 1 FCA investment firm within an investment firm group, there could be situations where the sum of the individual firms' K-factor requirements could be more than the consolidated K-factor requirements. This would be due to intra-group transactions. But this is consistent with the need to ensure that the main focus is upon the harm that could be caused by individual authorised FCA investment firms.

Where this is the case, firms may wish to take this into account when conducting their ICARA process.

Taking several points made above together, where there is an FCA investment firm that acts as a centralised 'dealing' function that executes client orders on behalf of other entities within the same group, that investment firm will need to include the value of all relevant orders within its measurement of COH at individual firm level. This reflects the importance of solo supervision of an individual authorised FCA investment firm and its potential to lead to harm. However, where prudential consolidation applies under MIFIDPRU 2.5, the relevant transactions would 'fall away' as part of looking at the consolidated situation – ie they would not be included within the value of consolidated COH. This reflects the fact that consolidated supervision is only a supplement to solo supervision. And protects against financial instability or further sources of (direct or indirect) harm to clients of FCA investment firms arising from elsewhere within the group.

We have amended MIFIDPRU 2.5.29R (4). To make clear that where the consolidated application of the AUM, COH or DTF calculations would include amounts due to transactions or arrangements solely between 2 or more entities included within the consolidated situation, the UK parent entity may exclude those amounts when calculating the consolidated AUM, COH or DTF. See also Chapter 15.

Where an FCA investment firm performs agency trading as a member of a stock exchange by executing trades in the name of the firm, following the clarification in MIFIDPRU 4.11.4R, the value of the trade would always be recorded in K-DTF and not K-COH. See also under the section on K-DTF below and Chapter 15.

K-DTF – calculating the adjusted co-efficient

3.52 We received 9 responses on how to calculate an adjusted coefficient for K-DTF for stressed market conditions. Six respondents did not foresee any issues with our proposals. One of these suggested that it would be straightforward to include within automated calculations. They added that, as the use of the adjusted coefficient was optional, firms could decide if it was worth doing so. Another said that although they would generally have more trades under stressed conditions, it was helpful that its use was voluntary.

3.53 One respondent was concerned that it didn't take enough account of different business models of affected firms. Another asked how firms would know it was stressed market conditions and what about firms that trade on more than 1 venue where the stresses may occur at different times.

3.54 One respondent thought that our proposals did not offer enough relief to firms and would be operationally complex to implement. They suggested taking a statistical view of stressed market conditions.

Our response

The rationale for making an adjustment to the coefficient for calculating K-DTF is to avoid discouraging market making in times of stressed market conditions. It is therefore aimed particularly at those FCA investment firms that are relatively important in making markets. While recognising that such firms also trade in volatility. The adjustment to the coefficient should also be viewed alongside how average DTF is calculated, which provides some degree of 'smoothing' and 'lagging' to help reduce major changes in the K-DTF requirement. If necessary, firms will have time during which to obtain permission for any interim profits they have made from trading during periods of stressed market conditions to count as own funds in accordance with MIFIDPRU 3.

Given how K-DTF is calculated, there can only be 1 coefficient that is applied to average DTF for cash trades and 1 for derivatives. Our proposal achieves this, adjusting the 2 coefficients to account for periods of stressed market conditions. To seek to adjust for different business models would only add additional complexity for marginal benefit, given the rationale for the adjustment noted above. Any approach needs a process to determine when periods of stressed market conditions have occurred, while taking into consideration that such periods may occur on different market venues, may cover only specific market segments, and may only last for short periods intra-day. Under MIFIDPRU 4.15.11R this is by reference to article 6 of Part 1 (FCA) of the UK version of Regulation (EU) 2017/578 (defined as the Market Making RTS). We appreciate that this may not be simple to ascertain, but it is consistent with the baseline and the rationale for the adjustment. And as noted by respondents, the use of the adjustment is voluntary.

While the alternative suggestion of a statistical approach is interesting, the concept is not sufficiently developed to have confidence in its effect, compared to our proposal which reflects the baseline.

There is no change to our proposals. However, we expect to monitor the use of the adjusted coefficient and may review its need and impact in the light of experience. For example, whether there would be any evidence to support a requirement upon market venues to publish data for when periods of stressed market conditions occur according to the relevant conditions.

K-DTF – execution of orders on behalf of clients in the name of the firm

3.55 In responding to our question on K-COH, and as described in that section above, 2 respondents drew attention to a possible unintended gap in the way our proposed rules for K-COH and K-DTF fit together. They explained that it was possible for an investment firm to execute in its own name without dealing on own account. It was suggested that, as drafted, our proposed rules would not capture such transactions as either COH or DTF.

Our response

As part of the feedback received under K-COH an issue was identified that is really about K-DTF. We are grateful to the 2 respondents that identified the need to clarify how the execution of orders in the name of the firm, including where on behalf of a client, should be treated. The intention is that generally a transaction that the firm has executed would fall to be considered under either COH or DTF. This is to be regarded as a binary decision and there should be no 'gap' between the 2. COH if in the name of the client, and DTF if in the name of the firm even if on behalf of a client. We expect firms to know, when entering into a transaction, if it is contractually in their name (or not).

Limb (2) of our definition of 'daily trading flow' or DTF as proposed includes 'the execution of orders on behalf of clients in the firm's own name'. This is confirmed in MIFIDPRU 4.15.2G (1). This is in line with the baseline for IFPR. However, the general provision in MIFIDPRU 4.11.4R that defined the application of, among other requirements, K-DTF was in conflict with this and so we have added a new provision underneath that rule. This is so that K-DTF is not only limited to an FCA investment firm that deals on own account. It will now also apply to a firm that executes orders on behalf of clients in its own name – ie there will be firms to which K-DTF may apply even if those firms do not hold, or otherwise need to hold, dealing on account permission. For example, a portfolio manager might execute a trade in its own name with the intention of subsequently allocating the relevant financial instruments among multiple client portfolios. Irrespective of whether such a trade constitutes dealing on own account, following the clarification in our rules, the value of the trade would always be recorded in K-DTF as it was executed in the name of the firm.

Consequential to the above amendment, to reflect that fact that there may now be transactions included within DTF that do not arise from dealing on own account, we have also deleted what was MIFIDPRU 4.15.8G (2). That provision indicated that a firm that provided portfolio management services on behalf of an investment fund did not need to include any trades that it executed in that capacity in its DTF. Including transactions executed by an FCA investment firm in its own name for the purpose of providing portfolio management services on behalf of investment funds with DTF removes what we believe would otherwise have led to an imprudent distortion. All client types are now treated the same. Conducting transactions in the name of the firm, even if on behalf of clients, has the potential for harm that is not the same as pure agency business. Capturing this risk in a standard way under K-DTF (in MIFIDPRU 4.15) also reduces the work required of firms that may otherwise have been required assessing harm under their ICARA process (in MIFIPRU 7).

Both the above changes are refinements to the position we set out in PS21/6 and are also covered in Chapter 15.

As noted under the section above on the interaction between K-AUM and K-COH, we have also amended MIFIDPRU 2.5.29R (4). To make clear that where the consolidated application of the DTF calculations would include amounts due to transactions or arrangements solely between 2 or more entities within the consolidated situation, the UK parent entity may exclude those amounts when calculating the consolidated DTF. See also Chapter 15.

4 Firms acting as clearing members and indirect clearing firms

4.1 In this chapter we summarise the feedback to our proposals for the specific requirements, including firm categorisation, that will apply to FCA investment firms that are clearing members and indirect clearing firms.

Key Proposals

4.2 We proposed that all FCA investment firms that are clearing members or indirect clearing firms should be non-SNI investment firms as they are, by the very nature of their activities, interconnected with other financial institutions. This means that they cannot be SNI firms even if they meet all the other requirements for being an SNI firm. We proposed that this will also apply to those firms that are self-clearing firms.

4.3 We proposed that the own funds requirement for daily trading flow (K-DTF) would apply to the transactions where these firms provide clearing services as a clearing member or as an indirect clearing firm.

4.4 We also proposed that FCA investment firms that are clearing members should include their pre-funded contributions to a central counterparty (CCP) default fund as part of the trading counterparty default (K-TCD) requirements and explained how to calculate this.

4.5 In CP21/7 we asked 1 question.

Q9: ***Do you agree with our proposed treatment of FCA investment firms when acting as clearing members and indirect clearing firms? If not, what alternatives could be used to calculate the own funds requirements for such activity? Are there any other circumstances in which FCA investment firms may have exposures to a CCP that should be captured by K-TCD?***

Feedback and responses

4.6 We received 9 responses to this question. Four respondents agreed with our proposals. A further respondent agreed on the point that clearing activity was interconnected and so firms carrying out this activity should be non-SNIs. The remaining 4 respondents were concerned about the proposed treatment of pre-funded contributions to the default fund of a CCP, although 2 also commented upon the application of K-DTF.

Pre-funded contributions to the default fund of a CCP

4.7 Four respondents were concerned about our proposed treatment of pre-funded contributions to the default fund of a CCP. They argued that the risk factor, set at 8%, was too high and would be disproportionate. One respondent provided calculations that showed it would lead to materially higher own funds requirements than currently under the UK CRR. Another respondent suggested that this would put FCA investment firms at a competitive disadvantage, noting that the EU does not have any corresponding requirement in its IFR. Alternative suggestions received were to lower the risk factor, provide an option based on the approach of (article 308 of the UK CRR) using 'c-factors', or to address the risk instead under the ICARA process.

Our response

We recognise that the EU's regime does not include a requirement to capture potential risk on pre-funded contributions to the default fund of a CPP. However, we suggest that this is because it also does not allow EU investment firms to make use of the K-CMG (alternative approach to calculating market risk requirements) where the clearing member is another investment firm subject to the IFR. Whereas under IFPR, the use of an investment firm as clearer is not a barrier to the use of K-CMG and we believe that our overall approach has regard to the relative standing of the UK. But we believe it is prudent to then provide for the potential risk on pre-funded contributions of an FCA investment firm clearing member to the default fund of a CCP.

We agree with respondents that a risk factor of 8% may be too high. This is the default amount for 'other' counterparty types that are not otherwise listed in MIFIDPRU 4.14.29R. A more appropriate amount is required when the default fund exposure is to a qualifying central counterparty (QCCP) – ie a CCP that is authorised or recognised under the UK EMIR regime.

We have amended MIFIDPRU 10.4.2R and added a new 10.4.3R so that the applicable risk factor may be the relevant 'c-factor' provided by a QCCP for the relevant pre-funded default fund exposure. Where a 'c-factor' is not available, the risk factor for a QCCP will be 1.6%. For a non-qualifying CCP the risk factor will be 8% in all cases. We have also set the value of the scalar, 'alpha', at 1.

Application of K-DTF to clearing services transactions

4.8 One respondent felt that applying K-DTF to transactions where a clearing firm provides clearing services as a clearing member or as an indirect clearing firm was disproportionate but did not explain why. Another respondent asked that we clarify how 'double counting' would be avoided for matched-principal business (but without explaining what they meant by this in the context of clearing).

Our response

We believe that transactions, where an FCA investment firm provides clearing services as a clearing member or as an indirect clearing firm, should be included in the calculation of the daily trading flow (DTF). This is because such transactions carry the potential for harm from an operational event.

In CP21/7 we proposed that where an FCA investment firm may both execute an order and provide clearing services, it does not need to include the clearing transaction in its DTF calculation provided that the value of the executed order is already included in its calculation of COH in line with MIFIDPRU.4.10 or DTF in line with MIFIDPRU 4.15. This is to avoid the transaction being double counted where the firm is providing both execution and clearing services for the same trade.

The term matched principal is not defined in this context and so the resulting own funds requirements will depend upon the nature of the contractual arrangements. For example, where the firm is principal to matching buy and sell transactions with separate clients then we would call this matched principal trading. In this instance there would be 2 transactions and the value of both must be included in DTF under MIFIDPRU 4.15. This is because DTF is based on the volume of trading undertaken and is not a measure of market risk. The no double counting provision in MIFIDPRU 10.3.2R would avoid both transactions also being subject to further DTF where the same FCA investment firm is also providing clearing services for those transactions.

However, there are other situations which we have seen more loosely described as matched principal trading. For example, where there is only a single transaction that the firm executes in its own name at the request of the client. The same firm provides clearing services in relation to the transaction in its own name. The resulting position is held by the firm, even though it is notionally allocated to a client's portfolio. Although the firm in this situation may regard itself as being 'matched' (because the trade was requested by the client) it will hold a net position. The FCA investment firm will therefore need to apply K-NPR under MIFIDPRU 4.12 (or where relevant, K-CMG under MIFIDPRU 4.13) to such positions, until such time as the client requests an opposite trade to unwind the position. The firm will also need to include the transaction in its calculation of DTF, since the firm entered into the trade in its own name (ie dealing on own account, but on behalf of a client). The no double counting provision in MIFIDPRU 10.3.2R would avoid the 1 clearing services transaction being subject to further DTF because the FCA investment firm has already applied DTF to the execution of the transaction.

However, where an FCA investment firm provides clearing services without also executing the client order, then DTF will apply to that clearing transaction.

5 Basic liquid assets requirement

5.1 In this chapter, we summarise the feedback to our proposals for a basic liquid assets requirement that would apply to FCA investment firms and the type of assets that can be used to meet this requirement, and our responses.

Key proposals

5.2 In CP21/7, we proposed to introduce a basic liquid assets requirement where FCA investment firms would be required to hold an amount of liquid assets that is at least equal to the sum of:

- one third of the amount of its fixed overheads requirement (FOR), and
- 1.6% of the total amount of any guarantees provided to clients

5.3 We explained that the basic liquid assets requirement can apply on an individual and consolidated basis. Where the requirement applies on an individual basis, we set out our expectations that an FCA investment firm should meet this requirement using assets it holds itself.

5.4 We also recognised that there may be circumstances where it may be appropriate for the firm to rely on liquidity support provided by other entities within its group. Therefore, we made allowance for firms subject to prudential consolidation to apply for an exemption from this requirement on an individual basis.

5.5 We described a list of core liquid assets that firms can use to meet the basic liquid assets requirement.

5.6 In CP21/7 we asked 1 question:

> **Q10:** ***Do you agree with our proposals for a basic liquid asset requirement, to be met by holding core liquid assets? If not, please explain what alternative proposal you would suggest and why.***

Feedback and responses

5.7 We received 25 responses to question 10. Eight respondents fully agreed with our proposals with a further 6 respondents expressing broad support for the proposals. The remaining respondents focused on specific issues or areas of concern.

Basic liquid assets requirement

5.8 Respondents broadly agreed with our approach to introduce a basic liquid assets requirement. They expressed the view that the requirement aligns well with the harm that it aims to address.

5.9 One respondent pointed out that the basic liquid assets requirement is geared towards firms with simpler business models rather than for larger and more complex firms such as broker dealers. They went on to suggest that our proposals elsewhere in CP21/7 allowed firms to come up with their own assessments of what should be the appropriate level of liquidity needs for a firm.

Our response

We acknowledge that the basic liquid assets requirement is designed in such a way that it can accommodate simpler business models while being able to scale according to the proportion of a firm's FOR. In this way, firms with more complex business models should be able to meet their relevant overheads for at least a month using their core liquid assets.

In CP21/7, we explained that the purpose of the basic liquid assets requirement is to ensure that FCA investment firms always have a minimum stock of liquid assets to fund the initial stages of a wind-down process. This basic liquid assets requirement represents the minimum liquidity requirement that all FCA investment firms must meet whatever their specific investment services or activities. It is does not stop firms from holding more core liquid assets or applying stricter measures.

In CP21/7, we went on to clarify that the basic liquid assets requirement forms part of the overall framework that a firm must adopt for assessing its individual liquidity needs. It is through the ICARA process that FCA investment firms will need to determine if they should hold additional liquid assets to ensure they can be wound down in an orderly way or to address their funding for ongoing business needs. This is especially relevant for larger and more complex firms. The ICARA process is set out in MIFIDPRU 7. Refer to Chapter 6 for further detail concerning the feedback we received regarding the ICARA process and our response to that feedback.

5.10 One respondent asked for further engagement with the FCA to help ensure that the liquidity measures under the IFPR are embedded appropriately. For example, they had concerns around the maintenance of cash buffers with UK and global institutions. The respondent also asked if we could confirm whether regulated UK affiliates can act as custodian for cash reserves.

Our response

We agree that it is important to ensure that the IFPR, including its liquidity measures, is embedded appropriately. We aim to engage with FCA investment firms to help this process and share lessons in the light of experience, where appropriate.

Without any further details around the exact nature of the concerns raised by a respondent over the maintenance of cash buffers with UK and global institutions it is difficult to comment. We do note that MIFIDPRU 6.3.1R provides that short term deposits at a UK-authorised credit institution count as a core liquid asset. And MIFIDPRU 6.3.4R provides that deposits with non-UK credit institutions count where relevant expenditure or guarantees are incurred in a currency other than sterling. But these are not the only types of core liquid asset eligible to meet the basic liquid asset requirement.

We do not agree with the proposal that regulated UK affiliates can act as custodians for cash reserves that a firm needs to meet its basic liquid assets requirement on an individual firm level. To be eligible to meet the basic liquid asset requirement, core liquid assets (including cash or bank deposits) should be held by (ie in the name of) the FCA investment firm. This is to ensure that the asset is readily realisable, as it is the firm itself that may require these resources to fund the initial stages of an orderly wind-down. However, there is nothing to prevent a firm holding core liquid assets in the form of short-term deposits with an affiliated UK credit institution. Where the basic liquid assets requirement applies on a consolidated basis, MIFIDPRU 2.5.47R requires the UK parent entity to ensure that the total amount of liquid assets needed to meet the consolidated requirement is held by UK entities within the consolidated situation.

5.11 Another respondent said that while they strongly support the proposed approach to setting the basic liquid asset requirement, they had concerns around the composition of the FOR as an input into the calculation of the requirement. Their concern centres around the restriction that only fees, brokerage and other charges paid to central counterparties, exchanges, other trading venues and intermediate brokers can only be deducted from total expenditure where they are directly passed on and charged to customers.

5.12 The respondent argued that this does not adequately consider the business model of a proprietary trading firm. They advised that for these costs that are not directly passed on and charged to customers they are likely to represent a material part of a firm's FOR and so also the basic liquid asset requirement.

Our response

In paragraph 4.7 of CP21/7, we proposed that an FCA investment firm could deduct fees or other charges payable to a central counterparty, exchange, other trading venue or intermediate broker only where the relevant fees were directly passed on to customers. This followed our baseline approach to this issue. We do not share the same view that these fees would necessarily cease immediately and entirely once a firm stops trading or enters wind down. A proprietary trading firm may still need to incur such fees to exit its existing positions and the firm itself would need to bear those costs. However, we have revised our rules relating to the calculation of relevant expenditure under the FOR to permit firms that are dealing on their own account to deduct 80% of the value of those fees and charges when calculating relevant expenditure, subject to certain conditions. Chapter 3 of this PS contains further detail on our response to the feedback we received regarding the FOR. This should address the respondent's concern on the element of the basic liquid asset requirement that is derived from the amount of the FOR.

5.13 One respondent suggested that the proposal for a basic liquid assets requirement, could require a significant amount of liquid assets to be raised. The respondent said that this would be true for firms that do not benefit from the transitional relief available with respect to the FOR. They put forward a recommendation that the transitional provisions should be extended and apply to all firms.

Our response

The transitional provisions (TPs) are there to help existing authorised firms adjust to a new prudential regime and transition smoothly towards their full requirements under the IFPR. We have carefully considered the transitional relief that should be made available. At the same time, we have also taken into consideration the importance of firms holding the minimum level of own funds for the activities they undertake and the potential harm that they may cause. In terms of the basic liquid assets requirement, we are concerned that FCA investment firms hold the minimum amount of core liquid assets that will allow them to fund the initial stages of an orderly wind-down.

We explained in CP20/24 the circumstances where firms may benefit from TPs as they apply to the FOR. In our near-final rules, we have now clarified that where an FCA investment firm benefits from transitional relief using an alternative requirement for their FOR, it may also reduce the amount of the basic liquid assets requirement that is based upon the FOR accordingly. We have amended the rule clarifying the interaction between the TPs for own funds requirements (in this case, specifically, as applied to the FOR) and the basic liquid assets requirement in MIFIDPRU 6.2.1R. We have also inserted a new TP, MIFIDPRU TP 2.24R, to reflect this change. See also Chapter 15.

We recognise that the FCA investment firms that may benefit from this transitional relief may represent only a subset of the FCA investment firm population. In most cases, the TPs apply in circumstances where there might otherwise be a relatively large increase for an individual firm compared to existing regulatory capital requirements.

5.14 Three respondents asked us to clarify why we have chosen to apply a stricter approach than the EU by requiring SNIs to comply with the basic liquid assets requirement. They pointed to the flexibility provided under the IFR that allows competent authorities to exempt SNIs from this requirement. The 3 respondents felt strongly that all SNIs should be exempt from the basic liquid assets requirement.

5.15 Two respondents also raised questions regarding the application to SNIs of the additional liquidity requirements under the ICARA process.

Our response

Our approach does not represent a departure from the baseline position. Under that, competent authorities may choose not to exempt SNIs from the basic liquid assets requirement. Similarly, we have decided not to grant a similar exemption under the IFPR. The same can be said with respect to the application of internal capital and liquidity requirements to SNIs.

We are strongly of the view that it is prudent for all FCA investment firms to hold a minimum amount of core liquid assets. This will allow firms to fund the initial stages of an orderly wind-down. In addition, all firms should have internal procedures to monitor and manage their liquidity requirements. We explained in Chapter 7 of CP21/7, our expectations around determining the liquid assets threshold requirement. See Chapter 6 for our response to the feedback received on the ICARA process.

5.16 With respect to liquidity management on a consolidated basis, 1 respondent asked us to provide guidance around the criteria that will be applied and/or circumstances under which a firm may be granted a liquidity waiver under IFPR. The respondent also asked if firms currently operating within an FCA approved 'Defined Liquidity Group' could expect to receive the same approval under IFPR. If not, the respondent suggested that this would represent a significant change to the existing, FCA mandated day-to-day liquidity management for these firms.

Our response

The IFPR introduces a new approach of a basic liquid asset requirement for all FCA investment firms. Current concepts relevant only to certain firms (eg defined liquidity group) will, in general, no longer apply.

We acknowledged in CP 21/7 that there are circumstances in which it may be appropriate for investment firms to rely on liquidity support from other entities within their group. We proposed an option of applying for an exemption from this basic liquid assets requirement at an individual firm level. We are not able to provide individual guidance on potential waiver applications in this PS. But the conditions for obtaining an exemption from the application of individual liquidity requirements are set out in MIFIDPRU 2.3.2R. In summary, that provision requires that (i) the firm must be part of a consolidation group (either under the UK CRR or under MIFIDPRU), (ii) the consolidating parent must apply appropriate monitoring and oversight of the group's liquidity position, and (iii) we must be satisfied that there are contracts in place that provide for the free movement of funds around the group, so that the firm can meet its liquidity obligations as they fall due. For UK CRR consolidation groups, under which the PRA will be the consolidating supervisor, the PRA must also not object to us granting the exemption. We will assess these applications on a case-by-case basis, having regard to firms' explanations of how these conditions are met. Importantly, each application would require the appropriate level of scrutiny, taking into account the nature, scale and complexity of the FCA investment firm group before any exemption from this requirement at an entity level would be granted.

Calculating guarantees

5.17 Respondents agreed with our proposals regarding guarantees to clients.

Our response

We confirm that no change to our rules for the calculation of the element of the basic liquid asset requirement for any guarantees to clients.

Core liquid assets

5.18 Many respondents welcomed the list of core liquid assets that we proposed FCA investment firms could use to meet their basic liquid assets requirement. Respondents felt that the assets more closely reflect the realities for investment firms compared to existing prudential regimes.

5.19 Two respondents expressed their support for the inclusion of units or shares in a short-term regulated money market fund, or in a comparable third country fund, as a category of core liquid assets.

5.20 Two respondents suggested that assets representing claims on supra- and sovereign agencies (eg debt issued by these agencies) – should be included as part of core liquid assets. They argue that these instruments are a viable alternative to government direct issuances.

Our response

Given the importance of the basic liquid asset requirement, we believe that claims on or guaranteed by the UK government or the Bank of England (eg UK gilts and Treasury bonds) should count towards it. But not similar assets that do not necessarily have the same standing, including with respect to their certainty of value.

We said in CP21/7 that liquid non-UK government bonds would be an example of non-core liquid assets that can be used to meet the liquid asset threshold requirement under the ICARA process. Provided these assets can still readily be converted into cash even under stressed market conditions. And we recognise, that from a credit standpoint, assets representing claims on supra- and sovereign agencies may have a similar credit risk profile. MIFIDPRU 7.7.7G provides guidance on the principles we expect FCA investment firms to consider when deciding if an asset qualifies as a non-core liquid asset. And MIFIDPRU 7.7.10R requires FCA investment firms to apply 'haircuts' to determine the value of non-core liquid assets that contribute to meeting its liquid assets threshold requirement. For example, in MIFIDPRU 7.7.12G, we have indicated the minimum haircut for assets representing claims on, or guaranteed by, multilateral development banks or international organisations to be 0%.

5.21 One respondent suggested that cash deposits at non-UK credit institutions should be considered as core liquid assets given that bank-owned asset managers may be required to place their excess cash with another bank within their group.

Our response

In general, we do not consider that cash deposits held at non-UK credit institutions should be classified as core liquid assets as there may be obstacles in returning these assets to the UK under stressed market conditions. Nevertheless, MIFIDPRU 6.3.4R provides for cash deposits at non-UK credit institutions where a firm's expenditures are denominated in foreign currencies.

It is difficult to comment on the scenario envisaged by the respondent without further details. But in the event of a conflict between legal or regulatory requirements, it may be appropriate for a firm to apply for a rule modification.

5.22 One respondent expressed the view that committed facilities should be included in the list of core liquid assets. The respondent argued that committed facilities are a reliable source of financing. They went further to suggest that if committed facilities are excluded from core liquid assets, it may discourage firms from having such facilities to meet their liquidity requirements. The respondent argued that this may have a knock-on effect that leads to higher liquidity risk which would be contrary to the intention of the policy underpinning the IFPR's liquidity requirements.

Our response

We understand that committed facilities can be a useful additional source of overall business financing for firms while operating on an ongoing basis. Nevertheless, core liquid assets should be earmarked to fund the initial stages of an orderly wind-down. A loan facility may be withdrawn (even if regarded as committed) if a firm enters wind-down, or under stressed market conditions. Consistent with our baseline, we do not consider it prudent to allow committed facilities to be eligible to count as core liquid assets.

A firm may have regard to the availability of any committed facilities, taking account of their terms and quality, when assessing its ongoing liquidity requirements under the ICARA process.

Eligibility of trade receivables as core liquid assets

5.23 Two respondents disagreed with the exclusion of trade receivables for non-SNI investment firms, which have the permission to deal on own account or underwrite/place financial instruments on a firm commitment basis.

5.24 One of the respondents put forward a recommendation that where a non-SNI firm has such a permission but with a qualification that it is limited to using it for the purpose of executing client orders on a matched principal basis, it should be allowed to include trade receivables as part of its core liquid assets. This would be to the extent it is permitted under the conditions set in MIFIDPRU 6.3.3R. The respondent argued that this should be permitted because the matched principal transactions are matched and notionally offsetting.

5.25 Another respondent claimed that it is difficult to come up with an objective economic rationale behind excluding trade receivables as core liquid assets for non-SNIs that have permission to deal on own account or underwrite/place financial instruments on a firm commitment basis. The respondent went further to explain that principal trading firms may to a lesser degree have trade receivables on their balance sheet compared to other types of FCA investment firms and banks. Nevertheless, by categorising this balance sheet item differently for principal trading firms it creates unlevel playing field considerations and places an unnecessary burden upon these firms.

Our response

We have considered the arguments for non-SNI firms that deal on own account, including where notionally matching transactions, and remain of the view that the restriction with respect to trade receivables is appropriate. It is consistent with our baseline and reflects generally the specific risk profile of firms that deal on own account. These firms may be subject to unexpected calls on their liquidity (eg where the firm becomes liable because of a default on one of a pair of matched transactions). And trade receivables may not be so easily realisable by a trading firm during periods of stress.

5.26 One respondent asked if accrued income which, due to a firm's arrangement with their counterparty, is invoiced and redeemed within 30 days of the time the liquidity requirement is set would qualify as eligible core liquid assets as they contend it would in effect be equivalent to trade receivables.

Our response

Accrued income is revenue that the firm has earned but has not yet invoiced to a customer. Subject to the relevant accounting standards, once accrued income is invoiced it would ordinarily become an account receivable.

Trade receivables refers to any receivable generated by selling or providing a service to a customer. In our glossary of definitions, we refer to trade receivables as 'receivables from trade debtors (including fees or commissions)'. We consider that once the accrued income is invoiced, it becomes an account receivable, it would be considered as part of trade debtors (receivables).

We do not agree that income which has accrued for services already provided, but which has not yet been invoiced, should be eligible as core liquid assets. Until an invoice has been produced, any income arising from it is likely to be difficult to market or realise. But once an invoice has been produced, we agree with the respondent that such income may qualify as part of an FCA investment firm's eligible core liquid assets, as long as the conditions in MIFIDPRU 6.3.3R are met.

5.27 One respondent asked us to clarify that in the case of a firm who recognises a debtor arising from its daily funding of clients transactions (ie where the firm funds a client transaction and is then seeking reimbursement), whether these debtors could be classified as a trade receivable.

Our response

Where a firm recognises a debtor arising from its daily funding of client transactions, we would regard this as granting credit. It is likely to fall under the ancillary service which MiFID describes as 'granting credits or loans to an investor to allow him [or her or them] to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction.' We would not regard this as a trade receivable.

5.28 One respondent agreed with the inclusion of trade receivables as part of core liquid assets coupled with many of the conditions that need to be met in MIFIDPRU 6.3.3R. However, the respondent questioned the imposition of a 50% 'haircut' which they considered too steep and would prove to be too onerous. They asked if we could provide the reasoning behind this haircut.

Our response

Core liquid assets should be of high quality. We are concerned that when firms enter periods of stress, they may find that trade debtors delay repayment, which would diminish the available core liquid assets to fund the initial stages of an orderly wind-down.

Trade receivables are less liquid than other core liquid assets and they are more likely to be less marketable or realisable. The conditions set out in MIFIDPRU 6.3.3R, that trade receivables should be receivable within 30 days and subject to a 'haircut' of at least 50%, are consistent with our baseline. These conditions are a way to recognise that it may be possible to realise trade receivables through, for example invoice discounting, while maintaining a prudent level of comfort for times of stress.

Sterling and non-sterling currencies

5.29 Two respondents welcomed the proposal to allow an FCA investment firm to use comparable core liquid assets denominated in a foreign currency. However, the 2 respondents suggested that the requirement to link non-sterling assets to the proportion of expenditure and guarantees in these currencies should be removed. They raised concerns that the ongoing monitoring of the proportion of expenditure and guarantees on foreign currencies would be challenging and unduly restrictive for firms. One of the respondents argued that holding currencies such as pound sterling, euro and the dollar which are highly liquid are a way of diversifying assets and part of many FCA investment firms' liquidity strategy.

5.30 Another respondent raised a related concern where non-sterling denominated firms (ie firms with a functional currency other than pound sterling) may incur a significant portion of their relevant expenditure in sterling. In meeting the basic liquid assets requirement, the respondent claimed that a firm will incur additional foreign exchange risk, thereby incurring additional cost in hedging its resulting sterling balance sheet exposures as well as counterparty risk on the associated hedges.

Our response

In CP21/7, we acknowledged that some FCA investment firms and consolidation groups may incur relevant expenditure or guarantees in currencies other than pound sterling. We proposed that under these circumstances where a different currency is involved, a firm would be allowed to use comparable core liquid assets denominated in a foreign currency. But only to extent that these assets can be included in the same proportion as the relevant expenditure or guarantees that the firm incurs in that currency.

We note that MIFIDPRU 6.3.4R does not require an FCA investment firm to hold basic liquid assets in currencies that reflect the underlying expenditure for which the assets are likely to be required. Rather, a firm may choose to do so. This is intended to allow it to address the potential for currency mismatches between its liquid assets and its expenditures. We therefore do not agree that it exposes a firm to significant additional risk or creates undue burden. Where a firm has foreign exchange risk arising from material expenditure in foreign currencies, it is open to it manage this as it considers appropriate.

5.31 Two respondents asked whether pound sterling deposits held with overseas banks would be recognised as part of core liquid assets. They said that for many entities within a wider group, excess liquidity would ordinarily be deposited with their head office which could be outside of the UK.

Our response

In our proposals, we said that overseas deposits in foreign currencies could be used as core liquid assets as long as these assets are included in the same proportion as the relevant expenditure or guarantees that the FCA investment firm incurs in that currency. These funds would need to be held in the name of the FCA investment firm rather than held in the name of a parent or other firm within a wider group.

We do not agree that pound sterling deposits held at a non-UK credit institution should be considered as part of the core liquid assets of the firm. This is because stressed market conditions, coupled with potential localised difficulties that may occur in the relevant jurisdiction, could hinder the ability to readily return these liquid assets to the FCA investment firm to meet the relevant expenditure or guarantees that it incurs in pound sterling. Our prudent approach is intended to avoid a shortfall arising in terms of the UK liquidity needs of the firm, especially for funding the initial stages of a wind-down.

5.32 One respondent drew attention to the point that while trade receivables may also contribute to meeting the basic liquid assets requirement, it is also likely that the majority of trade receivables of a non-sterling denominated firm will be denominated in other currencies and therefore will not be eligible as core liquid assets except to the extent that expenditures are also incurred in that currency. The respondent recommended that the currency-based provisions set out in MIFIDPRU 6.3.4R be amended to link the currency of the core liquid assets held to meet the basic liquid assets requirement to the functional currency of the firm.

Our response

We do not believe that it would be prudent or appropriate to change the currency-based provisions in MIFIDPRU 6.3.4R in the way suggested. Allowing currency assets that are not in the same currency as expenditures incurred by the firm to count as core liquid assets to meet the basic liquid assets requirement would introduce additional risk in terms of their realisable value.

Not a liquid asset

5.33 One respondent requested further clarification as to how client assets that are excluded from the definition of core liquid assets would be considered in the overall regulatory liquidity position of the firm, especially in the context of prime brokers.

Our response

Any asset that belongs to a client (eg client money or client assets under our client assets sourcebook (CASS)) cannot be counted as a core or non-core liquid asset. This remains true where client assets are held in the firm's own name.

From a regulatory and liquidity perspective, client assets should not feature in the overall liquidity position of the firm as they do not belong to the firm. However, the holding of client money and/or client assets can have implications on a firm's liquidity position. For example, when there are reconciliation discrepancies – between say a firm's client money resource and a firm's client resource – CASS 7.5.29R states that any shortfall must be paid into a client bank account by the close of business the day that the reconciliation is performed.

In the preparation of the firm's financial statements, there may be a different accounting treatment with respect to client assets held in an FCA investment firm's name and this would be subject to the applicable accounting standards. But it should be clear that client money and client assets should not contribute towards the firm's core liquid assets and non-core liquid assets to meet the basic liquid assets requirement and the liquid assets threshold requirement respectively. (See Chapter 6 for further detail on the liquid assets threshold requirement).

Assets received via a title transfer collateral arrangement (TTCA) may count towards meeting an FCA investment firm's relevant liquid asset requirements where those assets are eligible as core or non-core assets as applicable. However, the potential for harm associated with use of TTCAs should be considered under a firm's ICARA process. As noted by MIFIDPRU 7 Annex 1.21G, a firm being reliant upon TTCAs to meet its basic liquid asset requirement on a sustained basis is an example of where its business model may become unviable.

5.34 One respondent drew attention to paragraph 6.19 in CP21/7, where our proposals describe the exclusion from the definition of a core liquid asset of any asset that 'is encumbered or subject to some restriction that prevents it being realised'. The respondent pointed out that that there is no indication of the time horizon that would be satisfactory for the purposes of making sure these assets can be readily realisable and available to the firm. The respondent recommended that a timeframe of between 2 and 4 business days may be appropriate.

5.35 In addition, it was pointed out that clearing firms may hold different types of assets for investment firms with different levels of restrictions and/or shifting ownership. This may explain why it would be necessary to apply a degree of flexibility with respect to an appropriate timeframe.

Our response

MIFIDPRU 6.3.5R says that an FCA investment firm must not treat as a core liquid asset (i) any asset that belongs to a client and (ii) any other asset that is encumbered. MIFIDPRU 6.3.6G (2) then describes other restrictions (eg regulatory or contractual requirements) which would affect a firm's ability to liquidate, sell, transfer or assign the asset. Setting a time horizon is not a relevant matter. For as long as an asset is encumbered or subject to some other restriction, it cannot count as a core liquid asset to meet the basic liquid asset requirement. The same applies for encumbered or restricted non-core liquid assets (see MIFIDPRU 7.7.9G (2)) which cannot be used to meet the liquid assets threshold requirement.

Overall liquidity needs

5.36 One respondent requested that we reassess the underlying rationale for the specific obligation to hold core liquid assets to meet the basic liquid assets requirement. They suggested that, for certain business models such as principal trading firms, there is limited impact in the event of the failure of a principal trading firm. This is because principal trading firms do not trade or invest on behalf of any third parties, but rather they put their own capital at risk. Consequently, they suggested that, for these firms, their balance sheets are far less complex with little in the way of long-term assets or liabilities. In addition, they suggest that positions can be closed out in a short period of time.

Our response

We are strongly of the view that all FCA investment firms should hold a minimum amount of core liquid assets to be able to meet the basic liquid assets requirement as set out in MIFIDPRU 6.2.1R. Irrespective of an FCA investment firm's business model, any FCA investment firm could enter into wind-down and the requirement represents the minimum stock of liquid assets that we believe a firm should hold to allow the firm to fund the initial stages of an orderly wind-down. This will help avoid principal trading firms creating potential harm to the market.

5.37 One respondent pointed out that, despite the resemblance between our proposed liquidity requirements and those that exist in other jurisdictions, they contend that there are some differences. Specifically, they pointed to EU's regime, which they argued sets only 1 criterion for the liquid assets requirement as opposed to having both the basic liquid assets threshold plus the liquid assets threshold requirement under the IFPR.

5.38 The respondent asked us to describe the rationale behind the second criterion (ie the combined elements that define the liquid assets threshold requirement). The respondent suggests that the combination of the basic liquid assets requirement and the liquid assets threshold requirement could imply that liquid assets are necessary to enable a firm to begin wind-down and secondly, to begin an orderly wind-down respectively. According to the respondent, this would imply the firm needs to hold two sets of liquid assets twice for the same risk.

5.39 Or alternatively, the respondent said that the other combination would be that liquid assets are needed to begin wind down and to fund ongoing operations respectively. They suggest that in this case an FCA investment firm would have to take 2 sets of liquid assets for 2 risks (or events) which are mutually exclusive – either the firm winds down or it continues as a going concern.

Our response

We believe that our overall approach to liquidity requirements for FCA investment firms is broadly consistent with the approach in our baseline. We have, however, simplified the treatment of (core) liquid assets that may be used to meet the basic liquid assets requirement, while providing flexibility in the types of (non-core) liquid assets that can be used to meet the liquid assets threshold requirement. This approach is intended to make our rules more accessible to all FCA investment firms and avoid having to refer across to other detailed sources such as delegated regulations or PRA rules that implement the UK CRR. It also helps firms determine the detailed treatment of (non-core) liquid assets to better fit their business model.

In terms of the rationale behind the combination of the basic liquid assets requirement and the liquid assets threshold requirement, we do not agree with the description put forward by the respondent – it is neither combination that they have put forward.

MIFIDPRU 6.1.7G explains that the basic liquid assets requirement is based on a proportion of a firm's fixed overheads requirement and any guarantees provided to clients. And that a firm may need to hold more liquid assets to comply with its liquid assets threshold requirement. The basic liquid assets requirement is meant to ensure that FCA investment firms have the minimum amount of core liquid assets to enable the firm to fund the initial stages of an orderly wind-down.

In Chapter 7 of CP21/7, we explained that firms would need to determine if they need more liquid assets to fund an orderly wind-down than are required by the basic liquid assets requirement. The amount of additional liquid assets a firm may need to hold should also consider the liquidity needs of the firm to fund its ongoing business. FCA investment firms should set their liquid assets threshold requirement as the higher of the liquid assets needed to fund an orderly wind-down and for ongoing business purposes. Thus, the basic liquid assets requirement and the liquid assets threshold requirement are not mutually exclusive as they serve to ensure a firm has determined the total amount of liquid assets it requires to commence an orderly wind-down. The diagrams we provided in Annex 4 of CP21/7 show the process for determining the liquid assets threshold requirement. We discuss our response to the feedback that we received in relation to the liquid assets threshold requirement in Chapter 6 of this PS.

Impact of a FOR transitional provision on the basic liquid assets requirement

5.40 Three respondents requested confirmation that where a firm benefits from transitional relief limiting their FOR as set out in MIFIDPRU TP2, they will also have their basic liquid assets requirement correspondingly reduced during the transitional period (as the basic liquid assets requirement is determined with reference to their FOR).

5.41 Respondents asked us to clarify the interaction between the own funds requirements TP (and specifically, those that reference the provisions concerning the FOR), and the basic liquid assets requirement in MIFIDPRU 6.2.1R.

5.42 One respondent asked if we had considered their feedback to CP20/24, where a request was made to provide transitional relief for current exempt-CAD firms with respect to the liquid asset requirement. They suggest that the liquidity requirements under the IFPR are new for current exempt-CAD firms and would mean a higher own funds requirement for these firms under the proposed TPs.

Our response

In MIFIDPRU TP 2.7R 2 (a), MIFIDPRU TP 2.10R (2) (a) and MIFIDPRU TP 2.21R (2) we set out the instances under which an FCA investment firm may be able to benefit from transitional relief by using an alternative requirement for their FOR.

We confirm that we have added a transitional provision in MIFIDPRU TP 2.24R which states that where a firm is applying an alternative requirement for their FOR, the basic liquid assets requirement should be calculated on the basis of the FOR as reduced by the own funds requirements TP. See also Chapter 15.

The change to MIFIDPRU TP2 does mean that current exempt-CAD firms may be able to benefit from transitional relief with respect to the basic liquid assets requirement where they are able to apply the alternative requirement for their FOR.

6 Risk management, ICARA and SREP

6.1 In this chapter we summarise the feedback to our proposals on the rules and expectations on firms' risk management and Internal Capital Adequacy and Risk Assessment (ICARA) under the IFPR, and our approach to the Supervisory Review and Evaluation Process (SREP).

Key proposals

6.2 In CP21/7 we explained that we saw the introduction of the IFPR as an opportunity to re-establish our expectations for FCA investment firms' internal governance and risk management. We began by setting out 5 key principles that underpinned our proposed approach:

- FCA investment firms must consider and account for the potential harm they pose to consumers and market
- the ICARA process is the centrepiece of firms' risk management processes
- senior management is responsible for ensuring the appropriateness of their firm's governance and risk management
- we will intervene at given intervention points if FCA investment firms fail to act appropriately or their actions prove unsuccessful
- our expectations on firms are proportionate to the risk of harm posed

We made clear the intention of our proposals was to build upon the framework established in our Guidance FG20/1 'Assessing Adequate Financial Resources' (June 2020).

6.3 Our key proposals were to:

- introduce an Overall Financial Adequacy Rule (OFAR)
- establish the ICARA process as the centrepiece for investment firms' risk management, incorporating business model assessment, forecasting and stress-testing, recovery planning and wind-down planning
- set out expectations and standards around the assessment of the adequacy of own funds and liquid assets, including how any necessary additional own funds and liquid assets should be determined
- introduce the concept of notification and intervention points to clarify our expectations of firms facing challenges to their financial resilience
- link oversight of the ICARA to responsibilities under SM&CR
- introduce the ICARA questionnaire to support the re-orientation of our approach to SREP and risk monitoring
- allow firms that are part of investment firm groups the option of conducting the ICARA process on a group basis

6.4 In the CP we asked 4 questions on our proposals:

> **Q11:** ***Are our expectations of firms regarding the ICARA and meeting the OFAR sufficiently clear? If not, which areas would benefit from further clarification?***
>
> **Q12:** ***Is the rationale for and explanation of the own funds and liquid assets wind-down trigger sufficiently clear? If not, which areas would benefit from further clarification?***
>
> **Q13:** ***Do you agree with our proposal to use an early warning indicator?***
>
> **Q14:** ***Do you agree with our proposed approach to the ICARA for firms forming part of a group?***

Feedback and responses

6.5 We received 36 responses to question 11, 12 responses to question 12, 14 to question 13 and 13 responses to question 14. Respondents broadly supported our proposals, but requested clarification on several points, requested we provide more guidance on some of our proposals, and that we adopt a transitional approach towards full compliance with our proposed rules on the ICARA.

Expectations for ICARA and OFAR

6.6 In CP21/7 we set out our proposals to introduce the ICARA, which replaces the internal capital adequacy assessment process (ICAAP) for those investment firms currently subject to it. The ICARA process covers investment firms' risk management, incorporating business model assessment, forecasting and stress-testing, recovery planning and wind-down planning. As part of the ICARA process we proposed that investment firms would need to meet an OFAR, to ensure that they hold sufficient own funds and liquid assets to remain viable throughout the economic cycle, and to allow their business to wind down in an orderly way.

6.7 There were multiple comments and queries from respondents, but no objections to the overall proposed approach, with respondents stating their support for our proposals as improving on the current regime by better tying in the different elements of risk management into a more coherent whole. We break down the feedback provided on this question into three sub-categories: the ICARA process; assessing harms and mitigants; and transitions.

The ICARA process

6.8 We received comments from 1 respondent on the frequency of OFAR calculation and from 11 respondents in relation to our proposed requirements on the wider ICARA process.

6.9 One respondent requested that SNI firms be exempted from the ICARA process entirely. Two respondents requested that we provide more detail on our expectations in relation to business model analysis and planning.

6.10 There were also requests for information on our expectations on stress testing, such as what we meant by "severe but plausible", and whether liquidity stress testing should cover specific, market-wide and combined scenarios. One respondent asked what "larger trading firms" meant in the context of our expectations on reverse stress testing and which investment firms this applied to.

6.11 We received 1 query asking whether we expected recovery planning to be undertaken by SNIs, and another response asked whether recovery planning should be included within the ICARA document.

6.12 We also received 5 responses on our proposed approach to wind-down planning. One respondent requested further clarity between our proposed rules for MIFIDPRU 7 and our published Wind-down Planning Guide. One respondent expressed concerns that the FOR would not be adequate for wind down. One respondent argued that the liquid asset requirement for wind down would have a disproportionate impact on private equity and venture capital firms given their low potential for harm.

6.13 On the wind-down triggers, a respondent argued that we should not require firms to automatically begin wind down if a breach occurs. Another respondent requested that our rules be amended so as not to require firms to hold in full and up front the own funds and liquid assets required for orderly wind down. One respondent wanted to know what would constitute an "imminent and credible" recovery. One respondent asked whether the own funds and liquidity triggers are independent of each other.

Our response

Firms must ensure that they meet the OFAR at all times, whether the primary component is made up of their K-Factor requirements or other requirements.

All firms, including SNIs, pose a risk of harm to consumers and markets and must consider and account for this risk. The ICARA process is also the tool that firms will use to determine their own funds threshold requirement and liquid assets threshold requirement, and therefore determine how they meet our Threshold Conditions. For these reasons, it would not be appropriate to exempt SNIs from the ICARA process.

Our expectations for the ICARA are proportionate and we do not expect firms with less complex business and operating models to conduct a disproportionately complex ICARA process. If firms believe their basic own funds and liquid assets requirements are sufficient to cover their assessment of their risk of harm for their ongoing operations and during wind down, then that would be acceptable as long as they provide a clear and reasonable basis for this view in their ICARA document.

Recovery planning forms a part of the ICARA process and should either be included within the main ICARA document or may be provided in a separate document alongside to form part of the overall ICARA documentation, as long as it is properly integrated into the firm's overall approach to the ICARA.

Firms should refer to FG20/1 ('Our Framework: Assessing adequate financial resources') where we have already published guidance on business model analysis.

Firms should use their judgment to ascertain what constitutes a severe but plausible stress given the nature of their business and operating model. We do not define it as a certain confidence interval or specific market conditions. There is no general requirement to conduct firm-specific, market-wide and combined scenarios for stress testing and our expectations of firms are proportionate. However, firms should consider which scenarios are most appropriate to replicate a severe but plausible stress for their own circumstances, which may include approaching stress testing in this way.

We have changed references to 'larger trading firms' to 'firms with more complex business or operating models'. In the first instance, firms should assess for themselves whether the complexity of their business or operating model means it is appropriate to conduct more in-depth stress testing and reverse stress testing. The FCA may provide feedback on the adequacy of a firm's stress testing relative to the complexity of a firm's business or operating model as part of a SREP or other review.

As stated in CP21/7, we expect all FCA investment firms to conduct recovery planning, including SNIs. This is because an SNI may also cause harm to consumers and/or markets if things go wrong. This should be proportionate to the nature and complexity of the firm's business.

We do not propose to introduce further guidance on our approach to wind-down planning at this stage. Wind-down plans should be developed with reference to the Wind-Down Planning Guide but taking into account the specifics of the firm.

The wind-down trigger represents the point at which the firm is no longer likely to be able to recover. It is important to recognise this point so that the firm can commence an orderly wind down. By the time a firm reaches this point, it will normally have executed its recovery planning options, and potentially actions set by us. We would normally expect to engage with the governing body of a firm during this process rather than automatically imposing wind down. However, if necessary, we may use our powers to prevent harm from occurring, for example by preventing the firm from continuing to carry on regulated activity.

Firms should use the ICARA process to identify the amount of resources they need for wind down and hold the relevant amount.

We recognise that some capital and liquid resources may be released during the wind-down process and for some non-SNIs it may result in a reduction in their K-Factor requirements. However, the purpose of this requirement is to reduce the risk of a disorderly wind by ensuring firms hold the necessary resources at all times to wind down in an orderly way if required. As such, the full amount required to do this must be held up front.

We do not consider it appropriate to exempt private equity and venture capital firms from the liquid asset requirement for wind down. These firms, like all other FCA investment firms, may still pose a risk of harm for which additional liquid assets may be required, including during wind down.

"Imminent" means there is a specific timeline by which the firm's situation will improve (eg a capital injection scheduled for a specific date in the near future), and by which the situation will not deteriorate further. "Credible" means there is a strong probability that the firm's recovery actions will be successful.

The own funds and liquidity wind-down triggers are independent of each other. Breaching one should be considered a signal to wind down without waiting to breach the other. However, if one is breached, the position of the other may be considered as part of any actions we expect the firm to take or may take ourselves. For example, if a firm breaches its liquidity wind-down trigger but has a strong capital position well in excess of its own funds requirements, we might expect it to convert some of its assets to liquid assets.

Assessing harms and mitigants

6.14 Eleven respondents requested varying levels of guidance on the connection between the identification and assessment of the risk of harm required under our ICARA process rules and the calculation of own funds and liquid assets requirements under the OFAR.

6.15 Most of these were to request further clarification and examples – either through this publication or through follow-up guidance – of our expectations around assessing harm. While some made a general request for guidance, others were more specific, wanting to know how we expect firms to map harm to different exposures, citing potential challenges in dis-aggregating a source of risk that has the potential to harm clients, markets and/or the firm itself. One respondent requested we provide additional templates to set out our expectations on the type of harm that we are expecting firms to address through the ICARA. Another respondent requested we go a step further and publish expected calibrations for K-Factor calculations to address harm not captured through the standard K-Factor calibrations to help ensure a level playing field. Two respondents also sought further detail on the confidence levels underlying our expectations, for example if we expected a 1-in-200-year event to be covered.

6.16 Three respondents voiced concerns around our proposed rules prohibiting firms using any K-Factor requirement calculated under MIFIDPRU 4 that they determined to be in 'excess' to address other sources of harm. They believe such an approach may not capture the benefit of commercial agreements or similar that reduce the level of risk overall, and more generally do not reflect how the ICARA may be used to offset risks or take a holistic view of the business when measuring the adverse impact of disruption. One respondent had a specific question in relation to our expectations around the use of credit risk mitigation techniques.

6.17 We received several comments specific to our proposed approach to calculating liquid asset requirements under the OFAR. These were to question or get clarity on our approach to non-core assets: the appropriate treatment of intercompany and trade receivables, and more granular guidance on haircuts applicable to non-core liquid assets. One respondent requested additional clarity on our desired level of granularity compared to ILAA/BIPRU 12, specifically on what the stress in the economic cycle should constitute.

6.18 One respondent thought that making SNI firms undertake a K-Factor assessment to assess risks would create a more onerous framework than intended.

Our response

At this stage we do not intend to provide specific articulations, templates or calibrations of how firms should break down and quantify the risk of harm posed by their activities. We also do not intend to change our rules prohibiting the use of components of an own funds requirement required by a rule under MIFIDPRU 4 or MIFIDPRU 5 to cover harms that cannot be attributed to that component. This is explained below.

However, we approach with an open mind how firms approach and adapt to our standards for the ICARA process. We do not believe our proposals pose the issues that some respondents have identified.

It is important to point out key features of the IFPR approach that differ from existing regimes. As we set out in the summary to our first consultation (CP20/24), the IFPR is intended to "streamline and simplify" prudential requirements for all FCA investment firms. This applies both to the approaches we expect of firms in how they apply internal methodologies to undertake their risk assessment, and to how we intend to supervise against this.

The streamlining and simplifying we want to achieve includes our expectations for firms' determinations of appropriate levels of own funds and liquid assets to meet the OFAR. Our expectations are proportionate to the potential for harm posed, but rather than detailed calculations made to a specific confidence interval, we generally consider broad proxies sufficient and appropriate for the assessing and mitigating harm to clients, markets and the firm.

It is not a requirement under our proposals that non-SNIs determine the additional requirements needed to address a given harm by reference to a specific K-Factor. Investment firms may reference and recalibrate upwards multiple K-Factors if they believe that appropriate to capture the different sources of potential harm from an activity. They can alternatively undertake a standalone calculation. This reflects the examples that we provided in MIFIDPRU 7.6.8G. The example further below illustrates how this could be approached.

We appreciate that for some firms this represents a significant change of approach and mindset and, as we set out below in the section on transitioning to the ICARA, our assessment of firms' application of the ICARA process will initially be made with this in mind, until the new process and approach are embedded.

We would like to explain our thinking for MIFIDPRU 7.6.3R and prohibiting firms from 'offsetting' between internal calculations of harm and the calculations required by individual K-Factors.

Each K-Factor calculated under the methodology set out in MIFIDPRU 4 and 5 represents the minimum own funds amount we believe is necessary to address the driver of harm addressed by each K-Factor, in line with our current risk appetite. We do not consider it appropriate for investment firms to calculate what is an appropriate offset between the different K-Factors. The K-Factor calculations have been specifically calibrated to capture each harm via the agreement of multiple expert bodies at a UK and European level. The IFPR is a new regime and the prudent approach for now is to retain minimum expectations for the harm addressed by each relevant K-Factor.

Further, as noted above, we seek to streamline and simplify the prudential regime for investment firms and how we monitor, benchmark and supervise it. Prohibiting 'offsetting' for components of an own funds requirement required by a rule under MIFIDPRU 4 or MIFIDPRU 5 is consistent with that approach.

Recognising this is a new regime however, as part of our ongoing review of the regime as it embeds this may be something that we can return to.

We do not consider intercompany receivables to be appropriate to meet the liquid assets threshold requirement. This is because they are not likely to be easily and promptly converted into cash during periods of stress. Trade receivables may likewise not always be as readily realisable in periods of stress as other assets permitted as core or non-core liquid assets. As such they may not be used as non-core liquid assets, but in the interests of proportionality a very limited set have been permitted as core assets to reflect the position in the EU IFR, which is our baseline.

We will not provide further granularity on haircuts for non-core liquid assets. As part of the ICARA process, firms should exercise their judgment and give consideration to the specifics of their business when applying haircuts.

We will also not provide further guidance on liquidity stress at this stage. Different assets may be less readily realisable during different types of stress and firms should consider plausible stresses which may impact the amount of liquid assets needed to fund their ongoing business operations and during wind down.

On the query of SNIs having to undertake K-Factor calculations, as we set out in MIFIDPRU 7.6.9G(4), we do not expect this unless an investment firm believes it likely it will breach the threshold to become a non-SNI in the short to medium term. In this case undertaking the calculation(s) is appropriate in order for them to prepare for the K-Factor requirements that they will likely become subject to.

More generally, in response to the requests for more guidance, it is our intention to provide ongoing support to FCA investment firms with firm-specific and general guidance over the next 12 to 36 months as we look to roll out and embed the new approach to risk assessment and management that we have set out in our proposals.

This will be supported by how we see different firms approaching the challenges presented by adapting to the new regime, and what we observe to be good practice in line with our intentions.

In the shorter term, with reference to MIFIDPRU 7.4.13R, we would like to emphasise the importance we place on business model assessment to the ICARA process and our determination of whether firms meet the OFAR. Firms should use their assessments of their business and operating model as the basis for determining the likely source of harm and how to mitigate this. Firms should provide reasonable justification for their approach.

Below we provide an example of what we mean by this.

Example of our expectations:

This is with reference to a question from a respondent on how to determine the harm caused by a cyber incident. The specific question: how to 'allocate' it as a risk under the IFPR framework since it is typically measured as an operational risk relevant to a business area as a whole.

A starting point for us would be the firm's business model. We will use here the example of a non-SNI asset manager with a small execution business. Note that they could also approach this by including a reasonable estimate of the financial impact of any risks that do not fit neatly into a K-Factor as a fixed add-on above the K-Factor requirement.

The firm determines through its ICARA process (business model assessment, risk assessment and reverse stress testing) that the substantive risk it faces – that its current systems and controls could not mitigate – is from a cyber incident. It believes that this could crystallise in the form of the theft of sensitive client data, disruption to business operations, and to the firm itself through reputational damage, compensation and fines. It considers how to account for these risks through its ICARA process.

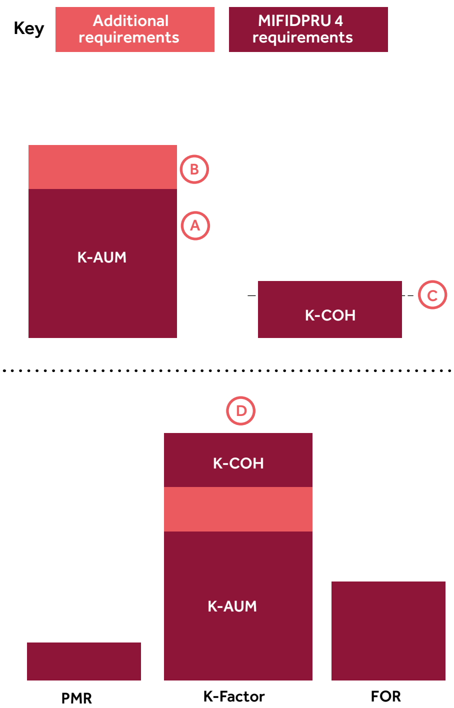
Theft of sensitive client data
Having considered (as per MIFIDPRU 7.4.9R) the likely impact of its systems and controls, the firm believes that the MIFIDPRU 4 K-AUM calculation is likely to be insufficient to cover the risk to clients from a cyber incident. Its business model involves outsourcing much of its IT processes, and it determines this leaves it with less scope to quickly address any issues that would face clients than if it were inhouse. To account for this, the firm determines that it would be appropriate to re-calibrate under the ICARA the K-AUM calculation to 0.025% of its average AUM (from 0.02% under our MIFIDPRU 4 requirements). This is a conservative approach, but one that the governing body thinks is appropriate given the importance of client data integrity to the firm's brand.

Disruption to business operations
The firm only has a small execution business that it is looking to exit as part of its medium-term business strategy. The firm believes that the MIFIDPRU 4 K-COH calculation results in an amount that is excessive, given the nature of the business, to cover the risk of harm from handling client orders from the cyber incident. But continues to hold the K-COH calculated amount as a minimum as per MIFIDPRU 7.6.3R.

Risk to firm viability
While the firm believes that a major cyber incident has the potential to pose a risk to the viability of the firm in a worst case scenario, through its wind-down planning it has determined that its fixed overhead requirement is sufficient to allow it to initiate an orderly wind down that will not result in disruption to clients or the market, and so no additional own funds are required to support wind down.

The outcome is that the firm calculates as a first step what is required to cover the risk of harm from its ongoing activities by summing the K-Factor requirements, including the additional requirement identified as necessary for K-AUM and calculated by increasing the K-AUM calculation calibration.

As a second step the firm compares this to the FOR and PMR to determine its own funds threshold requirement. The K-Factor calculation is the higher and so is the threshold requirement.



Step 1
The firm determines that the K-AUM calculation under MIFIDPRU 4 **(A)** may not be enough to address the risk of harm to clients given its business model. It applies an upward re-calibration on the K-AUM multiplier to determine the appropriate own funds amount **(B)**.
The firm believes that the K-COH calculation is too high for the harm posed, but due to 7.6.3R cannot use the 'excess' **(C)** to help meet **(B)**.

Step 2
The firm sums the individual K-Factor requirements, including the additional own funds to address the risk to client assets from the cyber-incident **(D)**.
Since the firm has not identified any other source of harm from its business model that cannot be mitigated through systems or controls, and since it believes its FOR sufficient to allow it to initiate an orderly wind-down, **(D)** is the firm's own funds threshold requirement.

Transition to the ICARA

6.19 Fourteen respondents provided comments on our expectations for the transition to the ICARA from existing regimes. Several respondents were not in favour of larger trading firms potentially having to review and document the ICARA process on at least a twice-yearly basis, arguing that it may have the counter-intuitive impact of meaning it received less oversight and senior-level focus than an annual approach, and that annual should be sufficient where a business model is not subject to material change.

6.20 Three responses concerned investment firms that are currently subject to ICAAP requirements, requesting that such firms be provided with significant additional time to make the transition in processes, procedures and modelling to the ICARA. A further 4 raised a similar request but in relation to firms that are not currently subject to ICAAP and so would like additional time – specifically a transition period at least until the end of 2022 – in which to adapt to the new regime.

6.21 Respondents also raised questions on the implications on own funds requirements of the transition to the ICARA. Two of these questioned if our proposal that firms meet the threshold requirement without a transition undermined the transitional provisions set out in our first consultation in relation to MIFIDPRU 4 own funds requirements. Two wanted confirmation of how we expected firms with existing individual capital guidance to re-base this. On a related point, 1 respondent sought guidance on our approach to outstanding remedial actions from SREPs undertaken under previous regimes and if they should lapse.

6.22 On the issue of timing and form submission of the ICARA, 3 respondents requested that we provide the same flexibility as allowed under the existing ICAAP approach, while another 2 wanted more guidance on the process for advising us of the proposed ICARA submission date. One respondent wanted to know when the date should initially be reported to the FCA.

Our response

We have taken into consideration the feedback around firms submitting the ICARA document twice yearly and have amended this accordingly. Firms will submit once a year unless there are material changes to their business model. We emphasise that the ICARA is a continuous process and firms should consider their risk management throughout the year regardless of the date or frequency of submission of MIF007.

As set out in CP21/7, firms will have the flexibility to choose their ICARA submission date as long as it is coherent with their reference date and it results in the FCA receiving the data in a timely manner. We are planning to send a questionnaire to all FCA investment firms in the autumn (separate to the financial resources transition questionnaire mentioned above) and expect the planned date for initial ICARA submission to be one of the questions. After that, firms will use our online notification form to advise us of changes to this date.

As firms will need to use the ICARA process to determine the amount of financial resources they need to hold to meet the OFAR, there will not be a transitional provision for the ICARA process. We recognise that there will be some adjustment for firms as they get used to the new regime. We expect firms to make their best efforts to comply and we may provide firms with feedback to support them in this.

We consider the lack of transitional provision for the ICARA is consistent with the transitional provisions for MIFIDPRU 4 own funds requirements, as all firms must meet the Threshold Conditions at all times regardless of other rules which may apply to them. This includes the requirement to hold adequate financial resources at all times. We published guidance in FG20/1 that explained how we expect firms to assess whether they hold adequate financial resources for these purposes.

We recognise, however, that how adequate financial resources are assessed may change over time, for example to reflect regulatory developments and better understanding of risks and harm. The IFPR is new and introduces explicitly the need to consider the potential for harm that an FCA investment firm may pose.

The MIFIDPRU 4 own funds requirement does not, by itself, determine the level of financial resources that will be adequate for a firm. This is because the MIFIDPRU 4 requirement is a minimum requirement that is not necessarily tailored for the firm's individual circumstances. The firm's ICARA assessment should consider the extent to which the potential for harm is covered by its MIFIDPRU 4 requirement and then supplements the minimum MIFIDPRU 4 requirement by assessing the particular position of the individual firm as appropriate.

As set out in MIFIDPRU 7.4.16G, the ICARA process is an internal risk management process that a firm must operate on an ongoing basis. As part of that process, a firm will consider whether the risk of material potential harms can be reduced through proportionate measures (other than holding additional financial resources) and, if so, whether it is appropriate to implement such measures. The nature of any potential measures will vary depending on the firm's business and operating model. Examples may include implementing additional internal systems and controls, strengthening governance and oversight processes or changing the way in which the firm conducts certain business. A firm will need to form a judgement about what is appropriate and proportionate in its individual circumstances. For example, MIFIDPRU 7.4.5G recognises that a firm's approach should be proportionate to the complexity of its business and operating model. That judgement should also be informed by the firm's risk appetite.

A firm will then need to assess whether it should hold additional own funds (or additional liquid assets) to mitigate any material potential harms that it has identified. This may be the case where the firm cannot identify other appropriate, proportionate measures to mitigate harms, or where it has applied such measures, but a residual risk of material harm remains. Any such assessment must be realistic and based on severe but plausible assumptions. This assessment should take into account all relevant facts and circumstances, including:

- the firm's MIFIDPRU 4 requirement
- With an exception for firms that currently have individual capital guidance (ICG) (see below) the effect of any transitional provisions on the firm's own funds and own funds requirements and the purpose of those transitional arrangements
- any internal controls operated by the firm (including any new controls implemented to comply with MIFIDPRU)

- the fact that expectations relating to adequate financial resources may evolve over time as the MIFIDPRU regime becomes embedded and matures.

We accept that at the outset of a new regime, there will be a need for firms to bed in their ICARA processes and subsequently refine their annual reviews of their assessment. We expect discussions between the FCA and particular firms and the promotion of best practice to evolve as both FCA investment firms and the FCA gain experience under the IFPR and its focus upon the potential for harm, including through the ability to wind down or exit the market in an orderly manner. We expect to adopt a proportionate and risk-based approach to supervising these requirements at the beginning of the MIFIDPRU regime.

We are introducing a new transitional provision for firms which currently have ICG and/or individual liquidity guidance (ILG), which we have set out in MIFIDPRU TP 10. These amounts act as a minimum floor to a firm's threshold requirements to ensure that they do not apply an inappropriately low requirement at the outset of the MIFIDPRU regime before having been able to properly consider the outcome of the ICARA process. If the firm calculates that they need to hold more resources than the minimum floor to meet the OFAR, MIFIDPRU 4 requirements, or basic liquid assets requirement, then they must do so, even during the period for which TP 10 is in force.

In brief, the transitional own funds threshold requirement will be calculated by reference to the ICG amount averaged over the 12 months covered by the firm's last own funds reports submitted before 1 January 2022. The transitional liquid assets threshold requirement will be determined by the methodology used to determine their current ILG, as applied on an ongoing basis.

Firms with a current ICG/ILG will need to submit MIF007 for the first time by 31 March 2023 at the latest. This is to allow for firms whose reference dates fall towards the end of the calendar year, although we expect most firms subject to MIFIDPRU TP10 to submit their first MIF007 during 2022. The TP 10 will cease to apply a maximum of 6 months after their MIF007 submission, or before then if we inform them otherwise (either through individual notification or as part of a SREP). Firms should refer to TP10 for the full details and a worked example. We are also planning to send a financial resources transitional questionnaire to firms who currently have additional capital and/or liquidity add-ons (ie ICG/ILG) shortly. This will help us understand how these firms foresee their transition and allow us to assess whether the guidance remains appropriate in light of the new regime. We may be in touch with certain firms on an individual basis as a result of this in 2022.

Firms should continue to comply with any outstanding actions relating to governance and risk management (eg requirements to improve systems and controls) from prior SREPs until they submit their first ICARA to us, which should justify how any outstanding issues have been addressed.

Wind-down triggers and the early warning indicator

6.23 We received 3 supportive comments in relation to our approach to wind-down triggers and no other comments.

6.24 8 respondents agreed with our proposal for an early warning indicator. 1 respondent requested that we clarify our proposal, as they were concerned that it effectively meant that we expected investment firms to hold an additional 10% capital to avoid having to provide the FCA with continuous notifications. The respondent suggested instead that a firm should be able to set an early warning indicator at less than 110% of the own funds threshold requirement where the facts supported such a conclusion.

Our response

As we set out in our consultation (para 7.79), the early warning indicator should not be seen as an additional requirement. In some cases, it will be acceptable and appropriate that an investment firm is within the 110% boundary for the threshold requirement for a substantial period of time, if this is part of its agreed capital planning and reflective of its wider business strategy.

We would expect to be made aware of the reasons for a firm triggering the early warning notification, as we set out under 7.6.11R(2), but it will not then be necessary for a firm to provide continuous updates to us if they remain below the notification point. Having provided us with the information required under 7.6.11R(2), we do not expect further notifications unless the next notification point is met – a breach of the own funds threshold requirement (see 7.6.11R(1)).

For example, if own funds fall from 112% of the threshold requirement to 109%, we would require a notification. But if own funds subsequently fell to 106%, we would not expect another notification, unless we have specifically requested such an update (ie as part of a supervisory dialogue outside of our MIFIDPRU 7.6.11 rule).

It is important the firms are clear that the 110% figure is set purely for FCA monitoring purposes. We agree with the respondent that firms should be able to set internal early warning indicators (EWIs) at levels appropriate to their business model. Indeed, that is a specific requirement of our rule on recovery actions under the ICARA (MIFIDPRU 7.5.5R). We expect firms, on a proportionate basis, to have a range of EWIs and associated recovery actions. If a firm has an EWI of 110% this should be because it is appropriate for its business model and risk appetite, not because that is the FCA's measure.

ICARA process for firms that are part of a group

6.25 Three respondents welcomed our proposals for the ICARA process for firms that are part of a group.

6.26 We received feedback from 6 respondents to request that we provide additional guidance on our expectations. Two requested more guidance on when we would consider a group or individual entity ICARA useful or necessary. Two requested more explanation of the types of entities that should be included in the group ICARA, for example if we expected property management entities to be included, or the non-MiFID business of CPMIs. Separately, 3 respondents requested more guidance on how we expected group level OFAR and wind-down plans to be allocated at an individual entity level. Two respondents wanted clarification on how we expected firms to run group risk management, including whether existing risk management taxonomies could be adapted.

Our response

There is no general requirement to conduct a group ICARA, but firms may choose to do to so if they meet the relevant criteria. The appropriateness of a group ICARA will also depend on the business model and specific circumstances of firm. For example, some firms may conduct their business management within business lines that are split across entities rather than on an entity-level basis. The individual FCA investment firms in the group must still comply with certain requirements on an individual basis (such as wind-down planning and the overall financial adequacy rule).

It is important to distinguish between a group ICARA process and a consolidated ICARA process. There is also no general requirement on an investment firm group to operate a consolidated ICARA process, except where we impose a specific requirement on a group to that effect. This is the case even where an investment firm group is subject to prudential consolidation under MIFIDPRU 2.5.

We said in CP21/7 in that if we do not believe that the harm posed by the firm can be appropriately captured by a group ICARA, then we may require a firm to undertake it on an individual basis. We have now added additional guidance to MIFIDPRU 7.9 to clarify that we may also impose a requirement on an investment firm group to operate a consolidated ICARA process (i.e. as if the overall financial adequacy rule applied to the consolidated situation, so that the entire investment firm group were treated as a single FCA investment firm) if we believe this to be necessary. We would ordinarily expect to do this only in exceptional situations, where we consider that potential harm cannot be adequately captured through individual ICARA processes or a group ICARA process.

We would not normally require entities that conduct only non-MiFID business to be included in a group ICARA, but we may use our consolidation powers to require the inclusion of specific entities in some cases where we have concerns. It may be appropriate for some firms to choose to include non-MiFID entities and we would not prevent them from doing so. A group ICARA process should reflect how the group manages the risks of its business in practice, except where our rules expressly require otherwise.

We remind firms, however, that all activities undertaken by an FCA investment firm must be taken into account in its individual ICARA (or a group ICARA that includes that firm), including any non-MiFID business that the firm undertakes.

We will give firms flexibility on how they allocate the financial impact of potential harms identified by the group ICARA and wind-down requirements between their group entities. However, they must be allocated such that all FCA investment firms still satisfy the OFAR on an individual basis and have sufficient resources to wind down, as entities are wound down individually. We do not propose to require specific allocation methodologies.

Firms forming part of a group should conduct their risk management in a coherent way that makes the most sense for their business and operating model in order to accurately capture their risk of harm. The IFPR is a new regime and it is different to existing rules in that its primary focus is on the harm a firm may pose, rather than the risks it may face. We expect firms' approach to risk management and the ICARA process to reflect this important difference. Firms should bear this in mind when considering changes they may need to make to existing risk management frameworks.

Other comments

6.27 One respondent wanted to know when firms that will be placed on a regular FCA SREP cycle will be informed of this.

6.28 One respondent requested additional guidance on how our proposals for sectoral reviews could work, and if it could adversely change the outcome of an individual SREP.

6.29 Several respondents requested that we use the introduction of the IFPR to provide firms in general with more communication and feedback on our expectations. One respondent suggested that we could produce an annual public report on how we see firms performing in the application of the new rules, and good practice.

6.30 One respondent asked if the charts and diagrams from CP21/7 could be incorporated into the MIFIDPRU Handbook text.

6.31 One respondent asked whether we could offer seminars to help small firms transition to the new regime.

Our response

The way we intend to SREP firms will change to align with our focus on harm, which may include thematic or sectoral SREPs instead of placing all firms on regular yearly cycles. Investment firms will be informed by their supervisory contact in the coming months if they will be subject to a regular SREP under our new supervisory approach.

Sectoral reviews reflect existing FCA supervisory practice, where we undertake a thematic review of a specific aspect of the business models of a group of firms, or the risk of a certain type of harm they pose crystallising. As we set out in MIFIDPRU 7.10.3G(2), an outcome of this under the IFPR may be that we determine it appropriate to issue guidance or impose additional requirements to all, or a subset, of the entities covered by the review. If this were the case this would be in addition to any outcome of a firm specific SREP. Where the issue has already been addressed through the individual SREP, or independently by the firm through its ICARA process, it may not be necessary to apply the outcome of the sectoral review. Such a situation will be resolved on a case-by-case basis through supervisory dialogue with impacted firms.

As noted in our response above, we intend to support investment firms with more guidance on our expectations and best practices in relation to the ICARA process, and implementation of the IFPR more generally. The idea of an annual report of some sort is something we will consider further.

We are glad that the diagrams and charts were helpful. Unfortunately, the Handbook format does not support such diagrams so they will not be able to be carried across. However, we have launched an IFPR page on our website and we plan to add the diagrams to this page for reference.

We are carefully considering how best to engage with firms later in the year and into 2022 to ensure they are supported and able to effectively apply the new regime when it comes into force. Following the success of our webinar last year, further webinars remain an option. We will communicate plans for any events in due course. Firms can also sign up to our new IFPR newsletter by emailing IFPR-newsletter@fca.org.uk with 'sign up' in the subject line to receive the latest updates.

7 MIFIDPRU Remuneration Code: scope and application

7.1 In this chapter we summarise the feedback to our proposals on the scope and application of a new remuneration regime for FCA investment firms, and set out our response.

Key proposals

7.2 We proposed to create a single remuneration code for all FCA investment firms in SYSC 19G. This would replace the IFPRU Remuneration Code (SYSC 19A) and the BIPRU Remuneration Code (SYSC 19C).

7.3 We proposed:

- to apply different levels of remuneration requirements to different types of FCA investment firms (basic, standard and extended remuneration requirements)
- how these rules would apply to CPMIs and in different group situations
- how non-SNI firms should identify their material risk takers (MRTs) and which MRTs firms may exempt from certain rules
- that firms should apply the new MIFIDPRU Remuneration Code from the start of their next performance year beginning on or after 1 January 2022

7.4 In CP21/7 we asked 6 questions:

Q17: ***Do you agree with our proposal for firms to apply the new MIFIDPRU Remuneration Code from the start of their next performance year beginning on or after 1 January 2022?***

Q18: ***Do you agree that SNI firms should be subject to the 'basic remuneration requirements'? If not, please explain why not.***

Q19: ***Do you agree that only certain non-SNI firms should be required to apply the remuneration rules on deferral, pay-out in instruments and discretionary pension benefit? Do you have any comments on the thresholds we propose?***

Q20: ***Do you have any comments on our proposed approach to identifying material risk takers?***

Q21: ***Do you agree with our proposals for exempting certain individual from the rules on deferral, pay-out in instruments and discretionary pension benefits? Do you have any evidence that may assist us in defining the scope of the exemption?***

Q22: ***Do you have any other comments on the proposed scope and application of the remuneration rules?***

Overview of feedback

7.5 We received 18 responses to question 17, 14 responses to question 18, 24 responses to question 19, 21 responses to question 20, 18 responses to question 21 and 8 responses to question 22.

Timing of application

Performance year beginning on or after 1 January 2022

7.6 Thirteen respondents agreed with our proposal that firms should apply the new rules from the start of their next performance year beginning on or after 1 January 2022. Several welcomed not needing to introduce new remuneration policies in the middle of a performance year.

7.7 Five respondents expressed concerns that 1 January 2022 would not give all firms enough time to make the necessary changes to their remuneration policies and practices. Respondents mentioned the ongoing challenges associated with Brexit and COVID-19, amendments to employment contracts, and designing appropriate instruments to pay out variable remuneration.

7.8 Our engagement with stakeholders has shown that some firms have performance periods which are shorter than 1 year, for example quarters. They requested clarity on when they should start applying the MIFIDPRU Remuneration Code.

Our response

We have amended the application provision to refer to 'performance periods' instead of 'performance years'. This means that a firm with quarterly performance periods should apply the new code from the beginning of its next performance period beginning on or after 1 January 2022.

We have also added a guidance provision to remind firms that the code applies to each performance period, regardless of its length. For example, firms should ensure they apply the rules on performance assessment and risk adjustment to each performance period. Rules that refer to periods of years, such as deferral periods, would still apply for the stated length of time.

By publishing DP20/2 in June 2020 and CP21/7 in March 2021, we have informed FCA investment firms about the potential content of the new remuneration regime as we have developed it. The near-final rules published with this PS should enable firms to complete the necessary steps by the start of the next performance period beginning in 2022.

The pay-out of variable remuneration for performance years beginning in 2022 will not take place until 2023. This provides firms subject to the extended remuneration requirements with an extra year in which to finalise the pay-out arrangements.

Transitional provision

7.9 We proposed that firms currently in scope of the IFPRU or BIPRU Remuneration Codes should continue to apply them until 1 January 2022 or the beginning of their next performance period after that, whichever is later. We consulted on a transitional provision to provide for this.

7.10 Respondents asked us to clarify which remuneration code would apply where:

- the variable remuneration is based on performance in 2021 but is awarded after the firm has started to apply the new MIFIDPRU Remuneration Code
- the variable remuneration is awarded in 2021 but is paid out by the firm after the firm has started to apply the new MIFIDPRU Remuneration Code

Our response

The new remuneration code applies to performance periods beginning on or after 1 January 2022. It is the performance period, rather than the date on which the remuneration is awarded or paid out, which is relevant.

This means that firms subject to the existing IFPRU and BIPRU Remuneration Codes should continue to apply those rules when awarding and paying out remuneration where the remuneration in question is for performance or services provided during a period which started before 1 January 2022.

We have made some minor changes to the transitional provision to reflect this. We have also added a guidance provision clarifying that it is the performance period which determines whether the MIFIDPRU Remuneration Code applies.

Scope and application to firms

Application to SNI firms

7.11 We proposed to require SNI firms to comply with a small number of principles-based remuneration rules. Eleven respondents agreed with our proposal, with some noting that it would be important for all FCA investment firms to be subject to certain minimum standards.

7.12 One respondent disagreed, arguing it would create a competitive disadvantage for UK firms when compared with EU firms, who are exempt from all remuneration requirements in the IFD.

Our response

We confirm we will proceed to apply the basic remuneration requirements to all FCA investment firms, including SNI firms.

We agree with respondents that it is important to put in place certain minimum standards for all FCA investment firms. This is essential to the objectives of our overall approach to remuneration, which are to:

- promote effective risk management
- ensure alignment between risk and individual reward
- support positive behaviours and healthy firm cultures
- discourage behaviours than can lead to misconduct and poor customer outcomes

The principles-based nature of these requirements provides firms with a high degree of discretion in how they comply with them. We consider this will mitigate the risk of any competitive disadvantage. Many SNI firms are also already subject to existing FCA remuneration requirements.

Relationship between SYSC 19F and SYSC 19G

7.13 One respondent requested clarification of the relationship between the proposed remuneration requirements in SYSC 19G and the existing requirements on MiFID and insurance distribution remuneration incentives in SYSC 19F.

Our response

We have not proposed any changes to SYSC 19F, so the scope, application and content of these rules remain unchanged. The focus of SYSC 19F is staff incentives and the remuneration of sales staff and advisers.

We recognise that there is some overlap with the MIFIDPRU Remuneration Code but we do not consider there are incompatibilities. Firms in scope of both SYSC 19F and SYSC 19G will need to comply with both.

Thresholds for application of extended remuneration requirements

7.14 In CP21/7, we proposed that a non-SNI firm would be in scope of the extended remuneration requirements (deferral, pay-out in instruments and pay-out of discretionary pension benefits) if:

- the value of its on-and off-balance sheet assets over the preceding 4-year period is a rolling average of more than £300m, or
- the value of its on-and off-balance sheet assets over the preceding 4-year period is a rolling average of more than £100m (but less than £300m), and it has trading book business of over £150m, and/or derivatives business of over £100m

Use and level of thresholds

7.15 Most of the 24 stakeholders who responded to this question agreed that only certain non-SNI firms should have to comply with the extended remuneration requirements.

7.16 Eight respondents agreed with our proposals for thresholds for non-SNI firms. Sixteen respondents disagreed, and can be broadly divided into 2 groups:

- Some respondents argued that it should be left to each non-SNI firm to decide whether it would be proportionate for it to apply the extended remuneration requirements. They requested that if we do decide to set a threshold, then it should be £15bn of total assets, as under our current guidance on proportionality under the IFPRU Remuneration Code. One respondent suggested we should set the threshold at £5bn to align with the rules applicable to banks, building societies and designated investment firms since December 2020.
- Other respondents argued that the metrics we proposed do not lead to an accurate assessment of which FCA investment firms have remuneration policies and practices posing the greatest risks to customers and the financial system. They suggested that different or additional metrics should be used to reflect the nature and complexity of the firm's activities. However, we did not receive specific suggestions for metrics.

7.17 Both groups of respondents argued against our proposed thresholds on the basis that they would bring more firms into scope of deferral and pay-out in instruments than under the current IFPRU and BIPRU Remuneration Codes.

7.18 They also expressed competition concerns, arguing that non-SNI firms subject to the standard remuneration requirements would have a competitive advantage over those subject to the extended requirements. Some respondents feared the result may be large scale migration of MRTs and other staff from larger firms to smaller ones.

Our response

We agree with respondents that it is appropriate for some non-SNI firms to apply deferral and pay-out in instruments. If we set the threshold at £15bn, no firms would be in scope of these provisions. Our cost benefit analysis (published as Annex 2 to CP21/7) shows that only just over 100 out of around 3,600 FCA investment firms would be in scope of the extended requirements under our proposals. Furthermore, some of these firms already apply deferral and pay-out in instruments to their MRTs, or even to wider categories of staff.

It is worth recalling that firms subject to the extended remuneration requirements must apply them to only a small proportion of their staff. These are the staff members identified as MRTs and whose variable remuneration exceeds certain thresholds (see below).

We acknowledge that the metrics we are proposing are not a perfect measure of the risks posed to and by FCA investment firms and that any application threshold has the potential to create tiers. But we believe that the metrics represent a proportionate approach to identifying the largest non-SNI firms and also have the advantage of being relatively simple.

An alternative would be to require all non-SNI firms to apply deferral and pay-out in instruments. We have considered this approach and concluded that it would not be proportionate.

We will nevertheless monitor any changes in the market, in particular those relevant to competition and employment, and keep the thresholds and metrics under review.

Defining the metrics

7.19 We received several questions from respondents about what should and should not be included in firms' calculations of their on- and off-balance sheet assets, trading book assets and derivatives business.

7.20 Two respondents also queried the proposed use of 'gross' trading book assets and 'gross' market value of derivatives business. They argued it would be more reflective of the risk to the market and more consistent with the K-AUM to use net trading book assets and the net market value approach for derivatives business.

Our response

Following respondents' feedback, we have reflected on how the metrics are defined in our draft rules. We have made some changes to clarify certain aspects while also better reflecting the levels of potential harm to customers and the market that can arise from trading activity.

In relation to on-and off-balance sheet assets, we have:

- replaced the term with 'on-balance sheet assets and off-balance sheet items'
- defined 'off-balance sheet items' as the items listed in Annex 1 of the UK CRR
- clarified that firms must calculate their on-balance sheet assets in accordance with the applicable accounting framework, and their off-balance sheet items using the full nominal value

We have also clarified that firms must use the exposure values (EV) of their on- and off-balance sheet trading book and derivatives business. We have added a provision on how firms must calculate these values, based on the calculation of EV in MIFIDPRU 5.4.

Calculating the average assets

7.21 A number of respondents raised questions about how a firm should calculate the value of its on-and off-balance sheet assets (following the changes outlined above, now on-balance sheet assets and off-balance sheet items) over the preceding 4-year period as a rolling average. Respondents asked:

- whether the average should be calculated on the basis of 4 yearly figures, 48 monthly figures, or some other frequency
- whether acquisition of another entity requires the value of its assets to be retrospectively included in the 4-year average

7.22 A further respondent asked us whether CPMI firms should calculate their assets based solely on the firm's MiFID business.

Our response

As some respondents have pointed out, using only 4 annual values could result in materially different outcomes depending on which date is used. We think that quarterly values could also lead to distortions, and daily values would impose an unnecessary administrative burden on firms.

We consider the most appropriate frequency to be monthly as this will provide a representative average over the 4-year period. We have clarified this in the final rules. Firms have discretion to decide which date of the month is used but, after choosing it, may only change it for genuine business reasons.

It is possible that, prior to the application of the MIFIDPRU Remuneration Code, some non-SNI firms will not record the data needed for the calculations on a monthly basis. We have added guidance explaining that where a firm doesn't have all the monthly data points for the preceding 4 years, we would expect the firm to use the data points it does have in a way that paints the most representative picture of the period in question.

The value of the assets and items used for the calculation of the average are point-in-time values. They should not be amended retrospectively to take account of later events, such as acquisitions. This ensures the same treatment for businesses which grow organically and through acquisitions.

CPMI firms should not calculate their on-balance sheet assets and off-balance sheet items based only on their MiFID business. To ensure a level playing field, all firms in scope of the MIFIDPRU Remuneration Code should use their total on-balance sheet assets and off-balance sheet items. To make this clearer, we have added a guidance provision to the application rules. For consistency, we have added a similar guidance provision to MIFIDPRU 2.5.22G when applying the on- and off- balance sheet criteria to be classified as an SNI firm on a consolidated basis.

Application to consolidation groups

7.23 Several respondents asked us to clarify how the remuneration requirements should be applied to consolidation groups. Some were also unsure whether the thresholds should be calculated on an individual entity or consolidated basis.

Our response

We confirm that non-SNI firms should calculate the remuneration thresholds on an individual entity basis, including where they are part of prudential consolidation groups.

We are aware of some concerns that calculating the thresholds at individual level may influence the structure of groups or favour certain types of growth models over others. However, this is in line with the approach applied across all our existing remuneration codes.

We have clarified in the MIFIDPRU Remuneration Code that the extended remuneration requirements do not apply on a consolidated basis. This means that an entity within a consolidation group is subject to the rules on pay-out in instruments, deferral, retention and pay-out of discretionary pension benefits only if it exceeds the thresholds, and not solely because another entity in the group exceeds the thresholds. We think this delivers a proportionate outcome.

Firms should note that this approach differs to that which applies to the determination of whether a consolidation group is to apply the rules as if it were an SNI or non-SNI firm (see MIFIDPRU 2.5.21R and 2.5.22G). We have clarified in the MIFIDPRU Remuneration Code that this approach also applies in the context of SYSC 19G.

This means that where the consolidation group contains at least 1 non-SNI firm or a firm which deals on own account, the consolidation group must comply with the rules as if it were a non-SNI, so it must apply the standard remuneration requirements at consolidated level. In other instances, the consolidation group is to comply with the rules as if it were an SNI, so the basic remuneration requirements will apply.

We have also added a provision which clarifies that the parent entity of a consolidation group is responsible for identifying staff members who have a material impact on:

- the risk profile of the investment firm group as a whole, or
- the risk profile of, or assets managed by, any other entity in the group to which the MIFIDPRU Remuneration Code applies on an individual basis

Application to CPMI firms

7.24 We proposed that the MIFIDPRU Remuneration Code should apply to CPMI firms. We also proposed that, where MRTs have responsibilities for both MiFID and non-MiFID business, the firm must apply to them the stricter of the requirements in the applicable remuneration codes.

7.25 Two respondents disagreed with our proposals. They argued that it would result in complexity if CPMI firms had to apply 2 remuneration codes and that it is not easy to split MiFID from non-MiFID business. They suggested that compliance with the AIFM or UCITS Remuneration Code should suffice to also be deemed compliant with the MIFIDPRU Remuneration Code.

7.26 The 2 respondents considered it would be unfair to apply the stricter requirements to MRTs with responsibilities across both MiFID and non-MiFID business, especially where the individual works primarily on non-MiFID matters.

7.27 As alternatives, they suggested we could permit CPMI firms to:

- choose which of the relevant codes to apply to the MRT, depending on which is more appropriate in the circumstances
- apportion the remuneration of the MRT to MiFID or non-MiFID business and apply the relevant code to each portion

Our response

We consider it is appropriate for CPMI firms to apply the remuneration codes relevant to the types of business they conduct. Some MRTs in non-CPMI firms are already subject to more than 1 remuneration code, and this will continue to be the case under the MIFIDPRU Remuneration Code. In line with our broader approach under the IFPR, it is appropriate that the same also applies to CPMI firms.

We have considered the apportionment approach suggested by respondents. However, if remuneration were to be apportioned, the potential for the MIFIDPRU Remuneration Code to drive positive behaviours and reduce negative outcomes for customers and markets would be significantly reduced. This is because the sums would be a relatively small proportion of the individual's total remuneration. As the respondents have acknowledged, such apportionment would also be far from simple.

Application of multiple remuneration requirements

7.28 We received requests for clarity on which rules a non-SNI firm should apply to an individual who has been identified as an MRT under both the MIFIDPRU Remuneration Code and another remuneration code.

Our response

We have restructured and simplified some of the application provisions to clarify what a firm should do where an MRT is subject to multiple remuneration requirements, for example the MIFIDPRU Remuneration Code and another remuneration code.

Where multiple requirements apply, an FCA investment firm (or, where consolidation applies, the parent entity) must ensure compliance with all relevant requirements. In many instances, different remuneration codes contain the same requirement, so this is unproblematic. For example, all our codes require firms to take into account both financial and non-financial criteria when assessing individual performance.

In most other instances, it is possible to comply with all relevant requirements by complying with the stricter of them. For example, a firm may be subject to the basic remuneration requirements at solo entity level but to the standard remuneration requirements at consolidated level.

Only where it is not possible to comply with both provisions because there is a conflict, is there a need to decide which provision to apply. In these situations, the stricter of the provisions should be applied. We believe these situations are very rare.

We have added guidance to clarify that we would expect firms to determine which rules are stricter on a provision by provision basis rather than by applying all or none of a remuneration code to an individual. We have also provided illustrative examples of situations in which multiple requirements may apply to 1 MRT.

Application to subsidiaries established in third countries

7.29 In relation to group entities in third countries, we proposed to apply the remuneration rules only to those MRTs who oversee or are responsible for business activities that take place in the UK. MRTs whose roles are not linked to UK activities in this way would not be in scope of the MIFIDPRU Remuneration Code.

7.30 Two respondents welcomed this proposal. One suggested it would be fairer if our remuneration rules were to apply only to the portion of the MRT's remuneration that relates to the portion of their time spent on business activities in the UK.

7.31 Another respondent asked us to clarify how this rule applies to a firm which has been granted permission to apply the group capital test given the remuneration rules do not apply on a consolidated basis to such firms.

Our response

As stated above under 'Application to CPMI firms', we do not consider that apportionment of MRTs' remuneration has the same potential to drive positive behaviours and reduce poor conduct.

The rule on MRTs in subsidiaries in third countries does not apply to firms that are subject to the group capital test. We consider it is clear from the rules that this requirement is relevant only to FCA investment firms in prudential consolidation groups.

Scope and application to individuals

7.32 We proposed that all FCA investment firms must apply the basic remuneration requirements to all members of staff. In addition, we proposed that non-SNI firms must apply the standard and, where applicable, the extended remuneration requirements to their MRTs.

Identifying material risk takers

7.33 We set out proposals for how non-SNI firms should identify their MRTs with a view to identifying all individuals whose professional activities have a material impact on the risk profile of the firm or the assets it manages.

Identification process

7.34 Eleven respondents agreed with our proposals for identifying MRTs. Many emphasised their support for not being required to identify individuals based solely on the level of their remuneration. Only 1 respondent argued in favour of such quantitative criteria.

7.35 Eight respondents disagreed with our proposals or suggested alternative ways we could shape the requirement. Most of these said they would like more flexibility and argued against a minimum list of categories of staff or suggested the list should be indicative only. They argued that the diversity of investment firms means it is not appropriate to require all non-SNI firms to identify certain types of staff given they may be relatively junior roles in smaller firms.

7.36 One respondent suggested that only the most senior categories of staff who report into the firm's governing body should be MRTs, as this would be more aligned with the Senior Managers Regime (SMR).

7.37 We received a number of questions on whether certain staff can be excluded as potential MRTs, for example because they are responsible for non-MiFID business, located outside the UK, employed by a non-UK group entity or are paid by an off-payroll service company.

Our response

Overall, we consider that our proposals strike an appropriate balance between clarity and firm discretion by establishing minimum standards (supplemented by guidance) which give firms enough discretion to allow them to reflect their own structures and activities. We confirm we will proceed with our list of categories of staff that must be identified as MRTs and with the accompanying guidance.

It is important that non-SNI firms properly identify their MRTs given that the standard and, where applicable, extended remuneration requirements apply to these individuals. Because we do not propose to include quantitative criteria for MRT identification, the significance of the qualitative criteria is greater than under our current remuneration codes.

With this in mind, we urge firms to take a holistic approach to MRT identification and to avoid a compliance-focused or 'box-ticking' approach. This means the list should provide a starting point only, with firms supplementing it with extra criteria of their own, for example drawing on the guidance we provide in SYSC 19G.5.

We encourage firms to focus on the overall purpose of the MRT identification process, which is to identify all those individuals whose roles mean they have a material impact on the risk profile of the firm, or of the assets it manages, and so have the greatest potential for causing harm to the firm, its customers and financial markets.

Following the feedback we have received, we would like to clarify a number of points in relation to the identification process:

- The name of the function or role is not decisive but rather the authority and responsibility held by the individual. This may mean that individuals in relatively junior roles are not identified as MRTs if they do not hold an appropriate level of authority and responsibility.
- The process should identify those with managerial responsibilities rather than all those members of staff with operational responsibilities in a certain field.
- Any individual who has a material impact on the risk profile of the firm, or of the assets it manages, should be identified as an MRT. This includes individuals employed or contracted by the solo entity or (where the rules apply on a consolidated basis) another firm in the consolidation group. This is irrespective of whether the individual is located in the UK or abroad, and whether or not they have responsibilities for MiFID business.

Firms should note that identifying MRTs and assigning accountability to Senior Management Functions (SMFs) under the SMR are separate processes. SMFs cover only the most senior individuals who need FCA approval, while MRTs cover a wider range of risk-taking roles.

Specific categories of staff

7.38 We received some requests for clarity around how 'managerial responsibility' should be interpreted.

Our response

We consulted on a Glossary definition of 'managerial responsibility': 'a situation in which a staff member heads a business unit or a control function and is directly accountable to the management body as a whole, a member of the management body or to senior management'. We also consulted on definitions of 'business unit' and 'control function'.

We did not receive any feedback on our proposed definitions, so we confirm we will proceed with them.

Exemption for certain individuals

7.39 We proposed to exempt certain MRTs from the rules on deferral, pay-out in instruments and pay-out of discretionary pension benefits. To qualify for the exemption, we proposed that an MRT would need to:

- have variable remuneration of £167,000 or less, and
- have variable remuneration which makes up one-third or less of their total remuneration

7.40 Ten respondents agreed with our proposed exemption. A further 5 agreed that there should be an exemption of this kind but suggested higher thresholds.

7.41 A common suggestion was to set at a higher level, or remove, the criterion that the variable remuneration should make up no more than one-third of the total remuneration. Respondents argued that many of their staff receive variable remuneration in excess of one-third of their total remuneration, and that the criterion could potentially drive up the percentage of MRTs' remuneration that is fixed.

7.42 Two respondents suggested that the maximum variable remuneration permitted under the exemption should be increased beyond £167,000.

7.43 We also received a number of requests for clarification of the scope and application of the exemption. These included:

- whether the exemption can also be applied to the standard remuneration requirements
- whether the threshold is to be calculated based on the maximum possible award of variable remuneration or the actual amount of the award to the MRT
- where an MRT does not meet 1 or both of the criteria, whether the exemption applies to the qualifying portion of the MRT's variable remuneration

Our response

We think it is appropriate to define this exemption with reference not only to the level of variable remuneration awarded but also to the proportion it makes up of the MRT's total remuneration.

For example, MRT A and MRT B are both awarded £150,000 in variable remuneration. If MRT A has fixed remuneration of £600,000 and MRT B of £175,000, the financial incentives created for MRT B are stronger than those for MRT A. This makes it more likely that MRT B's remuneration will influence their decision-making and behaviour, and so potentially lead to harm. In our view, it is appropriate that the additional safeguards provided by deferral and pay-out in instruments apply to MRT B, even though both MRT A and B are receiving the same amount of variable remuneration.

As we set out in CP21/7, our current guidance to IFPRU and BIPRU firms, AIFMs and UCITS management companies permits firms to disapply certain provisions in similar circumstances. We have not found evidence to suggest the thresholds should be set at a higher or lower level.

No data or other evidence was offered in support of the suggestions we received from respondents to the consultation, so we have not changed our proposals. We will monitor the impacts of the exemption and keep the thresholds under review.

By way of clarification, we would remind firms:

- The exemption is relevant only to those firms and MRTs to which the extended remuneration requirements apply.
- The exemption does not relate to the basic or standard requirements.
- In calculating whether an individual qualifies for the exemption, it is the amount of the actual variable remuneration awarded that is decisive.

- Both criteria must be met for an MRT to qualify for the exemption. It is not possible to apply the exemption to the part of the individual's variable remuneration that is below the thresholds.

8 MIFIDPRU Remuneration Code: basic remuneration requirements

8.1 In this chapter we summarise the feedback to our proposals for 'basic remuneration requirements' and our response.

Key proposals

8.2 We proposed that all FCA investment firms should have remuneration policies and practices that meet certain minimum standards. These relate to:

- remuneration policy design
- governance and oversight of remuneration policies and practices
- fixed and variable remuneration
- restrictions on variable remuneration

8.3 In CP21/7 we asked 1 question:

Q23: ***Do you have any comments on the specific remuneration rules which we propose to apply to all FCA investment firms ('basic remuneration requirements')?***

Overview of feedback

8.4 We received 15 responses to question 23. Respondents agreed with most of our proposals for basic remuneration requirements, so we will proceed with these.

8.5 We summarise below the feedback we received on specific issues. Many of the comments we received concerned the types of payments which may be considered as remuneration, and the use of non-financial criteria when assessing the individual performance of staff members.

8.6 We also set out our responses, which include some changes to the proposals on which we consulted.

Payments considered as remuneration

Definition of remuneration

8.7 We proposed that the remuneration policies of FCA investment firms must make a clear distinction between fixed and variable remuneration. We proposed that all remuneration should be either fixed or variable. Our proposals relied on the existing Glossary definition of 'remuneration'.

8.8 One respondent pointed out that the Glossary definition contains different definitions of 'remuneration' for use in different contexts, and asked us to clarify which applies to the MIFIDPRU Remuneration Code.

Our response

Paragraph 1 of the Glossary definition of remuneration should be used for the purposes of the MIFIDPRU Remuneration Code: 'any form of remuneration, including salaries, discretionary pension benefits and benefits of any kind'. As indicated in the Glossary, this definition is to be used in all instances except the specific contexts set out in paragraphs 2, 3 and 4 (which are not relevant here).

Guidance on remuneration and profit-sharing

8.9 We consulted on guidance to assist partnerships and limited liability partnerships (LLPs) determine which types of payments to partners and members of LLPs should be treated as remuneration under the MIFIDPRU Remuneration Code, and which should be treated as a return on equity.

8.10 Partnerships and LLPs found this guidance helpful. They sought further clarity on how our expectation that a material portion of the profit share of a partner (or member of an LLP) be considered as remuneration fits with our view on how to categorise profit shares as remuneration or not remuneration.

Our response

We have responded to this feedback by clarifying in the guidance provision that we would expect 'a reasonable portion' of the profit share of a partner (or member of an LLP) to be considered remuneration where that partner or member works full-time for the firm. This aligns with our existing General guidance on the AIFM Remuneration Code (SYSC 19B).

Carried interest

8.11 We consulted on a guidance provision which set out that carried interest should be considered as remuneration for the purposes of the MIFIDPRU Remuneration Code.

8.12 Two respondents argued that carried interest does not form part of an individual's remuneration because they pay for the units that entitle them to receive carried interest, and the value is determined by the performance of the fund in which the carried interest is held, not by the performance of the individual.

8.13 Three respondents considered that it is unnecessary to subject carried interest to requirements on pay-out in instruments, deferral and ex-post risk adjustment. They argued that, by their nature, carried interest schemes ensure the alignment of the interests of staff and investors because:

- payment to carried interest holders is only made once capital has been returned and a rate of return paid to investors

- there is a significant gap between award and pay-out
- 'bad leavers' usually have to forfeit their unvested carried interest rights

8.14 Respondents also noted that carried interest arrangements are well-established and often exist at the global level within financial groups. They expressed concern that if our rules necessitated changes to such schemes, there would be an impact on the competitiveness of the UK because it would be less attractive for investors and UK firms less attractive for employees.

8.15 We also received requests to clarify the point at which the value of carried interest should be calculated, as this will be needed to determine the variable to fixed remuneration ratio. All respondents who commented on this noted that the current practice is to use the value at the time of award.

Our response

We have carefully considered this feedback, which came mainly from large UK trade bodies. It was not our intention to propose rules that would require large scale changes to existing carried interest arrangements or have a negative impact on the competitiveness of the UK or UK firms.

To address the concerns raised, we have clarified that:

- the MIFIDPRU Remuneration Code applies to carried interest
- carried interest must be valued at the time of its award

We have added a new rule which means that the requirements on pay-out in instruments, deferral, retention and ex-post risk adjustment do not apply to carried interest arrangements where:

- the value of the carried interest is determined by the performance of the fund in which the carried interest is held
- the period between award and payment of the carried interest is at least 4 years, and
- there are provisions for the forfeiture or cancellation of carried interest that include at least situations in which the MRT participated in or was responsible for conduct which resulted in significant losses to the firm, and situations in which the MRT failed to meet appropriate standards of fitness and propriety

Co-investment where a loan is provided

8.16 In our proposed guidance on co-investment arrangements, we said that we would expect the return on an investment to be categorised as remuneration where the investment was made by the individual using a loan from their employer.

8.17 Two respondents disagreed with this, arguing:

- It would not be fair to determine whether the arrangement is remuneration or an investment according to whether the loan is provided by the employer or another lender.

- It would go further than the ESMA Guidelines on sound remuneration policies under the AIFMD, which state that a loan granted by the firm should not be considered a co-investment arrangement only where it has not been repaid by the individual by the time the return is paid.

Our response

In response to this feedback, we have amended the guidance to clarify that we would consider the returns on a co-investment arrangement to be remuneration only where the investment was made using a loan provided by the firm or a member of the group to which the firm belongs, and that loan:

- was not provided to the individual on commercial terms, or
- had not been repaid in full by the time the return on the investment was paid

Financial and non-financial criteria

8.18 We proposed that all FCA investment firms must take into account both financial and non-financial criteria when assessing the individual performance of their staff. To help firms identify and apply appropriate non-financial criteria, we proposed to include guidance around our expectations as well as a non-exhaustive list of examples of non-financial criteria.

Split of financial and non-financial criteria

8.19 Four respondents disagreed with, what they believed, to be a proposal that firms must give equal weight to financial and non-financial criteria, i.e. a 50/50 split. They argued that each FCA investment firm should have the discretion to apply performance criteria as it sees fit, and should be able to decide the split between financial and non-financial criteria.

8.20 One respondent noted that a 50/50 split would likely be unpopular with shareholders, especially in relation to executive directors of listed companies.

Our response

The rule we proposed requires only that FCA investment firms take into account financial and non-financial criteria. The reference to 'equal weight' is in a guidance provision and explicitly recognises that a 50/50 split is not always appropriate.

To make this clearer, we have amended the relevant guidance provision to say that equal weighting 'may be appropriate' for some firms, rather than 'will be appropriate' for some firms.

Environmental, social and governance factors

8.21 Our draft list of examples of non-financial criteria included achieving targets relating to environmental, social and governance (ESG) factors.

8.22 One respondent requested further guidance on how firms should link remuneration practices with ESG factors. This stakeholder was concerned that without further clarification, firms may not adhere to the requirement and/or an inconsistent approach may be adopted across FCA investment firms.

Our response

Our proposals do not require FCA investment firms to include ESG factors in the non-financial criteria they choose to assess staff performance. The criteria on which we consulted are examples. They are designed to give firms a flavour of the types of non-financial criteria they may wish to consider.

Consequently, we have not added any further guidance on the use of ESG factors. But we recognise that the role of ESG is increasing, and will monitor whether and how firms link ESG targets to variable remuneration.

Firms benefiting from public financial support

8.23 We proposed that an FCA investment firm that benefits from extraordinary public financial support (for example a government bail-out) must not pay any variable remuneration to members of its management body.

8.24 One respondent noted that this approach is stricter than that which applies to banks, building societies and designated investment firms. This is because the Dual-regulated firms Remuneration Code permits variable remuneration to be paid to members of the management body where it 'is justified'.

Our response

We did not intend to adopt a stricter approach to that in the Dual-regulated firms Remuneration Code. We have amended the relevant rule in the MIFIDPRU Remuneration Code to provide that an FCA investment firm benefiting from extraordinary public financial support must not pay variable remuneration to members of its management body 'unless this is justified'.

We have also added a guidance provision which sets out our view that it may be justified to pay variable remuneration to a member of the management body who was not in office at the time the extraordinary public financial support was required. This aligns with our expectations of firms in scope of the Dual-regulated firms Remuneration Code.

We have also replaced the references to extraordinary public financial support with 'exceptional government intervention'. This ensures further alignment with the rules applicable to banks, building societies and designated investment firms.

Remuneration Policy Statement templates

8.25 We noted in CP21/7 that we intend to review and amend the existing Remuneration Policy Statement (RPS) templates in line with the final MIFIDPRU Remuneration Code. These are templates which IFPRU and BIPRU firms may use to record how their remuneration policies and practices comply with the relevant rules.

8.26 One respondent queried whether it is proportionate to apply the templates to SNI firms given that many of the remuneration requirements do not apply to them.

8.27 Several stakeholders have contacted us to ask when we will make the revised templates available.

Our response

The existing RPS templates are not compulsory but rather are designed as a tool for firms to help them document their remuneration policies and practices. Accordingly, firms may choose to document their remuneration policies in a different way.

We do not intend to change the optional character of the RPS templates when we review and amend them to take account of the new MIFIDPRU Remuneration Code. We will make the revised templates available after we adopt the final remuneration rules later this year.

In the meantime, we have added a guidance provision to SYSC 19G.2 to clarify that, in line with the general record-keeping requirements in SYSC 9, a MIFIDPRU investment firm should ensure its remuneration policies and practices, including performance assessment processes and decisions, are clear and documented.

9 MIFIDPRU Remuneration Code: standard remuneration requirements

9.1 In addition to the basic remuneration requirements, we proposed in CP21/7 to apply additional rules, the 'standard remuneration requirements', to all non-SNI firms. In this chapter, we summarise the feedback to these proposals and our response.

Key proposals

9.2 We proposed that all non-SNI firms should identify their material risk takers (MRTs) and apply the standard remuneration requirements to them. In addition to the basic requirements, the standard requirements cover:

- setting a ratio between variable and fixed remuneration
- performance assessment
- ex-ante and ex-post risk adjustment, including malus and clawback
- restrictions on non-standard forms of variable remuneration, such as guaranteed variable remuneration and buy-out awards

9.3 In CP21/7 we asked 2 questions:

Q24: ***Do you have any comments on the specific remuneration rules we are proposing to apply to all non-SNI firms ('standard remuneration rules')?***

Q25: ***Do you agree with our proposal to extend the existing non-Handbook guidance on ex-post risk adjustment to FCA investment firms?***

Overview of feedback

9.4 We received 15 responses to question 24 and 7 responses to question 25.

9.5 Stakeholders agreed with many of our proposals for standard remuneration requirements and provided helpful feedback on several issues. This has led us to change the detail of some of our proposals.

Scope and application

9.6 One respondent queried why the standard remuneration requirements should be applied only to MRTs and not to all members of staff at all FCA investment firms, including SNI firms. They argued that the harm which could be caused by an individual may not differ much between some MRTs and some non-MRTs.

9.7 Another respondent asked for clarification of our expectations on firms considering whether to apply some of the standard remuneration requirement to non-MRTs, and whether such considerations should be documented.

Our response

We agree that applying the standard remuneration requirements to categories of staff other than MRTs can be beneficial. Our proposed rules would not preclude a firm from choosing to apply some or all of the standard or extended remuneration requirements to members of staff who are not MRTs. We would encourage firms to consider whether this might be helpful as part of their wider risk management strategies and/or as a measure to support a healthy firm culture.

We have added a guidance provision to SYSC 19G.5 to clarify this. We would also expect firms to document all decisions related to its remuneration policies and practices, as noted in Chapter 8.

We consider it would be disproportionate to require SNI firms to apply the standard remuneration requirements to all their staff. The implementation and application costs would be likely to outweigh the potential benefits. However, we consider it good practice for an SNI firm to consider whether there are any aspects of the standard or extended remuneration requirements which it wishes to apply to some or all of its staff in support of sound risk management and/or a healthy firm culture. We have added a guidance provision to SYSC 19G.1 to reflect this.

Setting a ratio between variable and fixed remuneration

9.8 We proposed that non-SNI firms must set an appropriate ratio between the variable and fixed components of the total remuneration. This should be set out in the firm's remuneration policy.

9.9 Several respondents welcomed the absence of a single maximum ratio or 'bonus cap'. They pointed out that this flexibility would allow each firm to manage its remuneration structures in the way most appropriate to its risks.

9.10 One respondent asked whether there is a ratio that we would consider to be too high. Our engagement with stakeholders also showed there is uncertainty about whether the ratio a firm defines could be increased, for example if the firm experiences a considerably better financial year than predicted.

9.11 A number of industry stakeholders expressed concern about the potential consequences of being required to publicly disclose their ratios. These included that it could lead to pressure to increase variable remuneration if employees could compare ratios across firms.

Our response

Given the diversity of investment firm business models, activities, and remuneration arrangements, we do not consider it would be appropriate for us to define ratios that we would consider to be 'high' or 'low'.

A firm should consider all potential scenarios when setting its ratio or ratios for the coming year, including that the firm exceeds its financial objectives. The maximum ratio should reflect the highest amount of variable remuneration that can be awarded to the category of MRT in the most positive scenario. A firm should be satisfied that it has taken into account all relevant factors and be able to explain its decision to us upon request. We have clarified these expectations in a new guidance provision.

In general terms, we would consider a ratio not to be appropriate where the fixed element of the remuneration is so small as to require the payment of variable remuneration to ensure basic living costs can be met. In such instances, staff may feel under financial pressure which can drive risk taking beyond the firm's own risk appetite. Appropriate governance and documentation of processes and decisions have an important role to play.

We will shortly issue a further consultation paper containing our proposals on remuneration disclosure requirements. We will take into account the concerns raised by respondents to CP21/7 in formulating our proposals.

Performance assessment

9.12 We proposed that performance-related variable remuneration must be based on a combination of the assessment of the performance of the individual, the relevant business unit, and the overall results of the firm. The performance assessment must be based on a multi-year period which takes into account the business cycle of the firm and its business risks.

9.13 Six respondents indicated that they were unsure how to interpret the proposal to base the performance assessment on a multi-year period. For example, they asked whether annual performance reviews would be compatible with such a requirement, and whether the assessment of the individual, business unit and firm performance would all have to be conducted over a longer period.

Our response

The proposed requirement reflects the fact that revenue and profits can be volatile and may be subject to cycles. This can result in exaggerated performance assessments if the performance of the individual, business unit or firm as a whole is considered at a single point in time.

To prevent this, our proposal requires non-SNI firms to take a longer term approach. This includes setting some aspects of the assessment process in a multi-year framework, deferring variable remuneration over a period which reflects the firm's business cycle or the redemption policy of the funds managed, and/or using appropriate ex-ante and ex-post adjustments.

We have amended the relevant rule to better reflect the policy intention.

Annual review of remuneration policy by control functions

9.14 We proposed that non-SNI firms should ensure its remuneration policy and practices are subject to an independent, internal review by staff engaged in control functions at least annually. We suggested that, where 1 exists, the review should be conducted by the internal audit function.

9.15 Two trade bodies pointed out that the internal audit functions of FCA investment firms operate in diverse ways, with some having in-house internal audit functions and others outsourcing the function, for example to financial auditors. On this basis, they queried whether the guidance on using the internal audit function was helpful to all firms.

9.16 One of the trade bodies also requested further guidance on what aspects of the remuneration policies and practices should be covered by such a review, and in how much detail.

Our response

We agree with the respondents that these provisions could be clearer. We have:

- amended the rule to clarify that the independent internal review relates to the implementation of the remuneration policy and practices, and whether they comply with the policy framework and procedures laid down by the management body in its supervisory function
- added guidance to provide more detail of what we would expect the review to include
- removed the reference to the internal audit function
- clarified in guidance that the review may be outsourced in whole or in part (for example to consultants)

Ex-post risk adjustment

Clawback

9.17 We proposed that all non-SNI firms must have in place ex-post risk adjustment mechanisms that enable an MRT's variable remuneration to be reduced by up to 100%. Firms must set minimum malus (where deferral is in use) and clawback periods that allow sufficient time for any potential risks to crystallise and for adjustments to be made.

9.18 One respondent disagreed with the proposed use of clawback, arguing that it is not an effective deterrent and its practical application would be likely to result in costly litigation. They considered malus to be a more realistic approach where variable remuneration has been deferred.

9.19 In our engagement with stakeholders, a small number of non-SNI firms requested clarity on appropriate clawback periods where deferral is not used. They noted that our proposed rule on clawback periods would not be relevant to them given that it requires clawback periods to span at least the combined length of the deferral and retention periods.

Our response

We understand that the use of clawback in the UK has been very limited. However, enabling a wider use of malus by FCA investment firms would mean making deferral compulsory for all non-SNI firms rather than just for those subject to the extended remuneration requirements. We consider this would be disproportionate.

It remains open to all non-SNI firms to use deferral periods, which would then enable the use of malus as well as clawback. Our approach provides firms with the flexibility to choose whether or not to use deferral and malus in addition to clawback.

We have added guidance to clarify that non-SNI firms subject to the extended remuneration requirements must include in their remuneration policies the possibility of applying in-year adjustments, malus and clawback. Where performance adjustment is required, the appropriate tool should then be applied.

When setting minimum clawback periods where no deferral is used, we would remind firms to carefully consider all types of risks, including conduct risks, and how long they may take to crystallise. Given that the minimum deferral period for firms subject to the extended remuneration requirements is 3 years, we would generally consider this to be an appropriate starting point for all FCA investment firms when considering minimum clawback periods. We have added this in a new guidance provision.

Non-Handbook guidance on ex-post risk adjustment

9.20 As part of CP21/7, we proposed to extend the scope of our existing General guidance on the application of ex-post risk adjustment to variable remuneration. This aims to provide FCA investment firms with more detailed guidance on how we would expect them to comply with our proposed rules on malus and clawback.

9.21 Six respondents expressed support for this proposal, stating they found the proposed guidance helpful. We did not receive any comments on the substance of the non-Handbook guidance.

Our response

We will proceed to adopt the amended text of the non-Handbook guidance as consulted on. We intend to issue the Finalised Guidance at the same time as the final MIFIDPRU Remuneration Code later this year.

Non-standard forms of variable remuneration

9.22 We proposed to include in the MIFIDPRU Remuneration Code rules and guidance on the use of guaranteed variable remuneration, retention awards, buy-out awards and severance pay for MRTs.

9.23 We received no comments on our proposals on guaranteed variable remuneration. We confirm we will proceed with those as consulted on.

Severance pay

9.24 We proposed that non-SNI firms should apply all the relevant variable remuneration rules to severance pay. We also proposed that they must be included in the variable component of the fixed to variable remuneration ratio for the performance period in which the award was made.

9.25 We have become aware that there are occasionally situations in which it could create difficulties to require non-SNI firms to include severance pay in the ratio, for example where making certain severance payments could require a firm to exceed its ratio.

Our response

When setting its variable to fixed remuneration ratio, a non-SNI firm must consider all potential scenarios. This should include the situation in which the maximum possible severance pay is awarded to an individual in line with the severance provisions set out in the firm's remuneration policy and any relevant statutory requirements.

A firm may have to make a severance payment as a result of a legal obligation that has arisen (for example a court order) after the firm has adopted the relevant version of its remuneration policy. Where this would result in the non-SNI firm exceeding the ratio it has set, the firm should exclude from the variable component the difference between the maximum severance pay foreseen in its remuneration policy and the severance pay it has become obliged to pay.

We have amended the rules to include this exception.

Retention awards

9.26 We proposed that retention awards must only be paid to MRTs after a defined event or at a specified point in time.

9.27 The draft provisions on retention awards belong to a section of the MIFIDPRU Remuneration Code with the heading 'non-performance related variable remuneration'. Stakeholders have asked us whether this means that retention awards must not have performance criteria attached.

Our response

By making the payment of a retention award dependent on the MRT meeting certain defined performance criteria, we consider that the alignment of risk and reward is further strengthened. We have added guidance to SYSC 19G.6 to clarify that an FCA investment firm may (but does not have to) link a retention award to performance criteria.

Buy-out awards

9.28 We proposed that where a non-SNI firm 'buys out' the remaining deferred variable remuneration of a new employee, it must ensure that:

- the buy-out award is aligned with the long-term interests of the firm
- it is subject to the same pay-out terms and ex-post risk adjustment arrangements as under the previous employer

9.29 Four respondents highlighted that our proposal to require 'the same' pay-out terms and ex-post risk adjustment arrangements would be a stricter requirement than that which currently applies to banks, building societies, designated investment firms and IFPRU investment firms. Our remuneration codes in SYSC 19D and SYSC 19A require only that that these are 'appropriate'.

9.30 The respondents argued that subjecting the buy-out award to the same malus and clawback triggers as the previous employer would not be practical and would not necessarily align with the long-term interests of the new firm. One of them also considered that the new employer should have the flexibility to set their own deferral and vesting periods.

Our response

It was not our intention to impose a stricter requirement on non-SNI MIFIDPRU investment firms.

To better reflect the policy intention, we have changed the relevant rule to require the duration of the retention, deferral, vesting and ex-post risk adjustment arrangements to be 'no shorter' than the duration applied, and remaining, under the previous employer.

The only requirement in relation to the non-duration aspects of the pay-out, malus and clawback arrangements is that these must be aligned with the long-term interests of the firm.

10 MIFIDPRU Remuneration Code: extended remuneration requirements

10.1 We proposed in CP21/7 to apply some additional rules to the largest non-SNI firms. In this chapter, we summarise the feedback to our proposals for 'extended remuneration requirements' and our response.

Key proposals

10.2 In addition to the basic and standard remuneration requirements, we proposed requirements covering:

- paying out a portion of variable remuneration in shares, other instruments or using alternative arrangements
- deferral and vesting
- retention
- discretionary pension benefits

10.3 In CP21/7 we asked 2 questions:

Q26: ***Do you agree with our proposals for rules on paying out variable remuneration in shares, other instruments or using alternative arrangements?***

Q27: ***Do you have any comments on our proposals on deferral, vesting and retention?***

Overview of feedback

10.4 We received 11 responses to question 26 and 16 to question 27.

10.5 We received no comments on our proposals on discretionary pension benefits. We confirm we will proceed with those as consulted on.

Pay-out in shares, other instruments or using alternative arrangements

10.6 We proposed to require the largest non-SNI firms to pay out at least 50% of an MRT's variable remuneration in shares, share-linked instruments and/or other types of instruments which we defined in CP21/7. We proposed that firms unable to issue any eligible instruments would be able to apply to us for a modification of the rule.

Pay-out requirement

10.7 Firms generally welcomed our proposals, especially the flexibility on the types of eligible instruments. One respondent noted that applying for a modification allows firms to confidently operate an alternative scheme which it knows has been assessed by us and found to be appropriate.

10.8 Four stakeholders disagreed with the requirement to pay out any portion of variable remuneration in shares, instruments or using alternative arrangements. They argued that in deferral and ex-post risk adjustment are sufficient to ensure alignment of interests. Pay-out in instruments or operating an alternative arrangement would impose a significant burden on firms, putting them at a competitive disadvantage.

10.9 Privately owned investment firms expressed especially strong concerns. Some argued that only publicly owned firms should be subject to this requirement.

Our response

The largest firms in scope of our existing remuneration codes are subject to similar requirements on pay-out in instruments. We do not think there is a compelling case for taking a different approach to the largest FCA investment firms.

Furthermore, a majority of the FCA investment firms that will be subject to the extended remuneration requirements are already in scope of at least 1 of our existing remuneration codes.

We are aware that it may be more straightforward for many publicly owned firms to meet this requirement than for some privately owned firms. We have tried to provide as much flexibility as possible, for example by highlighting the possibility of applying for a modification to permit alternative arrangements. In view of this, we do not consider it would be appropriate to apply different pay-out rules to firms dependent on their ownership structures.

We confirm we will proceed with our proposed approach.

Proportion to be paid out in instruments

10.10 Two respondents suggested that we align the percentage of variable remuneration to be paid out in instruments (at least 50%) with the percentage subject to deferral (usually at least 40%, but at least 60% where the variable remuneration is a particularly high amount). They argued that this would be administratively simpler because it would avoid scenarios such as some instruments not being subject to deferral or some cash awards needing to be deferred.

Our response

Our proposals for the proportions of variable remuneration to be paid out in instruments and subject to deferral are minimum percentages. This means that firms are free to increase them in relation to some or all their MRTs.

For example, a firm may choose to both pay out in instruments and defer 50% of an MRT's variable remuneration (assuming it was not 'a particularly high amount'). We have therefore not amended the requirement to pay out at least 50% in instruments.

Non-cash instruments which reflect the instruments of the portfolios managed

10.11 One trade body asked whether the type of eligible instrument referred to in our draft rules as 'non-cash instruments which reflect the instruments of the portfolios managed' also includes notional units which track the performance of units in the underlying portfolio and are settled in cash. They were concerned that the use of the term 'non-cash' might lead to an interpretation that such instruments may not be used because they are settled in cash.

Our response

We can confirm that this type of arrangement does fall within the category of non-cash instruments which reflect the instruments of the portfolios managed. This is because they achieve the objective of reflecting the credit quality of the firm or fund managed.

We have clarified this in the MIFIDPRU Remuneration Code.

Use of shares and instruments issued by parent entity

10.12 Three respondents asked whether it would be appropriate to use shares or instruments of a parent entity in variable remuneration if there is no close relationship with the credit quality of the FCA investment firm concerned.

Our response

The purpose of the requirement to pay out a proportion of an MRT's variable remuneration in instruments is to align the interests of the individual with those of the firm. This is done by linking the value of the variable remuneration to the credit quality of the firm.

We confirm that shares and instruments issued by a parent entity may be used as variable remuneration to meet the pay-out rule. We have clarified in the MIFIDPRU Remuneration Code that this is subject to the value of those shares or instruments moving in line with the value of an equivalent ownership interest in the individual entity concerned.

A firm which is not able to issue any eligible instruments which meet this condition may apply to us to use alternative arrangements.

We would remind firms that additional tier 1 instruments, tier 2 instruments and other instruments which can be converted to common equity tier 1 instruments or written down (as defined in SYSC 19G Annex 1) cannot be issued by an entity other than the individual MIFIDPRU investment firm.

Alternative arrangements

10.13 One trade body expressly welcomed our proposal for alternative arrangements and pointed out that some LLPs already have arrangements in place which have been agreed with the FCA and are linked to their status as LLPs. The respondent asked whether such agreements could be transitioned to the MIFIDPRU regime without the need for a modification application.

Our response

The MIFIDPRU Remuneration Code is a new regime which will replace the existing codes for IFPRU and BIPRU firms. Many aspects have been tailored to the investment firm sector. This includes the requirement for investment firms unable to issue eligible instruments to apply for a modification and submit proposals for alternative arrangements.

We will need to assess both existing and new arrangements or schemes before approving any modification applications. We advise any firm with concerns or questions to contact us as early as possible.

Deferral and vesting

10.14 We proposed that non-SNI firms subject to the extended remuneration requirements must ensure:

- at least 40% of the variable remuneration awarded to an MRT is deferred for at least 3 years
- where the variable remuneration is a particularly high amount, and in any case where it is £500,000 or more, at least 60% is deferred
- the deferred variable remuneration does not vest faster than on a pro rata basis
- no interest or dividends paid on the shares or instruments during the deferral period are paid out to the MRT either during or after the deferral period

Length of deferral period

10.15 Two respondents welcomed the flexibility provided by our proposal for 40% of variable remuneration to be deferred for at least 3 years.

10.16 Five respondents commented on the guidance we provided that we would expect MRTs whose roles and responsibilities mean they have a considerable impact on the risk profile of the firm, or the funds it manages, to be subject to a deferral period longer than the 3-year minimum.

10.17 Some of these respondents had understood this guidance to be a rule and suggested that a longer deferral period should only be required for the most senior MRTs, for example members of a firm's board and executive committee. One respondent asked us how much longer than 3 years we would expect the deferral period to be.

10.18 One respondent argued that prudential and conduct risks would in any case have crystallised within 3 years, meaning it would be unnecessary to ever go beyond the

3-year minimum. Another respondent argued that it would be difficult to operate a longer deferral period alongside the requirement to pay-out in shares or instruments.

Our response

Our proposal was for a rule requiring 40% of variable remuneration to be deferred for 'at least 3 years'. Our intention was to provide some guidance around the types of situations in which we consider it may be appropriate to have a deferral period longer than the minimum. Members of the management body or senior management were given only as examples.

Stakeholder feedback has shown that our guidance could have been clearer. We have amended the provision to emphasise that it may be appropriate (rather than it being an expectation in all instances) to apply a deferral period longer than 3 years to the most senior MRTs. We have retained the example of members of the management body.

We consider it is important to provide firms with full flexibility beyond the 3-year minimum, so have not added any further guidance on the length of deferral periods. We confirm the list of factors which firms must take into account when setting the deferral and vesting schedule. These provide firms with clear guidance while retaining flexibility.

Deferral of 'a particularly high amount'

10.19 Four respondents commented on our proposal to require firms to defer at least 60% of an MRT's variable remuneration where that variable remuneration is a particularly high amount, and in any case where it is £500,000 or more.

10.20 Three respondents considered 60% to be an excessive amount to defer. Two suggested a minimum of 50% would be more appropriate.

10.21 Two stakeholders provided comments on the proposed £500,000 threshold for application of 60% deferral. One argued it was arbitrary and would mean a different population of MRTs being subject to the higher rate of deferral each year. Another requested further guidance on what constitutes 'a particularly high amount'.

Our response

We do not agree that 60% is an excessive proportion to defer. We consider it is appropriate to take this additional measure to ensure risk alignment where an individual receives a particularly high amount of variable remuneration in the context of their firm's remuneration policy and/or is at least £500,000. It is unlikely to apply to a large number of MRTs and would not give rise to a disproportionate amount of additional administration given they will in any case be subject to deferral.

60% deferral and £500,000 are the levels used in all our existing remuneration codes. We do not consider that there is any reason why a different approach is needed for FCA investment firms. We think this consistency will be helpful to firms and MRTs subject to more than one remuneration code.

We consulted in CP21/7 on the factors we would expect firms to take into account when determining what should be considered 'a particularly high amount'. We did not receive any feedback on these factors, so confirm we will include them in the new Code. We do not think it is necessary to provide additional guidance on this issue.

Interest and dividends

10.22 We received a lot of detailed feedback on our proposal to not permit interest or dividends on shares or instruments during the deferral period to be paid out to the individual.

10.23 Nine respondents strongly disagreed with our proposal. Their arguments included:

- It creates a misalignment of the interests of the individual and the firm's key stakeholders, such as shareholders and clients, so runs counter to the objective of the rules on deferred shares and instruments.
- One of the main purposes of the ban on interest and dividends for firms in scope of the Dual-regulated firms Remuneration Code was to prevent a breach of the bonus cap. As there is no bonus cap proposed for FCA investment firms, this is not a relevant consideration.
- The existing rules and guidance for AIFMs and UCITS management companies do not prevent payment of interest and dividends. Preventing it for FCA investment firms would create a competitive disadvantage in recruitment and retention. It would also result in a lack of consistency within firms.
- It is common practice outside the financial services sector for senior employees to accrue interest and dividends. Preventing this in the investment firm sector would making it more difficult to hire appropriate talent from other sectors.
- Not permitting dividends or interest would not have any positive behavioural consequences. Any negative behaviours potentially arising from them are already mitigated through the requirements on deferral, pay-out in instruments and ex-post risk adjustment.
- Firms would seek to compensate their staff for the 'loss' of interest and dividends, for example by increasing fixed pay or issuing shares to MRTs at fair value.
- The fact that the firm remains the legal owner of deferred shares and instruments until the variable remuneration vests, does not preclude the firm from paying the interest or dividends to the individual at the point of vesting.

10.24 Several respondents noted that they agreed MRTs should not benefit from interest and dividends during the deferral period.

Our response

We have listened to this feedback and changed our proposal. We will permit MRTs to accrue interest and dividends during the deferral period, but firms will not be permitted to pay them to MRTs until the point of vesting. This will apply on the condition that the interest rate or level of dividends paid is not higher than that which would have been paid to an ordinary holder of the instrument. Where this condition is not met, the accrued interest or dividends may not be paid out to the MRT.

We do not require MIFIDPRU investment firms to include dividends and interest in the variable component of the variable to fixed remuneration ratio. We consider this would introduce complexity without a corresponding benefit.

Vesting

10.25 We proposed that deferred variable remuneration must not vest faster than on a pro rata basis. A respondent asked whether this means that an MRT could access and/or sell the vested portion before the end of the deferral period, subject to the retention period.

Our response

Where remuneration vests on a pro rata basis, each portion vests at different times. For example, if £60,000 is deferred over 3 years and vests on a pro rata basis, then £20,000 would vest after the first year, a further £20,000 after the next year, and the last £20,000 at the end of the deferral period.

This means that the individual takes legal ownership of each portion in turn. As a result, the retention period applies to each portion separately, so the individual can access and/or sell the cash or instruments at the end of each portion's retention period (whether or not the deferral period has ended).

Retention

10.26 We proposed that FCA investment firms must ensure all shares and instruments issued for variable remuneration are subject to an appropriate retention policy.

10.27 Two respondents disagreed with our proposal. They argued that there is little benefit to adding a retention period to a deferral period of at least 3 years. It was said to add a layer of complexity which we could avoid by requiring longer deferral periods instead.

10.28 One respondent asked if we could provide guidance or examples around what an appropriate retention period might be.

Our response

We appreciate that separate deferral and retention periods can pose challenges. However, if we were to require no retention period, it would likely be appropriate to instead prescribe a longer deferral period.

As we do not intend to define a minimum retention period, this would reduce the overall flexibility for firms to set a deferral and retention schedule appropriate to their business and their categories of MRTs. We are keen to maintain this flexibility, which has been welcomed by many.

In line with the Financial Stability Board's Principles and Standards for Sound Compensation Practices, an appropriate retention period is a requirement under all our existing remuneration codes. We do not believe there is a clear rationale for adopting a different approach for FCA investment firms.

We consulted on a list of minimum factors we would expect firms to consider when deciding on an appropriate retention period. We did not receive any feedback on these factors, so confirm we will include them as consulted on.

11 Governance

11.1 In this chapter, we summarise the feedback to our governance proposals for FCA investment firms, and our responses.

Key proposals

11.2 In CP21/7, we proposed high-level governance requirements for all FCA investment firms. These should be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the firm's business model and activities.

11.3 We also proposed that the largest non-SNI firms must have risk, remuneration and nomination committees. At least 50% of the membership of each committee should be non-executive members of the management body.

11.4 In CP21/7 we asked 2 questions:

Q15: ***Do you have any comments on our proposals for high-level rules on internal governance and controls?***

Q16: ***Do you agree with our proposals to require certain non-SNI firms to have a risk committee, remuneration committee and nomination committee.***

Overview of feedback

11.5 We received 7 responses to Q15 and 23 responses to Q16.

11.6 Having considered the feedback, we will proceed with our governance proposals largely as consulted on. We have made some changes to our proposals for the largest non-SNI firms to have committees, which we set out below.

Internal governance and controls

11.7 We proposed that all FCA investment firms, including SNI firms, must have robust governance arrangements. These must include a clear organisational structure, effective risk management processes, and adequate internal control mechanisms.

11.8 We also consulted on minimum criteria that an FCA investment firm should take into account when considering whether its governance arrangements are appropriate and proportionate.

11.9 Six respondents agreed with our proposed high-level governance requirements. Two asked us to clarify how the internal governance rules would apply to FCA investment firm groups on a consolidated basis, for example where there are non-investment firms in the group or where the parent is a non-regulated entity.

Our response

In light of the positive feedback, we will proceed with the internal governance rules and guidance as consulted on.

As set out in the table in MIFIDPRU 7.1.3, the internal governance rules in MIFIDPRU 7.2 apply to all FCA investment firms on an individual basis. Where an investment firm group is subject to prudential consolidation, the rules also apply to the UK parent entity.

In line with our approach to consolidation in MIFIDPRU 2.5, this means the UK parent entity must apply the internal governance rules on a consolidated basis with the parent entity and all the undertakings in the investment firm group being treated as if they were a single FCA investment firm. This would include an unregulated UK parent entity and an undertaking that is not an FCA investment firm.

Risk, remuneration and nomination committees

11.10 We proposed that the largest non-SNI firms would be required to have risk, remuneration and nomination committees at individual entity level (the 'committees requirement'). We set out our approach to applications for modifications of this requirement, and how we intend to deal with FCA investment firms that are currently 'significant IFPRU firms' and have waivers or modifications of the existing committee requirements.

11.11 Thirteen of the 23 responses to this question were supportive of our proposals. Respondents highlighted their support for:

- the possibility of applying for a modification to allow a firm to rely on a group level committee
- the requirement that at least 50% of the members of each committee should be non-executive members of the management body, of which 1 must be the chair
- recognising that not all firms' legal structures permit non-executive members of the management body

11.12 Other respondents disagreed with the proposed requirement to have these committees and/or to have them at individual entity level. We also received a number of requests for clarification.

Firms in scope of the committees requirement

11.13 Under our proposals, a non-SNI investment firm would need to have risk, remuneration and nomination committees if:

- the value of its on-and off-balance sheet assets over the preceding 4-year period is a rolling average of more than £300m, or
- the value of its on-and off-balance sheet assets over the preceding 4-year period is a rolling average of more than £100m (but less than £300m), and it has trading book business of over £150m, and/or derivatives business of over £100m

11.14 Two respondents disagreed with our proposal, arguing that the proposed thresholds would mean more firms being required to establish committees than under our current rules. Two other respondents asked us to clarify how the committees requirement applies at consolidated level.

Our response

As set out in Chapter 7 when discussing the thresholds for application of the extended remuneration requirements, we acknowledge that the metrics we are proposing are not a perfect measure of the risks posed to and by FCA investment firms. However, they represent a proportionate approach to identifying the largest non-SNI firms.

We have amended the definition of the metrics and provided further clarity on how firms should calculate their average assets. This ensures the thresholds for the committees requirement remain aligned with those for the extended remuneration requirements in the MIFIDPRU Remuneration Code. The changes are summarised in Chapter 7 (paragraphs 7.19 to 7.22).

We confirm that non-SNI firms should calculate the thresholds on an individual entity basis. We also remind firms that the committees requirement does not apply on a consolidated basis (see table in MIFIDPRU 7.1.3). This means that an FCA investment firm group subject to prudential consolidation is not required to set up a risk, remuneration or nominations committee at group level. Instead, the committees requirement applies only to the individual entity.

We set out below how individual FCA investment firms may be able to rely on a group level committee to satisfy the requirements applicable to the individual entity.

Risk committees

11.15 Respondents generally agreed with our proposal that the largest non-SNI firms must establish a risk committee at individual entity level. Several noted that risk committees are an effective way of monitoring the risks which arise from the activities of an investment firm.

Our response

We will proceed with the requirement for non-SNI firms in scope of the committees requirement to establish a risk committee at individual entity level. We consider that it is appropriate to require risk committees at individual entity level because the risks to which a firm is exposed, and can pose to its customers and the wider market, can differ considerably depending on factors such as its activities, types of clients, business model and strategy.

As we proposed in CP21/7, a firm will be able to apply to us for a modification if it has a group level risk committee it considers meets the requirements.

Remuneration committees

11.16 Six respondents disagreed with our proposal for remuneration committees to be at individual entity level. They argued that we should permit FCA investment firms subject to prudential consolidation to establish a remuneration committee at group level, without the need to apply for a modification.

11.17 Their reasons included:

- the EU Investment Firms Directive permits the largest non-SNIs to have remuneration committees at group level
- group level remuneration committees are permitted under the ESMA Guidelines on sound remuneration policies under the AIFMD and the corresponding Guidelines under the UCITS Directive
- remuneration policies usually operate at group level, so allowing group level remuneration committees would help to ensure consistency and alignment of remuneration strategies across the group
- remuneration committees at individual entity level would be burdensome for groups containing multiple FCA investment firms subject to the committees requirement, without a corresponding benefit

Our response

We agree with respondents that it is important a remuneration committee adds value and provides an appropriate level of oversight of remuneration policies. It should contribute to the better alignment of risk and individual reward.

We have carefully considered the feedback and take the view that it is possible for the objectives of remuneration committees to be fulfilled at group level. We have amended our rules to permit a non-SNI firm to rely on a group level remuneration committee where the firm is part of an FCA investment firm group to which prudential consolidation applies and where the UK parent entity has a remuneration committee that:

- meets the composition requirements (where they apply)
- has the necessary powers to comply with the other obligations in MIFIDPRU 7.3 on behalf of the non-SNI firm, and

- has members with the appropriate knowledge, skills and expertise in relation to the non-SNI firm

Where these criteria are met, a firm may rely on the group level remuneration committee without needing to apply to us for a modification.

Non-SNI firms in groups subject to the group capital test may apply for a modification in the way we proposed in CP21/7.

Nomination committees

11.18 Three respondents disagreed with the proposed requirement for the largest non-SNI firms to have nomination committees. They argued:

- It should be for the management body to decide whether it wishes to establish a nomination committee.
- The management body itself is often best placed to consider its own collective skills and experience and can effectively engage in succession planning and appoint senior management without the need for a nomination committee.
- Some non-SNIs subject to the requirement have relatively small management committees, so a separate nomination committee would add little value.

11.19 Two respondents suggested that firms should be permitted to combine their remuneration and nomination committees.

Our response

We consider that nomination committees have an important role to play in evaluating candidates to ensure there is an appropriate balance of knowledge, skills, diversity and experience on the management body. The importance of such committees continues to grow.

For example, we highlighted in DP21/2: Diversity and inclusion in the financial sector – working together to drive change (July 2021) that nomination committees can help ensure their decisions are not dominated by a small group of individuals with the same characteristics. This supports improved decision-making and delivery of products and services that better meet the needs of a diverse customer base.

We agree with respondents that the management body itself may be able to fulfil these and other tasks. However, we think it is appropriate to require the largest non-SNI firms to establish nomination committees to ensure sufficient time and independent thought is dedicated to these and other key issues. We have not set out in detail the role of the nomination committee as we consider this should be for the management body to determine.

The role of the nomination and remuneration committees are separate and distinct. Accordingly, we do not think it would be appropriate to combine the tasks in a single committee.

For these reasons, we will proceed with the requirement for the largest non-SNI firms to establish nominations committees at individual entity level. As we proposed in CP21/7, a firm will be able to apply to us for a modification if it would prefer to rely on a group level nomination committee.

Significant IFPRU firms and enhanced scope SM&CR firms

11.20 We said in CP21/7 that the new committees requirement applying to the largest non-SNI firms would replace the current requirements for significant IFPRU firms to have risk, remuneration and nomination committees.

11.21 We have received queries from stakeholders asking what this means for the future of the term 'significant IFPRU firm'. Specifically, they have asked what the consequences are for firms which are enhanced scope Senior Managers and Certification Regime (SM&CR) firms due to being significant IFPRU firms.

Our response

A firm that is currently an enhanced scope SM&CR firm because it is a significant IFPRU firm will continue to be an enhanced scope SM&CR firm when the IFPR comes into force. There will be no change in this respect.

We are no longer using the term 'significant IFPRU firm' to define which firms need to have risk, remuneration and nomination committees. But we are not making substantive changes in the other contexts in which it is used. The thresholds behind 'significant IFPRU firm' will continue to be used to define firms that are enhanced scope SM&CR firms.

Because the IFPRU sourcebook will no longer exist under the IFPR, we plan to consult as part of our next IFPR CP on moving the relevant thresholds to SYSC, and renaming 'significant IFPRU firm'. But we do not intend to change the substantive thresholds that underpin the term, only the name.

Approach to existing waivers and modifications

11.22 We set out in CP21/7 our intended approach to FCA investment firms that are currently significant IFPRU firms and have waivers or modifications of the existing requirements to establish committees.

11.23 Two respondents asked us to clarify how we would deal with firms who currently have waivers from the requirement to have a committee at all (rather than a modification permitting a group level committee).

Our response

We will treat all current waivers and modifications in line with the approach we set out in CP21/7. In summary:

- If a firm has an existing waiver or modification that expires on or before 31 December 2021, it should apply to renew it before the date of expiry. Where the firm expects to be in scope of the new committees requirement, we will consider whether it is appropriate to grant the waiver or modification so that it transfers to the new regime.
- If a firm has an existing waiver or modification that expires after 31 December 2021, we will transfer it automatically to the IFPR regime. Upon expiry, the firm will need to submit a new application if it wants to continue to rely on the waiver or modification.

Further information about our approach to applications is in Chapter 14.

12 Regulatory reporting

12.1 In this chapter we summarise the feedback to our proposals for regulatory reporting under the IFPR and our responses. We also explain some changes we have made to MIF003 (which was originally consulted on in CP20/24) based on feedback received to the application of COH and DTF and to the DTF adjusted coefficient in CP21/7.

Key proposals

12.2 In CP21/7 we included further proposals for regulatory reporting under the IFPR covering:

- the liquid assets requirement (MIFIDPRU 6)
- the ICARA process (MIFIDPRU 7)
- remuneration (SYSC 19G), and
- updating FIN067, the additional reporting template for CPMIs

12.3 Our proposals were based on the information that FCA investment firms should already have available as management information, or already need to record as part of our proposals for the requirements to which they relate.

12.4 Our proposals set out our intention to collect an appropriate amount of data that enables us to supervise FCA investment firms, including CPMIs, against the requirements of the IFPR. The proposals sought to ensure the amount of data requested is proportionate to the size and complexity of the FCA investment firm.

12.5 In CP21/7 we asked 1 question:

> **Q28:** ***Do you have any feedback on our reporting proposals? Please particularly provide details of any areas where you consider additional guidance on how to complete them is needed.***

Feedback and responses

12.6 We received 19 responses to question 28. Three responses fully supported our proposals. An additional 7 respondents expressed support for our proposals alongside other comments or requests for clarification.

General responses

12.7 Respondents asked us to clarify the format that we would like to receive firms' regulatory reporting. It was noted that other regulators ask for reporting data as xls files.

12.8 One respondent highlighted that our reporting requirements may require system changes for firms. Another requested that our reporting system filters out reports that are irrelevant to a firm's permission. Another respondent asked us to clarify which units we would like reports to be completed in.

12.9 A respondent raised questions and concerns regarding consolidated reporting. We consulted on consolidated reporting in CP20/24 and have responded to this feedback in PS 21/6.

Our response

Firms will be required to submit their IFPR regulatory returns using the FCA's reporting system, RegData. This requires firms to submit reporting files in an xml file format. We can confirm that we will not require reporting files in an xbrl file format.

We cannot filter forms so that firms only see the requirements that are relevant to them. This is because different requirements could be relevant to a firm over time. We are introducing a more proportionate and single suite of IFPR reporting forms that will be far simpler for firms to navigate. The instructions accompanying our reporting forms should clarify which requirements are applicable to each firm.

All figures should be reported in Sterling. Figures should be reported in 000s, except in the Remuneration Report where full figures should be used.

Liquid assets requirement reporting – MIF002

12.10 Two respondents provided feedback on our proposed forms for liquid assets requirement reporting. One of these respondents expressed their support for the proposed liquid asset reporting. Another respondent asked that we clarify whether an investment firm within a consolidation group must complete the reporting form where an individual exemption has been obtained because of liquidity requirements under MIFIDPRU 2.3.2R.

Our response

A firm that has an exemption from the liquid asset requirement on an individual basis is not required to complete MIF002 on an individual basis. However, other MIFIDPRU firms within the consolidated group without an exemption would be required to complete MIF002 on an individual basis.

We have made a small change to the guidance notes accompanying MIF002 to clarify that where firms input the basic liquid assets requirement they will be based on the FOR as reduced by any relevant transitional provision that applies.

ICARA process reporting – MIF007

12.11 Four respondents provided feedback on MIF007. One respondent expressed their support for our proposed ICARA forms, noting their clarity and consistency.

12.12 Several responses focussed on the timing of ICARA reporting. One respondent requested clarity on when ICARA submissions was expected. Another expressed their concern about ICARA submissions not being collected until 2023 and asked for clarity on when we expected reporting to take place. They asked whether we expect all firms to submit an MIF007 report in 2022. This respondent also asked if firms could undertake their ICARA review within three months of the date that they submit their audited accounts to the FCA. Another respondent asked if reporting could begin before the completion of the first ICARA and how firms should complete this disclosure.

12.13 We also received a response asking for clarification when completing certain cells in the ICARA questionnaire:

- Whether the 'additional own funds for risks from ongoing activities not captured in rows A16-A24' should in fact refer to rows A18 – A27
- Guidance on the level of detail we would like within the description of risks that led to an additional own funds requirement
- Confirmation that the references to delegated discretionary portfolio management in rows 58 and 60 should include internal delegation within a firm or delegation within a consolidated group
- How should the value of discretionary portfolio management delegated to and from the investment firm be measured?

Our response

Firms must review their ICARA process at least once every 12 months. We recognise that firms will have different operational and governance arrangements for reviewing the adequacy of their ICARA process, so firms can decide when they would like to complete their report within the 12-month period.

We expect firms to review their ICARA process during 2022 and consistent with MIFIDPRU 7.8.6G(2) submit their MIF007 report on their review of the ICARA process within a reasonable period after the review date. This may mean that for some firms the first ICARA has a review date late in 2022, and the subsequent first ICARA submission is in early 2023.

We understand that firms will be familiarising themselves with the new form and our new requirements during 2022. We therefore ask firms to undertake their ICARA reports during 2022 on a 'best efforts' basis. We will provide aggregated feedback on first submissions.

Firms can choose to complete their ICARA process review at any point during the year. We understand that firms may choose to complete their first ICARA review in the first half of 2022 for a number of reasons. For example, to align with how they have completed similar risk management assessments in the past or to align with year-end accounting dates. In those circumstances this submission will not represent a full year of reporting under the new ICARA process. This is because the requirement to complete the ICARA review may not have existed for a full year yet. We expect subsequent ICARA reports to be submitted at least once every 12 months.

MIF007 is a report on a firm's review of its ICARA, therefore, we do not expect firms to submit MIF007 before they have completed their ICARA process.

We ask that firms provide a level of detail on risks within their reporting that accurately expresses the nature of those risks. The value of the discretionary portfolio should be expressed as the value of assets under management.

We have decided to make a small number of changes to MIF007 to provide us with a better understanding of FCA investment firms' business models for supervisory purposes.

We are asking firms to indicate if they receive money or assets from clients under title transfer collateral agreements.

We are adding 2 questions about the delegated management of assets. We are going to ask for the value of discretionary asset management that the reporting firm has had formally delegated to it and that is not included in its K-AUM calculation. We are also asking for the value of AUM that the reporting firm has formally delegated to another portfolio manager.

Finally, we are asking for firms to tells us the value of assets included in an investment firm's K-AUM calculation that is derived from providing investment advice on an ongoing nature.

We will also make a change to our forms to amend the incorrect reference to rows A16 to A24.

Group capital test reporting – MIF006 – Restructured

12.14 We consulted on MIF006 in our first consultation paper. We have reformatted the layout of MIF006 to make it more logical and easier to complete. There have been no changes in the underlying data points that we are asking firms to submit. Please see the revised layout of MIF006 included in the forms published alongside this Policy Statement.

Remuneration reporting – MIF008

12.15 Seven respondents commented on our proposed MIFIDPRU Remuneration Report. All were broadly supportive, with 2 respondents highlighting their support for our proposal that FCA consolidation groups would complete the report on a consolidated basis.

12.16 Our proposals in CP21/7 related only to regulatory reporting. We intend to consult on public disclosure of remuneration information in our third IFPR CP. Nevertheless, 2 respondents expressed concerns about the potential consequences of any requirement to publicly disclose certain remuneration information. We will take these views into account when developing our disclosure proposals.

Reporting template and instructions

12.17 We received no comments on the draft template or the instructions for completion.

Our response

We will proceed with the format of the template and instructions as consulted on, with just 1 minor change.

We have removed the requirement for firms to enter their accounting reference date on the template. We already hold this information and the scheduling of the report will tell us to which performance year any individual report relates.

Proportionality

12.18 We proposed to tailor the reporting requirements according to whether a firm is subject to the basic, standard or extended remuneration requirements in SYSC 19G.

12.19 One respondent argued that it does not seem necessary to require SNI firms to submit a remuneration report given they are not subject to any limits on variable remuneration. Another respondent considered it disproportionate to require non-SNI firms to report information on variable remuneration if they do not pay their MRTs any variable remuneration.

Our response

We consider it appropriate and proportionate to require SNI firms to provide some targeted remuneration information.

While there are no formal limits on variable remuneration, all FCA investment firms, including SNI firms, must ensure that the fixed and variable components of an individual's total remuneration are appropriately balanced. The data we are requesting would give us an overview of the split between fixed and variable remuneration. If an FCA investment firm does not pay any variable remuneration at all, this is also relevant to our understanding of a firm's approach to remuneration, so we would expect the firm to submit the report with a zero in the relevant fields.

The data to be reported by all FCA investment firms will also show us whether a firm pays out any of its variable remuneration in non-cash (such as shares or instruments) and whether it uses deferral. For most firms, these are not regulatory requirements, but the information helps us to understand the approach of individual firms to remuneration and incentives, and the overall remuneration landscape.

If the high-level information provided raises any questions, supervisors will contact individual firms to request additional information.

Banking groups with FCA investment firms

12.20 One large trade body noted that FCA investment firms which are part of banking groups under the UK CRR would have to complete both the MIFIDPRU Remuneration Report and the PRA's 2 remuneration reports for credit institutions.

Our response

We take the view that it would be unnecessarily burdensome to require these firms to produce additional reporting.

We have amended our rules to provide an exemption from the obligation to submit MIF008 for FCA investment firms that are part of a consolidation group under the UK CRR and the PRA Rulebook where they submit the PRA's Remuneration Benchmarking Information Report and High Earners Report, and include in those reports the relevant information on the FCA investment firm's remuneration. Because banking groups are dual-regulated, we have access to the reports submitted to the PRA and will use the data to monitor remuneration practices, including in groups with FCA investment firms.

Highest earning individuals

12.21 We proposed that non-SNI firms subject to the extended remuneration requirements would need to provide information on the structure and amount of remuneration awarded to their highest 3 earners.

12.22 Two respondents noted that such information could be sensitive. They asked whether they would need to publicly disclose this information or to provide the names of the individuals to us.

Our response

We acknowledge the sensitivity of information relating to individuals' pay and can reassure firms that the information reported to us will handled appropriately and in line with the data processing requirements of the UK General Data Protection Regulation (GDPR). As the template shows, we will not be requiring firms to report to us the names of the highest earning individuals.

As explained above, we intend to consult on public disclosure of remuneration information in our third IFPR CP.

Changes to Metric monitoring – MIF003 –resulting from other feedback to CP21/7

12.23 Following feedback received about the application of COH and DTF, we have clarified that DTF will apply to any trades that a firm enters into when dealing on own account or when trading in the firm's own name on behalf of clients (if this does not otherwise constitute dealing on own account). This will include where a firm trades in in its own name on an agency basis. The revised application of the K-DTF requirement is explained in more detail in Chapter 3 of this PS.

12.24 We are clarifying that any firm with a non-zero measure of DTF cannot be an SNI firm. Firms that have permission to deal on own account (which will normally be reflected through a permission to deal as principal) are automatically non-SNI firms.

12.25 So that we can monitor this, we have added 2 additional data points in MIF003 asking firms to include their average DTF (cash) and average DTF (derivatives). How to calculate the average DTF is set out in MIFIDPRU 4.15.

12.26 We have also amended the definition of an SNI firm to reflect this change. The revised thresholds are in Table 2 in Chapter 2 of this PS. Any firm that has a non-zero value for average DTF cannot be an SNI firm.

12.27 In CP21/7 we proposed how to calculate an adjusted coefficient in stressed market conditions to be used when calculating K-DTF. We have added another 2 data points to MIF003 that asks for DTFexcl (cash) and DTFexcl (derivatives), where this has been used. How to calculate DTFexcl is set out in MIFIDPRU 4.15.10R.

12.28 We have also updated the guidance notes accompanying MIF003 to clarify how reporting of average K-factor metrics should work when a firm ceases an activity. Where a firm no longer undertakes an activity that results in a K-factor metric, it will still need to report an average K-factor figure for the relevant metric until any historical activity ceases to be reflected in the averaging calculation. For example, an investment firm ceases its discretionary portfolio management activities on 1 March and therefore no longer records any AUM for month ends after that date. As the calculation of average AUM is based on a 15-month historical period, the firm would still need to report a positive number for average AUM in MIF003 reports until 1 June the following year, when the historical data points for monthly AUM that have a positive value will drop out of the rolling average calculation.

13 Interaction of MIFIDPRU with other prudential sourcebooks

13.1 In this chapter we summarise the feedback to how we proposed that MIFIDPRU will interact with other prudential sourcebooks. This includes changes to the Glossary of definitions.

Key proposals

13.2 In CP21/7, we proposed

- to delete BIPRU, most of IFPRU, and Chapters 9 and 13.1A of IPRU-INV
- to amend MIPRU to remove any references to BIPRU
- a transitional provision for current exempt-CAD firms to give them time to comply with any new requirements in MIPRU 3.2 that apply to them
- to make consequential amendments to Chapters 1, 2, 3, 4, 5, 11, 13 and 14 of IPRU-INV as well as to Appendix 1 and Annex A

13.3 In CP 21/7 we asked 3 questions.

Q29: ***Do you agree with our proposals for consequential changes to other prudential sourcebooks? If not, please identify which specific provisions you believe are not consequential changes that are needed.***

Q30: ***Do you agree with our proposal for a three-year transitional provision (set out in MIPRU TP 2) to give former exempt-CAD firms time to comply with any new requirements in MIPRU 3.2? If not, what alternative proposal would you suggest.***

Q31: ***Have you identified any specific cross-references that we may have missed where a consequential amendment could be needed to ensure the relevant provision still operates once IFPR is implemented? If so, please provide details.***

Feedback and responses

13.4 We received 9 responses to question 29, 1 response to question 30 and 6 responses to question 31.

Consequential changes needed

13.5 All 9 respondents agreed with the need for the changes. One respondent asked if the BIPRU and GENPRU sourcebooks would remain available under the 'time travel' feature of the Handbook. They thought that they provided valuable insight into the policy intent of some of aspects of onshored CRR.

Three-year transitional provision for exempt-CAD firms using MIPRU

13.6 The 1 respondent who answered the question agreed with our proposals.

Additional consequential amendments required

13.7 None of the respondents suggested additional consequential amendments were required.

Our response

We will proceed with the amendments and the 3-year transitional provision for exempt-CAD Firms that use MIPRU, as consulted on. The sections of the Handbook that are being deleted will remain available using the 'time travel' feature of the Handbook.

14 Applications and notifications

14.1 In this chapter, we summarise the feedback to our proposed MIFIDPRU application and notification forms and potential fees for a small number of application types, and our responses to the feedback.

Key proposals

14.2 We proposed having separate forms for each MIFIDPRU permission application and notification. This was to make it clear to firms the information we needed to be able to determine their application, or the level of detail expected for a notification. We said that FSMA waivers and modifications of the rules related to the IFPR will continue to be done on the existing Waiver Application Form.

14.3 We proposed to charge fees for a small number of application types where we thought it was fair that we recover our costs, because those costs were likely to be material. We explained that we would consult on the level of any fees in a subsequent CP.

14.4 Finally, we proposed that we would publish any MIFIDPRU permissions granted on the Financial Services Register. This would be in line with our current approach to publishing FSMA waivers and modifications, and UK CRR permissions.

14.5 In CP21/7 we asked 4 questions:

Q32: ***Do you have any feedback on the applications and notification forms covered in this chapter, including our proposals for any supporting information or documentation? Please indicate the specific form or forms your feedback relates to.***

Q33: ***If you think you might want to apply for any of the permissions that need to be determined before 1 January 2022, please indicate which ones.***

Q34: ***Do you agree it is fair and appropriate that we charge fees for the applications in certain circumstances where we have deemed it justifiable to do so? Please suggest what you believe would be an appropriate charge for the applications we have listed in section 11.19. Please indicate which permissions from that list you might be applying for.***

Q35: ***Do you agree with our proposed approach to publishing MIFIDPRU permissions on the FS Register.***

Feedback and responses

14.6 We received 9 responses to question 32, 12 to question 33, 6 to question 34 and 10 to question 35.

Content and structure of the application and notification forms

14.7 Respondents were generally supportive of our proposal to introduce bespoke forms for each MIFIDPRU permission application and notification. While the feedback we received on the actual content and structure of the forms was limited, most respondents thought the forms, including where they request supporting information, were reasonable and fit for purpose.

14.8 We have since made further improvements to the forms, mainly to fine-tune some of the language used without changing the substance of any requirements. This is so the forms are clearer and easier to complete. For example, our forms now ask for a confirmation of the group entities involved in an application or notification only in the forms where this may be relevant, rather than as a common question for all forms.

14.9 One respondent wanted further clarity on when we will start accepting MIFIDPRU applications and what the expected time frame for a response would be.

Our response

We stated in CP 21/7 that we expected to open the gateway for MIFIDPRU applications this summer following the publication of our near-final rules in this PS. Initially, only MIFIDPRU permissions that firms need to apply for in advance of MIFIDPRU coming into force will be available on Connect. The remaining application forms and all notification forms will be available in the autumn.

We have created a page on our website dedicated to the IFPR. This will contain practical information for firms and further guidance on what is expected of them ahead of the new regime taking effect. It will contain details of all the MIFIDPRU application and notification forms and will clearly indicate which ones will be available this summer. The page will also explain the changes to the authorisation and variation of permission processes for firms wishing to be authorised as MiFID firms.

We will update this page so it remains useful and relevant as the implementation of the new regime progresses.

14.10 Some respondents raised queries or made comments about specific notification and application requirements.

14.11 For example, we were asked to provide further clarity on how the requirement to seek FCA permission, or notify, applies to non-CRR firms who wish to count their existing instruments as own funds for the purpose of MIFIDPRU 3.

Our response

As set out in paragraph 15.36 of CP21/7, FCA investment firms and UK parent entities that have not been subject to the UK CRR definition of capital and wish to count their existing instruments as own funds for the purpose of MIFIDPRU 3, will need to notify us under MIFIDPRU TP7.4R. They will not be required to seek our permission for pre-existing CET1 instruments, as long as the relevant conditions are met. This notification should be made using the bespoke form under MIFIDPRU TP7.

14.12 Another respondent sought clarity on whether a firm holding a permission under the UK CRR to use own delta estimates, for the purpose of the standardised approach for options, would need to notify the FCA separately regarding the intended use of own delta estimates in K-TCD.

Our response

We explained in CP21/7 that existing UK CRR permissions for own estimates of delta will be treated as permanent notifications under the new rules. This means that an FCA investment firm currently holding this permission is not required to submit further notifications in the future for the existing models used for these purposes. However, if the firm wishes to use internal models to calculate own delta estimate in K-TCD, the firm will need to submit a notification to us before they can use them because their current permission under UK CRR will not cover K-TCD.

14.13 We received a few queries covering the applications and notifications for consolidated or group situations. One respondent asked if there was an expectation that firms who intend to apply for the group capital test (GCT) and/or rely on the GCT transitional provision, should apply for the exemption from liquidity requirements on a consolidated basis if they would otherwise seek to apply for this exemption on a prudential consolidation basis.

14.14 The same respondent enquired if it would be considered inconsistent if an investment firm group applied for exemption from liquidity requirements on a consolidated basis but conducted an ICARA on a group basis.

14.15 Another respondent requested that we confirm if firms are required to make a formal notification to inform the FCA that they intend to undertake their ICARA on a group basis.

Our response

Firms have until 31 January 2022 to apply for permission to use GCT in order to take advantage of the transitional arrangement. This would allow firms to use GCT for up to 2 years while we process the application. Firms with permission to use the GCT and those using the transitional arrangement will not be required to comply with prudential consolidation requirements, including those on liquidity, unless we have refused their GCT applications.

If an investment firm group chooses to operate a group ICARA under MIFIDPRU 7.9, the individual MIFIDPRU investment firms in the group must still comply with certain requirements on an individual basis (such as wind-down planning and the overall financial adequacy rule). In this case, it would not be inconsistent for an investment firm group that is subject to consolidation to apply for an exemption from the consolidated liquidity requirement and still operate a group ICARA process. The group ICARA process would still need to ensure that each individual MIFIDPRU investment firm in the group held appropriate liquid assets on an individual basis to meet its liquid assets threshold requirement (see Chapter 6 of this PS for further information).

Firms will be required to confirm the basis on which they conduct their ICARA when they complete their ICARA questionnaire. No separate notifications are required.

Application fees

14.16 Respondents were generally supportive of our proposal to charge fees for a small number of MIFIDPRU permission applications listed in paragraph 15.21 of CP 21/7. In their feedback they urged that we are proportionate when setting the fee amounts and structures.

Our response

Having considered the practicalities in greater detail, we have decided not to introduce standard application fees for MIFIDPRU applications at this stage. Instead, we will recover our costs in the usual way through annual regulatory fees (periodic fees) for all affected firms. We may review our position in the future in light of our experience of dealing with applications.

However, for larger permission applications taking up a significant amount of our resources, we are considering the application of the Special Project Fees (SPF) model in order to recover these costs.

We will consult on proposed changes to our periodic fees and cost recovery for larger IFPR permission applications in the fees policy CP. This will be published in the autumn as part of our annual cycle of consultation on fees.

Publishing MIFIDPRU permissions on the FS Register

14.17 All respondents agreed with our proposed approach to publish MIFIDPRU permissions on the FS Register. This is consistent with our current approach of publishing FSMA waivers and modifications, and UK CRR permissions.

Our response

In light of the feedback received, we are continuing the approach that we proposed in the consultation.

Interaction with authorisation and variation of permission applications

14.18 Some respondents queried how the new IFPR regime will interact with the existing authorisations and variations of permissions processes. We are using this opportunity to provide some clarification.

Our response

We currently ask for a range of prudential information as part of the new authorisation and variations of permission (VOP) process. This information reflects current prudential requirements and helps us to determine whether applicants meet, and will continue to meet, threshold conditions.

There can be a lead-in time of up to 12 months between us receiving an application and determining it. With the publication of the near-final rules in this PS, we will introduce a new MIFIDPRU supplement form in Connect. This will enable us to collect information from applicant FCA investment firms so we can assess their ability to meet the IFPR requirements in advance of the new regime coming into force. It will also ensure that we can set applicants up on the appropriate reporting schedules once their applications have been determined.

Treatment of existing prudential limitations and requirements

14.19 In the past, we have applied limitations or requirements to the permissions of FCA investment firms in order to establish the prudential category into which they fall. "Local firms", "exempt CAD firms", "BIPRU firms" and "matched principal" firms all typically have associated limitations or requirements that ensure they cannot carry on activities that their prudential category does not permit.

14.20 We do not intend to apply these limitations or requirements to new firms going through the authorisations gateway, because those limitations or requirements are associated with the existing prudential regime, which is being replaced by the IFPR. However, for existing firms these limitations or requirements will continue to operate as restrictions on the types of activity that those existing firms may carry on, as their authorisations were originally granted on this basis. If a firm wishes to remove 1 of these limitations or requirements, it should apply for a VOP in the standard way.

14.21 By way of an example, matched principal firms should note that the matched principal exemption conditions in IFPRU or BIPRU will continue to restrict their activities as a result of the standard matched principal limitation, even after the relevant parts of IFPRU/BIPRU have been deleted. If a matched principal firm wants to take on market positions beyond what is envisaged by IFPRU/BIPRU, it should apply for a VOP.

14.22 In CP20/24 we proposed transitional provisions for the own funds requirements for local, exempt CAD, BIPRU and IFPRU firms. This was to provide a smoother transition for such firms from their existing regulatory capital requirements to the requirements under MIFIDPRU. We explained that an FCA investment firm that applies to vary its permissions and, as a result has a higher PMR, will no longer be able to rely on the PMR transitional provisions. Similarly, if the PMR remains unchanged as a result of a VOP, the transitional provisions will continue to apply.

14.23 By way of an example, if a former BIPRU firm varies its permissions on or after 1 January 2022 to allow it to hold client money in the course of MiFID business, this would result in the firm moving from a PMR of £75K to a PMR of £150K under MIFIDPRU 4.4. This means that the firm would lose the benefit of the PMR transitional in MIFIDPRU TP 2.16R. If, on the other hand, the variation of permission was to solely involve removing the standard BIPRU requirement (effectively to expand the scope of the firm's activities to placing on a non-firm commitment basis), this would not result in a PMR change under MIFIDPRU 4.4. Therefore, the firm would be able to continue to rely on the PMR transitional in MIFIDPRU TP 2.16R.

14.24 Generally, if a firm is already on the maximum PMR of £750k under MIFIDPRU, varying its permissions will not result in it losing any PMR transitional.

14.25 The exception to this general approach are local firms. This is because the transitional in MIFIDPRU TP 2.20R is not specifically limited to their PMR but operates as an overall cap on their entire own funds requirement. If a local firm varied its permission to remove the standard requirement for local firms before 1 January 2022, it would effectively cease to meet the definition of a local firm. In a similar vein, if the VOP was to take place on or after 1 January 2022, the firm would cease to have the benefit of the transitional in MIFIDPRU TP 2.20R. We have updated MIFIDPRU TP 2.20R to make this point clear.

15 Summary of amendments to Handbook text

15.1 In this chapter we provide additional technical information on the main changes to the Handbook text consulted on in CP21/7. This includes those that have been described elsewhere in this PS and those that we have made so that the rules work as intended.

15.2 This information is provided as a guide for FCA investment firms to help them identify what and where those changes are. The information contained in this guide should be read in the context of the rules in the Handbook and any other rules that may affect their application. This chapter is not intended to be exhaustive and firms should ensure that they read the Handbook rules in full to understand the implications for their business.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
General definitions				
1.	Definition of 'UK parent entity'		Correction of drafting omission	The original Glossary definition of 'UK parent entity' referred to a 'UK mixed financial holding company'. This should have been a reference to a 'UK parent mixed financial holding company'. This has now been corrected.
2.	Definition of 'consolidated situation'		Correction of drafting omission	The original Glossary definition of 'consolidated situation' did not make it clear when the general UK CRR definition applied and when the new definition for the purposes of MIFIDPRU applied. This has now been corrected.
3.	Definition of 'institution'		Correcting of drafting omission	The original Glossary definition of 'consolidated situation' referred to a designated investment firm. This should have been a reference to a UK designated investment firm. This has now been corrected.
4.	Definition of 'mixed-activity' holding company		Clarification of use of the definition in the context of SUP 16	The original Glossary definition of 'mixed-activity holding company' has been updated to clarify that in the context of the reporting obligations in SUP 16, it includes entities that meet that definition under the UK CRR or that definition under MIFIDPRU.
5.	Definition of 'overall financial adequacy rule'		Clarification that of how this definition works for dormant account fund operators	This definition has been updated to reflect the fact that for dormant account fund operators, it should be interpreted as a reference to a 'frozen in time' historical version of GENPRU 1.2.26R. This reflects that such firms are subject to a legacy regime and that we intend to repeal GENPRU 1 and 2.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
6.	Definition of 'UK CRR'		Amendment of existing UK CRR definition to reflect existence of PRA CRR rules	This definition has been amended to establish a general definition of the 'UK CRR' in the Handbook that operates by reference to the on-shored UK CRR text, as amended or supplemented by any CRR rules made by the PRA under section 144A FSMA. This definition does not apply where a provision in the Handbook expressly stated that 'UK CRR' has a different meaning in that context. For example, some parts of MIFIDPRU use a modified definition of 'UK CRR' to refer to a historical 'frozen in time' version of the UK CRR.
MIFIDPRU 2 – levels of application				
7.	MIFIDPRU 2.5.22G (4)		Amendment to clarify that a UK parent entity should not attempt to subdivide the balance sheet of a CPMI firm between MiFID and non-MiFID business when calculating the consolidated on- and off-balance sheet total for the purposes of MIFIDPRU 1.2.1R (6).	This clarification takes a sensible approach to the underlying rule in that it is not practical to allocate balance sheet assets of a firm between MiFID and non-MiFID activities when applying the on- and off-balance sheet criteria for classification as an SNI firm on a consolidated basis. This is also consistent with the approach taken to balance sheet thresholds for a CPMI firm in SYSC 19G.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
8.	MIFIDPRU 2.5.29R(2) and (4)		Clarification of how intra-group amounts are treated for AUM, COH and DTF	In CP 20/24, our original text in MIFIDPRU 2.5.29R stated that where transactions or arrangements are between two or more entities included within the consolidated situation, the firm could apply an adjustment for 'double-counting'. A respondent to CP21/7 asked us to clarify what this meant when calculating COH on a consolidated basis. Upon reflection, we think that this wording is not as clear as it should be. If a transaction or arrangement is solely between two or more entities that all form part of the consolidated situation, it will net out entirely on consolidation (since the single hypothetical consolidated entity cannot be performing these MiFID services for itself). Therefore, we have amended this wording to clarify that such amounts should be excluded entirely when calculating the relevant consolidated metric. For the avoidance of doubt, on an individual basis, there is no exemption for intra-group arrangements, so they continue to be counted in the metrics of the individual firms unless otherwise expressly stated.
9.	MIFIDPRU 2.5.41R		Clarification of eligible clearing members and eligible indirect clearing members for the purposes of portfolios of third country entities included within the consolidated calculation of the K-CMG requirement	We have made a minor amendment to MIFIDPRU 2.5.41R to the entities that are eligible to be clearing members (and in the case of indirect clearing arrangements, indirect clearing firms) where a third country entity is included within the consolidated situation and the UK parent entity wishes to include a portfolio of that third country entity within the calculation of the consolidated K-CMG requirement. We have now made it clear that the clearing member (and where applicable, indirect clearing firm) for these purposes can be one of the types of entities listed in MIFIDPRU 4.13.9R(2)I – that is, a MIFIDPRU investment firm, a designated investment firm, a UK credit institution, a third country investment firm or a third country credit institution. In addition, it can also be another type of entity that is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates. It can also be the third country entity itself (i.e. where the third country entity is self-clearing).

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU 3 – own funds				
10.	MIFIDPRU 3.1.3R(1) (Newly inserted provision)		Freezing the UK CRR references in MIFIDPRU 3 in time so that they reflect the initial implementation of CRR2, but not any future changes in the UK CRR framework	In CP 20/24, we stated that generally speaking, references to the UK CRR would reflect CRR2 and IFPR related amendments that come into force on 1 January 2022. As the UK CRR2 regime allows the PRA to amend aspects of the UK CRR framework through PRA rules (i.e. CRR rules under section 144A FSMA), it is possible that the UK CRR provisions could be further amended in the future. In order to provide stability for firms in relation to the applicable rules for determining their own funds, we have therefore made it clear that the for the purposes of MIFIDPRU 3, any reference to the 'UK CRR' is to the UK CRR provisions (including any CRR rules made by the PRA) on 1 January 2022. In the longer term, the FCA is considering the merits of transposing relevant provisions of the UK CRR in full into the FCA Handbook in order to reduce the use of cross-references to the UK CRR.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU 4 – own funds requirements				
11.	Glossary definition of 'financial entity'	MIFIDPRU 4.7.10G	Expanding the definition of a 'financial entity' to include insurers within the same financial conglomerate (if the FCA is coordinator for the conglomerate) and other entities within the same prudential consolidation group if MIFIDPRU 2.5 applies to the relevant investment firm group	Under MIFIDPRU 4.7.9R, a firm to which discretionary management of assets has been delegated can exclude the value of those delegated assets from its calculation of the K-AUM requirement if the delegating firm is a 'financial entity'. Respondents to CP21/7 asked us to extend the definition of a financial entity in various ways to increase the potential application of this exclusion for delegated management. Having considered the various arguments put forward for amending the definition of a financial entity, we have decided to extend the definition to cover two new categories of entities. The first is an insurance undertaking that forms part of the same financial conglomerate as the firm to which management of the assets has been delegated, provided that the FCA is the coordinator of that financial conglomerate under the UK FICOD regime. The second is an entity that is included within the same investment firm group as the firm to which management of the assets has been delegated, provided that the investment firm group is subject to prudential consolidation under MIFIDPRU 2.5 and both entities are included within the consolidated situation of the UK parent entity of that investment firm group. In both cases, this reflects the fact that the FCA has additional oversight over the situation of the delegating entity to deal with harm to clients, either because the FCA has powers as the coordinator of a conglomerate or because the FCA will be consolidating supervisor of the investment firm group.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
12.	MIFIDPRU 4.5.3R(2)(f) (Newly inserted provision)	MIFIDPRU 4.5.4R	Introduction of additional deduction from relevant expenditure under the fixed overheads requirement for fees, brokerage and other charges paid to CCPs, trading venues, exchanges and intermediate brokers by firms dealing on their own account	In CP21/7, we broadly followed the baseline approach in the EBA's draft RTS on calculating the fixed overheads requirement under the EU IFR. That text permits the deduction of fees, brokerage and other charges paid to CCPs, trading venues, exchanges and intermediate brokers when they are directly passed on and charged to customers. A respondent to CP21/7 argued that this was unfairly prejudicial to firms which incurred such expenses while trading on their own account, as they would never be charging the cost back to a customer. The respondent argued that when winding-down, such firms would no longer be incurring material amounts of these types of trading expenses and therefore they should be deducted when calculating the fixed overheads requirement (FOR). Having considered this point further, we think that there is merit in introducing a deduction for equivalent fees incurred by trading firms. However, we also consider that a firm that trades on its own account cannot assume that it will not incur any trading charges during a wind-down period, as it may need to liquidate, hedge or manage down existing positions that it holds on its balance sheet. Accordingly, we have included a new provision which allows firms dealing on their own account to deduct 80% of the annual value of fees, brokerage and other charges that they pay to CCPs, trading venues and intermediate brokers. This means that the contribution of these charges to the firm's FOR will be one quarter of the remaining 20%. This equates to 5% of the annual amount, or a little over two weeks' worth of such expenses. The value of the fees and charges being deducted must not include any fees or charges that the firm is required to pay to maintain membership or, or meet loss-sharing financial obligations to, a CCP, exchange or other trading venue. The provision also excludes any overlap where fees or charges may also have been deducted under the existing provision which allows deduction of fees or charges that are charged directly to the firm's client, so there can be no 'double deduction'.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
13.	MIFIDPRU 4.5.3R(1)(a)	MIFIDPRU 4.5.3R(2)(a)	Amendment to clarify that relevant expenditure should be calculated before distribution of profits	Our original rules in CP21/7 stated that a firm should calculate relevant expenditure by calculating its total expenditure after distribution of profits and then subtracting the permitted deductible items in MIFIDPRU 4.5.3R(2). This followed the EBA's baseline text in its proposed technical standards under the EU IFR. Upon reflection, and taking into account feedback from respondents, we consider that this wording could cause confusion. We have therefore amended the provision so that it refers to calculating the firm's total expenditure before distribution of profits. We would not generally expect that the distribution of profits would be an expenditure item in a firm's accounts. Instead, a firm will normally make a distribution of its retained earnings once it has determined its profits, having already taken into account its expenditure. We therefore think that the revised wording is likely to be a more accurate reflection of how firms calculate their total expenditure according to normal accounting practice.
14.	MIFIDPRU 4.5.3R(2)(a)(ii)		Clarification that rules around deducting partners' shares in profits from total expenditure for the purposes of calculating the relevant expenditure for the FOR should include profit shares of LLP members	Our original proposed rules around calculating relevant expenditure for the FOR in MIFIDPRU 4.5.3R(2) stated that fully discretionary payments of profit shares to employees, directors or partners can be deducted from total expenditure. Our intention was that this should also include profit share payments to members of LLPs and we have amended the drafting to make this clearer.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
15.	MIFIDPRU 4.5.3R(2)(l) (renumbered provision)		Expansion of existing deduction relating to software assets	In CP21/7, we originally proposed that a firm could deduct expenses relating to the amortisation of prudently valued software assets, but could not otherwise deduct expenses relating other intangibles or items that had been deducted in full from own funds. Respondents to CP21/7 argued that our approach was unduly restrictive and that a firm should not be required to include expenses in its relevant expenditure where those expenses related to items that had already been deducted from own funds under MIFIDPRU 3.3.6R (such as intangible assets). We agree that where an item has already been deducted from own funds, expenses that reflect the value already deducted (such as amortisation expenses) do not need to be included in a firm's relevant expenditure (and therefore do not form part of the fixed overheads requirement). We have revised MIFIDPRU 4.5.3R(2) to reflect this.
16.	MIFIDPRU 4.5.7R(2)		Clarifying that following a material increase in projected relevant expenditure for the year, the firm must recalculate the fixed overheads requirement (FOR) and basic liquid assets requirement (BLAR) immediately	We have made minor updates to the drafting of MIFIDPRU 4.5.7R(2) to clarify that following a material increase in the projected relevant expenditure of a firm for the current year, the firm must immediately substitute the updated FOR calculation for its original FOR, and must immediately substitute the updated BLAR (based on the updated FOR) for its original BLAR. This does not change the substance of our original proposals but is merely intended to avoid any confusion over the timing of when the updated requirement applies.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
17.	MIFIDPRU 4.7.14G – MIFIDPRU 4.7.22G (Newly inserted provisions)	Glossary definition of 'investment advice of an ongoing nature'	Introduction of new rules and guidance to explain how to calculate AUM for 'investment advice of an ongoing nature'	In CP21/7 we followed the baseline approach of including within the definition of AUM the activity of 'investment advice of an ongoing nature'. Respondents to CP21/7 asked us to clarify how AUM should be measured for these purposes. A number of respondents (primarily investment consultants) were also concerned that the existing definition of 'investment advice of an ongoing nature' would extend beyond MiFID investment advice (i.e. personal recommendations) to catch generic advice about asset allocation, etc. In PS2, we have amended the definition of 'investment advice of an ongoing nature' to clarify that in all cases, this must involve the provision of MiFID investment advice (i.e. personal recommendations). As a result, the provision of generic advice, such as advice relating to general asset allocation (e.g. 'invest in China' or 'invest in equities, not bonds'), will not by itself constitute investment advice of an ongoing nature for these purposes. We have referred firms to our existing guidance in PERG 13.3 on personal recommendations. The new guidance also clarifies that the AUM for this activity should be calculated by reference to the scope of the firm's duty to advise in any given case (or, in the case of recurring investment advice, the value of the financial instruments on which the firm advises). While we do not think it is appropriate to specify a minimum frequency that makes investment advice 'recurring', our new guidance explains that firms should consider whether in substance, the recurring arrangements are such that they are similar to periodic or continuous advice. This is not just a matter of frequency, but also of the extent to which investment advice is provided on each occasion. New rules explain how a firm should calculate average AUM for the purposes of ongoing investment advice, depending on whether the advice is continuous, periodic or recurrent. For recurrent advice, we have proposed a cumulative total over a 12-month rolling period, but allowing for adjustment if any of the same assets are the subject of advice on multiple occasions within that 12-month period.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
18.	MIFIDPRU 4.8.16G		Clarifying that end of day amounts for CMH should include any subsequent adjustment as a result of reconciliations that the firm is required to carry out	Under the CASS rules, a firm will normally be required to carry out regular internal reconciliations in relation to client money. These will occur after the end of the business day for which the firm will have recorded a CMH value but may result in an adjustment to that value (for example, where the firm identifies a discrepancy and subsequently corrects it). We have added new guidance in MIFIDPRU 4.8.16G that where a firm subsequently applies an adjustment in relation to client money as a result of an internal reconciliation, it must update the amount of CMH recorded for the relevant business day to reflect the impact of that adjustment on MiFID client money held at the end of that day. Where the K-CMH requirement applies on a consolidated basis, the same approach should be applied where an adjustment occurs as a result of a reconciliation applied by another entity included within the consolidated situation.
19.	MIFIDPRU 4.11.4R	MIFIDPRU 4.11.5R (Newly inserted provision. All subsequent provisions in MIFIDPRU 4.11 have therefore been renumbered) MIFIDPRU 1.2.1R MIFIDPRU 1.2.9R MIFIDPRU 1.2.12G MIFIDPRU TP 6.9G MIFIDPRU 9 Annex 1R (MIF003 template amended) MIFIDPRU 9 Annex 2G (MIF003 reporting guidance amended)	Clarifying the scope of K-DTF in response to feedback on CP21/7 to ensure that this includes all instances of a firm entering into transactions in its own name, even if it is not dealing on own account	Two respondents to CP21/7 questioned whether the scope of our original proposed rules on K-DTF and K-COH was correct. They argued that it is possible for a firm to execute a transaction in the firm's own name, but as agent for a client so that the firm is not dealing on own account. In that case, under the original proposals, the transaction would have fallen neither within K-COH (which excludes orders executed in a firm's own name) nor within K-DTF (which, under our original rule in MIFIDPRU 4.11.4R, applies only to a firm that deals on own account). Our original intention here was to mirror the baseline approach to K-DTF and K-COH. The definition of DTF, as consulted upon in CP20/24, was always intended to capture transactions entered into by the firm when dealing on own account and transactions that the firm enters into in its own name (whether it is technically dealing on own account or not) when executing orders on behalf of clients. We have therefore amended MIFIDPRU 4.11.4R so that a firm is no longer required to be dealing on own account in order for the K-DTF requirement to apply. Instead, the new MIFIDPRU 4.11.5R makes it clear that K-DTF applies either when the firm deals on own account or when it executes orders its own name on behalf of a client.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
				In order to be an SNI MIFIDPRU investment firm, a firm must not have any DTF. Originally, when the scope of DTF was limited in the proposed rules to transactions arising from dealing on own account, this condition was satisfied by the requirement in MIFIDPRU 1.2.1R that an SNI firm must not have permission to deal on own account. However, since we have now clarified that DTF can arise where a firm executes orders on behalf of a client in the firms' own name, we have added a specific new condition to MIFIDPRU 1.2.1R(9) to state that a firm must have average DTF of zero to be SNI. We have also updated the metrics captured on the MIF003 return to include the value of average DTF to allow us to monitor this condition. The related reporting guidance for MIF003 has also been updated to reflect these changes to the underlying reporting template. We have also made a small consequential update to the guidance in MIFIDPRU TP 6.9G. This makes it clear that for the purposes of the transitional rules on determining SNI status. the FCA expects that a firm should know whether it has entered into one or more transactions in its own name or by dealing on own account in the relevant period (9 months, excluding the most recent 3 months) immediately preceding the IFPR go-live date. Therefore, we do not consider that a firm needs specific transitional arrangements to determine if that condition is met.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
20.	MIFIDPRU 4.7.12R MIFIDPRU 4.8.15R MIFIDPRU 4.9.13R MIFIDPRU 4.10.33R MIFIDPRU 4.15.10R	MIFIDPRU TP 4.3G	Amendment of rules for initial calculation of K-factor requirements when a firm first starts new activities	Our original proposals in CPs 20/24 and 21/7 followed the baseline approach of stating that where a firm begins a new activity and therefore has no data on a relevant K-factor, the FCA would specify the missing data points to be used based on the firm's business projections at the time that it applied for authorisation. A respondent to CP21/7 asked how the FCA would specify the missing data points for these purposes, particularly in circumstances where the firm might commence business without having relevant projections (e.g. when acquiring a business line from another entity). We are now amending the rules for K-AUM, K-CMH, K-ASA, K-COH and K-DTF to state that where a firm begins a new activity, it should use the alternative methodology specified in MIFIDPRU TP 4.11R(1) to determine its K-factor requirement for that activity until it has sufficient observed data to apply the standard calculation. This will mean that the FCA will not need to specify missing data points and it will be clear to the firm at the outset how this should be calculated. The reference in MIFIDPRU TP 4.3G to the transitional calculation not being relevant to firms starting new business has also been deleted to reflect the revised approach.
21.	MIFIDPRU 4.10.19R MIFIDPRU 4.15.4R	MIFIDPRU 4.10.21G MIFIDPRU 4.15.5G [(Newly inserted provision. All subsequent provisions in MIFIDPRU 4.15 have been renumbered) MIFIDPRU Schedule 1	Amendment to rules for COH and DTF to clarify how to treat amounts denominated in foreign currency for the purposes of the average calculations	A respondent to CP21/7 asked us to clarify how amounts denominated in foreign currencies should be treated when measuring COH. In CP20/24, we included a provision in the K-AUM calculation rules to explain how to convert foreign currency amounts into the firm's functional currency for the purposes of measuring AUM. This reflected the specific approach in the baseline for AUM. We consider that an equivalent approach should apply under both the K-COH and K-DTF calculations and therefore have amended the relevant calculation provisions. When measuring COH and DTF, a firm should therefore convert any foreign currency amounts in the COH or DTF for a business day into the firm's functional currency at the end of that business day. The firm should choose an appropriate market rate for the conversion and should record the rate chosen. We have also updated the record keeping schedule in MIFIDPRU Schedule 1 to reflect these additional record keeping requirements.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
22.	MIFIDPRU 4.15.9G(2)		Deletion of previous guidance provision referring to execution of transactions by a firm when acting as portfolio manager being excluded from DTF	In CP20/24, we included in a guidance provision in what was then MIFIDPRU 4.15.8G, reflecting article 33(3) of the EU IFR. That provision stated that a firm must exclude from DTF any transactions executed by the firm for the purpose of providing portfolio management services on behalf of investment funds. Having considered the position in relation to the application of DTF more generally (including the other changes to MIFIDPRU 4.11 and 4.15 summarised above), we have decided to delete this guidance provision. There is therefore no general exclusion from DTF in relation to transactions that a firm might execute in the context of providing portfolio management to a fund (or any other client).
23.	MIFIDPRU 4 Annex 12G	MIFIDPRU 4.7.13G MIFIDPRU 4.10.26G	Addition of guidance table on requirement to calculate K-AUM and K-COH	Several respondents to CP21/7 commented that they found the guidance table in paragraph 4.89 of the CP helpful and asked if we would reproduce this as guidance in MIFIDPRU. We agree that it would be helpful to reproduce this guidance and therefore have included a new guidance annex in MIFIDPRU 4 Annex 12G that reproduces the relevant table with some minor amendments. We have also updated existing guidance provisions in MIFIDPRU 4.7 (relating to K-AUM) and MIFIDPRU 4.10 (relating to COH) to cross-refer to this new guidance annex.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU 7 – Governance, ICARA and SREP				
24.	MIFIDPRU 7.1.4R	MIFIDPRU 7.1.6 to 7.1.8G Glossary definition of 'off-balance sheet items'	Revision of rules for calculating the thresholds for when the risk, remuneration and nomination committee requirements in MIFIDPRU 7.3 apply to a non-SNI firm	We have made amendments to the thresholds that determine whether a non-SNI firm has to comply with the rules in MIFIDPRU 7.3 regarding risk, remuneration and nomination committees. The amendments: • Draw a clearer distinction between on-balance sheet assets and off-balance sheet items. • Define off-balance sheet items by reference to material in Annex 1 of the UK CRR. • Explain that the value of on-balance sheet assets must be calculated in accordance with the applicable accounting framework. • Explain that the value of off-balance sheet items must be calculated using their full nominal value. • Explain how firms calculate the exposure values in MIFIDPRU 7.1.4R(2)(a) and (b). • Explain that where the thresholds use an arithmetic mean it must be calculated using monthly data points. • Explain what firms should do if they have missing data points, and when the FCA would expect this to arise. • Clarify when firms can change the date they use for their data points.
25.	MIFIDPRU 7.3.3R		Amendment of rules on remuneration committees to clarify that the individual obligation of a non-SNI firm to have a remuneration committee may be satisfied by a group committee established at the level of the UK parent entity	We have amended our rules to permit a non-SNI firm to rely on a group level remuneration committee where the firm is part of an FCA investment firm group to which prudential consolidation under MIFIDPRU 2.5 applies and where the UK parent entity has a remuneration committee that: • meets the composition requirements (where they apply) • has the necessary powers to comply with the other obligations in MIFIDPRU 7.3 on behalf of the non-SNI firm, and • has members with the appropriate knowledge, skills and expertise in relation to the non-SNI firm Where these criteria are met, a firm may rely on the group level remuneration committee without needing to apply to us for a modification.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
26.	MIFIDPRU 7.4.5G	MIFIDPRU 7.4.6G(2) (now deleted) MIFIDPRU 7.5.4G(1)	Clarification around firms with complex business models	Our original proposed text in CP21/7 detailing the obligations for the ICARA process referred to 'large or complex' firms. Respondents considered that the concept of a 'large or complex firm' was unclear and therefore that it was not clear from the rules when a firm might be expected to apply some of the more detailed approaches. We have rephrased certain provisions in MIFIDPRU 7 to make it clearer that these references were intended to be references to firms that have more complex businesses or operating models. We do not think that it is necessary or helpful to give a technical definition of when a business or operating model will be more complex for these purposes. Ultimately, this is a question of degree and as the complexity of the firm's activities or operating model increases, we would generally expect the analysis under the ICARA process to become more detailed in a manner that is proportionate to the increased complexity.
27.	MIFIDPRU 7.5.4G(3) (newly inserted provision)		New guidance to clarify that the FCA may impose a requirement on a firm to carry out more in-depth stress testing or reverse stress testing	Under MIFIDPRU 7.5.4G(1), a firm that has a complex business or operating model is required to undertake more in-depth stress testing and to carry out reverse stress testing. In the first instance, a firm will need to carry out its own analysis of whether the complexity of its business or operating model means that it should undertake more this more in-depth testing. However, this new guidance clarifies that the FCA may also invite a firm to apply for the imposition of a voluntary requirement, or may exercise the FCA's own initiative powers to impose a requirement, for the firm to carry out such testing.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
28.	MIFIDPRU 7.6.8G(4) and (5) (newly inserted provisions)		Clarification that a firm is not required to map the impact of every material harm back to a component of the K-factor requirement	Respondents to CP21/7 sought clarity on whether they were required to map the estimated financial impact of every material potential harm back to one or more components of their K-factor requirement in every case. We have added new guidance to MIFIDPRU 7.6.8G to make it clear that a firm is not required to map every potential material harm back to its K-factor requirement in this way. It may not be possible to do so, or it may be disproportionately complex or otherwise impractical. In that case, the firm can simply choose to hold an additional amount of own funds to cover the relevant harm without seeking to determine whether it might already be partly covered by the K-factor requirement. A firm should, however, ensure that it has clearly documented the basis on which it determines that any additional own funds are or are not required in relation to a particular material harm.
29.	MIFIDPRU 7.8.3G (as originally numbered – now deleted)	MIFIDPRU 7.8.4R (as now renumbered) MIFIDPRU 7.8.5G (as now renumbered)	Removal of guidance specifying that significant or complex firms should consider reviewing their ICARA processes more regularly, such as on a half-yearly basis	Feedback to CP21/7 indicated that respondents did not agree with the guidance in our original proposed MIFIDPRU 7.8.3G. That guidance stated that a firm whose activities are significant in their nature, scale or complexity should consider whether it is appropriate to review the adequacy of the ICARA process more regularly than annually. In light of the feedback received, we have decided to remove this guidance provision and related provisions around the submission of MIF007 reports more regularly than annually. Therefore, a firm will only be expected to carry out a formal review of its ICARA process on an annual basis, unless there is a material change in the firm's business or operating model, in which case the ICARA process will need to be reviewed again to take into account the impact of that change. However, the ICARA process itself is an ongoing risk management process within the firm. Therefore, although a formal ICARA review is normally required only annually, a firm must ensure that it is meeting the overall financial adequacy rule on an ongoing basis and has an ongoing risk management framework.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
30.	MIFIDPRU 7.9.4G		Addition of guidance that the FCA may, in exceptional circumstances, direct an investment firm group to operate a consolidated ICARA process	In CP21/7, we confirmed that an investment firm group will not normally be required to operate an ICARA process on a consolidated basis, even if the group is subject to prudential consolidation under MIFIDPRU 2.5. We are adding guidance to confirm that although the default position remains that an investment firm group is not required to operate a consolidated ICARA process, the FCA may nonetheless impose a requirement on a UK parent entity to operate an ICARA process on a consolidated basis in exceptional circumstances. This could include where the individual (or, where applicable, group) ICARA process does not adequately capture material risks that arise within the context of the group as a whole. The guidance also clarifies that the FCA may exclude entities from the scope of the consolidated situation, in which case the consolidated ICARA process should also exclude such entities.
31.	MIFIDPRU 7.10.9G(4)		Clarification that the FCA may impose a requirement on a parent undertaking by reference to the status of the group as a whole	We have amended the guidance in MIFIDPRU 7.10, which explains the FCA's approach to the SREP and prudential supervision, to make it clear that the FCA may impose a requirement on a parent undertaking by reference to the status of the investment firm group as a whole. This was already implicit in the guidance, but we have stated this expressly to give firms greater clarity. The FCA may therefore impose requirements on individual firms or relevant parent undertakings or may impose a consolidated requirement on a parent undertaking by reference to the consolidated situation of the group.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU 10 – requirements for clearing firms				
32.	MIFIDPRU 10.4.2R	Insertion of new MIFIDPRU 10.4.3R and MIFIDPRU 10.4.4G (with consequential renumbering of existing provisions as MIFIDPRU 10.4.5G and 10.4.6G)	Amendment of rules relating to capital requirement for a clearing firm's pre-funded exposures to a CCP default fund	One respondent to CP21/7 argued that our proposed rules for calculating the capital requirement for a clearing firm's pre-funded exposures to a CCP's default fund were too punitive. The respondent argued that an 8% risk weight (as originally proposed in MIFIDPRU 10.4.2R) was excessive, given that the risk weight for credit institutions and investment firms was only 1.6% and an authorised CCP should not be seen as riskier than those entities. The respondent also pointed to the C-factors applied under current article 308 of UK CRR and to the C-factor that would apply under the Basel III SA-CRR for comparison. We have amended MIFIDPRU 10.4.2R to modify the calculation of the capital requirement resulting from the pre-funded exposure to the CCP default fund. We have amended the applicable risk factor. This now varies, depending on whether the CCP is an authorised CCP (i.e. including a recognised CCP) or not. For a non-authorised CCP, the risk factor remains 8%. For an authorised CCP, the risk factor depends upon whether the CCP publishes a C-factor relating to its default fund or not in accordance with national rules implementing the Basel II or Basel III requirements (see BCBS 227 and BCBS 282). If the CCP publishes a relevant C-factor, then the value of the C-factor must be used. If the CCP publishes a C-factor for the purposes of both BCBS 227 (i.e. Basel II, as reflected in current UK CRR) and BCBS 282 (i.e. Basel III), the C-factor for BCBS 282 must be used (and in the case of default funds relating to derivatives, this will mean applying the Basel III SA-CCR – MIFDPRU 10.4.4G clarifies this point). If the authorised CCP does not publish a C-factor for any reason, then a default risk factor of 1.6% will apply instead. In addition, the applicable alpha for the purposes of MIFIDPRU 4.14.7R (as cross-applied by MIFIDPRU 10.4.2R(1)) has been reduced to 1 (from the standard 1.2 in MIFIDPRU 4.14.17R). This is because we do not believe it to be necessary in this context, especially when combined with the use of the C-factor and the methodology by which this is calculated.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU TP 2 – Transitional provisions for own funds requirements				
33.	MIFIDPRU TP 2.7R MIFIDPRU TP 2.14R		Extending the existing own funds transitionals for former IFPRU and BIPRU firms to apply to CPMI firms	As originally drafted in CP20/24 and PS1, the transitional provision in MIFIDPRU TP 2.7R applies to former IFPRU and BIPRU firms, but excluded CPMI firms. This was because we addressed our intended approach to CPMI firms in CP21/7. In responses to CP21/7, we were asked whether there should be transitional arrangements available for CPMI firms on the same basis as for other MIFIDPRU investment firms, given that we confirmed our intention to treat CPMIs as MIFIDPRU investment firms. We did not include an own funds transitional provision for CPMIs in CP21/7, but had intended to do so. We have therefore amended MIFIDPRU TP 2.7R so that CPMIs are no longer excluded from its scope. This means that CPMI firms (which will be either former BIPRU firms or former IFPRU firms, depending on their precise activities) can benefit from the transitional arrangements for their K-factor requirements and fixed overheads requirements in MIFIDPRU TP2.7R. We have also amended MIFIDPRU TP 2.14R to extend the permanent minimum capital requirement (PMR) transitional that would apply to a former IFPRU 125K firm to apply to a CPMI firm that would have a MIFIDPRU PMR of £150K. We do not think it is necessary to provide a PMR transitional for CPMIs that become subject to a PMR of £75K on 1 January 2022. This is because CPMIs have a parallel base capital requirement of EUR 125K under IPRU-INV 11.3 and therefore this would be expected to be significantly higher than the £75K MIFIDPRU PMR in any case.
34.	MIFIDPRU TP 2.19R		Clarification that certain transitional requirements could be disapplied due to a change in a limitation or requirement and not just a permission	The original provision in MIFIDPRU TP 2.19R provided that certain own funds transitionals relating to the permanent minimum capital requirement (PMR) cease to apply if a firm varies its permissions on or after 1 January 2022 in a manner that means that there would be an increase in its standard PMR under MIFIDPRU. We have amended this provision so that it also includes any change to the limitations or requirements applicable to the firm that would have that effect.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
35.	MIFIDPRU TP 2.20R		Amendment of the own funds transitional provision for local firms to clarify that it is disapplied if the firm varies its permissions, limitations or requirements in a way that would have resulted in it ceasing to be a local firm if it had occurred before 1 January 2022	The transitional provision in MIFIDPRU TP 2.20R applies a fixed transitional requirement to local firms that applies in place of their entire own funds requirement under MIFIDPRU for 5 years. We have now clarified that this transitional relief will cease to apply if the firm varies its permissions, limitations or requirements on or after 1 January 2022 in a manner that, if that variation had occurred before 1 January 2022, would have resulted in the firm ceasing to be classified as a local firm. This ensures that a local firm cannot vary its activities on or after 1 January 2022 to undertake a wider range of business and still rely on its fixed alternative transitional requirement.
36.	MIFIDPRU TP 2.24R MIFIDPRU 2.25G (Newly inserted provisions. The previous MIFIDPRU TP 2.24R onwards have been renumbered afterwards)		Clarification of the interaction between the fixed overheads requirement (FOR) and the basic liquid assets requirement when the FOR is capped by a transitional provision	Respondents to CP21/7 sought clarification of whether the component of the basic liquid assets requirement, which is based upon one third of the amount of a firm's FOR, was calculated on the basis of the full value of the standard FOR or the FOR as capped by the own funds transitional provisions (where applicable). We have therefore added a new rule and a guidance provision to MIFIDPRU TP2 to clarify that where a firm is subject to a reduced FOR under one of the own funds transitional provisions, the component of the basic liquid assets requirement that is derived from the FOR should be calculated by reference to the reduced FOR. Any amount for the component of the basic liquid asset requirement due to client guarantees should be added to this.
MIFIDPRU TP 9 – Transitional provisions for IFPRU waivers on risk, remuneration and nomination committees				
37.	MIFIDPRU TP 9.5R		Correction of drafting error	The MIFIDPRU provisions in the second and third rows of column B of the table in MIFIDPRU TP 9.5R were the wrong way around, so we have rectified this.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
MIFIDPRU TP 10 – Individual capital guidance and individual liquidity guidance transitional provisions				
38.	MIFIDPRU TP 10		Transitional provisions for existing pre-1 January 2022 individual capital guidance and individual liquidity guidance issued to IFPRU investment firms, BIPRU firms and their groups	Respondents to CP21/7 asked us to clarify our approach to existing individual capital guidance (ICG) and individual liquidity guidance (ILG). In particular, they wanted to understand whether, and if so, how, ICG and ILG would be relevant when transitioning to the ICARA process and the other requirements in the new MIFIDPRU rulebook. We have included a new transitional annex, MIFIDPRU TP 10, which explains how firms should use their existing ICG and/or ILG to calculate a transitional requirement that will set a 'floor' for the purposes of their own funds threshold requirement and/or liquid assets threshold requirement under MIFIDPRU. The transitional rules will require any firm that is subject to an existing ICG and/or ILG to submit its first MIF007 (ICARA assessment questionnaire) by no later than 31 March 2023. From 1 January 2022 until 6 months after the firm has submitted its first MIF007, it will be subject to the transitional 'floor' set by reference to the ICG and/or ILG. Our intention is that following the submission of the first MIF007 reports, the FCA will have 6 months to review the firm's conclusions under the new regime and determine whether the firm's assessment of its new own funds threshold requirement and/or liquid assets threshold requirement is reasonable. Once the FCA has communicated the outcome of its review to the firm, or 6 months after the date on which the firm submitted the MIF007 return (if earlier), the transitional 'floor' will cease to apply. This will ensure that all existing ICGs and ILGs will cease to be relevant by no later than 30 September 2023. Where a firm is part of a group that is subject to a consolidated ICG or ILG, the rules require the UK parent entity of the relevant group to allocate the resources required by guidance between the entities forming part of that group on a reasonable basis. The UK parent entity must record its basis for this allocation. The individual FCA investment firms within the group must then apply the transitional 'floor' by reference to their individual allocation.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
				In each case, the transitional requirement is a 'floor' and so does not limit the own funds threshold requirement and/or liquid assets threshold requirement if the overall financial adequacy rule would otherwise require the firm to hold a higher amount. In addition, it does not limit any requirement that applies under the own funds requirement in MIFIDPRU 4 (as limited by any own funds transitional, where applicable). This means that notwithstanding the transitional requirement, the firm may need to hold additional own funds and/or liquid assets during the transitional period.
Remuneration – SYSC 19G				
39.	SYSC 19G.1.1R	SYSC 19G.1.2G SYSC 19G.1.3R SYSC 19G.1.4R SYSC 19G.1.7G	Amendment of rules on calculating the thresholds according to which the standard or extended remuneration requirements under SYSC 19G apply	We have made amendments to the thresholds that determine whether a non-SNI firm has to comply with the extended remuneration requirements in SYSC 19G. The amendments: • Draw a clearer distinction between on-balance sheet assets and off-balance sheet items. • Define off-balance sheet items by reference to material in Annex 1 of the UK CRR. • Explain that the value of on-balance sheet assets must be calculated in accordance with the applicable accounting framework. • Explain that the value of off-balance sheet items must be calculated using their full nominal value. • Explain how firms calculate the exposure values in SYSC 19G.1.1R(2)(a) and (b). • Explain that where the thresholds use an arithmetic mean it must be calculated using monthly data points. • Explain what firms should do if they have missing data points, and when the FCA would expect this to arise.
40.	SYSC 19G.1.14R	SYSC 19G.1.15G	Clarification of how thresholds should be calculated by CPMI firms	We have added a guidance provision to clarify that CPMI firms should use their total on-balance sheet assets and off-balance sheet items (not those based only on their MiFID business).

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
41.	SYSC 19G.1.18R	SYSC 19G.1.19G, SYSC 19G.5.9R and SYSC 19G.5.10G(3)	Clarification of how SYSC 19G applies to a group to which prudential consolidation under MIFIDPRU 2.5 applies	We have made a number of amendments to clarify how the rules in SYSC 19G apply on a consolidated basis. We have clarified in the MIFIDPRU Remuneration Code that the extended remuneration requirements do not apply on a consolidated basis. This means that an entity within a consolidation group is subject to the rules on pay-out in instruments, deferral, retention and pay-out of discretionary pension benefits only if it exceeds the thresholds, and not solely because another entity in the group exceeds the thresholds. We have included rules to make clear that the rules in MIFIDPRU 2.5.21R and 2.5.22G for determining whether a consolidation group is treated as an SNI or non-SNI firm also determine that question under SYSC 19G.
42.	SYSC 19G.1.20R	SYSC 19G.1.21G to SYSC 19G.1.23G	Clarification of how SYSC 19G applies when provisions under multiple remuneration codes apply to the same firm	We have restructured and simplified some of these provisions to clarify what a firm should do where it is subject to multiple remuneration requirements, for example the MIFIDPRU Remuneration Code and another remuneration code. These provisions explain that in the rare cases where a firm cannot comply with both requirements, it must comply with the stricter of those differing requirements. We have also clarified that a firm must consider which requirement is the stricter on a provision by provision basis.
43.	SYSC 19G.1.25G		Clarification that SYSC 19G applies by reference to performance periods, whatever the frequency of the performance period	We have added a guidance provision to remind firms that the code applies to each performance period, regardless of its length.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
44.	SYSC 19G.1.27R	SYSC 19G.1.28R	Clarification of how the requirements in SYSC 19G apply in relation to carried interest arrangements	We have clarified that: • the MIFIDPRU Remuneration Code applies to carried interest, and • carried interest must be valued at the time of its award. We have added a new rule which means that the requirements on pay-out in instruments, deferral, retention and ex-post risk adjustment do not apply to carried interest arrangements where: • the value of the carried interest is determined by the performance of the fund in which the carried interest is held, • the period between award and payment of the carried interest is at least 4 years, and • there are provisions for the forfeiture or cancellation of carried interest that include at least situations in which the MRT participated in or was responsible for conduct which resulted in significant losses to the firm, and situations in which the MRT failed to meet appropriate standards of fitness and propriety.
45.	SYSC 19G.1.29G		Guidance that SYSC 19G contains minimum requirements, but it is good practice for firms to consider whether going beyond them	We have included a guidance provision explaining that SYSC 19G contains minimum requirements, but that it is good practice for firms to consider whether going beyond SYSC 19G would contribute to sound risk management or a healthy firm culture.
46.	SYSC 19G.1.30R	SYSC 4.9G, SYSC 19G.5.11R, SYSC 19G.5.12G, SYSC 19G.6.7R(1)(b)(ii), SYSC 19G.6.9G(2), SYSC 19G.6.19R, SYSC TP 10		We have amended all relevant provisions to refer to 'performance periods' instead of 'performance years'. This means that a firm with quarterly performance periods should apply the new code from the beginning of its next performance period beginning on or after 1 January 2022.
47.	SYSC 19G.2.3G		Guidance relating to documenting remuneration policies and practices	We have included a guidance provision reminding firms that in line with their record-keeping requirements in SYSC 9 they should ensure remuneration policies, practices and procedures (including performance assessment processes and decisions) are clear and documented.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
48.	SYSC 19G.3.4R	SYSC 19G.3.5G	Clarification of the requirement for non-SNI firms to conduct an independent review of remuneration arrangements	We have: • amended the rule to clarify that the independent internal review relates to the operation of the remuneration policy and practices, and whether they comply with the policy framework and procedures laid down by the management body in its supervisory function, • added guidance to provide more detail of what we would expect the review to include, • removed the reference to the internal audit function, and • clarified in guidance that the review may be outsourced in whole or in part.
49.	SYSC 19G.3.8G		Amendment of drafting error	The final sentence of this provision contained a drafting error which we have rectified.
50.	SYSC 19G.4.3G		Guidance on when returns made on co-investment arrangements may constitute remuneration under SYSC 19G	We have amended the guidance to clarify that we would consider the returns on a co-investment arrangement to be remuneration only where the investment was made using a loan provided by the firm or a member of the group to which the firm belongs and that loan: • was not provided to the individual on commercial terms, or • had not been repaid in full by the time the return on the investment was paid.
51.	SYSC 19G.4.4G(3)		Clarification of the guidance on when and how to categorise partners' or LLP members' profit shares as remuneration	We have clarified in this guidance provision that we would expect 'a reasonable portion' of the profit share of a partner, or member of an LLP, to be considered remuneration where that partner or member works full-time for the firm.
52.	SYSC 19G.4.10G		Guidance on setting ratios of variable to fixed remuneration	We have added guidance to highlight that firms should consider all potential scenarios when setting ratios of variable to fixed remuneration, including that the firm exceeds its financial objectives.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
53.	SYSC 19G.4.11R	SYSC 19G.4.12G	Clarification of when severance pay may be excluded from the assessment of whether variable remuneration complies with the variable to fixed remuneration ratio set by the firm	We have made amendments to the provisions on severance pay to: • Make clear that when setting its variable to fixed remuneration ratio, a non-SNI firm must consider the situation in which the maximum possible severance pay is awarded to an individual. • Explain that when assessing whether an award of variable remuneration is consistent with the relevant ratio a firm can exclude the difference between the maximum severance pay foreseen in its remuneration policy and any amount it is obliged to pay as a result of a legal obligation that has arisen after the date on which the firm adopted the relevant version of its remuneration policy.
54.	SYSC 19G.5.7R	Glossary definition of 'material risk taker'	Amendment to rules on the levels at which material risk takers must be identified and which entity is responsible for identifying them	We have added a provision which clarifies that the UK parent entity of a consolidation group is responsible for identifying as material risk takers staff members who have a material impact on: • the risk profile of the investment firm group as a whole, or • the risk profile of, or assets managed by, any other entity in the group to which the MIFIDPRU Remuneration Code applies on an individual basis. We have also amended the Glossary definition of 'material risk taker' to reflect the effect of this provision.
55.	SYSC 19G.5.13G		Guidance on good practice in relating to potential extension of rules for material risk takers to other staff	We have included a guidance provision explaining that we think it is good practice for a firm to consider whether it should also apply the rules that apply to material risk takers to other members of staff.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
56.	SYSC 19G.6.2R	SYSC 19G.6.3G	Clarification that variable remuneration can be paid to members of the management body of a firm that benefits from exceptional government intervention if justified, and guidance on when this might be the case	We have replaced the references to extraordinary public support with 'exceptional government intervention' to ensure alignment with SYSC 19D. We have amended the relevant rule in the MIFIDPRU Remuneration Code to provide that an FCA investment firm benefiting from exceptional government intervention must not pay variable remuneration to members of its management body 'unless this is justified'. We have also added a guidance provision which sets out our view that it may be justified to pay variable remuneration to a member of the management body who was not in office at the time the exceptional government intervention was required.
57.	SYSC 19G.6.4G(2)		Amendment to guidance on assessment of performance as part of a multi-year framework	We have clarified the provisions to reflect our intention to require non-SNI firms to take a longer-term approach to assessing performance. As the rules explain, this should include setting some aspects of the assessment process in a multi-year framework, deferring variable remuneration over a period which reflects the firm's business cycle or the redemption policy of the funds managed, and/or using appropriate ex-ante and ex-post adjustments.
58.	SYSC 19G.6.6G		Clarification of guidance on financial and non-financial criteria	Feedback from respondents suggested that some had not appreciated that the guidance provision referring to equal weight between financial and non-financial criteria explicitly recognises that a 50/50 split is not always appropriate. To make this clearer, we have amended the guidance to say that equal weighting 'may be appropriate' for some firms, rather than 'will be appropriate' for some firms.
59.	SYSC 19G.6.11G(2)		Clarification of the criteria that may be attached to retention awards	We have added guidance to clarify that an FCA investment firm may (but does not have to) link a retention award to performance criteria which have been defined in advance. This can further strengthen the alignment of risk and reward.
60.	SYSC 19G.6.13R(2)		Amendment of rules on application of variable remuneration requirements to buy-out awards	We have amended the rules to make clear that the duration of the retention, deferral, vesting and ex-post risk adjustment arrangements must be 'no shorter' than the duration applied, and remaining, under the previous contract of employment.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
61.	SYSC 19G.6.19R(4)		Clarification that 'non-cash instruments which reflect the instruments of the portfolios managed' may be settled in cash	We have made a minor addition to this rule to confirm that 'non-cash instruments which reflect the instruments of the portfolios managed' also includes those which are settled in cash. This is because they achieve the objective of reflecting the credit quality of the firm or fund managed.
62.	SYSC 19G.6.20R		Addition of a rule to clarify the circumstances in which shares and instruments issued by a parent entity may be used as variable remuneration	We have amended the rules to make clear that shares and instruments issued by a parent entity may be used as variable remuneration, subject to their value moving in line with the value of an equivalent ownership interest in the FCA investment firm itself.
63.	SYSC 19G.6.26G(2)		Amendment of guidance to clarify when it may be appropriate for senior material risk takers to be subject to a deferral period that is longer than the minimum period	We have amended the provision to emphasise that it may be appropriate (rather than it being an expectation in all instances) to apply a deferral period longer than 3 years to the most senior material risk takers. We have retained the example of members of the management body.
64.	SYSC 19G.6.29R		Amendment to permit payment to a material risk taker of interest or dividends on an instrument that is subject to deferral	Following stakeholder feedback, we have amended our rules to permit material risk takers to accrue interest and dividends during the deferral period, but firms are not permitted to pay them out until the point of vesting. Accrual of dividends or interest during the deferral period will only be possible if the interest rate or dividend applied is not higher than that which is applied to ordinary holders of the instruments.
65.	SYSC 19G.6.33G(1)	SYSC 19G.6.33G(2)	Addition of guidance to clarify that some firms must include in-year adjustments, malus and clawback in their remuneration policies	We have added guidance to clarify that a non-SNI firm subject to the extended remuneration requirements must include in its remuneration policy the possibility of applying in-year adjustments, malus and clawback to the variable remuneration of material risk takers. Where performance adjustment is required, the appropriate tool or tools should then be applied.

	Main Rule Reference	Connected Rules also being Amended	Purpose of Amendment	Explanation
66.	SYSC TP 10		Amendment of transitional provisions to clarify how SYSC 19G applies during the transition to the MIFIDPRU regime and the extent to which requirements under previous remuneration codes might continue to apply for an initial period	We have amended these provisions and added further guidance to make clearer that SYSC 19G only applies to performance or services in performance periods beginning on or after 1 January 2022. This is the case irrespective of when the remuneration is awarded or paid out.

Annex 1
List of non-confidential respondents

Adempi Associates LLP

Alternative Credit Council (ACC)

Alternative Investment Management Association (AIMA)

Ashmore Group plc

Association of Consulting Actuaries

The Association of Professional Compliance Consultants

Baillie Gifford & Co.

Bankhall Ltd

The Bank of New York Mellon

BlackRock Inc

Brewin Dolphin Limited

British Private Equity and Venture Capital Association (BVCA)

Capital Group

Capita plc

Cardano Risk Management Ltd

The City of London Law Society

Confederation of British Industry

Daiwa Capital Markets Europe Ltd

Ellis Wilson Limited

The European Association of Independent Research Providers

FIA European Principal Traders Association (FIA EPTA)

Fidelity International

Futures Industry Association (FIA)

Hargreaves Lansdown

ICE Futures Europe

ICI Global

The IFA Corporation Limited

The Investment Association

Interactive Investor

JP Morgan

Lane Clarke & Peacock LLP

Lincoln Pension Limited

Macfarlanes LLP

Managed Funds Association

Mainspring Nominees Ltd

Man Group Ltd

Natwest Trustee and Depositary Services

Ninety One

Personal Investment Management & Financial Advice Association (PIMFA)

Pillar 4

Sanlam Private Wealth (UK) LTD

The Society of Pension Professionals

Schroders Investment Management Limited

SMBC Nikko Capital Markets Limited

Wells Fargo

XTX Markets Ltd

Annex 2
Abbreviations used in this paper

Abbreviation	Description
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Management Directive
ASA	Assets safeguarded and administered
AUM	Assets under management
BCBS	Basel Committee of Banking Supervisors
BIPRU	Prudential sourcebook for banks, building societies and investment firms
BRRD	Bank Recovery and Resolution Directive
CASS	Client assets sourcebook
CBA	Cost benefit analysis
CCP	Central counterparty
CMAR	Client Money and Assets Return
COH	Client orders handled
CP	Consultation paper
CPM	Collective Portfolio Management firm
CPMI	Collective Portfolio Management Investment firm
CRD	Capital Requirements Directive
CRR	Capital Requirements Regulation
EBA	European Banking Authority
EMPS	Energy market participants
ESMA	European Securities and Markets Authority
EU	European Union

Abbreviation	Description
EV	Exposure value
FCA	Financial Conduct Authority
FICOD	Financial Conglomerates Directive
FOR	Fixed overheads requirement
FS Act	Financial Services Act 2021
FS Bill	Financial Services Bill
FS Register	FS Register
FSMA	Financial Services and Markets Act
GEN	General Provisions sourcebook
GENRPU	General Prudential sourcebook
ICAAP	Internal capital adequacy assessment process
ICARA	Internal Capital Adequacy and Risk Assessment
ICG	Individual Capital Guidance
IFD	Investment Firm Directive
IFPR	Investment firm prudential regime
IFPRU	Prudential sourcebook for investment firms
IFR	Investment Firm Regulation
ILAA	Internal Liquidity Adequacy Assessment
ILG	Individual Liquidity Guidance
IPRU-INV	Interim prudential sourcebook for investment business
K-ASA	K-factor requirement related to the activity of administering and safeguarding assets
K-AUM	K-factor requirement related to the activity of managing assets
K-CMH	K-factor requirement related to the activity of holding client money
K-CON	K-factor requirement based on concentration risk

Abbreviation	Description
K-COH	K-factor requirement related to the activity of handling client orders
K-DTF	K-factor requirement related to the daily trading flow
K-NPR	K-factor requirement related to market risk
K-TCD	K-factor requirement related to the risk from the default of a trading firm counterparty
KFR	K-factor requirement
LLP	Limited Liability Partnership
MiFID	Markets in Financial Instruments Directive
MIFIDPRU	New Prudential sourcebook for FCA investment firms
MIPRU	Prudential sourcebook for Mortgage and Home Finance firms and Insurance Intermediaries
MMF	Money Market Fund
MRT	Material Risk Taker
MTF	Multilateral Trading Facility
NAV	Net Asset Value
OFAR	Overall financial adequacy rule
OMPS	Oil market participants
OTF	Organised Trading Facility
PERG	The Perimeter Guidance Manual
PMR	Permanent minimum requirement
PRA	Prudential Regulation Authority
PS	Policy Statement
QCCP	Qualifying central counterparty
QMMF	Qualifying money market fund
RPS	Remuneration Policy Statement
SM&CR	Senior Managers & Certification Regime

Abbreviation	Description
SMF	Senior management function
SMR	Senior Managers Regime
SNI	Small and non-interconnected investment firm
SREP	Supervisory review and evaluation process
SUP	Supervision sourcebook
SYSC	Systems and controls sourcebook
TCD	Trading counterparty default
TP	Transitional provision
TTCA	Title transfer collateral arrangement
UCITS	Undertakings for Collective Investments In Transferable Securities
UK	United Kingdom

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Appendix 1
Made rules (legal instrument)

INVESTMENT FIRMS PRUDENTIAL REGIME INSTRUMENT 2021

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (The FCA's general rules);
(2) section 137T (General supplementary powers);
(3) section 138C (Evidential provisions);
(4) section 138D (Actions for damages);
(5) section 139A (Power of the FCA to give guidance);
(6) section 143D (Duty to make rules applying to parent undertakings);
(7) section 143E (Powers to make rules applying to parent undertakings); and
(8) paragraph 23 of Schedule 1ZA (Fees).

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

Commencement

C. The following parts of this instrument come into force on 1 December 2021:

(1) Part 2 of Annex B; and
(2) solely for the purpose of enabling a person to comply with the rules in Part 2 of Annex B to this instrument, the provisions in Annex A and Part 1 of Annex B.

D. This instrument comes into force for all remaining purposes on 1 January 2022.

Amendments to the FCA Handbook

E. 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).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Supervision manual (SUP)	Annex D

F. The FCA confirms and remakes in the Glossary of definitions any defined expressions used in the modules of the FCA's Handbook of rules and guidance referred to in paragraph E or G where the defined expressions relate to UK legislation that has been amended since those defined expressions were last made.

Making the Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

G. The FCA makes the rules and gives the guidance in Annex B to this instrument.

H. The Prudential sourcebook for MiFID Investment Firms (MIFIDPRU) is added to the Prudential Standards block within the Handbook, immediately after the Prudential sourcebook for Insurers (INSPRU).

Notes

I. In the annexes to this instrument, the "notes" (indicated by "**Note:**" or "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

J. This instrument may be cited as the Investment Firms Prudential Regime Instrument 2021.

K. The sourcebook in Annex B to this instrument may be cited as the Prudential sourcebook for MiFID Investment Firms (or MIFIDPRU).

By order of the Board
[*date*]

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 is not underlined.

ASA	*assets safeguarded and administered*.
assets safeguarded and administered	(in *MIFIDPRU*) the value of assets, as calculated in accordance with the *rules* in *MIFIDPRU* 4.9 (K-ASA requirement), belonging to a *client* that a *firm* holds in the course of *MiFID business*, irrespective of whether those assets appear on the *firm's* own balance sheet or are deposited into accounts opened with third parties.
assets under management	(in *MIFIDPRU*) the value of assets, as calculated in accordance with the *rules* in *MIFIDPRU* 4.7 (K-AUM requirement), that a *firm* manages for its *clients* under the following arrangements, where the arrangements constitute *MiFID business*: (1) discretionary *portfolio management*; and (2) non-discretionary arrangements constituting *investment advice of an ongoing nature*.
AUM	*assets under management*.
average ASA	the rolling average of a *firm's ASA* calculated in accordance with *MIFIDPRU* 4.9.8R.
average AUM	the rolling average of a *firm's AUM* calculated in accordance with *MIFIDPRU* 4.7.5R.
average CMH	the rolling average of a *firm's CMH* calculated in accordance with *MIFIDPRU* 4.8.13R.
average COH	the rolling average of a *firm's COH* calculated in accordance with *MIFIDPRU* 4.10.19R.
average DTF	the rolling average of a *firm's DTF* calculated in accordance with *MIFIDPRU* 4.15.4R.
basic liquid assets requirement	the requirement in *MIFIDPRU* 6.2.1R for a *MIFIDPRU investment firm* to hold a minimum amount of *core liquid assets*.

business unit	(in *SYSC* 19G) a separate organisational or legal entity, business line or geographical location within a *firm*.
cash trade	(in *MIFIDPRU*) an order relating to the purchase or sale of a *financial instrument* that is: (1) referred to in paragraphs 1 to 3 of Part 1 of Schedule 2 to the *Regulated Activities Order*; or (2) an exchange-traded option.
clearing margin given	the total margin required by a *clearing member* or *CCP*, where the execution and settlement of transactions of a *MIFIDPRU investment firm's dealing on own account* take place under the responsibility of a *clearing member* or *CCP*.
client money held	(in *MIFIDPRU*) the amount of *MiFID client money* that a *firm* holds.
client orders handled	(in *MIFIDPRU*) the value of orders, as calculated in accordance with the *rules* in *MIFIDPRU* 4.10 (K-COH requirement), that a *firm* handles for *clients* when providing the following services, where the services constitute *MiFID business*: (1) reception and transmission of *client* orders; and (2) *execution of orders on behalf of clients*.
CMG	*clearing margin given*.
CMH	*client money held*.
CMV	*current market value*.
COH	*client orders handled*.
commodity and emission allowance dealer	a *MIFIDPRU investment firm* the main business of which consists exclusively of the provision of *investment services and/or activities* in relation to: (1) *commodity derivatives* or commodity derivative contracts referred to in paragraphs 5, 6, 7, 9 and 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*; (2) derivatives of *emission allowances* referred to in paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*; or (3) *emission allowances* referred to in paragraph 11 of Part 1 of Schedule 2 to the *Regulated Activities Order*.

CON own funds requirement	the own funds requirement calculated in accordance with *MIFIDPRU* 5.7.2R, which relates to a concentrated exposure to a *client* or *group of connected clients*.
concentration risk	the risks arising from the strength or extent of a *firm's* relationships with, or direct exposure to, a single *client* or *group of connected clients*.
concentration risk soft limit	the limit specified in *MIFIDPRU* 5.5.1R on the *exposure value* a *firm* has to a *client* or a *group of connected clients*, above which a *firm* is required to calculate the *K-CON requirement*.
connected undertaking	has the meaning in *MIFIDPRU* 2.4.6R.
convertible instrument	(in *SYSC* 19G) an instrument the terms of which require the principal amount of that instrument to be converted into an instrument that qualifies as *common equity tier 1 capital* if a trigger event occurs.
core liquid asset	has the meaning in *MIFIDPRU* 6.3 (Core liquid assets).
daily trading flow	the daily value of transactions that a *MIFIDPRU investment firm* enters through: (1) *dealing on own account*; or (2) the *execution of orders on behalf of clients* in the *firm's* own name.
derivatives trade	(in *MIFIDPRU*) an order relating to the purchase or sale of a *financial instrument* that is not a *cash trade*.
DTF	*daily trading flow*.
early warning indicator	an amount of *own funds* equal to: (1) 110% of a *firm's own funds threshold requirement*; or (2) another amount specified by the *FCA* in a *requirement* imposed on a *firm*.
eligible instrument	(in *SYSC* 19G) an instrument falling within *SYSC* 19G.6.19R.
EV	(in *MIFIDPRU* 5) the *exposure value*.
EVE	(in *MIFIDPRU* 5) the *exposure value excess*.
exposure value	(in *MIFIDPRU* 5) the value of a *firm's* exposure to a *client* or *group of connected clients*, calculated in accordance with *MIFIDPRU* 5.4.

exposure value excess — (in *MIFIDPRU* 5) the value by which a *firm's* exposure to a *client* or *group of connected clients* exceeds the *concentration risk soft limit*, calculated in accordance with *MIFIDPRU* 5.5.3R.

financial entity — (in *MIFIDPRU*) any of the following:

(1) a *MIFIDPRU investment firm* (including a *collective portfolio management investment firm*);

(2) a *collective portfolio management firm*;

(3) an entity established in a *third country* that is subject to an assets under management-based financial resources requirement that is similar to the *K-AUM requirement*;

(4) an *insurance undertaking* where the following conditions are met:

  (a) the *insurance undertaking* forms part of the same *financial conglomerate* as the *firm* that is applying the definition of a *financial entity* for the purposes of *MIFIDPRU* 4; and

  (b) the *FCA* is the *coordinator* for the *financial conglomerate* in (a); or

(5) an *undertaking* ("A") where the following conditions are met:

  (a) A forms part of the same *investment firm group* as the *firm* that is applying the definition of a *financial entity* for the purposes of *MIFIDPRU* 4 ("B");

  (b) the *investment firm group* in (a) is subject to prudential consolidation under *MIFIDPRU* 2.5; and

  (c) both A and B are included within the *consolidated situation* of the *UK parent entity* of the *investment firm group* in (a).

GCT parent undertaking — a *relevant financial undertaking* that:

(1) is a *parent undertaking*; and

(2) either:

  (a) is an *authorised person*; or

  (b) satisfies both of the following conditions:

(i) it is incorporated in, or has its principal place of business in, the *UK*; and

(ii) it has a *MIFIDPRU investment firm* as a *subsidiary*.

group capital test	the requirement in *MIFIDPRU* 2.6.5R.
group ICARA process	an *ICARA process* operated by an *investment firm group* in accordance with *MIFIDPRU* 7.9.5R.
ICARA document	has the meaning in *MIFIDPRU* 7.8.7R, which, in summary, is the documentation used to record the *firm's* review of the adequacy of its *ICARA process* under *MIFIDPRU* 7.8.2R.
ICARA process	has the meaning in *MIFIDPRU* 7.4.9R, which, in summary, is the systems, controls and procedures set out in *MIFIDPRU* 7.4.9R(1) to (3) operated by a *MIFIDPRU investment firm* to: (1) identify, monitor and, if proportionate, reduce all material potential harms that may result from the ongoing operation of, or winding down of, the *firm's* business; and (2) assess whether the *firm* should hold additional *own funds* and/or *liquid assets* to address material potential harms.
indirect clearing arrangements	as defined in article 1(b) of the *EMIR L2 Regulation*.
indirect clearing firm	a *client* or an *indirect client* of a *clearing member* where that *client* or *indirect client* provides *indirect clearing arrangements*.
investment advice of an ongoing nature	either of the following: (1) the recurring provision of *investment advice*; or (2) *investment advice* given in the context of the continuous or periodic assessment and monitoring or review of a *client* portfolio of *financial instruments*, including of the *investments* undertaken by the *client* on the basis of a contractual arrangement.
investment firm group	(1) (in *MIFIDPRU* 2.4 and any provision that refers to a group to which *MIFIDPRU* 2.5 applies) a group of *undertakings* that: (a) consists of a *parent undertaking* (including an *undertaking* that is deemed to be a *parent undertaking* for the purposes of *MIFIDPRU* 2.5) that is incorporated in the *UK* or has its principal place of business in the *UK* (or, in the case of a *UK parent investment firm*, has its registered office, or

if it has no registered office, its head office in the *UK*) and:

(i) the *subsidiaries* and *connected undertakings* of that *parent undertaking*; and

(ii) the *connected undertakings* of the *subsidiaries* of that *parent undertaking*;

(b) includes at least one *MIFIDPRU investment firm*; and

(c) does not include a *subsidiary* which is a *UK credit institution.*

(2) (in any provision that refers to a group to which *MIFIDPRU* 2.6 applies) a group of *undertakings* that:

(a) consists of a *parent undertaking* that is incorporated in the *UK* or has its principal place of business in the *UK* (or, in the case of a *UK parent investment firm*, has its registered office, or if it has no registered office, its head office in the *UK*) and its:

(i) *subsidiaries*; and

(ii) *connected undertakings* in which it holds a *participation* in accordance with *MIFIDPRU* 2.4.15R;

(b) includes at least one *MIFIDPRU investment firm*; and

(c) does not include a *subsidiary* which is a *UK credit institution.*

investment holding company	a *financial institution* that satisfies all of the following conditions:

(1) its *subsidiaries* are exclusively or mainly *investment firms* or *financial institutions*;

(2) at least one of its *subsidiaries* is a *MIFIDPRU investment firm*; and

(3) its *subsidiaries* do not include a *UK credit institution*.

For the purposes of this definition, the *subsidiaries* of a *financial institution* are "mainly" *investment firms* or *financial institutions* where:

(a) more than 50% of the *financial institution's* equity, consolidated assets, capital deployed, revenues, expenses, personnel or *customers* are associated with *subsidiaries* that are *investment firms* or *financial institutions*; or

(b) the *group* containing the *financial institution* and its *subsidiaries* has been structured in an artificial manner to avoid exceeding the threshold in (a).

K-ASA requirement	the part of the *K-factor requirement* calculated on the basis of the *ASA* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.9 (K-ASA requirement).
K-AUM requirement	the part of the *K-factor requirement* calculated on the basis of the *AUM* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.7 (K-AUM requirement).
K-CMG permission	a permission granted to a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.13.9R allowing the *firm* to calculate a *K-CMG requirement* in respect of a *portfolio*.
K-CMG requirement	the part of the *K-factor requirement* calculated in accordance with *MIFIDPRU* 4.13 in relation to *portfolios* for which the firm has been granted a *K-CMG permission*.
K-CMH requirement	the part of the *K-factor requirement* calculated on the basis of the *CMH* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.8 (K-CMH requirement).
K-COH requirement	the part of the *K-factor requirement* calculated on the basis of the *COH* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.10 (K-COH requirement).
K-CON requirement	the part of the *K-factor requirement* that accounts for *concentration risk* in the *trading book* of a *MIFIDPRU investment firm*, calculated in accordance with *MIFIDPRU* 5.7.
K-DTF requirement	the part of the *K-factor requirement* calculated on the basis of the *DTF* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.15.
K-NPR requirement	the part of the *K-factor requirement* calculated on the basis of the *NPR* of a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.12 where the *firm* is *dealing on own account* (whether on its own behalf or on behalf of its *clients*) and the relevant positions do not form part of a *portfolio* for which the *firm* has been granted a *K-CMG permission*.

K-TCD requirement	the part of the *K-factor requirement* calculated in accordance with *MIFIDPRU* 4.14 that is based on the transactions listed in *MIFIDPRU* 4.14.3R and not otherwise excluded by *MIFIDPRU* 4.14.5R or *MIFIDPRU* 4.14.6R, where those transactions are: (1) recorded in the *trading book* of a *firm dealing on own account* (whether or itself or on behalf of a *client*); or (2) in the case of transactions specified in *MIFIDPRU* 4.14.3R(7), undertaken by a *firm* that has the necessary *permissions* to *deal on own account*.
K-factor average metric	any of the following: (1) *average ASA*; (2) *average AUM*; (3) *average CMH*; (4) *average COH*; (5) *average DTF*; or (6) TM (which, in summary, is part of the formula in *MIFIDPRU* 4.13.5R that is used to calculate the *K-CMG requirement*).
K-factor metric	any of the following: (1) *ASA*; (2) *AUM*; (3) *CMG*; (4) *CMH*; (5) *COH*; (6) *CON*; (7) *DTF*; (8) *NPR*; and (9) *TCD*.
K-factor requirement	the part of the *own funds requirement* calculated in accordance with *MIFIDPRU* 4.6.
liquid assets	*core liquid assets* and *non-core liquid assets*.

liquid assets threshold requirement	the amount of *liquid assets* that a *firm* needs to hold to comply with the *overall financial adequacy rule*.
liquid assets wind-down trigger	an amount of *liquid assets* that is equal to: (1) a *firm's basic liquid assets requirement*; or (2) another amount specified by the *FCA* in a *requirement* imposed on a *firm*.
majority common management	a relationship between an *undertaking* ("A") and another *undertaking* ("B") where: (1) A and B are not connected by virtue of being a *parent undertaking* and *subsidiary undertaking* in accordance with section 1162 (read together with Schedule 7) of the Companies Act 2006; and (2) the administrative, management or supervisory bodies of A and B consist, for the major part, of the same *persons* in office during the financial year in respect of which it is being decided whether such a relationship exists.
Market Making RTS	Part 1 (FCA) of the *UK* version of Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes, which is part of *UK* law by virtue of the *EUWA*.
material risk taker	(in *SYSC* 19G) has the meaning in *SYSC* 19G.5.1R and (where *SYSC* 19G applies on a consolidated basis) *SYSC* 19G.5.7R(2).
Market Risk Model Extensions and Changes RTS	Part 1 (FCA) of the *UK* version of Regulation (EU) No 529/2014 of 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assessing the materiality of extensions and changes of the Internal Ratings Based Approach and the Advanced Measurement Approach, which is part of *UK* law by virtue of the *EUWA*.
MIFID client money	(in *MIFIDPRU*) *money* that a *firm* receives from, or holds for or on behalf of, a *client* in the course of, or in connection with, its *MiFID business*. For the purposes of *MIFIDPRU*, this includes: (1) where that *money* has been deposited into a *client bank account* (including any amounts of the *firm's* own *money* or other *money* received in that account as a result of applying *prudent segregation*, *alternative approach*

mandatory prudent segregation or *clearing arrangement mandatory prudent segregation*);

(2) where a *firm* has placed that *money* in a *qualifying money market fund* in accordance with *CASS* 7.13.3R(4);

(3) any amount of that *money* that a *firm* has allowed a third party to hold in accordance with *CASS* 7.14.

MIFIDPRU — the Prudential sourcebook for MiFID Investment Firms.

MIFIDPRU-eligible institution — (in *MIFIDPRU* 5):

(1) a *MIFIDPRU investment firm*;

(2) a *UK credit institution*;

(3) a *UK designated investment firm*;

(4) a *MIFIDPRU-eligible third country investment firm*; or

(5) a *MIFIDPRU-eligible third country credit institution*.

MIFIDPRU-eligible third country investment firm — an *investment firm* that satisfies the following conditions:

(1) its registered office or, if it has no registered office, its head office is outside the *UK*;

(2) it is authorised by a *third country competent authority* in the state or territory in which the *investment firm's* head office is located; and

(3) the *investment firm* is subject to prudential supervisory and regulatory requirements in that state or territory that are comparable to those applied in the *UK*.

MIFIDPRU-eligible third country credit institution — a *credit institution* that satisfies the following conditions:

(1) its registered office or, if it has no registered office, its head office is outside the *UK*;

(2) it is authorised by a *third country competent authority* in the state or territory in which the *credit institution's* head office is located; and

(3) the *credit institution* is subject to prudential supervisory and regulatory requirements in that state or territory that are comparable to those applied in the *UK*.

MIFIDPRU investment firm — an FCA investment firm as defined in section 143A of the *Act*.

In summary, this means an *investment firm* that meets the following conditions:

	(1) it is an *authorised person*; (2) it is not a *designated investment firm*; (3) it has its registered office or, if it has no registered office, its head office in the *UK*; (4) it is not a *person* who is excluded from the definition of an "investment firm" in article 3(1) of the *Regulated Activities Order* by paragraphs (a) or (b) of that definition; and (5) it is not an *investment firm* that has a *Part 4A permission* to carry on regulated activities as an exempt investment firm within the meaning of regulation 8 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.
MIFIDPRU Remuneration Code	as set out in *SYSC* 19G (MIFIDPRU Remuneration Code).
net position risk	the value of the following positions of a *MIFIDPRU investment firm*: (1) *trading book* positions; and (2) positions other than *trading book* positions where such positions give rise to foreign exchange risk or commodity risk.
non-core liquid asset	has the meaning in *MIFIDPRU* 7.7.8R, which is any of the following, except to the extent excluded by *MIFIDPRU* 7.7.8R(2): (1) short-term deposits at a *credit institution* that does not have a *Part 4A permission* in the *UK* to *accept deposits*; (2) assets representing claims on, or guaranteed by, multilateral development banks or international organisations; (3) assets representing claims on or guaranteed by any *third country* central bank or government; (4) *financial instruments*; and (5) any other instrument eligible as collateral against the margin requirement of an *authorised central counterparty*.
Non-Delta Risk of Options RTS	Part 1 (FCA) of the *UK* version of Regulation (EU) No 528/2014 12 March 2014 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to

	regulatory technical standards for non-delta risk of options in the standardised market risk approach, which is part of *UK* law by virtue of the *EUWA*.
non-financial sector entity	an entity that is not a *financial sector entity*.
non-segregated account	(in *MIFIDPRU*) an account that is not a *segregated account*.
non-SNI MIFIDPRU investment firm	a *MIFIDPRU investment firm* that is not an *SNI MIFIDPRU investment firm*.
NPR	*net position risk*.
off-balance sheet items	the items listed in Annex 1 of the *UK CRR*.
OFR	(in *MIFIDPRU* 5) the own funds requirement for exposures to a *client* or *group of connected clients* calculated in accordance with *MIFIDPRU* 5.7.3R(2).
OFRE	(in *MIFIDPRU* 5) the own funds requirement for the excess calculated in accordance with *MIFIDPRU* 5.7.3R(1).
own funds threshold requirement	the amount of *own funds* that a *firm* needs to hold to comply with the *overall financial adequacy rule*.
own funds requirement	the requirement for a *MIFIDPRU investment firm* to maintain a minimum level of *own funds* specified in *MIFIDPRU* 4.3.
own funds wind-down trigger	an amount of *own funds* that is equal to: (1) the *firm's fixed overheads requirement*; or (2) another amount specified by the *FCA* in a *requirement* applied to the *firm*.
permanent minimum capital requirement	the part of the *own funds requirement* calculated in accordance with *MIFIDPRU* 4.4.
portfolio	(in relation to the *K-CMG requirement* or a *K-CMG permission*) either: (1) all the *trading book* positions attributable to a specific *trading desk* within the *firm*; or (2) a subset of the positions in (1) that share identified common characteristics and risks. any of the following:

positions held with trading intent

(a) proprietary positions and positions arising from client servicing and market making;

(b) positions intended to be resold in the short term;

(c) positions intended to benefit from actual or expected short-term price differences between buying and selling prices or from other price or interest rate variations.

relevant expenditure

(in *MIFIDPRU* 4 and *IPRU(INV)* 11) relevant expenditure as calculated under *MIFIDPRU* 4.5.3R.

relevant financial undertaking

any of the following:

(1) an *investment firm*;

(2) a *credit institution*;

(3) a *financial institution*;

(4) an *ancillary services undertaking*; or

(5) a *tied agent*.

responsible UK parent

(for the purposes of the *group capital test*) an *undertaking* ("A") in relation to which all of the following conditions are satisfied:

(1) A is a *GCT parent undertaking*;

(2) A is part of an *investment firm group*;

(3) A is the *parent undertaking* of one or both of the following;

 (a) an *undertaking* established in a *third country* ("B"); or

 (b) an *undertaking* incorporated in, or with its principal place of business in, the *UK* ("C");

(4) where (3)(a) applies, B:

 (a) is a *parent undertaking*; and

 (b) would be a *relevant financial undertaking* if B were established in the *UK*;

(5) where (3)(b) applies, C:

 (a) is a *relevant financial undertaking*;

 (b) is a *parent undertaking*; and

	(c) is not a *GCT parent undertaking*;
	(6) A does not have a *subsidiary* that:
	(a) is a *GCT parent undertaking*; and
	(b) is a *parent undertaking* of:
	(i) where (3)(a) applies, B; and
	(ii) where (3)(b) applies, C.
segregated account	(in *MIFIDPRU*) an arrangement which satisfies the conditions in *MIFIDPRU* 4.8.8R.
short-term MMF	a *regulated money market fund* that meets the definition of a “short-term MMF” in article 2(14) of the *Money Market Funds Regulation*.
SNI MIFIDPRU investment firm	a *MIFIDPRU investment firm* that is classified as an *SNI MIFIDPRU investment firm* in accordance with *MIFIDPRU* 1.2.
TCD	*trading counterparty default*.
TCD own funds requirement	the own funds requirement calculated in accordance with *MIFIDPRU* 4.14.7R that applies to the transactions specified in *MIFIDPRU* 4.14.1R(2).
third country MIFIDPRU investment firm	an *overseas firm* that would be a *MIFIDPRU investment firm* if it: (1) were incorporated in, or had its principal place of business in, the *United Kingdom*; (2) carried on all its business in the *United Kingdom*; and (3) had obtained the authorisations necessary under the *Act* to carry on its business.
threshold requirement	either of the following in relation to a *MIFIDPRU investment firm*: (1) the *liquid assets threshold requirement*; or (2) the *own funds threshold requirement*.
trade receivables	receivables from trade debtors (including fees or commissions).
trading counterparty default	the exposures in the *trading book* of a *MIFIDPRU investment firm* in instruments and transactions specified in *MIFIDPRU* 4.14.3R, and not otherwise excluded by *MIFIDPRU* 4.14.5R or *MIFIDPRU* 4.14.6R, giving rise to the risk of trading counterparty default.
trading desk	an identified group of *individuals* established by a *firm* for the joint management of one or more portfolios of *trading book* positions in

	accordance with a well-defined and consistent business strategy, operating under the same risk management structure.
UK-authorised credit institution	a *credit institution* with a *Part 4A permission* to *accept deposits*.
UK credit institution	a *credit institution* that meets the definition of "CRR firm" under article 4(1)(2A) of the *UK CRR*.
UK investment holding company	an *investment holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.
UK mixed-activity holding company	a *mixed-activity holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.
UK mixed financial holding company	a *mixed financial holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.
UK parent entity	any of the following: (1) a *UK parent investment firm*; (2) a *UK parent investment holding company*; or (3) a *UK parent mixed financial holding company*.
UK parent investment firm	a *MIFIDPRU investment firm* that: (1) is part of an *investment firm group*; (2) holds a *participation* in or has a *subsidiary* that is: (a) a *MIFIDPRU investment firm*; (b) a *designated investment firm*; or (c) a *financial institution*; and (3) is not a *subsidiary* of: (a) a *MIFIDPRU investment firm*; or (b) an *investment holding company* or *mixed financial holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.
UK parent investment holding company	an *investment holding company* incorporated in the *UK* or that has its principal place of business in the *UK* that: (1) is part of an *investment firm group*; and (2) is not a *subsidiary* of:

(a) a *MIFIDPRU investment firm*; or

(b) an *investment holding company* or *mixed financial holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.

UK parent mixed financial holding company

a *mixed financial holding company* incorporated in the *UK* or that has its principal place of business in the *UK* that:

(1) is part of an *investment firm group*; and

(2) is not a *subsidiary* of:

(a) a *MIFIDPRU investment firm*; or

(b) an *investment holding company* or *mixed financial holding company* that is incorporated in the *UK* or that has its principal place of business in the *UK*.

wind-down trigger

either of the following in relation to a *MIFIDPRU investment firm*:

(1) the *liquid assets wind-down trigger*; or

(2) the *own funds wind-down trigger*.

write-down instrument

(in *SYSC* 19G) an instrument the terms of which require the principal amount of that instrument to be written down on the occurrence of a trigger event.

Amend the following definitions as shown.

additional tier 1 capital

(1) (in *MIFIDPRU*) as defined in article 61 of the *UK CRR*, as applied and modified by *MIFIDPRU* 3.4.

(2) (except in *MIFIDPRU*) as defined in article 61 of the *UK CRR*.

additional tier 1 instrument

(1) (in relation to an instrument issued by a *MIFIDPRU investment firm*) a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the *UK CRR* as applied and modified by the requirements in *MIFIDPRU* 3.4.

(2) (in any other case) a capital instrument that qualifies as an additional tier 1 capital instrument under article 52 of the *UK CRR*.

central counterparty

~~(for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions))~~ an entity that legally interposes itself between counterparties to contracts traded within one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

…

clearing member	(1)	(in *MIFIDPRU*) a clearing member as defined in article 2(14) of *EMIR*.
	(2)	(except in *MIFIDPRU*) in relation to an *authorised central counterparty*, as defined in article 2(14) of *EMIR*.
client	…	…
		(B) in the *FCA Handbook*:
		(1) (except in *PROF*, in *MIFIDPRU* 5, in relation to a *credit-related regulated activity*, in relation to a *home finance transaction* and in relation to *insurance risk transformation* and activities directly arising from *insurance risk transformation*) has the meaning given in *COBS* 3.2, that is (in summary and without prejudice to the detailed effect of *COBS* 3.2) a *person* to whom a *firm* provides, intends to provide or has provided a service in the course of carrying on a *regulated activity*, or in the case of *MiFID or equivalent third country business*, an *ancillary service*:
		…
		(2A) (in *MIFIDPRU* 5) a counterparty of the *investment firm*.
		…
client money	…	
	(2A)	(in *MIFIDPRU*, *FEES*, *CASS* 6, *CASS* 7, *CASS* 7A and *CASS* 10 and, in so far as it relates to matters covered by *CASS* 6, *CASS* 7, *COBS* or *GENPRU* and *IPRU(INV)* 11) subject to the *client money rules*, *money* of any currency:
		…
common equity tier 1 capital	(1)	(in *MIFIDPRU*) as defined in article 50 of the *UK CRR*, as applied and modified by *MIFIDPRU* 3.3.
	(2)	(except in *MIFIDPRU*) as defined in article 50 of the *UK CRR*.

common platform firm	(a)	a ~~*BIPRU firm*~~ *MIFIDPRU investment firm*; or
	(aa)	a *bank*; or
	(ab)	a *building society*; or
	(ac)	a *designated investment firm*; or
	(ad)	~~an *IFPRU investment firm*; or~~ [deleted]
	(b)	~~an *exempt CAD firm*; or~~ [deleted]
	(c)	~~a *MiFID investment firm* which falls within the definition of 'local firm' in article 4(1)(4) of the *UK CRR*; or~~ [deleted]
	(d)	a *dormant account fund operator*.
consolidated basis		~~has the meaning in article 4(1)(48) of the *UK CRR*.~~ means on the basis of the *consolidated situation*.
consolidated situation	(1)	(in relation to a group to which the *UK CRR* applies) has the meaning in article 4(1)(47) of the *UK CRR*.
	(2)	(other than in (1)) the situation that results from applying the requirements in *MIFIDPRU* 3, 4, 5, 8 and 9 in accordance with *MIFIDPRU* 2.5 to a *UK parent entity* as if that *undertaking*, together with all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* that are its *subsidiaries* or *connected undertakings* or *connected undertakings* of its *subsidiaries*, formed a single *MIFIDPRU investment firm*. For the purpose of this definition, the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* also apply to *undertakings* established in other countries that, if established in the *UK*, would satisfy the definitions of those terms.
control	(1)	(except in ~~(2) and (2A)~~ (2), (2A) and (2B))
	…	
	(2B)	(in *MIFIDPRU* 5) the relationship between a parent undertaking and a subsidiary undertaking, as defined in section 1162 of the Companies Act 2006, or the accounting standards to which an undertaking is subject under section 403(1) of the Companies Act 2006, or a

similar relationship between a natural or legal *person* and an undertaking.

(3) (except in ~~(2) and (2A)~~ (2), (2A) and (2B)) …

…

(4) (except in ~~(2) and (2A)~~ (2), (2A) and (2B)) …

…

(5) (except in ~~(2) and (2A)~~ (2), (2A) and (2B)) …

…

control functions

(1) (except in 2) has the meaning in article 3 of the *Material Risk Takers Regulation 2020*.

(2) (in *SYSC* 19G) a function (including, but not limited to, a risk management function, compliance function and internal audit function) that is independent from the *business units* it controls and that is responsible for providing an objective assessment of the *firm's* risks, and for reviewing and reporting on those risks.

convertible

(for the purposes of ~~*BIPRU* and *IFPRU*~~ *MIFIDPRU*) a *security* which gives the investor the right to convert the *security* into a *share* at an agreed price or on an agreed basis.

current market value

~~(for the purpose of *BIPRU* 13.5 (CCR standardised method)) the net market value of the portfolio of transactions within the *netting set* with the counterparty; both positive and negative market values are used in computing *current market value*.~~ the net market value of the portfolio of transactions or securities legs subject to netting in accordance with *MIFIDPRU* 4.14.28R (Netting), where both positive and negative market values are used in computing *CMV*.

data element

A discrete fact or individual piece of information relating to a particular field within a *data item* required to be submitted to the *appropriate regulator* by a *firm*, ~~or~~ other regulated entity or *parent undertaking*.

data items

One or more related *data elements* that are grouped together into a prescribed format and required to be submitted by:

(1) a *firm* or other regulated entity under *SUP* 16 or provisions referred to in *SUP* 16; or

(2) a *MIFIDPRU investment firm* or a *parent undertaking* under *MIFIDPRU* 9.

discretionary pension benefit	(1)	~~(in *SYSC 19C*) enhanced pension benefits granted on a discretionary basis by a *firm* to an *employee* as part of that *employee's* variable *remuneration* package, but excluding accrued benefits granted to an *employee* under the terms of his company pension scheme.~~ ~~[Note: article 4(49) of the *Banking Consolidation Directive*]~~ [deleted]
	(2)	(in ~~*IFPRU*~~, ~~*SYSC* 19A (IFPRU Remuneration Code)~~ ~~and~~ *SYSC* 19D (Dual-regulated firms Remuneration Code) and *SYSC* 19G (MIFIDPRU Remuneration Code)) has the meaning in article 4(1)(73) of the UK CRR.
financial holding company	~~a *financial institution* that fulfils the following conditions:~~	
	~~(1)~~	~~(except in (2))~~ has the meaning in article 4(1)(20) of the *UK CRR*.
	~~(2)~~	~~(in *GENPRU* (except *GENPRU* 3) and *BIPRU* (except *BIPRU* 12) a *financial institution* that fulfils the following conditions:~~ ~~(a)~~ ~~its *subsidiary undertakings* are exclusively or mainly *CAD investment firms* or *financial institutions*;~~ ~~(b)~~ ~~at least one of those *subsidiary undertakings* is a *CAD investment firm*; and~~ ~~(b)~~ ~~it is not a *mixed financial holding company*.~~
financial institution	…	
	(2)	~~for the purposes of *GENPRU* (except *GENPRU 3*), *BIPRU* (except in *BIPRU 12*):~~ ~~(a)~~ ~~an *undertaking*, other than a *credit institution* or an *investment firm*, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 and 15 of *Annex 1 activities* including the services and activities provided for in Parts 3 and 3A of Schedule 2 to the *Regulated Activities Order* when referring to *financial instruments*.~~ ~~(b)~~ ~~(for the purposes of consolidated requirements) those institutions listed in Article 2 of the *Banking Consolidation Directive* (Scope), with the exception of the Bank of England and the *central banks* of *other countries*.~~ [deleted]

~~[Note: articles 1(3) (Scope) and 4(5) (Definitions) of the Banking Consolidation Directive)]~~

(3) ~~(except in (2) and subject to (4))~~ (except in (5)) has the meaning in article 4(1)(26) of the *UK CRR*.

(4) ~~(for the purposes of consolidated requirements in *IFPRU* the following:~~

~~(a) financial institutions within the meaning in article 4(1)(26) of the *UK CRR*; and~~

~~(b) those institutions permanently excluded by article 2(5) of *CRD* (Scope) with the exception of the *central banks* as defined in article 4(1)(46) of the *UK CRR*.~~ [deleted]

~~[Note: article 2(6) of *CRD*]~~

(5) (for the purposes of *MIFIDPRU*) an *undertaking* that fulfils the following conditions:

(a) it is a *financial holding company*, a *mixed financial holding company*, an *investment holding company*, an *authorised payment institution* or an *asset management company*, *AIFM* or any other *undertaking* the principal activity of which is to acquire holdings or to pursue one or more of the activities listed in points 2 to 12, point 15 and the final paragraph of the *Annex 1 activities*; and

(b) it is not:

(i) a *UK credit institution*;

(ii) a *MIFIDPRU investment firm*;

(iii) a pure industrial holding company; or

(iv) an insurance holding company or mixed-activity insurance holding company, as defined in the *PRA Rulebook*.

fixed overheads requirement

(1) ~~(except in *IPRU(INV)* and for the purposes of *GENPRU* (except *GENPRU* 3 and *BIPRU* (except *BIPRU* 12)) the part of the *capital resources requirement* calculated in accordance with *GENPRU* 2.1.53R (Calculation of the fixed overheads requirement).~~ [deleted]

(2) (in *IPRU(INV)*) the part of the *own funds* requirement calculated in accordance with *IPRU(INV)* 11.3.3R (Fixed overheads requirement).

	(3)	(in *MIFIDPRU*) the part of the *own funds requirement* calculated in accordance with *MIFIDPRU* 4.5 (Fixed overheads requirement).
group of connected clients	~~has the meaning given to it in article 4.1(39) of the *UK CRR*.~~ (in *MIFIDPRU* 5) has the meaning in *MIFIDPRU* 5.1.12R to 5.1.16R.	
initial capital	…	
	(4)	~~(in the case of a *BIPRU firm*) *capital resources* included in stage A (Core tier one capital) of the *capital resources table* plus *capital resources* included in stage B of the *capital resources table* (Perpetual non-cumulative preference shares).~~ [deleted]
	(5)	[deleted]
	(6)	~~(for the purposes of the definition of *dealing on own account* in *BIPRU* and in the case of an *undertaking* not falling within (3) or (4)) *capital resources* calculated in accordance with (3) and paragraphs (3) and (4) of the definition of *capital resources*.~~ [deleted]
	(7)	(in *IPRU(INV)* 13) the initial capital of a *firm* calculated in accordance with *IPRU(INV)* 13.1A.6R.
	(8)	~~(for an *IFPRU investment firm*) the amount of *own funds* referred to in article 26(1)(a) to (e) of the *UK CRR* and calculated in accordance with Part Two of those Regulations (Own funds).~~ ~~[Note: article 28(1) of *CRD*]~~ [deleted]
	(9)	~~(for the purpose of the definition of dealing on own account in *IFPRU*) the amount of *own funds* referred to in article 26(1)(a) to (e) of the *UK CRR* and calculated in accordance with Part Two of those Regulations (Own funds).~~ [deleted]
	(10)	(for a *MIFIDPRU investment firm*) the amount of *own funds* that is required for *authorisation* as a *MIFIDPRU investment firm* in accordance with *MIFIDPRU* 4.2.1R).
institution	(1)	(except in (2)) has the meaning in article 4(1)(3) of the *UK CRR*.
	(2)	(for the purposes of ~~*GENPRU* and *BIPRU*~~ *MIFIDPRU*) ~~includes a *CAD investment firm*~~ a *UK credit institution* or a *UK designated investment firm*.

long settlement transaction	a transaction where a counterparty undertakes to deliver a security, a *commodity*, or a *foreign currency* amount against cash, other ~~*CRD*~~ *financial instruments*, or *commodities*, or vice versa, at a settlement or delivery date ~~that is contractually specified as more than the lower of~~ specified by contract that is later than the market standard for this particular type of transaction ~~and~~ or five *business days* after the date on which the *person* enters into the transaction, whichever is earlier. ~~[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]~~
managerial responsibility	(1) (except in *SYSC* 19G) has the meaning in article 2 of the *Material Risk Takers Regulation 2020*. (2) (in *SYSC* 19G) a situation in which a staff member heads a *business unit* or a *control function* and is directly accountable to the *management body* as a whole, to a member of the *management body* or to *senior management*.
margin lending transaction	~~for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing transactions and long settlement transactions)) transactions in which a person extends credit in connection with the purchase, sale, carrying or trading of securities; the definition does not include other loans that happen to be secured by securities collateral.~~ ~~[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions)]~~ has the meaning in point (10) of article 3 of the *SFTR*.
mixed-activity holding company	(1) (in *SYSC* 12) has the meaning given to the definition of "mixed activity holding company" in article 4(1)(22) of the *UK CRR*~~.~~; (2) (in *MIFIDPRU*) a *parent undertaking* that satisfies the following conditions: (a) its *subsidiaries* include at least one *MIFIDPRU investment firm*; and (b) it is not a *financial holding company*, an *investment holding company*, a *credit institution*, an *investment firm* or a *mixed financial holding company*. (3) (in *SUP* 16) means both (1) and (2).
netting set	~~(for the purpose of *BIPRU* 13 (The calculation of counterparty risk exposure values for financial derivatives, securities financing~~

~~transactions and long settlement transactions)) a group of transactions with a single counterparty that are subject to a legally enforceable bilateral netting arrangement and for which netting is recognised under *BIPRU* 13.7 (Contractual netting), *BIPRU* 5 (Credit risk mitigation) and, if applicable, *BIPRU* 4.10 (The IRB approach: Credit risk mitigation); each transaction that is not subject to a legally enforceable bilateral netting arrangement, which is recognised under *BIPRU* 13.7 must be interpreted as its own netting set for the purpose of *BIPRU* 13. Under the method set out at *BIPRU* 13.6, all *netting sets* with a single counterparty may be treated as a single *netting set* if negative simulated market values of the individual sets are set to zero in the estimation of *expected exposure* (EE).~~

~~[Note: Part 1 of Annex III of the *Banking Consolidation Directive* (Definitions) and Annex III, Part 1, point 5 of the *Banking Consolidation Directive*]~~

(in *MIFIDPRU*) a group of transactions with a single counterparty that satisfies the conditions in *MIFIDPRU* 4.14.28R.

overall financial adequacy rule

~~(1)~~ ~~(in *GENPRU* and *BIPRU*) *GENPRU* 1.2.26R (Requirement for certain *firms* to have adequate financial resources).~~

~~(2)~~ ~~(in *IFPRU*) *IFPRU* 2.2.1R (Adequacy of financial resources).~~

(1) (for a *dormant account fund operator*) *GENPRU* 1.2.26R as in force at 31 December 2015, which requires that a *firm* must at all times maintain overall financial resources, including capital resources and liquidity resources, which are adequate, both as to amount and quality, to ensure that there is no significant risk that its liabilities cannot be met as they fall due.

(2) the requirement in *MIFIDPRU* 7.4.7R(1) (Overall financial adequacy rule), which is the obligation for a *MIFIDPRU investment firm* to hold *own funds* and *liquid assets* which are adequate, both as to their amount and quality, to ensure that:

(a) it is able to remain financially viable throughout the economic cycle, with the ability to address any material potential harm that may result from its ongoing activities; and

(b) its business can be wound down in an orderly manner, minimising harm to *consumers* or to other market participants.

own funds

(1) ~~(in *GENPRU* (except *GENPRU* 3 (Cross sector groups) and *BIPRU* (except *BIPRU* 12 (Liquidity standards)) own~~

~~funds as described in articles 56 to 67 of the *Banking Consolidation Directive*.~~ [deleted]

…

~~(2A)~~ ~~(in *IPRU(INV)* 11) has the meaning in article 4(1)(118) of the *UK CRR*.~~ [deleted]

…

~~(3A)~~ ~~(in *IPRU(INV)* 13) the own funds of a firm calculated in accordance with *IPRU(INV)* 13.1A.14R (Own funds) for a *personal investment firm* that is an *exempt CAD firm*~~ [deleted]

…

(4A) (in *MIFIDPRU*) has the meaning in *MIFIDPRU* 3.2.1R.

(5) (except in (1) to ~~(4)~~ (4A)) has the meaning in article 4(1)(118) of the *CRR*, as it applied on 31 December 2021.

own funds instruments

(1) (in relation to an instrument issued by a *MIFIDPRU investment firm*) capital instruments that qualify as *common equity tier 1 instruments*, *additional tier 1 instruments* or *tier 2 instruments*.

(2) (in relation to a *parent undertaking* to which the *group capital test* applies) as defined in *MIFIDPRU* 2.6.2R.

(3) (in any other case) has the meaning in article 4(1)(119) of the *UK CRR*.

parent undertaking

(1)

…

(c) (~~for the purposes of *BIPRU* (except *BIPRU 12*), *GENPRU* (except *GENPRU 3*) and *INSPRU* as they apply on a consolidated basis and~~ for the purposes of *SYSC 12* (Group risk systems and controls requirement) ~~and *SYSC 19C* (Remuneration Code for BIPRU firms)~~ and in relation to whether an *undertaking* is a *parent undertaking*) an *undertaking* which has the following relationship to another *undertaking* ("S"):

(i) a relationship described in (a) other than (a)(vii); or

(ii) it effectively exercises a dominant influence over S;

~~and so that (a)(v) does not apply for the purpose of *BIPRU* as it applies on a consolidated basis (including BIPRU 8 (Group risk - consolidation)) or BIPRU 10.~~

…

(3) (for the purposes of *GENPRU* 3~~, *BIPRU* 12, *IFPRU*, *SYSC* 19A (IFPRU Remuneration Code)~~ and *SYSC* 19D (Dual-regulated firms Remuneration Code)) has the meaning in article 4(1)(15) of the *UK CRR* but so that article 4(1)(15)(b) applies for the purpose of *GENPRU* 3.

[Note: article 2(9) of the Financial Groups Directive]

(4) (for the purposes of *MIFIDPRU*, *SYSC* 19G (MIFIDPRU Remuneration Code) and otherwise in relation to an *investment firm group*):

(a) an *undertaking* which is a parent undertaking under section 1162 of the Companies Act 2006, taken with Schedule 7 to that Act; or

(b) (for the purposes of *MIFIDPRU* 2.5):

(i) an *undertaking* referred to in (a); and

(ii) an *undertaking* that is deemed to be a *parent undertaking* in accordance with *MIFIDPRU* 2.4; or

(c) (for the purposes of *MIFIDPRU* 2.6):

(i) an *undertaking* referred to in (a); and

(ii) an *undertaking* that is deemed to be a *parent undertaking* in accordance with *MIFIDPRU* 2.4.15R(2).

participation ~~(1)~~ ~~(for the purposes of *GENPRU* (except *GENPRU* 3) and for the purposes of *BIPRU* (except *BIPRU* 12) as they apply on a consolidated basis):~~

~~(a)~~ ~~a participating interest may be defined according to:~~

~~(i)~~ ~~section 421A of the *Act* where applicable; or~~

(ii) ~~paragraph 11(1) of Schedule 10 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) where applicable; or~~

(iii) ~~paragraph 8 of Schedule 7 to the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008 (SI 2008/409) where applicable; or~~

(iv) ~~paragraph 8 of Schedule 4 to the Large and Medium-sized Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1913) where applicable; or~~

(v) ~~paragraph 8 of Schedule 5 to the Small Limited Liability Partnerships (Accounts) Regulations 2008 (SI 2008/1912) where applicable; or~~

(b) ~~(otherwise) the direct or indirect ownership of 20% or more of the voting rights or capital of an *undertaking*;~~

~~but excluding the interest of a *parent undertaking* in its *subsidiary undertaking*.~~ [deleted]

(2) ~~(except in (1)~~ has the meaning in article 4(1)(35) of the *UK CRR*.

repurchase transaction

~~(for the purposes of *BIPRU*) any agreement in which an *undertaking* or its counterparty transfers securities or *commodities* or guaranteed rights relating to title to securities or *commodities* where that guarantee is issued by a *designated investment exchange* or *recognised investment exchange* which holds the rights to the securities or *commodities* and the agreement does not allow an *undertaking* to transfer or pledge a particular security or *commodity* to more than one counterparty at one time, subject to a commitment to repurchase them or substituted securities or *commodities* of the same description at a specified price on a future date specified, or to be specified, by the transferor, being a *repurchase agreement* for the *undertaking* selling the securities or *commodities* and a *reverse repurchase agreement* for the *undertaking* buying them.~~

~~[Note: article 3(1)(m) of the *Capital Adequacy Directive* and Article 4(33) of the *Banking Consolidation Directive* (Definitions)]~~

has the meaning in article 3(9) of the *SFTR*.

securities or commodities lending or borrowing transaction

~~(for the purposes of *BIPRU*) any transaction in which an *undertaking* or its counterparty transfers securities or commodities against appropriate collateral subject to a commitment that the borrower will return equivalent securities or *commodities* at some future date or when requested to do so by the transferor, that transaction being *securities or commodities lending* for the *undertaking* transferring the securities or *commodities* and being *securities or commodities borrowing* for the *undertaking* to which they are transferred.~~

~~[Note: article 4(34) of the Banking Consolidation Directive and Article 3(1)(n) of the Capital Adequacy Directive (Definitions)]~~

a transaction that falls within the definition in article 3(7) of the *SFTR*.

securities financing transaction

…

(1B) (in *CASS* and *MIFIDPRU*) a securities financing transaction as defined in article 3(11) of the *SFTR*.

…

subsidiary

…

(2) (in relation to *MiFID business*, other than for the purposes of *MIFIDPRU*, *SYSC* 19G (MIFIDPRU Remuneration Code) and the definition of an *investment firm group*) a subsidiary undertaking within the meaning of article 2(10) and article 22 of the *Accounting Directive*, including any subsidiary of a subsidiary undertaking of an ultimate *parent undertaking*.

(3) ~~(for the purpose of *IFPRU*) has the meaning in article 4(1)(16) of the *UK CRR*.~~ (for the purposes of *MIFIDPRU*, *SYSC* 19G (MIFIDPRU Remuneration Code) and in the definition of an *investment firm group*) an *undertaking* which is a subsidiary undertaking under section 1162 of the Companies Act 2006, read with Schedule 7 to that Act.

…

supervisory review and evaluation process

(1) the *appropriate regulator's* assessment of the adequacy of certain *firms'* capital, as more fully described ~~in *BIPRU* 2.2.9G (*BIPRU firms*) and~~ *INSPRU* 7.1.91G to *INSPRU* 7.1.99G (*insurers*).

(2) ~~the *FCA's* assessment of the adequacy of an *IFPRU investment firm's* capital, as more fully described in *IFPRU* 2.3 (Supervisory review and evaluation process)~~ (in *MIFIDPRU*) the *FCA's* assessment of the adequacy of

		a *MIFIDPRU investment firm's own funds* and *liquid assets*, as described in *MIFIDRU* 7.10.
tier 2 capital	(1)	(in *MIFIDPRU*) as defined in article 71 of the *UK CRR*, as applied and modified by *MIFIDPRU* 3.5.
	(2)	(except in *MIFIDPRU*) as defined in article 71 of the *UK CRR*.
trading book	(1)	[deleted]
	(2)	~~(in *BIPRU* and *GENPRU* in relation to a *BIPRU firm*) has the meaning in *BIPRU* 1.2 (Definition of the trading book) which is in summary, all that *firm's positions* in *CRD financial instruments* and *commodities* held either with trading intent or in order to hedge other elements of the *trading book*, and which are either free of any restrictive covenants on their tradability or able to be hedged.~~ [deleted]
	(3)	~~(in *BIPRU* and *GENPRU* and in relation to a *person* other than a *BIPRU firm*) has the meaning in (2) with references to a *firm* replaced by ones to a *person*.~~ [deleted]
	(4)	~~(in *IFPRU* and in relation to an *IFPRU investment firm*) has the meaning in article 4(1)(86) of the *UK CRR*.~~ [deleted]
	(5)	(in *DTR*) has the meaning in article 4.1(86) of *UK CRR*.
	(6)	(in *MIFIDPRU*) all positions in *financial instruments* and commodities held by a *MIFIDPRU investment firm* that are: (a) *positions held with trading intent*; or (b) held to hedge *positions held with trading intent*.
UK CRR		(except where stated otherwise) the *UK* version of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012, which is part of *UK* law by virtue of the *EUWA*, read together with any CRR rules as defined in section 144A of the *Act*.

Delete the following definitions. The text is not shown struck through.

deal on own account	(1)	(for the purposes of *GENPRU* and *BIPRU*) has the meaning in *BIPRU* 1.1.23 R (Meaning of dealing on own account) which is in summary the service referred to in paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *BIPRU* 1.1.23R(2) and *BIPRU* 1.1.23R(3).
	(2)	(other than in *GENPRU* and *BIPRU*) has the meaning in *IFPRU* 1.1.12 R (Meaning of dealing on own account) which is, in summary, the service referred to in paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order*, subject to the adjustments in *IFPRU* 1.1.12R(2) and *IFPRU* 1.1.12R(3).
own funds requirements	as defined in article 92 (Own funds requirements) of the *UK CRR.*	

Annex B

Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

In this Annex, all the text is new and is not underlined.

Part 1: Comes into force on 1 January 2022

Prudential sourcebook for MiFID Investment Firms (MIFIDPRU)

1 Application

1.1 Application and purpose

Application

1.1.1 G There is no overall application provision for *MIFIDPRU*. Each chapter or section has its own application statement. However, *MIFIDPRU* broadly applies to the following:

(1) *MIFIDPRU investment firms*;

(2) *UK parent entities*; and

(3) *parent undertakings* in an *investment firm group* that are incorporated in, or have their principal place of business in, the *United Kingdom*.

1.1.2 G (1) The definition of a *MIFIDPRU investment firm* includes a *collective portfolio management investment firm*. This means that a *collective portfolio management investment firm* must comply with the *rules* in *MIFIDPRU*, except to the extent that a provision of *MIFIDPRU* otherwise provides.

(2) A c*ollective portfolio management investment firm* is also subject to the prudential requirements in *IPRU-INV* 11 (Collective Portfolio Management Firms and Collective Portfolio Management Investment Firms). These *firms* should refer to *IPRU-INV* 11.6 for further *guidance* on how the requirements in *MIFIDPRU* interact with the requirements in *IPRU-INV* 11.

(3) As explained in *MIFIDPRU* 1.1.5G, many requirements in *MIFIDPRU* apply only in relation to the *MiFID business* of a *firm* and therefore will not apply to the collective portfolio management activities carried on by a *collective portfolio management investment firm*. However, some requirements in *MIFIDPRU* apply to the *firm* as a whole.

Application to overseas firms

1.1.3 G *MIFIDPRU* does not directly apply to an *undertaking* which is not incorporated in, and does not have its principal place of business in, the *United Kingdom*. However, *MIFIDPRU* imposes some obligations on *UK parent entities* and *responsible UK parents* relating to *undertakings* established in a *third country* that form part of the same *investment firm group*. *MIFIDPRU* 2 (Levels of application) contains additional *guidance* on the application of *MIFIDPRU* to *investment firm groups*.

1.1.4 G (1) This *guidance* provision applies to a *third country MIFIDPRU investment firm*. It is without prejudice to the *FCA's* general approach to authorising *overseas firms*.

(2) The *FCA* will not normally give a *Part 4A permission* to a *third country MIFIDPRU investment firm* unless the *FCA* is satisfied that the applicant will be subject to prudential regulation by a *regulatory body* in its home jurisdiction and the regulatory requirements are broadly equivalent to the requirements that would apply under *MIFIDPRU*.

(3) When conducting the assessment in (2), the *FCA* will take into account the following non-exhaustive list of factors:

(a) whether the requirements of the jurisdiction are likely to achieve similar prudential outcomes to *MIFIDPRU*;

(b) how the overseas *regulatory body* supervises and enforces those requirements in practice;

(c) the broader legal framework applicable to the applicant in the jurisdiction; and

(d) whether there are adequate arrangements in place between the *FCA* and the overseas *regulatory body* to facilitate any necessary supervisory cooperation.

(4) The *FCA* considers that the approach described in (2) and (3) is consistent with the following:

(a) The requirements in the *threshold conditions* including, in particular, the effective supervision *threshold condition* described in *COND* 2.3, the appropriate resources *threshold condition* described in *COND* 2.4 and the suitability *threshold condition* described in *COND* 2.5.

(b) The need for the *FCA* to be able to apply effective supervision to a *third country MIFIDPRU investment firm* to ensure appropriate protection for *consumers* or potential *consumers*. This relies on cooperation between the *FCA* and the overseas *regulatory body* that supervises that *third country MIFIDPRU investment firm* and on the *FCA* being able to place appropriate reliance on the supervision applied by that overseas *regulatory body*.

(5) If a *third country MIFIDPRU investment firm* is not subject to prudential regulation by a *regulatory body* in its home jurisdiction which is broadly equivalent to the requirements that would apply under *MIFIDPRU*, the *FCA* will normally expect it to establish a *subsidiary* in the *United Kingdom*. That *subsidiary* would need to be authorised as a *MIFIDPRU investment firm* and would then be directly subject to the requirements in *MIFIDPRU*. The *subsidiary* would need to demonstrate that it meets the *threshold conditions* to obtain *authorisation*.

(6) Although a *third country MIFIDPRU investment firm* that is granted a *Part 4A permission* is not subject to *MIFIDPRU*, it must still comply with the requirements in the *threshold conditions* and *Principles* on an ongoing basis. This includes the obligation under *Principle* 11 (Relations with regulators) to inform the *FCA* of anything of which the *FCA* would reasonably expect notice, which may include interactions between the *firm* and its overseas *regulatory body*.

Purpose

1.1.5 G The purpose of *MIFIDPRU* is to set out the detailed prudential requirements that apply to a *MIFIDPRU investment firm*. *MIFIDPRU* does not apply to a *designated investment firm*, which is subject to prudential regulation by the *PRA*. Generally, the *rules* in *MIFIDPRU* are intended to cover the *MiFID business* undertaken by a *firm*, but certain requirements apply to a *firm* as a whole.

1.1.6 G The requirements in *MIFIDPRU* expand upon the basic requirements under the appropriate resources *threshold condition* in *COND* 2.4 and the requirement in *Principle* 4 for a *firm* to maintain adequate financial resources.

Tied agents

1.1.7 G (1) Certain provisions of *MIFIDPRU* refer to, or apply in relation to, *tied agents*. The definition of a *tied agent* refers to a *person* who, on behalf of an *investment firm* (including a *third country investment firm*):

(a) promotes *investment services* or *ancillary services* to *clients* or prospective *clients*;

(b) receives and transmits instructions or orders from the *client* in respect of *investment services* or *financial instruments*;

(c) places *financial instruments*; or

(d) provides advice to *clients* or prospective *clients* in respect of *investment services* or *financial instruments*.

(2) The references in *MIFIDPRU* to *tied agents* do not include *appointed representatives* that do not meet the definition of a *tied agent* (for example, because the relevant *appointed representative* does not carry on its activities in relation to the *MiFID business* of its principal *firm*). However, a *firm's* potential responsibility for *appointed representatives* (whether or not they are also *tied agents*) will be a relevant factor for a *firm's ICARA process* under *MIFIDPRU* 7 (Governance and risk management).

Voluntary application of stricter requirements

1.1.8 R No provision in *MIFIDPRU* prevents a *firm* from:

(1) holding *own funds* (or components of *own funds*) or *liquid assets* that exceed those required by *MIFIDPRU*; or

(2) applying other measures that are stricter than those required by *MIFIDPRU*.

1.1.9 G (1) If a *firm* applies stricter measures than those required under *MIFIDPRU* in accordance with *MIFIDPRU* 1.1.8R, the *firm* must still ensure that it meets the basic requirements of *MIFIDPRU*. This is illustrated by the following two examples:

(a) Example 1: A *firm* decides to hold *own funds* of 0.03% of its *average AUM*, rather than 0.02% as required under *MIFIDPRU* 4.7.5R. This would be a stricter measure that still met the basic requirements of *MIFIDPRU* and therefore would be permitted under *MIFIDPRU* 1.1.8R.

(b) Example 2: A *firm* decides to hold a significant amount of additional *own funds* instead of applying the deductions from its *common equity tier 1 capital* required under *MIFIDPRU* 3.3.6R. This is on the basis that the additional *own funds* far exceed the estimated value of the required deductions and the *firm* considers that the deduction calculations are too onerous. While the *firm* may consider that holding these additional *own funds* is a stricter measure, this approach would not meet the basic requirements of *MIFIDPRU*, which require the *firm* to calculate and apply the deductions. In addition, the failure to apply the correct deductions to *common equity tier 1 capital* may result in the *firm* incorrectly applying the *concentration risk* requirements and limits in *MIFIDPRU* 5. This approach would therefore not be permitted under *MIFIDPRU* 1.1.8R because it does not meet the basic requirements of *MIFIDPRU*.

(2) If a *firm* wishes to apply a stricter measure but is unsure of whether that measure would meet the basic requirements of *MIFIDPRU*, it should discuss the proposal with the *FCA* before applying the measure.

1.2 SNI MIFIDPRU investment firms

Basic conditions for classification as an SNI MIFIDPRU investment firm

1.2.1 R A *MIFIDPRU investment firm* is an *SNI MIFIDPRU investment firm* if it satisfies the following conditions:

(1) its *average AUM*, as calculated in accordance with *MIFIDPRU* 4.7.5R is less than £1.2 billion;

(2) its *average COH*, as calculated in accordance with *MIFIDPRU* 4.10.19R is less than:

(a) £100 million per *day* for *cash trades*; and

(b) £1 billion per *day* for *derivatives trades*;

(3) its *average ASA*, as calculated in accordance with *MIFIDPRU* 4.9.8R is zero;

(4) its *average CMH*, as calculated in accordance with *MIFIDPRU* 4.8.13R is zero;

(5) it does not have *permission* to *deal on own account*;

(6) its on- and off-balance sheet total is less than £100 million;

(7) its total annual gross revenue from *investment services and/or activities* is less than £30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year;

(8) it has not been classified as a *non-SNI MIFIDPRU investment firm* due to the effect of *MIFIDPRU* 10.2 (Categorisation of clearing firms as non-SNI MIFIDPRU investment firms); and

(9) its *average DTF*, as calculated in accordance with *MIFIDPRU* 4.15.4R, is zero.

1.2.2 G The definitions of *ASA* and *CMH* relate to *client* assets and *client money* that are held in the course of *MiFID business*. As a result, a *firm* may hold *client* assets or *client money* in the course of business other than *MiFID business* (provided that it has the necessary *permissions* to do so) and still meet the conditions to be classified as an *SNI MIFIDPRU investment firm*. When determining whether *client* assets or *client money* are to be treated as held in the course of *MiFID business* for these purposes, *MIFIDPRU investment firms* should refer to the *rules* and *guidance* in *MIFIDPRU* 4.8 (K-CMH requirement) and 4.9 (K-ASA requirement).

Additional provisions relating to the calculation of conditions to be classified as an SNI MIFIDPRU investment firm

1.2.3 R Notwithstanding the calculation methodologies in *MIFIDPRU* 4, the *firm* must use the following for the purposes of the conditions in *MIFIDPRU* 1.2.1R:

(1) end-of-day values to calculate:

(a) its *average AUM* under *MIFIDPRU* 1.2.1R(1);

(b) its *average COH* under *MIFIDPRU* 1.2.1R(2);

(c) its *average ASA* under *MIFIDPRU* 1.2.1R(3);

(2) intra-day values to assess its *average CMH* under *MIFIDPRU* 1.2.1R(4).

1.2.4 R (1) By way of derogation from *MIFIDPRU* 1.2.1R, a *firm* may use the alternative approach in (2) to measure:

(a) its *average AUM* for the purposes of *MIFIDPRU* 1.2.1R(1); and/or

(b) its *average COH* for the purposes of *MIFIDPRU* 1.2.1R(2).

(2) The alternative approach is to apply the methodologies in *MIFIDPRU* 4 for measuring *average AUM* and *average COH*, but with the following modifications:

(a) the measurement must be performed over the immediately preceding 12 *months*; and

(b) the exclusion of the 3 most recently monthly values does not apply.

(3) If a *firm* uses the derogation in (1), it must:

(a) notify the *FCA* by submitting the form in *MIFIDPRU* 1 Annex 1R via the *online notification and application system*; and

(b) apply the alternative approach for a continuous period of at least 12 *months* from the date specified in the *firm's* notice in (a).

(4) If a *firm* ceases to apply the derogation in (1), it must notify the *FCA* by submitting the form in *MIFIDPRU* 1 Annex 1R via the *online notification and application system*.

1.2.5 G Where a *firm* relies on the derogation in *MIFIDPRU* 1.2.4R, the alternative approach applies only for the purpose of determining whether the *firm* meets the requirements to be classified as an *SNI MIFIDPRU investment firm*. It does not apply for the purpose of the *firm's* calculation of its *K-factor requirement* under *MIFIDPRU* 4.

1.2.6 R (1) Subject to (2), a *firm* must use the values recorded at the end of the last financial year for which accounts have been finalised and approved by its *management body* to assess each of the following conditions:

(a) its on- and off-balance sheet total under *MIFIDPRU* 1.2.1R(6); and

(b) its total annual gross revenue under *MIFIDPRU* 1.2.1R(7).

(2) The *firm* must use provisional accounts where its accounts have not been finalised and approved after 6 *months* from the end of the last financial year.

1.2.7 R (1) A *firm* may use the end-of-day value for *average CMH* instead of the intra-day value under *MIFIDPRU* 1.2.3R(2) if:

(a) there is an error in record-keeping or in the reconciliation of accounts that incorrectly indicates that the *firm* has breached the zero threshold in *MIFIDPRU* 1.2.1R(4); and

(b) the error is resolved before the end of the *business day* to which it relates.

(2) If a *firm* uses an end-of-day value under (1), it must notify the *FCA* immediately of:

(a) the error;

(b) the reasons that the error occurred; and

(c) how the error has been corrected.

(3) The notification in (2) must be submitted via the *online notification and application system* using the form in *MIFIDPRU* 1 Annex 2R.

1.2.8 G (1) *MIFIDPRU* 1.2.7R applies where a *firm* has incorrectly recorded an amount of *client money* as *CMH* and identifies the mistake before the end of the same *business day*. This could occur, for example, where there has been an error in data entry, or where a *firm* incorrectly records *client money* as meeting the *CMH* definition.

(2) *MIFIDPRU* 1.2.7R does not apply where a *firm* mistakenly accepts an amount that satisfies the *CMH* definition and subsequently returns that amount to the relevant *client*. In that case, the *firm* will have breached the zero threshold in *MIFIDPRU* 1.2.1R(4) and the situation has not arisen due to an error in record-keeping or reconciliation. A *firm* that wishes to be classified as an *SNI investment firm* should therefore operate effective systems and controls that prevent it from mistakenly accepting *money* or assets that constitute *CMH* or *ASA*.

1.2.9 R A *MIFIDPRU investment firm* must assess the following conditions on the basis of the *firm's* individual situation:

(1) *average ASA* under *MIFIDPRU* 1.2.1R(3);

(2) *average CMH* under *MIFIDPRU* 1.2.1R(4);

(3) *average DTF* under *MIFIDPRU* 1.2.1R(9);

(4) whether the *firm* has *permission* to *deal on own account*; and

(5) whether the *firm* is a *clearing member* or an *indirect clearing firm*.

1.2.10 R (1) A *MIFIDPRU investment firm* must assess the conditions in (2) on the basis of the combined position of each of the following entities that form part of the same *group* as the *firm*:

(a) *MIFIDPRU investment firms*;

(b) *designated investment firms*;

(c) *collective portfolio management investment firms*; and

(d) *third country investment firms* that carry on *investment services and/or activities* in the *UK*.

(2) The relevant conditions are:

(a) *average AUM* under *MIFIDPRU* 1.2.1R(1);

(b) *average COH* under *MIFIDPRU* 1.2.1R(2);

(c) the on- and off-balance sheet total under *MIFIDPRU* 1.2.1R(6); and

(d) total annual gross revenue under *MIFIDPRU* 1.2.1R(7).

(3) When measuring the combined total annual gross revenue under (2)(d), the *firm* may exclude any double counting that arises in respect of gross revenues generated within the *group*.

(4) When calculating the contribution of the following to the combined position of the *group*, the *firm* must:

(a) for a *collective portfolio management investment firm*, include only amounts that are attributable to the *investment services and/or activities* that fall within *COLL* 6.9.9R (4) to (6) or *FUND* 1.4.3R (3) to (6); and

(b) for a *third country investment firm*:

(i) include only amounts that are attributable to the *investment services and/or activities* that are carried on by the *third country investment firm* in the *UK*; and

(ii) apply the definitions of *AUM* and *COH* as if the references to "*MiFID business*" in those definitions included the *investment services and/or activities* in (i).

1.2.11 G (1) *MIFIDPRU* 1.2.10R applies to each individual *MIFIDPRU investment firm* by reference to the relevant entities that form part of that *firm's group*. The purpose of the *rule* is to prevent a *MIFIDPRU investment firm* from dividing its business between separate *group* entities that may each carry-on *investment services and/or activities* in the *UK* in order to avoid being classified as a *non-SNI MIFIDPRU investment firm*. Where two or more *MIFIDPRU investment firms* exceed one or more of the relevant thresholds in *MIFIDPRU* 1.2.10R on a combined basis, each of those *firms* will be treated as a *non-SNI MIFIDPRU investment firm*.

(2) Where a *MIFIDPRU investment firm* forms part of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5, *MIFIDPRU* 2.5.21R explains how *MIFIDPRU* 1.2 applies to the *consolidated situation* of the relevant *UK parent entity*.

Summary of conditions for classification as an SNI MIFIDPRU investment firm and associated calculation requirements

1.2.12 G The following table summarises the effect of *MIFIDPRU* 1.2.1R to 1.2.10R.

Measure	**Measurement of relevant values**	**Threshold to be classified as an SNI MIFIDPRU investment firm**	**Application of threshold on an individual basis or combined basis of investment firms within a group (see MIFIDPRU 1.2.9R and 1.2.10R)**	
Average AUM	End-of-day	Less than £1.2 billion	Combined	See Note 1
Average COH (cash trades)	End-of-day	Less than £100 million per day	Combined	See Note 1
Average COH (derivatives)	End-of-day	Less than £1 billion per day	Combined	See Note 1
Average ASA	End-of-day	Zero	Individual	
Average CMH	Intra-day	Zero	Individual	See Note 2
Average DTF	End-of-day	Zero	Individual	
NPR	*Firm* must not have *permission* to *deal on own account*, so these measures must always be zero		Individual	
CMG			Individual	
TCD			Individual	
On- and off-balance sheet total	End of last financial year for which accounts finalised by *management body*	Less than £100 million	Combined	See Note 3

Total annual gross revenue from *investment services and/or activities*	End of last financial year for which accounts finalised by *management body*	Less than £30 million, based on an average of annual figures for the two-year period immediately preceding the given financial year	Combined	See Notes 3 and 4
Whether *firm* is a *clearing member* or *indirect clearing firm* under *MIFIDPRU* 10.2	*Firm* must not be a *clearing member* or *indirect clearing firm*		Individual	
Notes				
Note 1:	Under *MIFIDPRU* 1.2.4R, the *firm* can choose to calculate the relevant values for these measures by applying the applicable methodologies in *MIFIDPRU* 4 to the most recent 12 *months* without excluding the three most recent monthly values.			
Note 2:	Under *MIFIDPRU* 1.2.7R, the *firm* may use the end-of-day value if there has been an error in record keeping or in reconciliation of accounts that incorrectly indicates the *firm* has breached the zero threshold for *average CMH*, provided that the error is corrected before the end of the *business day* to which it relates.			
Note 3:	Under *MIFIDPRU* 1.2.6R, the *firm* must use provisional accounts where the relevant accounts have not been finalised and approved after 6 *months* from the end of the last financial year.			
Note 4:	Under *MIFIDPRU* 1.2.10R, the *firm* may exclude any double counting that arises in respect of gross revenues generated within the *group*.			

Non-SNI MIFIDPRU investment firms that subsequently satisfy the conditions to be an SNI MIFIDPRU investment firm

1.2.13 R (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that subsequently satisfies all the conditions in *MIFIDPRU* 1.2.1R.

(2) The *firm* in (1) shall be reclassified as an *SNI MIFIDPRU investment firm* only if:

(a) the *firm* satisfies the relevant conditions for a continuous period of at least 6 *months* (or any longer period that has elapsed before the *firm* submits the notification in (b)); and

(b) the *firm* notifies the *FCA* that it satisfies the conditions in (a).

(3) The notification in (2)(b) must be submitted via the *online notification and application system* using the form in *MIFIDPRU* 1 Annex 3R.

Ceasing to meet the conditions to be an SNI MIFIDPRU investment firm

1.2.14 R Where a *MIFIDPRU investment firm* no longer satisfies all the conditions set out in *MIFIDPRU* 1.2.1R, it ceases to be an *SNI MIFIDPRU investment firm* with immediate effect, except where *MIFIDPRU* 1.2.15R applies.

1.2.15 R (1) Where a *MIFIDPRU investment firm* exceeds one or more of the thresholds in (2), but continues to satisfy all other conditions in *MIFIDPRU* 1.2.1R, it ceases to be an *SNI MIFIDPRU investment firm* 3 *months* after the date on which it first exceeded the relevant threshold.

(2) The relevant thresholds are:

(a) the *average AUM* threshold in *MIFIDPRU* 1.2.1R(1);

(b) either or both of the *average COH* thresholds in *MIFIDPRU* 1.2.1R(2);

(c) the on- and off-balance sheet total threshold in *MIFIDPRU* 1.2.1R(6); and

(d) the total annual gross revenue threshold in *MIFIDPRU* 1.2.1R(7).

1.2.16 R (1) If a *MIFIDPRU investment firm* ceases to satisfy one of the conditions in *MIFIDPRU* 1.2.1R, it must promptly notify the *FCA*.

(2) The notification in (1) must be submitted via the *online notification and application system* using the form in *MIFIDPRU* 1 Annex 4R.

1.2.17 G Where a *firm* ceases to satisfy one of the conditions in *MIFIDPRU* 1.2.15R, but subsequently satisfies that condition within the three-*month* period referred to in that *rule*, the *firm* will still be reclassified as a *non-SNI MIFIDPRU investment firm* 3 *months* after the date on which it first ceased to satisfy that condition. The *firm* will only be reclassified as an *SNI MIFIDPRU investment firm* if it satisfies the conditions in, and requirements of, *MIFIDPRU* 1.2.13R.

Application of senior management, remuneration and systems and controls requirements to SNI MIFIDPRU investment firms

1.2.18 R (1) Subject to (2) and (3), the following provisions do not apply to an *SNI MIFIDPRU investment firm*:

(a) *MIFIDPRU* 7.3 (Risk, remuneration and nomination committees);

(b) the provisions in *SYSC* 19G (MIFIDPRU Remuneration Code) which are not listed in *SYSC* 19G.1.6R(2).

(2) Subject to (4) and (5), if a *non-SNI MIFIDPRU investment firm* satisfies the conditions in *MIFIDPRU* 1.2.1R to be classified as an *SNI MIFIDPRU investment firm*, the provisions in (1) will cease to apply only:

(a) 6 *months* after the date on which the *firm* first satisfied those conditions (or after any longer period that has elapsed before the *firm* submits the notification in (b)(ii)); and

(b) provided that the *firm*:

(i) continued to satisfy the conditions throughout the period in (a); and

(ii) has notified the *FCA* under *MIFIDPRU* 1.2.13R(2)(b).

(3) Subject to (4) and (5), if an *SNI MIFIDPRU investment firm* no longer satisfies the conditions in *MIFIDPRU* 1.2.1R to be classified as an *SNI MIFIDPRU investment firm*, it must:

(a) notify the *FCA* immediately in accordance with *MIFIDPRU* 1.2.16R of the date on which it ceased to satisfy the conditions; and

(b) comply with the provisions in (1) within 12 *months* from the date on which the *firm* ceased to satisfy the conditions.

(4) *MIFIDPRU* 7.3 (Risk, remuneration and nomination committees) does not apply to a *non-SNI MIFIDPRU investment firm* if the *firm* meets the conditions in *MIFIDPRU* 7.1.4R.

(5) The provisions listed in *SYSC* 19G.1.1R(4) do not apply to a *non-SNI MIFIDPRU investment firm* if the *firm* meets the conditions in *SYSC* 19G.1.1R(2).

1.2.19 G Under the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (SI 2013/3118) as amended, *non-SNI MIFIDPRU* *investment firms* may be required to disclose information relating to their branches or subsidiaries outside the *UK.* The Regulations also set out how the country-by-country reporting obligations apply when a *MIFIDPRU investment firm* is reclassified as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm*.

1.3 Actions for damages

1.3.1 R A contravention of any *rule* in *MIFIDPRU* does not give rise to a right of action by a *private person* under section 138D of the *Act* (and each of those *rules* is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).

Notification under MIFIDPRU 1.2.4R in respect of the use of the alternative approach to measure AUM and/or COH for the purpose of determining if a firm can be classified as an SNI investment firm

1 Annex 1R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 1 Annex 1R

Notification under MIFIDPRU 1.2.4R in respect of the use of the alternative approach to measure AUM and/or COH for the purpose of determining if a firm can be classified as an SNI investment firm

1. Please confirm whether the notification relates to the firm's intention to start or stop applying the alternative approach by completing either a. or b.:

   a. The firm intends to use the alternative approach to measure (select):

      Average AUM for the purposes of MIFIDPRU 1.2.1R(1) ☐

      Average COH for the purposes of MIFIDPRU 1.2.1R(2) ☐

      We understand that we must continue to use this alternative approach for at least 12 months from the date this notification takes effect.

      ☐ Yes

   b. The firm intends to cease to apply the alternative approach to measure (select):

      Average AUM for the purposes of MIFIDPRU 1.2.1R(1) ☐

      Average COH for the purposes of MIFIDPRU 1.2.1R(2) ☐

      We confirm that we have applied the alternative approach for at least 12 months.

      ☐ Yes

2. Date notification takes effect (i.e. the date from which the firm proposes to start or cease using the alternative approach, as notified):

   DD/MM/YYYY

	Notification under MIFIDPRU 1.2.7R(2) of the use of an end-of-day value for CMH as a result of a qualifying error
1 Annex 2R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 1 Annex 2R

Notification under MIFIDPRU 1.2.7R(2) of the use of an end-of-day value for CMH as a result of a qualifying error

1. We are notifying that an error in record-keeping or in the reconciliation of accounts has incorrectly indicated that we have breached the zero threshold for CMH. We have therefore used an end-of-day value for the purpose of assessing our CMH.

2. We confirm that we have considered the guidance in MIFIDPRU 1.2.8G when determining whether we can rely on the error in order to use the end-of-day value for CMH.

   ☐ Yes

3. We confirm that the error was resolved before the end of the business day to which it relates.

   ☐ Yes

4. Details of the error:

5. Explanation why the error occurred:

6. Explanation how the error has been corrected:

7. Confirmation of the date the error occurred:

DD/MM/YYYY

Notification under MIFIDPRU 1.2.13R(2)(b) that a non-SNI investment firm qualifies to be reclassified as an SNI investment firm

1 Annex 3R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 1 Annex 3R

Notification under MIFIDPRU 1.2.13R(2)(b) that a non-SNI investment firm qualifies to be reclassified as an SNI investment firm

1. We are notifying that we qualify to be reclassified as a small and non-interconnected investment firm (SNI) from the date of this notification.

2. We confirm that we have continued to satisfy all the conditions in MIFIDPRU 1.2.1R for a continuous period of at least 6 months up to the date of this notification.

   ☐ Yes

3. Date from when the firm has continuously satisfied the conditions to be classified as an SNI:

DD/MM/YYYY

4. Date of this notification (i.e. the effective date from which the firm will be classified as an SNI):

DD/MM/YYYY

Notification under MIFIDPRU 1.2.16R that a firm no longer qualifies to be classified as an SNI investment firm

1 Annex 4R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 1 Annex 4R

Notification under MIFIDPRU 1.2.16R that a firm no longer qualifies to be classified as an SNI investment firm

1. We are notifying that we have ceased to meet one or more of the conditions set out in MIFIDPRU 1.2.1R for being a small and non-interconnected investment firm (SNI).

2. Please provide the following information:

Condition(s) no longer met	
Date from which conditions no longer met	*DD/MM/YYYY*

3. Where a firm has ceased to meet one or more of the average AUM, average COH, balance sheet or revenue thresholds specified in MIFIDPRU 1.2.15R(2), but continues to meet all other conditions in MIFIDPRU 1.2.1R, it will cease to be classified as an SNI investment firm 3 months after the date on which the relevant threshold was first exceeded.

Please confirm that the firm continues to meet all other conditions in MIFIDPRU 1.2.1R.

Yes/No

4. By submitting this notification, you confirm your understanding that the firm:

   a. will be subject to additional obligations and reporting requirements as a non-SNI investment firm, and

   b. will need to comply with the obligations in MIFIDPRU 1.2.18R(1) within 12 months of the date it first ceased to meet the SNI conditions in MIFIDPRU 1.2.1R.

2 Level of application of requirements

2.1 Application and purpose

Application

2.1.1 R *MIFIDPRU* 2 applies to:

(1) a *MIFIDPRU investment firm*;

(2) a *UK parent entity*;

(3) a *UK investment holding company*, *UK mixed financial holding company* or *UK mixed-activity holding company*; and

(4) a *parent undertaking* in the *UK* that is a *relevant financial undertaking* in an *investment firm group*.

Purpose

2.1.2 G This chapter contains:

(1) a *rule* in *MIFIDPRU* 2.2.1R applying requirements in this sourcebook to *MIFIDPRU investment firms* on an individual basis;

(2) *rules* in *MIFIDPRU* 2.3 outlining the circumstances in which a *MIFIDPRU investment firm* may apply to the *FCA* for an exemption from specific requirements in this sourcebook that apply on an individual basis;

(3) *rules* and *guidance* in *MIFIDPRU* 2.4 which cover:

(a) the definition of an *investment firm group*;

(b) the *undertakings* that are included within an *investment firm group*; and

(c) when and how an *investment firm group* may apply to the *FCA* for permission to use the *group capital test* as an alternative to the prudential consolidation requirements in *MIFIDPRU* 2.5;

(4) *rules* and *guidance* in *MIFIDPRU* 2.5 which cover the following:

(a) when requirements in this sourcebook apply on a *consolidated basis*;

(b) the circumstances in which the *FCA* may permit an *investment firm group* to disapply certain prudential consolidation requirements; and

(c) how an *investment firm group* must apply obligations in this sourcebook on a *consolidated basis*;

(5) *rules* and *guidance* in *MIFIDPRU* 2.6 in relation to the *group capital test*; and

(6) *rules* and *guidance* in *MIFIDPRU* 2.7 which cover:

(a) additional requirements and *FCA* supervisory powers that are relevant to a *UK parent entity*; and

(b) additional requirements that are relevant to a *MIFIDPRU investment firm* which is a *subsidiary* of a *UK mixed-activity holding company*.

2.2 General principle

2.2.1 R A *MIFIDPRU investment firm* must comply with the *rules* in *MIFIDPRU* 3 to *MIFIDPRU* 9 on an individual basis.

2.3 Exemptions

2.3.1 R A *MIFIDPRU investment firm* will be exempt from *MIFIDPRU* 8 (Disclosure) on an individual basis if:

(1) the *firm* has applied to the *FCA* in accordance with *MIFIDPRU* 2.3.3R;

(2) the application in (1) demonstrates to the satisfaction of the *FCA* that:

(a) the *firm* is a *SNI MIFIDPRU investment firm*;

(b) the *firm* is a *subsidiary* and is included in the supervision on a *consolidated basis* of an *insurance undertaking* or *reinsurance undertaking* in accordance with Rule 10.5 of the *PRA Rulebook*: Solvency II firms: Group Supervision;

(c) the *firm* and its *parent undertaking* are subject to *authorisation* and supervision in the *UK*;

(d) *own funds* are distributed adequately between the *firm* and its *parent undertaking* and:

(i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *parent undertaking*;

(ii) either the *parent undertaking* will guarantee the commitments entered into by the *firm*, or the risks in the *firm* are of negligible interest;

(iii) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *firm*; and

(iv) the *parent undertaking* holds more than 50% of the voting rights attached to shares in the capital of the *firm* or has the right to appoint or remove a majority of the members of the *firm's management body*.

(3) the *PRA* does not object to the exemption.

2.3.2 R A *MIFIDPRU investment firm* will be exempt from *MIFIDPRU* 6 (Liquidity) on an individual basis where:

(1) the *firm* has applied to the *FCA* in accordance with *MIFIDPRU* 2.3.3R;

(2) the application in (1) demonstrates to the satisfaction of the *FCA* that:

(a) the *firm*:

(i) is supervised on a *consolidated basis* in accordance with Chapter 2 of Title II of Part One of the *UK CRR*; or

(ii) is included in an *investment firm group* that is subject to *MIFIDPRU* 2.5.11R and has not obtained the exemption referred to in *MIFIDPRU* 2.5.19R;

(b) the *parent undertaking*, on a *consolidated basis*, monitors and has oversight at all times over the liquidity positions of all *institutions* and *MIFIDPRU investment firms* within the group or sub-group that are exempted from liquidity requirements on an individual basis, and ensures a sufficient level of liquidity for all of those *institutions* and *MIFIDPRU investment firms*;

(c) the *parent undertaking* and the *firm* have entered into contracts that, to the satisfaction of the *appropriate regulator*, provide for the free movement of funds between the *parent undertaking* and the *firm* to enable them to meet their individual obligations and joint obligations as they become due;

(d) there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts in (c); and

(3) the *PRA* does not object to the exemption if it is the consolidating supervisor of the group.

2.3.3 R An application referred to in *MIFIDPRU* 2.3.1R(1) or *MIFIDPRU* 2.3.2R(1) must:

(1) be made using the form in *MIFIDPRU* 2 Annex 1R; and

(2) be submitted using the *online notification and application system*.

2.4 Investment firm groups: general

Application and purpose

2.4.1 R This section applies to:

(1) a *UK parent entity*; and

(2) a *MIFIDPRU investment firm*.

2.4.2 G (1) The definition of an *investment firm group* covers a *parent undertaking* that is incorporated in the *UK* or has its principal place of business in the *UK*, and its *subsidiaries*, at least one of which must be a *MIFIDPRU investment firm*.

(2) The definition of an *investment firm group* also includes *connected undertakings*. These are *relevant financial undertakings* that are not *subsidiaries*, but which form part of the *investment firm group* by one of the relationships listed in *MIFIDPRU* 2.4.6R.

(3) If the *subsidiaries* of the group include a *UK credit institution*, the group is not an *investment firm group*. However, if a *UK credit institution* is only a *connected undertaking* in relation to an *investment firm group*, the group is still an *investment firm group*. If the *investment firm group* includes a *subsidiary* or a *connected undertaking* that is *credit institution* established in a *third country*, the group is still an *investment firm group*.

2.4.3 G (1) When a *UK parent entity* or a *MIFIDPRU investment firm* is identifying whether it forms part of an *investment firm group*, it must identify all *relevant financial undertakings* that are either *subsidiaries* or *connected undertakings*.

(2) The *UK parent entity* or *MIFIDPRU investment firm* can use the analysis in (1) to determine whether the *investment firm group*:

(a) is likely to be subject to consolidation under *MIFIDPRU* 2.5; or

(b) has a sufficiently simple structure to justify submitting an application to the *FCA* to apply the *group capital test* under *MIFIDPRU* 2.6.

2.4.4 G (1) Where consolidation under *MIFIDPRU* 2.5 applies, the definition of an *investment firm group* and the resulting *consolidated* *situation* includes all *relevant financial undertakings* that are either *subsidiaries* or *connected undertakings*.

(2) Where *MIFIDPRU* 2.6 applies, the definition of an *investment firm group* means that the *group capital test* only applies to a *parent undertaking* in relation to *relevant financial undertakings* that are its *subsidiaries* or that are *connected undertakings* in which it holds a *participation* in accordance with *MIFIDPRU* 2.4.15R. The *group capital test* does not apply in relation to a *relevant financial undertaking* that is a *connected undertaking* of the *parent undertaking* otherwise than due to a *participation*.

(3) However, as explained in *MIFIDPRU* 2.4.19G, where an *investment firm group* contains material *connected undertakings* (other than those connected by a *participation*), the *FCA* considers that the underlying structure of the *investment firm group* is unlikely to be sufficiently simple to permit the application of the *group capital test*. In that case, it is likely that the *UK parent entity* of the *investment firm group* will be subject to consolidation under *MIFIDPRU* 2.5.

Subsidiaries

2.4.5 G (1) The definition of a *subsidiary* for the purposes of *MIFIDPRU* refers to any *undertaking* which is a "subsidiary undertaking" as defined in section 1162, read together with Schedule 7, of the Companies Act 2006.

(2) Under section 1162(4) of the Companies Act 2006, this includes relationships where either of the following apply in relation to an *undertaking* ("A") and another *undertaking* ("B"):

(a) A has the power to exercise, or actually exercises, dominant influence or control over B; or

(b) A and B are managed on a unified basis.

(3) Under section 1162(5) of the Companies Act 2006, if an *undertaking* ("A") has a *subsidiary undertaking* ("B") and B is a *parent undertaking* of another *undertaking* ("C"), then C is also a *subsidiary undertaking* of A. As a result, the definition of a *subsidiary* in *MIFIDPRU* includes *subsidiaries* of *subsidiaries*.

Connected undertakings: general

2.4.6 R An *undertaking* ("CU") is a *connected undertaking* of another *undertaking* ("P1") if:

(1) P1 is connected to CU by *majority common management* in accordance with *MIFIDPRU* 2.4.8R(1);

(2) P1 exercises significant influence over CU in accordance with

MIFIDPRU 2.4.10R(1);

(3) P1 and CU have been placed under single management, other than under a contract, clauses in memoranda or articles of association, in accordance with *MIFIDPRU* 2.4.12R(1);

(4) CU is a *subsidiary* of another *undertaking* ("P2"), and P2:

(a) is connected to P1 by *majority common management* in accordance with *MIFIDPRU* 2.4.8R(1); or

(b) has been placed under single management with P1, other than under a contract, clauses in memoranda or articles of association, in accordance with *MIFIDPRU* 2.4.12R(1); or

(5) P1 holds a *participation* in CU in accordance with *MIFIDPRU* 2.4.15R.

2.4.7 G The criteria in *MIFIDPRU* 2.4.8R(2)-(5) and *MIFIDPRU* 2.4.12R(2)-(5) for determining the deemed *parent undertaking* in relation to a *connected undertaking* apply to the facts at the time when the relevant relationship is created. This means that a subsequent change in the *own funds requirement* of an entity or *investment firm group* does not change the deemed *parent undertaking*.

Connected undertakings: majority common management

2.4.8 R (1) This *rule* applies where:

(a) a *MIFIDPRU investment firm* is connected to a *relevant financial undertaking* by *majority common management*; or

(b) a *relevant financial undertaking* that forms part of an *investment firm group* is connected to another *relevant financial undertaking* by *majority common management*.

(2) If only one of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

(3) If both *undertakings* connected by *majority common management* form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation*, is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

(4) If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and

both *undertakings* are *MIFIDPRU investment firms*, the *MIFIDPRU investment firm* with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other *MIFIDPRU investment firm* when applying the requirements in *MIFIDPRU* 2.5.

(5) If neither of the *undertakings* connected by *majority common management* forms part of an existing *investment firm group* and only one of the *undertakings* is a *MIFIDPRU investment firm*, the *MIFIDPRU investment firm* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

2.4.9 G A *MIFIDPRU investment firm* may apply to the *FCA* under section 138A of the *Act* to modify the application of *MIFIDPRU* 2.4.8R(2)-(5), if it considers that a different *undertaking* should be deemed to be the *parent undertaking* on the basis of *majority common management* for the purposes of *MIFIDPRU* 2.5.

Connected undertakings: significant influence without participation or capital ties

2.4.10 R (1) This *rule* applies where:

(a) any of the following *undertakings* (“A”) exercises significant influence over a *relevant financial undertaking*:

(i) a *MIFIDPRU investment firm*;

(ii) an *investment holding company*; or

(iii) a *mixed financial holding company*; and

(b) the *relevant financial undertaking* is not:

(i) a *subsidiary* of A; or

(ii) connected to A by *majority common management*.

(2) Where this *rule* applies, A is deemed to be the *parent undertaking* of the *relevant financial undertaking* when applying *MIFIDPRU* 2.5.

2.4.11 G (1) To assess whether A exercises significant influence over a *relevant financial undertaking*, the *FCA* considers that the equivalent accounting position, as it would be assessed under the guidance in International Accounting Standard 28 (as amended in 2011) under IFRS or Financial Reporting Standard 102 (March 2018) under UK GAAP, will be relevant. In particular, a *firm* should consider whether A has the power to participate in the financial and operating policy decisions of the *relevant financial undertaking*, even though A does not have control or joint control of those policies. The indicators in (2) may be evidence of significant influence but are not conclusive. A *firm* should consider all relevant facts and circumstances.

(2) When applying *MIFIDPRU* 2.4.10R(1)(a), the following circumstances may be indicators that A exercises significant influence over the *relevant financial undertaking*:

(a) A appoints or has the ability to appoint a representative in the *management body* of the *relevant financial undertaking*, either in the executive or in the supervisory function;

(b) A participates in the policy-making processes of the *relevant financial undertaking*, including participation in decisions about dividends and other distributions;

(c) the existence of material transactions between the two *undertakings*;

(d) the interchange of managerial personnel between the two *undertakings*;

(e) the provision of essential technical information or critical services from one entity to the other;

(f) A enjoys additional rights in the *relevant financial undertaking*, under a contract or a provision in the articles of association or other constitutional documents of the *relevant financial undertaking*, that could affect the management or the decision-making of the *relevant financial undertaking*; and

(g) the existence of share warrants, share call options, debt instruments that are convertible into ordinary shares or other similar instruments that are currently exercisable or convertible and have the potential, if exercised or converted, to give voting power or to reduce another party's voting power over the financial and operating policies of the *relevant financial undertaking*.

Connected undertakings: single management other than pursuant to a contract, clauses in memoranda or articles of association

2.4.12 R (1) This *rule* applies where:

(a) any of the following *undertakings* ("A") has been placed under single management, other than pursuant to a contract, clauses in memoranda or articles of association, with a *relevant financial undertaking*:

(i) a *MIFIDPRU investment firm*;

(ii) an *investment holding company*; or

(iii) a *mixed financial holding company*; and

(b) the *relevant financial undertaking* is not:

(i) a *subsidiary* of A;

(ii) connected to A by *majority common management*; or

(iii) an *undertaking* over which A exercises significant influence in accordance with *MIFIDPRU* 2.4.10R.

(2) If only one of the *undertakings* placed under single management already forms part of an existing *investment firm group*, that *undertaking* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

(3) If both *undertakings* placed under single management form part of separate existing *investment firm groups*, the *undertaking* that forms part of the *investment firm group* which has, or would have, the higher consolidated *own funds requirement* based on its *consolidated situation* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

(4) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and both of those *undertakings* are *MIFIDPRU investment firms*, the *MIFIDPRU investment firm* with the higher individual *own funds requirement* is deemed to be the *parent undertaking* of the other *MIFIDPRU investment firm* when applying the requirements in *MIFIDPRU* 2.5.

(5) If neither of the *undertakings* placed under single management forms part of an existing *investment firm group* and only one of those *undertakings* is a *MIFIDPRU investment firm*, the *MIFIDPRU investment firm* is deemed to be the *parent undertaking* of the other *undertaking* when applying the requirements in *MIFIDPRU* 2.5.

2.4.13 G When applying *MIFIDPRU* 2.4.12R, the following circumstances are indicators that the type of single management in *MIFIDPRU* 2.4.12R(1)(a) may exist:

(1) A and the *relevant financial undertaking* are controlled by:

(a) the same natural *person*;

(b) the same group of natural *persons*;

(c) an *undertaking* or the same group of *undertakings* that do not otherwise belong to that *group*;

(d) an *undertaking* or the same group of *undertakings* that are not established in the *UK*; or

(2) the majority of the management body, either in its executive or in its supervisory function, of A and the *relevant financial undertaking* is composed of people appointed by the same *undertaking* or *undertakings*, by the same natural *person* or by the same group of natural *persons*, even if they do not necessarily consist of the same people.

2.4.14 G The indicators in *MIFIDPRU* 2.4.13G are not conclusive. Whether two or more *undertakings* are placed under single management for the purposes of *MIFIDPRU* 2.4.12R depends on whether in practice there is effective coordination of the financial and operating policies of the relevant *undertakings*. A *firm* should consider all relevant facts and circumstances.

Connected undertakings: participations

2.4.15 R (1) This *rule* applies where the following conditions are met:

(a) one of the following ("A") holds, directly or indirectly, a *participation* in a *relevant financial undertaking*:

(i) a *MIFIDPRU investment firm*;

(ii) an *investment holding company*; or

(iii) a *mixed financial holding company*;

(b) the *relevant financial undertaking* is not:

(i) a *subsidiary* of A; or

(ii) connected to A by *majority common management*; or

(iii) an *undertaking* over which A exercises significant influence in accordance with *MIFIDPRU* 2.4.10R; or

(iv) an *undertaking* with which A has been placed under single management in accordance with *MIFIDPRU* 2.4.12R; and

(c) A forms part of an existing *investment firm group*.

(2) Where this *rule* applies, A is deemed to be the *parent undertaking* of the *relevant financial undertaking* when applying the requirements in *MIFIDPRU* 2.5 or the *group capital test* in

MIFIDPRU 2.6.

2.4.16 G (1) An *undertaking* ("A") holds a *participation* in a *relevant financial undertaking* where A has direct or indirect ownership of 20% or more of the voting rights in, or capital of, a *relevant financial undertaking*.

(2) However, A may also hold a *participation* where, even though A does not have an ownership interest as described in (1), A nonetheless has rights in the capital of the *relevant financial undertaking* which create a durable link with that *undertaking* which is intended to contribute to its activities.

(3) For the purpose of assessing whether there is a *participation* of the type described in (2), it is relevant to consider the overall ownership structure of the *relevant financial undertaking*, having regard in particular to whether interests in the capital or voting rights of the *relevant financial undertaking* are distributed across a large number of shareholders, or whether A is the main investor.

Application to apply the group capital test to an investment firm group

2.4.17 R *MIFIDPRU* 2.6 applies, and *MIFIDPRU* 2.5 does not apply, to an *investment firm group* where:

(1) the *UK parent entity* of that *investment firm group* or a *MIFIDPRU investment firm* within that *investment firm group* has applied to the *FCA* in accordance with *MIFIDPRU* 2.4.18R; and

(2) the application in (1) demonstrates to the satisfaction of the *FCA* that:

(a) the group structure of the *investment firm group* is sufficiently simple to justify applying the *group capital test*; and

(b) there are no significant risks to *clients* or to the market stemming from the *investment firm group* as a whole that require supervision on a *consolidated basis*.

2.4.18 R An application submitted under *MIFIDPRU* 2.4.17R(1):

(1) must be made using the form in *MIFIDPRU* 2 Annex 2R, and should be submitted using the *online notification and application system*;

(2) must include:

(a) a group structure chart that:

(i) identifies each *undertaking* that forms part of the *investment firm group*;

(ii) explains the nature of the business or activities of each *undertaking*;

(iii) identifies whether each *undertaking* is a *relevant financial undertaking* and, if so, which type of *relevant financial undertaking* it is; and

(iv) explains the nature and degree of ownership or control that connects the *undertaking* to the *investment firm group* (including any relationship that has led the *undertaking* to be classified as a *connected undertaking* in relation to the *investment firm group*);

(b) an explanation of why the group structure is sufficiently simple to justify the application of the *group capital test*;

(c) an explanation of why there are no significant risks to *clients* or to the market stemming from the *investment firm group* that require supervision on a *consolidated basis*;

(d) calculations which show how each *parent undertaking* within the *investment firm group* would satisfy the *group capital test*;

(e) evidence that the book value of each *parent undertaking's* investment in each of the following is a fair reflection of the consideration paid by the *parent undertaking*:

(i) a *subsidiary*, whether that *subsidiary* forms part of the *investment firm group* or not; and

(ii) an entity that is a *connected undertaking* due to a *participation* in accordance with *MIFIDPRU* 2.4.15R.

(f) calculations that demonstrate the consolidated *own funds* and *liquid assets* requirements that would apply on the basis of the *consolidated situation* of the *investment firm group* if consolidation under *MIFIDPRU* 2.5 applied instead;

(g) an explanation of:

(i) how the *investment firm group* would comply with the consolidated requirements in (f) if the *FCA* did not grant permission to apply the *group capital test*; and

(ii) the timeframe in which the *investment firm group* would expect to achieve compliance with such consolidated requirements; and

(h) an explanation of how the *UK parent entity* of the *investment firm group*:

(i) would comply with the systems requirement in *MIFIDPRU* 2.6.9R; or

(ii) would comply with the systems requirement in *MIFIDPRU* 2.5.8R if the *FCA* did not grant permission to apply the *group capital test*.

(3) must be submitted by a *UK parent entity* or a *MIFIDPRU investment firm* that has the necessary authority to make the application on behalf of all *undertakings* within the *investment firm group* that would be subject to the *group capital test*.

2.4.19 G In the *FCA's* view, where an *investment firm group* includes one or more undertakings that are *connected undertakings* (other than *connected undertakings* due to a *participation* in accordance with *MIFIDPRU* 2.4.15R), that are material (either individually or in aggregate), it is unlikely that the *investment firm group* will be sufficiently simple to be able to apply the *group capital test*. This is because the relationship between the relevant member of the *investment firm group* and the *connected undertaking* is likely to be more complex and because the *group capital test* can only apply to holdings in instruments issued by, or claims on, an entity. Therefore, prudential consolidation under *MIFIDPRU* 2.5 is likely to be more appropriate in such circumstances.

2.5 Prudential consolidation

2.5.1 R (1) This section applies to a *UK parent entity* that is not subject to the *group capital test* under *MIFIDPRU* 2.6.

(2) This section also applies to a *MIFIDPRU investment firm* that forms part of the same *investment firm group* as the relevant *UK parent entity* in (1).

2.5.2 G Prudential consolidation under this section and the *group capital test* under *MIFIDPRU* 2.6 are mutually exclusive requirements that may apply to an *investment firm group*. If an *investment firm group* is not permitted to use the *group capital test* under *MIFIDPRU* 2.6, the consolidation requirements in this section will apply to that *investment firm group*, except to the extent that an exemption applies.

2.5.3 G The table below is a guide to the content of this section.

Provisions of *MIFIDPRU* 2.5	**Summary of content**
MIFIDPRU 2.5.4G	The interaction between prudential consolidation under *MIFIDPRU* 2.5 and prudential consolidation under the *UK CRR*
MIFIDPRU 2.5.5G	The meaning of the *consolidated situation*
MIFIDPRU 2.5.6G	The treatment of *tied agents* included within the *consolidated situation*
MIFIDPRU 2.5.7R to 2.5.12G	The main requirements in relation to prudential consolidation under *MIFIDPRU* 2.5
MIFIDPRU 2.5.13R to 2.5.16G	The default position requiring full consolidation and the availability of alternative methods of consolidation
MIFIDPRU 2.5.17R and 2.5.18G	Proportional consolidation
MIFIDPRU 2.5.19R and 2.5.20G	Exemption from consolidated liquidity requirements
MIFIDPRU 2.5.21R and 2.5.22G	Determining whether a *UK parent entity* should be treated as an *SNI MIFIDPRU investment firm* on a *consolidated basis*
MIFIDPRU 2.5.23G	Determining consolidated *own funds*
MIFIDPRU 2.5.24G to 2.5.46R	Determining the consolidated *own funds requirement*
MIFIDPRU 2.5.47R and 2.5.48G	Consolidated liquidity requirements
MIFIDPRU 2.5.49G	Consolidated disclosure requirements
MIFIDPRU 2.5.50G	Consolidated reporting requirements
MIFIDPRU 2.5.51G	Consolidated governance requirements
MIFIDPRU 2.5.52G	Application of the *ICARA process* on a group basis

Interaction between consolidation under MIFIDPRU and the UK CRR

2.5.4 G (1) Under this section, prudential consolidation applies where there is an *investment firm group*. The definition of an *investment firm group* excludes a *group* which contains a *UK credit institution* (except where the *credit institution* is a *connected undertaking*). Where a *group* includes a *UK credit institution*, prudential consolidation applies in accordance with the *UK CRR* and the *PRA Rulebook*.

(2) However, a *group* may be an *investment firm group* where it contains both a *MIFIDPRU investment firm* and a *designated investment firm* subject to the *UK CRR*, but no *UK credit institution*. In this case, the *MIFIDPRU investment firm* would trigger prudential consolidation under this section and the *designated investment firm* would trigger consolidation under the *UK CRR*. Therefore, certain group structures may be subject to consolidation under both *MIFIDPRU* and the *UK CRR*, with the same entities included within the scope of consolidation of each. In this situation, the relevant *group* must comply with both sets of consolidated requirements, which are aimed at addressing different types of risks.

Meaning of "consolidated situation"

2.5.5 G (1) The application of prudential consolidation under this section is based on the *consolidated situation* of a *UK parent entity*.

(2) A *consolidated situation* is defined as the situation that results from applying requirements in *MIFIDPRU* under *MIFIDPRU* 2.5.7R and *MIFIDPRU* 2.5.11R to a *UK parent entity*, as if it and the *relevant financial undertakings* in its *investment firm group*, form a single *MIFIDPRU investment firm*.

(3) For the purposes of the *consolidated situation*, the term "*relevant financial undertaking*" and the underlying definitions of "*investment firm*", "*financial institution*", "*ancillary services undertaking*" and "*tied agent*" include *undertakings* established outside the *UK* that would satisfy those definitions if they were established in the *UK*.

Tied agents included within the consolidated situation

2.5.6 G (1) If a *tied agent* is included within the *consolidated situation*, all relevant activities and expenditure of that *tied agent* will be consolidated in full (or, where proportional consolidation applies, the relevant proportion of the activities of that *tied agent* will be consolidated) for the purpose of calculating the consolidated *fixed overheads requirement* and the consolidated *K-factor requirement*. This applies whether the *tied agent* carries out *investment services and/or activities* or incurs relevant expenses on behalf of another entity within the *consolidated situation* or on behalf of a third party.

(2) The *guidance* in (1) relates to a *tied agent* that is included within the *consolidated situation*. There are separate requirements in:

(a) *MIFIDPRU* 4.5.6R, which applies in relation to the individual *fixed overheads requirement* of a *MIFIDPRU investment firm* where a *tied agent* incurs expenses on behalf of that *firm*; and

(b) *MIFIDPRU* 4.7.2R, *MIFIDPRU* 4.8.3R, *MIFIDPRU* 4.9.2R or *MIFIDPRU* 4.10.2R, which apply in relation to the individual *K-factor requirement* of a *MIFIDPRU investment firm* where a *tied agent* carries on certain *investment services and/or activities* on behalf of that *firm*.

These requirements apply in relation to the calculation of the individual *fixed overheads requirement* and *K-factor requirement* of a *MIFIDPRU investment firm*, even if the *tied agent* is not part of the same *investment firm group* as that *MIFIDPRU investment firm*. Where *MIFIDPRU* 4 applies on a *consolidated basis*, those requirements will also be relevant to any activities carried on by *tied agents* on behalf of a *third country investment firm* included within the *consolidated situation*.

(3) Where the requirements in (2)(a) or (2)(b) apply in relation to a *MIFIDPRU investment firm* or a *third country investment firm* that is included within the *consolidated situation*, the relevant amounts that are added to the individual requirements of that *MIFIDPRU investment firm* or *third country investment firm* due to the activities of the *tied agent* must be included in the *consolidated situation*, irrespective of whether the *tied agent* is itself included within the *consolidated situation*.

(4) An individual *tied agent* ("A") may both:

(a) be included within the *consolidated situation*; and

(b) incur expenses or carry on *investment services and/or activities* on behalf of a *MIFIDPRU investment firm* or *third country investment firm* ("B") where B is also included in the *consolidated situation*.

In this case, the contribution of A to the consolidated *fixed overheads requirement* and consolidated *K-factor requirement* may be adjusted to prevent double-counting of any amounts due to B being included in the *consolidated situation* and a proportion of A's activities or expenses having already been attributed to B.

Prudential consolidation – main requirements

2.5.7 R A *UK parent entity* must comply with the following on the basis of its *consolidated situation*:

(1) *MIFIDPRU* 3 (Own funds);

(2) *MIFIDPRU* 4 (Own funds requirements);

(3) *MIFIDPRU* 5 (Concentration risk);

(4) *MIFIDPRU* 8 (Disclosure); and

(5) *MIFIDPRU* 9 (Reporting).

2.5.8 R To ensure that the data required to comply with the consolidated requirements under *MIFIDPRU* 2.5.7R are duly processed and forwarded, a *UK parent entity* to which *MIFIDPRU* 2.5.7R applies and any *MIFIDPRU investment firm* in the same *investment firm group* must establish the following:

(1) a proper organisational structure; and

(2) appropriate internal control mechanisms.

2.5.9 R A *UK parent entity* to which *MIFIDPRU* 2.5.7R applies and any *MIFIDPRU investment firm* in the same *investment firm group* must each ensure that any of their *subsidiaries* that are not subject to *MIFIDPRU* implement the necessary arrangements, processes and mechanisms to ensure that the *UK parent entity* complies with the consolidated requirements under *MIFIDPRU* 2.5.7R.

2.5.10 R (1) When applying *MIFIDPRU* 3 on a *consolidated basis*, the requirements in Title II of Part Two of the *UK CRR* shall also apply.

(2) When applying the provisions of article 84(1), article 85(1) and article 87(1) of the *UK CRR* under (1):

(a) where those provisions refer to other provisions of the *UK CRR* that impose own funds requirements, only the references to article 92(1) of the *UK CRR* apply; and

(b) the references to article 92(1) of the *UK CRR* must be read as if they were references to the *own funds requirement* under *MIFIDPRU*.

2.5.11 R A *UK parent entity* must comply with *MIFIDPRU* 6 (Liquidity) on the basis of its *consolidated situation*.

2.5.12 G *MIFIDPRU* 2.5.7R to 2.5.11R require a *UK parent entity* to comply with other chapters of *MIFIDPRU* on the basis of its *consolidated* *situation*. Certain requirements in those chapters do not apply, or apply in a modified manner, to *SNI MIFIDPRU investment firms*. *MIFIDPRU* 2.5.21R explains how the *UK parent entity* should determine whether it should be treated as an *SNI MIFIDPRU investment firm* on the basis of its *consolidated situation*.

Default position: full consolidation of relevant entities

2.5.13 R (1) For the purposes of determining the *consolidated situation* under *MIFIDPRU* 2.5.7R and *MIFIDPRU* 2.5.11R, a *UK parent entity* must carry out a full consolidation of all *relevant financial undertakings* that form part of its *investment firm group*, unless (2) applies.

(2) A *UK parent entity* is not required to carry out a full consolidation of a *relevant financial undertaking* under (1) where:

(a) the *relevant financial undertaking* is a *connected undertaking* that forms part of the *investment firm group* due to a *participation* in accordance with *MIFIDPRU* 2.4.15R; and

(b) the conditions for proportional consolidation under *MIFIDPRU* 2.5.17R are satisfied.

2.5.14 G A *UK parent entity* that is subject to *MIFIDPRU* 2.5.13R(1) may apply to the *FCA* under section 138A of the *Act* to modify the application of *MIFIDPRU* 2.5.13R(1) to require an alternative method of consolidation.

2.5.15 G When the *FCA* considers an application described in *MIFIDPRU* 2.5.14G, it will consider a range of factors, including whether full consolidation is appropriate because the *UK parent entity* or a *MIFIDPRU investment firm* within the same *investment firm group*:

(1) acts as sponsor by managing or advising the *relevant financial undertaking* or marketing its securities;

(2) provides liquidity or credit enhancements to the *relevant financial undertaking*;

(3) is an important investor in the equity or debt instruments of the *relevant financial undertaking*;

(4) through contractual or non-contractual relationships, is exposed to risks or equity-like returns that are derived from the assets of the *relevant financial undertaking* or that are dependent upon the performance of that *undertaking*;

(5) is effectively involved in the decision-making process of the *relevant financial undertaking* or exercises influence over that

undertaking;

(6) receives critical operational services from the *relevant financial undertaking* which cannot be replaced in a timely fashion without excessive cost;

(7) has a credit rating upon which the credit rating of the *relevant financial undertaking* is based;

(8) has a close commercial relationship with other investors in the *relevant financial undertaking*;

(9) has a common customer base with the *relevant financial undertaking* or is involved in the commercialisation of its products;

(10) is part of the same brand as the *relevant financial undertaking*;

(11) has already provided financial support to the *relevant financial undertaking* in relation to financial difficulties; or

(12) incurs a disproportionate amount of the expenses connected with the business operations of the *relevant financial undertaking*.

2.5.16 G The *FCA* would generally expect that the alternative method of consolidation proposed in an application described in *MIFIDPRU* 2.5.14G would involve either:

(1) proportional consolidation according to the share of the capital or voting rights held in the *relevant financial undertaking*, in which case the *FCA* will take into account factors equivalent to those set out in *MIFIDPRU* 2.5.17R(2) in addition to the factors in *MIFIDPRU* 2.5.15G; or

(2) consolidation of an appropriate alternative fixed percentage of the relevant metrics attributable to the *relevant financial undertaking*.

Proportional consolidation: participations

2.5.17 R (1) This *rule* applies where a *relevant financial undertaking* forms part of an *investment firm group* because it is a *connected undertaking* due to a *participation* in accordance with *MIFIDPRU* 2.4.15R.

(2) For the purposes of determining the *consolidated situation* under *MIFIDPRU* 2.5.7R and *MIFIDPRU* 2.5.11R, a *UK parent entity* (“A”) may apply proportional consolidation in relation to the *relevant financial undertaking* in (1) (“B”) if the following conditions are met:

(a) A's liability is limited to the share of capital that it holds in B;

(b) the liability of the other shareholders or members of B ("participating undertakings") is clearly established by a legally binding and enforceable contract between A and all participating undertakings which:

(i) limits the liability of each party to the percentage of its shareholding;

(ii) clearly states that any potential losses arising from B will be borne by all shareholders or members proportionately to the share of capital held by each of them at such point in time;

(iii) states that any change in the share of capital of a shareholder or member is subject to the explicit consent of all the shareholders or members;

(iv) states that if B is recapitalised, A will inform the *FCA* in a timely manner about the progress of the recapitalisation process and that each shareholder or member is liable to contribute to the recapitalisation no more than an amount that is proportionate to its current share of capital held in A;

(c) there are no other agreements or arrangements between any of the following that would override or undermine any of the conditions in (b);

(i) some or all of the participating undertakings; or

(ii) some or all of the participating undertakings and one or more third parties;

(d) any participating undertakings who do not form part of the same *investment firm group* as A either:

(i) are subject to prudential supervision; or

(ii) can reasonably be expected to have sufficient resources to fund any contribution for which they may be liable under (b)(iv);

(e) the solvency of the participating undertakings is satisfactory and can be expected to remain satisfactory;

(f) the *UK parent entity* has notified the *FCA* in advance that it intends to apply proportional consolidation in relation to B; and

(g) the notification in (f) has been made using the form in *MIFIDPRU* 2 Annex 3R and submitted using the *online notification and application system*.

2.5.18 G Proportional consolidation allows a *UK parent entity* to include within its *consolidated situation* only a proportion of the relevant metrics associated with the *relevant financial undertaking* to which it is connected by a *participation*. The relevant proportion is equal to the proportion of capital or voting rights that comprises that *participation*.

Exemption from consolidated liquidity requirements

2.5.19 R A *UK parent entity* is exempt from *MIFIDPRU* 2.5.11R if:

(1) the *UK parent entity* has applied to the *FCA* in accordance with *MIFIDPRU* 2.5.20R; and

(2) the application in (1) demonstrates the following to the satisfaction of the *FCA*:

(a) all *MIFIDPRU investment firms* in the *investment firm group* are subject to the *rules* in *MIFIDPRU* 6 (Liquidity) on an individual basis; and

(b) the exemption is appropriate, taking into account the nature, scale and complexity of the *investment firm group*.

2.5.20 R A *UK parent entity* must make an application under *MIFIDPRU* 2.5.19R(1) by completing the form in *MIFIDPRU* 2 Annex 4R and submitting it using the *online notification and application system*.

Application of conditions for classification as an SNI MIFIDPRU investment firm on a consolidated basis

2.5.21 R (1) This *rule* applies for the purpose of determining whether a *UK parent entity* should be treated as an *SNI MIFIDPRU investment firm* when applying the chapters of *MIFIDPRU* specified in *MIFIDPRU* 2.5.7R and 2.5.11R on a *consolidated basis*.

(2) Where any individual *MIFIDPRU investment firm* within the *investment firm group* has been classified as a *non-SNI MIFIDPRU investment firm* in accordance with *MIFIDPRU* 1.2 (including on a combined basis under *MIFIDPRU* 1.2.10R), the *UK parent entity* in (1) must comply with the relevant chapters of *MIFIDPRU* that apply on a *consolidated basis* as if it were a *non-SNI MIFIDPRU investment firm*.

(3) Where no individual *MIFIDPRU investment firm* within the *investment firm group* has been classified as a *non-SNI MIFIDPRU investment firm* (including on a combined basis under *MIFIDPRU* 1.2.10R), the *UK parent entity* in (1) must apply the criteria and comply with the calculation requirements in *MIFIDPRU* 1.2 on the basis of the *consolidated situation*.

(4) When applying the criteria in *MIFIDPRU* 1.2 in accordance with (3), if any entity included within the *consolidated situation* is *dealing on own account*, the *UK parent entity* in (1) must comply with the relevant chapters of *MIFIDPRU* that apply on a *consolidated basis* as if it were a *non-SNI MIFIDPRU investment firm*.

(5) For the purposes of (3), when calculating the contribution of a *collective portfolio management investment firm* to the *consolidated situation*, the *UK parent entity* is required to include only amounts that are attributable to the *investment services and/or activities* carried on by the *collective portfolio management investment firm*.

2.5.22 G (1) *MIFIDPRU* 2.5.21R(3) requires the relevant *UK parent entity* to consolidate all of the relevant metrics for the criteria in *MIFIDPRU* 1.2.1R.

(2) This is separate from the application of only certain metrics (*AUM*, *COH*, the on- and off-balance sheet total and the total annual gross revenue) on a combined basis to an individual *MIFIDPRU investment firm* under *MIFIDPRU* 1.2.10R.

(3) If any of the thresholds in *MIFIDPRU* 1.2.1R are exceeded on a *consolidated basis*, the relevant chapters of *MIFIDPRU* specified in *MIFIDPRU* 2.5.7R and 2.5.11R apply to the *UK parent entity* as if it were a *non-SNI MIFIDPRU investment firm*. However, if none of the thresholds in *MIFIDPRU* 1.2.1R are exceeded on a *consolidated basis*, the relevant chapters of *MIFIDPRU* that apply on a *consolidated basis* apply to the *UK parent entity* as if it were an *SNI MIFIDPRU investment firm*.

(4) When calculating whether the thresholds in *MIFIDPRU* 1.2.1R are exceeded on a *consolidated basis*, MIFIDPRU 2.5.21R(5) permits a *UK parent entity* to exclude amounts that relate to its *non-MiFID business*. However, a *UK parent entity* should not apply this approach to the calculation of the consolidated on- and off-balance sheet total for the purposes of *MIFIDPRU* 1.2.1R(6). This is because the *FCA* does not consider that it is reasonable to subdivide a *collective portfolio management investment firm's* balance sheet in this way. Therefore, a *UK parent entity* should include the full on- and off-balance sheet

total of a *collective portfolio management investment firm* in the consolidated total for these purposes.

Prudential consolidation in practice: own funds

2.5.23 G (1) Where *MIFIDPRU* 3 applies on a *consolidated basis*, the total consolidated *own funds requirement* of an *investment firm group* must be met by consolidated *own funds*. Consolidated *own funds* must satisfy the requirements of *MIFIDPRU* 3 and the deductions from consolidated *own funds* must be applied in accordance with that chapter as it applies on a *consolidated basis*.

(2) *MIFIDPRU* 2.5.10R applies the provisions on minority interests and *additional tier 1 instruments* and *tier 2 instruments* issued by *subsidiaries* in Title II of Part Two of the *UK CRR* to a *UK parent entity*, but with the modifications set out in that *rule*.

(3) The determination of consolidated *own funds* should be consistent with any reporting of consolidated financial statements that the *FCA* may require. Under section 165(6) and (7) of the *Act*, the *FCA* may require a *UK parent entity* to provide independent verification of the calculation of its consolidated *own funds*.

Prudential consolidation in practice: own funds requirement

General

2.5.24 G (1) Generally, the same approach to *own funds requirements* that applies to a *MIFIDPRU investment firm* on an individual basis under *MIFIDPRU* 4 applies to a *UK parent entity* on a *consolidated basis*.

(2) Where *MIFIDPRU* 4 applies on a *consolidated basis*, the consolidated *own funds requirement* is the highest of the components of the *own funds requirement* specified in *MIFIDPRU* 4.3 as they apply on a *consolidated basis* – i.e. the highest of:

(a) the consolidated *fixed overheads requirement*;

(b) the consolidated *permanent minimum capital requirement*; or

(c) the consolidated *K-factor requirement* if the *UK parent entity* is treated as a *non-SNI MIFIDPRU investment firm* in accordance with *MIFIDPRU* 2.5.21R.

Consolidated fixed overheads requirement

2.5.25 R (1) This *rule* applies for the purposes of a *UK parent entity's* calculation of the *fixed overheads requirement* on a *consolidated basis*.

(2) A *UK parent entity* must:

(a) use figures arising from its most recent:

(i) audited consolidated *annual financial statements* after distribution of profits; or

(ii) unaudited consolidated *annual financial statements*, where audited financial statements are not available;

(b) if the relevant figures under (a) are not available, calculate the consolidated fixed overheads as the sum of the following:

(i) the individual fixed overheads of the *UK parent entity*;

(ii) the full amount of the individual fixed overheads of each *relevant financial undertaking* that is fully consolidated within the *consolidated situation*; and

(iii) the relevant proportion of the individual fixed overheads of each *relevant financial undertaking* that is subject to proportional consolidation on a *consolidated basis*.

(3) Where these amounts are not already included in the relevant figures under (2), a *UK parent entity* must include within its calculation of the consolidated fixed overheads any fixed expenses incurred by a third party, including a *tied agent*, on behalf of:

(a) the *UK parent entity*; or

(b) any *relevant financial undertaking* included in the *consolidated situation*.

(4) Where the figures under (2)(b) include expenses that are incurred between entities included in the *consolidated situation*, the *UK parent entity* may adjust the consolidated fixed overheads figure to avoid double-counting of these amounts.

2.5.26 G Where the *FCA* considers that there has been a material change in the activities of the *investment firm group*, the *FCA* may use its powers under section 55L or section 143K of the *Act* to require a *UK parent* *entity* to use an appropriate adjusted figure as the consolidated *fixed overheads requirement*.

Consolidated permanent minimum capital requirement

2.5.27 R (1) This *rule* applies for the purposes of a *UK parent entity's* calculation of the consolidated *permanent minimum capital requirement* when *MIFIDPRU* 4 applies on a *consolidated basis*.

(2) The consolidated *permanent minimum capital requirement* is the sum of the following:

(a) for entities that are fully consolidated within the *consolidated situation*, the full amount of each of the following:

(i) the individual *permanent minimum capital requirement* of each *MIFIDPRU investment firm*; and

(ii) where applicable, the base own funds requirement or initial capital requirement of any other *relevant financial undertaking*; and

(b) for entities that are subject to proportional consolidation under the *consolidated situation*, the relevant proportion of each of the amounts specified in (a).

(3) For the purposes of (2):

(a) references to a *MIFIDPRU investment firm* include a *third country* entity within the *investment firm group* that would satisfy the definition if it were established in the *UK*; and

(b) the individual *permanent minimum capital requirement*, base own funds requirement or initial capital requirement of any *third country* entity in (a) is the individual requirement that would apply if that entity were established in the *UK*.

Consolidated K-Factor Requirement

2.5.28 G (1) The general principle is that the consolidated *K-factor requirement* should be calculated on the basis of the *consolidated situation* of a *UK parent entity*, so that the entities included in the *consolidated situation* are treated as if they form a single *MIFIDPRU investment firm*. This is subject to any *rules* in this section which require a modified approach to the relevant calculation on a *consolidated basis*.

(2) As is the case when calculating the *K-factor requirement* on an individual basis, the *K-factor metrics* that are relevant to the *consolidated situation* depend on the *investment services and/or activities* (or equivalent activities in the case of a *third country* entity) carried on by relevant entities within the *investment firm group*. The consolidated *K-factor requirement* should be calculated in accordance with *MIFIDPRU* 4*,* but on the basis of the *consolidated situation*.

(3) *MIFIDPRU* 2.5.6G contains additional *guidance* on how the consolidated *K-factor requirement* applies in relation to *tied agents* that are included within the *consolidated situation*.

Consolidated K-AUM, K-COH and K-DTF requirements

2.5.29 R (1) This *rule* applies for the purposes of a *UK parent entity's* calculation on a *consolidated basis* of the following:

(a) the *K-AUM requirement*;

(b) the *K-COH requirement*; and

(c) the *K-DTF requirement*.

(2) Subject to (4), the consolidated *AUM*, *COH* or *DTF* for the purposes of (1) is the sum of the following:

(a) the full amount of the relevant individual *K-factor metrics* of each *MIFIDPRU investment firm* that is fully consolidated within the *consolidated situation*; and

(b) the relevant proportion of the relevant individual *K-factor metrics* of each *MIFIDPRU investment firm* that is subject to proportional consolidation on a *consolidated basis*.

(3) For the purposes of (2):

(a) references to a *MIFIDPRU investment firm* include a *third country* entity within the *investment firm group* that would satisfy that definition if it were established in the *UK*; and

(b) the relevant individual *K-factor metric* of any *third country* entity in (a) is the individual *K-factor metric* that would be attributable to that entity if that entity were established in the *UK*.

(4) Where the consolidated *AUM*, *COH* or *DTF* under (2) includes amounts attributable to transactions or arrangements solely between two or more entities included within the *consolidated*

situation, those amounts are excluded when calculating the consolidated *AUM*, *COH* or *DTF*.

Consolidated K-CMH and K-ASA requirements

2.5.30 R The consolidated *K-CMH requirement* and consolidated *K-ASA requirement* for an *investment firm group* must be calculated in accordance with the following:

(1) the contribution of any individual *MIFIDPRU investment firm* to the *consolidated situation* must be determined by applying the *rules* for calculating *CMH* and *ASA* in *MIFIDPRU* 4.8 and 4.9 to that individual *firm*; and

(2) the contribution of any other entity ("X") in the *investment firm group* to the *consolidated situation* must be determined by:

(a) identifying whether, in the course of, or in connection with, business which would be *MiFID business* if it were carried on by a *MIFIDPRU investment firm* in the *UK*, X holds:

(i) any *money* that was received from its *clients*; or

(ii) any assets belonging to its *clients*;

(b) subject to (3), applying the calculation *rules* in *MIFIDPRU* 4.8 or 4.9 to the amounts in (a) by treating:

(i) the amounts identified in (a)(i) as *CMH*;

(ii) the amounts identified in (a)(ii) as *ASA*;

(c) where an amount under (a) was originally received by X from a client in the form of money but has subsequently been placed in a collective investment undertaking to meet segregation requirements, treating the relevant amount as:

(i) *ASA* if, on the insolvency of X, the relevant client would be considered to have a direct proprietary interest in the relevant units, *shares* or equivalent interests in the collective investment undertaking; or

(ii) *CMH* in any other circumstance.

(3) when applying the calculation *rules* in *MIFIDPRU* 4.8, an arrangement operated by X in relation to client money is a *segregated account* only if (ignoring *MIFIDPRU* 4.8.9E, which does not apply for these purposes) it meets the requirements in *MIFIDPRU* 4.8.8R.

2.5.31 R Where the *UK parent entity* of the *investment firm group* has been unable to ascertain whether:

(1) the money or assets referred to in *MIFIDPRU* 2.5.30R(2)(a) were received or are held in the course of, or in connection with, business which would be *MiFID business* if it were carried on by a *MIFIDPRU investment firm* in the *UK*, it must treat the amounts as if they were received or are held in connection with such business;

(2) any amount treated as *CMH* held by X under *MIFIDPRU* 2.5.30R(2) is held in an account which meets the requirements to be classified as a *segregated account*, it must treat the relevant amount as held in a *non-segregated account*; and

(3) a client would be considered to have a direct proprietary interest in a *unit*, *share* or equivalent interest in a collective investment undertaking on the insolvency of X for the purposes of *MIFIDPRU* 2.5.30R(2)(c), it must treat the relevant amount as *CMH*.

Consolidated K-NPR and K-CMG requirements

2.5.32 R A *UK parent entity* must apply the relevant provisions for the calculation of the *K-NPR requirement* in *MIFIDPRU* 4 to a position or exposure included in the *consolidated situation* unless a *rule* in this section:

(1) permits the *UK parent entity* to include that position or exposure within the calculation of the consolidated *K-CMG requirement*; or

(2) otherwise permits the position or exposure to be excluded from the calculation of the consolidated *K-NPR requirement*.

2.5.33 G For the *K-NPR requirement* there is no coefficient in *MIFIDPRU* 4. The requirement is instead based upon the concept of positions and exposures.

2.5.34 R (1) This *rule* applies to a *UK parent entity* when calculating the *K-NPR requirement* on a *consolidated basis*.

(2) The *UK parent entity* may only use positions in one *undertaking* to offset positions in another *undertaking* if it has obtained permission to do so in accordance with (3).

(3) The permission in (2) will only be granted where:

(a) the *UK parent entity* has applied to the *FCA* in accordance with (4); and

(b) the application demonstrates to the satisfaction of the *FCA* that the conditions in article 325b of the *UK CRR* are met.

(4) An entity that applies for a permission under (3) must complete the form in *MIFIDPRU* 2 Annex 5R and submit it using the *online notification and application system*.

2.5.35 G The effect of *MIFIDPRU* 2.5.34R is that there is no automatic offsetting of positions held by different *undertakings* within an *investment firm group* for the purposes of applying the *K-NPR requirement* on a *consolidated basis*. If a *UK parent entity* has not obtained permission under *MIFIDPRU* 2.5.34R, it must include all positions held by the relevant *undertakings* within the *investment firm group* within its calculation of the consolidated *K-NPR requirement* without netting such positions.

2.5.36 G (1) *MIFIDPRU* 2.5.37R to 2.5.42R explain the circumstances in which a *UK parent entity* may calculate a *K-CMG requirement* when applying *MIFIDPRU* 4 on a *consolidated basis*. Where a *UK parent entity* is not permitted to calculate a *K-CMG requirement* in relation to a relevant position included within its *consolidated situation*, it must include that position within its calculation of the consolidated *K-NPR requirement*.

(2) *MIFIDPRU* 4.13 permits a *MIFIDPRU investment firm* on an individual basis to calculate a *K-CMG requirement* for a portfolio in *trading book* if it has obtained a *K-CMG permission* from the *FCA*. A *MIFIDPRU investment firm* must calculate a *K-NPR requirement* in relation to all other *trading book* positions, and positions other than *trading book* positions where those positions give rise to foreign exchange risk or commodity risk. These positions must be included within the calculation of the *consolidated K-NPR requirement*.

2.5.37 R When applying *MIFIDPRU* 4 on a *consolidated basis*, a *UK parent entity* may calculate a consolidated *K-CMG requirement* in relation to *portfolios* that form part of its *consolidated situation* in accordance with *MIFIDPRU* 2.5.38R to 2.5.42R.

2.5.38 R (1) This *rule* applies where a *MIFIDPRU investment firm*:

(a) is included within the *consolidated situation* of a *UK parent entity*; and

(b) has been granted a *K-CMG permission* in relation to a *portfolio* on an individual basis.

(2) Where this *rule* applies, the *UK parent entity* may include the *portfolio* in (1)(b) within its calculation of the consolidated *K-*

CMG requirement without requiring a further *K-CMG permission*.

2.5.39 G *MIFIDPRU* 2.5.38R sets out the only circumstance in which a *UK parent entity* can include a *portfolio* of a *MIFIDPRU investment firm* within the calculation of the consolidated *K-CMG requirement*. Unlike for *designated investment firms* under *MIFIDPRU* 2.5.40R and *third country* entities under *MIFIDPRU* 2.5.41R, it is not possible to make a separate application to calculate a *K-CMG requirement* in relation to that *portfolio* only on a *consolidated basis*. This reflects the *FCA's* view that the choice of whether to calculate a *K-NPR requirement* or a *K-CMG requirement* in relation to a specific *portfolio* must be applied consistently on both an individual and consolidated level.

2.5.40 R (1) This *rule* applies where a *designated investment firm* ("A") is included within the *consolidated situation* of a *UK parent entity*.

(2) A *UK parent entity* may include a *portfolio* of A within the calculation of the *UK parent entity's* consolidated *K-CMG requirement* if:

(a) the *UK parent entity*, or a *MIFIDPRU investment firm* within the same *investment firm group*, has applied to the *FCA* in accordance with *MIFIDPRU* 2.5.42R; and

(b) the application demonstrates to the satisfaction of the *FCA* that A satisfies the requirements in *MIFIDPRU* 4.13 as modified by (3) to obtain a *K-CMG permission* in respect of the portfolio on an individual basis.

(3) For the purposes of (2), the following modifications apply to the *rules* relating to the calculation of the *K-CMG requirement* in *MIFIDPRU* 4.13:

(a) a reference to the "*MIFIDPRU investment firm*" or "*firm*" is a reference to A;

(b) the clearing member in *MIFIDPRU* 4.13.9R(2)(c) may be one of the following:

(i) A itself;

(ii) another *designated investment firm*;

(iii) a *MIFIDPRU investment firm*;

(iv) a *third country investment firm*;

(v) a *UK credit institution*; or

(vi) a *credit institution* established in a *third country*.

(c) the reference in *MIFIDPRU* 4.13.12R to *MIFIDPRU* 4.13.9R is a reference to *MIFIDPRU* 4.13.9R as modified by this *rule*; and

(d) the requirement in *MIFIDPRU* 4.13.13R(1)(b) does not apply, but A must ensure that its ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed take into account the understanding of relevant *individuals* within A of the margin model for the purposes of considering whether:

(i) the resulting consolidated *K-CMG requirement* for the portfolio(s) is sufficient to cover the relevant risks to which A is exposed; and

(ii) the *K-CMG permission* remains appropriate in relation to the portfolio(s) in respect of which it was granted.

2.5.41 R (1) This *rule* applies where a *third country* entity ("B") is included within the *consolidated situation* of a *UK parent entity*.

(2) A *UK parent entity* may include a portfolio of B within the calculation of the *UK parent entity's* consolidated *K-CMG requirement* if:

(a) the *UK parent entity*, or a *MIFIDPRU investment firm* within the same *investment firm group*, has applied to the *FCA* in accordance with *MIFIDPRU* 2.5.42R; and

(b) the application demonstrates to the satisfaction of the *FCA* that B satisfies the requirements in *MIFIDPRU* 4.13 as modified by (3) to obtain a *K-CMG permission* in respect of the portfolio on an individual basis.

(3) For the purposes of (2), the following modifications apply to the *rules* relating to the calculation of the *K-CMG requirement* in *MIFIDPRU* 4.13:

(a) a reference to the "*MIFIDPRU investment firm*" or "*firm*" is a reference to B;

(b) the *clearing member* for the purposes of *MIFIDPRU* 4.13.9R(2)(c) may be any of the following:

(i) an entity listed in *MIFIDPRU* 4.13.9R(2)(c);

(ii) another entity that the application in (2)(a) demonstrates is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates; or

(iii) B itself, provided that the application demonstrates that B satisfies the conditions in (ii);

(c) a reference to the "*clearing member*" is a reference to the *clearing member* in (b);

(d) the reference in *MIFIDPRU* 4.13.12R to:

(i) *MIFIDPRU* 4.13.9R is a reference to *MIFIDPRU* 4.13.9R as modified by this *rule*; and

(ii) both the *clearing member* and *client* of the *clearing member* being entities listed in *MIFIDPRU* 4.13.9R(2)(c) is to both of those entities being entities listed in (b)(i) or (b)(ii);

(e) the obligation in *MIFIDPRU* 4.13.13R(1)(b) does not apply, but B must ensure that its ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed incorporate the understanding of relevant *individuals* within B of the margin model for the purposes of considering whether:

(i) the resulting consolidated *K-CMG requirement* for the *portfolio(s)* is sufficient to cover the relevant risks to which B is exposed; and

(ii) the *K-CMG permission* remains appropriate in relation to the *portfolio(s)* in respect of which it was granted.

2.5.42 R (1) A *UK parent entity* or a *MIFIDPRU investment firm* within the same *investment firm group* that wishes to apply for a *K-CMG permission* in relation to one or more *portfolios* included in the *consolidated situation* of its *investment firm group* must complete the application form in *MIFIDPRU* 2 Annex 6R or *MIFIDPRU* Annex 7R and submit it using the *online notification and application system*.

(2) A single application under (1) may be made in respect of multiple portfolios of multiple entities referenced in *MIFIDPRU* 2.5.40R or 2.5.41R, provided that the application demonstrates to the *FCA* how the relevant conditions in *MIFIDPRU* 4.13.9R (as modified by *MIFIDPRU* 2.5.40R(3) in relation to a *portfolio* of a *designated investment firm* or *MIFIDPRU* 2.5.41R(3) in relation to a *portfolio* of a *third country* entity) are satisfied in respect of each such *portfolio*.

(3) A *UK parent entity* or *MIFIDPRU investment firm* that submits an application under (1) must have the necessary authority to make the application on behalf of all entities within the *investment firm group* whose portfolios are the subject of that application.

Consolidated K-TCD requirement

2.5.43 G (1) For the *K-TCD requirement* there is no coefficient in *MIFIDPRU* 4. The requirement is instead based upon the concept of positions and exposures. The relevant provisions in *MIFIDPRU* 4 for calculating the *K-TCD requirement* should therefore also be applied to transactions included in the *consolidated situation*.

(2) When calculating the *K-TCD requirement* on a *consolidated basis*, transactions between counterparties included in the *consolidated situation* are disregarded. This applies irrespective of whether the exclusion in *MIFIDPRU* 4.14.6R applies to a transaction when a *MIFIDPRU investment firm* is calculating its *K-TCD requirement* on an individual basis.

2.5.44 R (1) When calculating its *K-TCD requirement* on a *consolidated basis*, a *UK parent entity* may only net offsetting transactions entered into between one or more entities included in the *consolidated situation* and a third party counterparty if the conditions in *MIFIDPRU* 4.14.28R, as modified by (2), are met.

(2) When applying *MIFIDPRU* 4.14.28R on the basis of the *consolidated situation*, the following modifications apply:

(a) any netting agreement or netting contract referenced in that *rule* must cover all entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted;

(b) any references in that *rule* to the rights and obligations of the "*firm*" refer to the rights and obligations of the entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted; and

(c) the legal opinion referenced in *MIFIDPRU* 4.14.28R(3)(c):

(i) may be obtained by the *UK parent entity* or any *MIFIDPRU investment firm* in the *investment firm group*; and

(ii) must address the relevant claims and obligations of all entities included in the *consolidated situation* whose transactions with the same third party counterparty are being netted.

Consolidated K-CON requirement

2.5.45 G (1) The *K-CON requirement* under *MIFIDPRU* 5 applies to a *MIFIDPRU investment firm* on an individual basis in relation to positions held in its *trading book*. Broadly, the *K-CON requirement* is calculated by reference to all relevant *trading book* exposures that exceed the *concentration risk soft limit*.

(2) *MIFIDPRU* 2.5.46R explains how the *K-CON requirement* applies on a *consolidated basis*.

2.5.46 R When a *UK parent entity* is calculating a *K-CON requirement* on the basis of its *consolidated situation*, the provisions in *MIFIDPRU* 5 apply, subject to the following:

(1) the *exposure value* with regard to an individual *client* or *group of connected clients* must be calculated on the basis of all relevant exposures included in the *consolidated situation*;

(2) to the extent that the calculation *rules* for the *K-NPR requirement* or *K-TCD requirement* are relevant to the calculation of an *exposure value* under *MIFIDPRU* 5.4 or the *OFR* under *MIFIDPRU* 5.7.3R(2), the *UK parent entity* must apply the methods for the calculation of the consolidated *K-NPR requirement* in *MIFIDPRU* 2.5.32R to 2.5.34R and consolidated *K-TCD requirement* in 2.5.43G to 2.5.44R; and

(3) the *own funds* to be used for the purposes of calculating the limits in *MIFIDPRU* 5.5 and *MIFIDPRU* 5.9 on a *consolidated basis* are the consolidated *own funds* of the *investment firm group*, as explained in the *guidance* in *MIFIDPRU* 2.5.23G.

Prudential consolidation in practice: liquidity

2.5.47 R When applying *MIFIDPRU* 6 on a *consolidated basis*, a *UK parent entity* must ensure that the total *liquid assets* held by the *UK* entities included within the *consolidated situation* are equal to or greater than the consolidated *liquid assets* requirement.

2.5.48 G (1) *MIFIDPRU* 2.5.11R requires a *UK parent entity* to comply with the liquidity requirements in *MIFIDPRU* 6 on the basis of its *consolidated situation*. In practice, this means that the *UK parent entity* must ensure that the *investment firm group* holds *liquid assets* equivalent to one third of the consolidated *fixed overhead requirement*, plus 1.6% of the total amount of any guarantees provided to *clients* by entities included within the *consolidated situation*.

(2) Under *MIFIDPRU* 2.5.47R, the required amount of consolidated liquid assets must be held by the *UK* entities included within the *consolidated situation*. This means that while *third country* entities may contribute to the consolidated *liquid assets* requirement (through the consolidated *fixed overheads requirement*), any *liquid assets* held by a *third country* entity do not count towards the *liquid assets* held by the *investment firm group* for the purposes of that *rule*.

(3) *UK parent entities* are reminded that:

(a) the consolidated *liquid assets* requirement applies only where the *UK parent entity* is subject to consolidation obligations under *MIFIDPRU* 2.5.11R. It does not apply where the *group capital test* under *MIFIDPRU* 2.6 applies to an *investment firm group* instead (although *MIFIDPRU* 6 will continue to be relevant to *MIFIDPRU investment firms* within that *investment firm group* on an individual basis in such circumstances); and

(b) a *UK parent entity* that is subject to consolidation obligations under *MIFIDPRU* 2.5.11R is exempt from the consolidated liquidity requirement if the conditions in *MIFIDPRU* 2.5.19R are met.

Prudential consolidation in practice: disclosure by investment firms

2.5.49 G [This provision has been intentionally left blank.]

Prudential consolidation in practice: reporting by investment firms

2.5.50 G Under *MIFIDPRU* 2.5.7R, a *UK parent entity* must comply with the reporting obligations in *MIFIDPRU* 9 on a *consolidated basis*. In practice, this involves reporting the same categories of information that would be reported by a *MIFIDPRU investment firm* to the *FCA* on an individual basis, but using the figures that result from applying the relevant requirements on a *consolidated basis* in accordance with this section. This does not apply to data item MIF007 (ICARA assessment questionnaire), which does not need to be submitted on a consolidated basis.

Prudential consolidation in practice: governance requirements

2.5.51 G (1) Under *MIFIDPRU* 7.1.3R, a *UK parent entity* to which *MIFIDPRU* 2.5.7R applies must comply with the general governance requirements in *MIFIDPRU* 7.2 (Senior management and systems and controls) on a *consolidated basis*. In practice, this means that the *UK parent entity* must ensure that it has a proper organisational structure, effective processes and adequate internal controls covering the business of the *investment firm group*.

(2) The requirements in *MIFIDPRU* 7.3 (Risk, remuneration and nomination committees) do not apply on a *consolidated basis*.

Prudential consolidation in practice: ICARA requirements

2.5.52 G As explained in *MIFIDPRU* 7.9.4G, an *investment firm group* is not required to operate an *ICARA process* on a *consolidated basis*. However, *MIFIDPRU* 7.9.5R permits an *investment firm group* to operate a single *group ICARA process* covering the business carried on by that *investment firm group*, provided that certain requirements are met.

2.6 The group capital test

2.6.1 R This section applies to an *investment firm group* that has been granted permission by the *FCA* to apply the *group capital test* under *MIFIDPRU* 2.4.17R.

Group capital test: requirements

2.6.2 R For the purposes of *MIFIDPRU* 2.6:

(1) 'own funds instruments' means own funds as defined in *MIFIDPRU* 3, without applying the deductions referred to in *MIFIDPRU* 3.3.6R(8), article 56(d), and article 66(d) of the *UK CRR*;

(2) the terms '*investment firm*', '*financial institution*', '*ancillary services undertaking*', '*tied agent*' and '*relevant financial undertaking*' include *undertakings* established in *third countries* that would satisfy the definitions of those terms if they were established in the *UK*.

2.6.3 G The definition of 'own funds instruments' for the purpose of *MIFIDPRU* 2.6.2R ensures that significant investments in *common equity tier 1 instruments*, *additional tier 1 instruments* and *tier 2 instruments* of financial sector entities in the *investment firm group* do not need to be deducted by a *parent undertaking* when applying the *group capital test*. This is to avoid 'double counting' of those investments.

2.6.4 G *MIFIDPRU* 3.7 contains *rules* and *guidance* on the composition of capital for *parent undertakings* subject to the *group capital test*.

2.6.5 R Where the *FCA* has granted an application under *MIFIDPRU* 2.4.17R, a *UK parent entity* and any other *GCT parent undertakings* in the *investment firm group* must hold own funds instruments sufficient to cover the sum of the following:

(1) the sum of the full book value of their holdings, subordinated claims and instruments referred to in *MIFIDPRU* 3.3.6R(8), article 56(d), and article 66(d) of the *UK CRR* in *relevant financial undertakings* in the *investment firm group*; and

(2) the total amount of their contingent liabilities in favour of *relevant financial undertakings* in the *investment firm group*.

2.6.6 G (1) Each *GCT parent undertaking* in the *investment firm group* must satisfy the *group capital test*. The *group capital test* can therefore apply at each level within the group structure. This mitigates the risk of leverage or capital gearing being introduced at levels underneath the *UK parent entity*.

(2) The requirement in *MIFIDPRU* 2.6.5R only applies to *GCT parent undertakings*. However, *MIFIDPRU* 2.6.7R imposes obligations on *GCT parent undertakings* in relation to their *subsidiaries* that are:

(a) *parent undertakings* established in a *third country*; or

(b) *parent undertakings* incorporated in, or with their principal place of business in, the *UK* that are not *GCT parent undertakings*.

(3) This prevents leverage and capital gearing being introduced into the *investment firm group* through:

(a) intermediate *parent undertakings* established in a *third country*; or

(b) intermediate *parent undertakings* in the *UK* to which the *group capital test* does not directly apply.

2.6.7 R (1) This *rule* applies where:

(a) an *investment firm group* has been granted permission to apply the *group capital test* under *MIFIDPRU* 2.4.17R; and

(b) a *parent undertaking* in that *investment firm group* is a *relevant financial undertaking* and either:

(i) is established in a *third country*; or

(ii) is incorporated in, or has its principal place of business in, the *UK* and is not a *GCT parent undertaking*.

(2) Where this *rule* applies, the *responsible UK parent* must either:

(a) ensure that the *undertaking* in (1)(b) holds own funds instruments sufficient to cover the sum of the amounts in *MIFIDPRU* 2.6.5R(1) and (2) as they would apply to that *undertaking*; or

(b) hold own funds instruments sufficient to cover the sum of the amounts in *MIFIDPRU* 2.6.5R(1) and (2) that:

(i) apply to the *responsible UK parent* itself; and

(ii) would apply to the *undertaking* in (1)(b).

2.6.8 G (1) The effect of *MIFIDPRU* 2.6.7R is shown through the example below of a hypothetical *investment firm group* that contains the following *undertakings*:

(a) a *UK parent entity* ("A");

(b) an intermediate *investment holding company* ("B"), that is incorporated in the *UK* and is a direct *subsidiary* of A;

(c) an *undertaking* established in a *third country* ("C") that would be an *investment holding company* if it were established in the *UK* and that is a direct *subsidiary* of B;

(d) an *undertaking* established in a *third country* ("D") that would be a *MIFIDPRU investment firm* if it were established in the *UK* and that is a direct *subsidiary* of C;

(e) a *MIFIDPRU investment firm* ("E") that is a direct *subsidiary* of D;

(f) a *tied agent* ("F") that is established in the *UK* and that is a direct *subsidiary* of B;

(g) an *undertaking* established in a *third country* ("G") that would be a *financial institution* if it were established in the *UK* and that is a direct *subsidiary* of C;

(h) an intermediate holding company ("H") that is incorporated in the *UK* and is a direct *subsidiary* of A; and

(i) an *authorised payment institution* ("I") that is incorporated in the *UK* and is a direct *subsidiary* of H.

(2) The *group capital test*:

(a) applies directly to A and B because they are both *GCT parent undertakings*;

(b) applies only indirectly to C and D, through the obligations imposed on the *responsible UK parent*, because C and D are *parent undertakings* established in a *third country*;

(c) applies only indirectly to H, through the obligations imposed on A in its capacity as the *responsible UK parent*, because H is not a *GCT parent undertaking*; and

(d) does not apply to E, F, G or I because they are not *parent undertakings*.

(3) In this example, B is a *responsible UK parent* because:

(a) B has two *subsidiaries* (a direct *subsidiary*, C, and an indirect *subsidiary*, D) that are both *parent undertakings* established in a *third country* and that would be *relevant financial undertakings* if they were established in the *UK*; and

(b) B does not have a *subsidiary* in the *UK* that is the *parent undertaking* of C or D. (Although F is a *UK subsidiary* of B, F is not a *parent undertaking*.) This means that there is no intermediate *parent undertaking* in the *UK* between B and either of C or D.

(4) A is not a *responsible UK parent* in relation to C and D. This is because A has a *subsidiary*, B, that is a *parent undertaking* of C and D and that is incorporated in the *UK*. B is therefore an intermediate *parent undertaking* in the *UK* between A on the one hand and C and D on the other.

(5) B is a *responsible UK parent* in relation to C and D. Note that B is the *responsible UK parent* of both C and D, even though D is only an indirect *subsidiary* of B. This is because there is no *parent undertaking* between C and D that is established in the *UK* and the definition of a *subsidiary* includes *subsidiaries* of *subsidiaries*.

(6) Under *MIFIDPRU* 2.6.7R(2), B therefore has the choice of whether to:

(a) ensure that both C and D comply with the requirements of the *group capital test* as it would apply to them if they were established in the *UK*; or

(b) hold own funds instruments that are sufficient to cover the sum of the requirements of the *group capital test* that apply to B and would apply to C and D if they were established in the *UK*.

(7) If B chooses the approach in (6)(a), B must:

(a) hold sufficient own funds instruments to cover the sum of B's holdings in, and contingent liabilities in favour of, C and F;

(b) ensure that C holds sufficient own funds instruments to cover the sum of C's holdings in, and contingent liabilities in favour of, D and G; and

(c) ensure that D holds sufficient own funds instruments to cover the sum of D's holdings in, and contingent liabilities in favour of, E.

(8) If B chooses the approach in (6)(b), B must hold sufficient own funds instruments to cover the sum of:

(a) B's holdings in, and contingent liabilities in favour of, C and F;

(b) C's holdings in, and contingent liabilities in favour of, D and G; and

(c) D's holdings in, and contingent liabilities in favour of, E.

(9) A is, however, a *responsible UK parent* in relation to H. This is because A is a *GCT parent undertaking* that is the *parent undertaking* of H. H is a *relevant financial undertaking* (being a holding company, and therefore a *financial institution*) and a *parent undertaking*. H is not a *GCT parent undertaking* because H is not an *authorised person* and does not have a *MIFIDPRU investment firm* as a *subsidiary*. There is also no intermediate *GCT parent undertaking* between A and H.

(10) In a similar way to B above, A therefore has a choice under *MIFIDPRU* 2.6.7R(2) of whether to:

(a) ensure that H complies with the requirements of the *group capital test* as if it applied directly to H; or

(b) hold own funds instruments that are sufficient to cover the sum of the requirements of the *group capital test* that apply to A and would apply to H.

(11) If A chooses the approach in (10)(a), A must:

(a) hold sufficient own funds instruments to cover the sum of A's holdings in, and contingent liabilities in favour of, B and H; and

(b) ensure that H holds sufficient own funds instruments to cover the sum of H's holdings in, and contingent liabilities in favour of, I.

(12) If A chooses the approach in (10)(b), A must hold sufficient own funds instruments to cover the sum of:

(a) A's holdings in, and contingent liabilities in favour of, B and H; and

(b) H's holdings in, and contingent liabilities in favour of, I.

2.6.9 R A *UK parent entity* must have systems in place to monitor and control the sources of capital and funding of all *relevant financial undertakings* within the *investment firm group*.

Group capital test: reporting requirements

2.6.10 R (1) Where the *FCA* has granted an application under *MIFIDPRU* 2.4.17R, a *UK parent entity* and any other *GCT parent undertakings* in the *investment firm group* must comply with the reporting requirements in (2).

(2) Each *GCT parent undertaking* in (1) must:

(a) report in accordance with *MIFIDPRU* 9 how that *GCT parent undertaking* meets the *group capital test*; and

(b) if the *GCT parent undertaking* is a *responsible UK parent*, also report in accordance with *MIFIDPRU* 9 how:

(i) the *undertaking* in *MIFIDPRU* 2.6.7R(1)(b) holds the required amount of own funds instruments referenced in *MIFIDPRU* 2.6.7R(2)(a); or

(ii) the *GCT parent undertaking* holds at least the amount of own funds instruments to cover the amount applicable to the *undertaking* in *MIFIDPRU* 2.6.7R(1)(b), as referenced in *MIFIDPRU* 2.6.7R(2)(b).

2.6.11 R An *investment firm group* may designate one *parent undertaking* in the *UK* to submit reports to the *FCA* under *MIFIDPRU* 2.6.10R on behalf of the *GCT parent undertakings* in the *investment firm group*.

Inclusion of holding companies in supervision of compliance with the group capital test

2.6.12 G *UK investment holding companies* and *UK mixed financial holding companies* are included in the *FCA's* supervision of compliance with the *group capital test* where they are *GCT parent undertakings*.

2.7 Investment holding companies, mixed financial holding companies and mixed-activity holding companies

Qualifications of directors

2.7.1 G Under section 143R of the *Act*, a *UK investment holding company*, *UK mixed financial holding company* or *UK mixed-activity holding company* must take reasonable care to ensure that the members of its *management body* are of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties effectively.

Mixed-activity holding companies

2.7.2 G (1) Under section 165 of the *Act*, the *FCA* may require a *parent undertaking* of a *MIFIDPRU investment firm* to provide information that is relevant for the *FCA's* supervision of the *MIFIDPRU investment firm*.

(2) Under section 167 of the *Act*, the *FCA* may appoint an investigator to verify the information received from a *parent undertaking* of a *MIFIDPRU investment firm* and any *subsidiaries* of that *parent undertaking*.

(3) The powers in (1) and (2) also apply to a *mixed-activity holding company*.

2.7.3 R (1) Where the *parent undertaking* of a *MIFIDPRU investment firm* is a *UK mixed-activity holding company*, the *MIFIDPRU investment firm* must have in place adequate risk management processes and internal control mechanisms.

(2) The processes and mechanisms in (1) must include sound reporting and accounting procedures to identify, measure, monitor and control transactions between the *firm*, the *UK mixed-activity holding company* and its *subsidiaries*.

Sanctions

2.7.4 G Under section 143W of the *Act*, the *FCA* may impose disciplinary measures on the following, where they are not *authorised persons*, to end or mitigate breaches of a requirement under the *MIFIDPRU* sourcebook or sections 143K, 143R or 143S(6) of the *Act*:

(1) a *UK investment holding company*;

(2) a *UK mixed financial holding company*;

(3) a *UK mixed-activity holding company*; or

(4) a member of the *management body* of the entities in (1) to (3).

Application under MIFIDPRU 2.3.3R for an exemption from application of specific requirements on an individual basis

2 Annex 1R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 1R Applications under MIFIDPRU 2.3.3R

Part A – Individual exemption from disclosure requirements in MIFIDPRU 8 for SNI investment firms in consolidated insurance groups

1. Please confirm that the applicant firm is a small and non-interconnected investment firm (SNI) by providing the following information.

   Note: Please refer to MIFIDPRU 1.2.1R which sets out the basic conditions to be classified as an SNI and explains how the numerical metrics should be calculated.

AUM	*number*
COH (cash)	*number*
COH (derivatives)	*number*
On- and off-balance sheet total	*number*
Annual gross revenue from MiFID services and activities	*number*

Please also confirm that the following statements are true about the applicant firm:

It does not have permission to deal on own account	☐ True
It does not act as a clearing member or an indirect clearing firm	☐ True
It does not hold client money and/or safeguard client assets in the course of its MIFID business	☐ True
Its DTF is zero	☐ True

2. Please provide the FRN and name of the parent insurance/reinsurance undertaking.

Name	
FRN	

3. Please attach a group structure chart clearly demonstrating that the applicant firm is a subsidiary of a parent insurance/reinsurance undertaking within a PRA consolidation group.

   ☐ Attached

4. Please confirm that the PRA has been notified about the firm's application to be exempt from disclosure requirements in MIFIDPRU 8.

   Note: The FCA will consult the PRA before making a determination.

☐ Yes

Name of the PRA supervisor / PRA contact for this application:

PRA supervisor/contact name	
Contact details	

5. With regards to the own funds held by the parent undertaking and the applicant firm:

   a. Please explain how you are satisfied that own funds are distributed adequately between the two firms:

   b. Please attach a breakdown of the own funds held by each firm.

   ☐ Attached

6. Please confirm that the following statements are true with respect to the arrangements between the parent undertaking and the applicant firm. Separately, in the text boxes provided please explain how these arrangements satisfy each of the below points and provide supporting evidence wherever possible.

   a. There is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking.

   ☐ Yes

   b. Either the parent undertaking will guarantee the commitments entered into by the firm, or the risks of the firm are of negligible interest.

   ☐ Yes

   c. The risk evaluation, measurement and control procedures of the parent undertaking include the firm.

   ☐ Yes

d. The parent undertaking holds more than 50% of the voting rights attached to shares in the capital of the firm or has the right to appoint or remove a majority of the members of the firm's management body.

☐ Yes

Part B – Individual exemption from liquidity requirements in MIFIDPRU 6 for MIFIDPRU investment firms in consolidated CRR or MIFIDPRU groups

1. Please confirm which of the following applies to the applicant firm:

a. The firm is part of a CRR prudential consolidation group and supervised on a consolidated basis; or

☐ Yes

b. The firm is part of an IFPR prudential consolidation group, supervised on a consolidated basis, and the parent undertaking complies with MIFIDPRU 6 on a consolidated basis.

☐ Yes

2. Please confirm that the UK parent undertaking has not applied for an exemption from consolidated liquidity requirements under MIFIDPRU 2.5.19R.

☐ Yes

3. Please attach a group structure chart which clearly identifies the prudential consolidation group that the applicant firm is part of. Please include FRNs of the group entities.

☐ Attached

4. Where 1.a. applies please confirm that the PRA has been notified about the firm's application to be exempt from liquidity requirements on an individual basis.

Note: The FCA will consult the PRA before making a determination.

☐ Yes

Name of the PRA contact for this application:

PRA supervisor/contact name	
Contact details	

5. Please explain how the parent undertaking:

a. monitors and oversees the liquidity positions of the applicant firm as well as of all other institutions and MIFIDPRU investment firms within the group that will be exempt from liquidity requirements on an individual basis; and

b. ensures a sufficient level of liquidity for all these entities.

6. The applicant firm is required to have entered into contracts that provide for the free movement of funds between the parent undertaking and the firm to enable each of them to meet their individual obligations and joint obligations as they become due.

   a. Please explain how the arrangements between the applicant firm and its parent undertaking satisfy this requirement:

   b. To the best of your knowledge, do you foresee any material, practical or legal impediments to these contracts being fulfilled?

   ☐ Yes ▸ Give details below
   ☐ No

   c. Please attach copies of the relevant contracts.

   ☐ Attached

Application under MIFIDPRU 2.4.17R for permission to apply the group capital test

2 Annex 2R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 2R

Application under MIFIDPRU 2.4.17R for permission to apply the group capital test to an investment firm group instead of prudential consolidation

1. Please confirm that the applicant firm has the necessary authority to make this application on behalf of all undertakings within the investment firm group which would be subject to the group capital test.

   ☐ Yes

2. Please attach a group structure chart which:

   a. identifies each undertaking in the investment firm group; and

   b. indicates any undertaking that is a relevant financial undertaking, and which type of financial undertaking it is.

   ☐ Attached

3. Please give details of the nature of business or activities carried out by each undertaking in the group.

FRN	Name of undertaking	Business/activities that bring the undertaking within the scope of investment firm group consolidation	Other unregulated business/activities

4. Please give details of the nature and degree of ownership or control connecting each undertaking to the investment firm group. This should include any that are connected undertakings.

FRN	Name of undertaking	Nature of ownership or control	Degree of ownership or control (where applicable)

5. Please explain why the group structure is simple enough to apply the group capital test. Please substantiate your response by providing supporting information.

☐ Supporting information attached

6. Please explain why you do not believe there to be any significant risks to clients or to the market stemming from the group that would mean that it should be supervised on a consolidated basis.

7. Please attach calculations to demonstrate how each parent undertaking satisfies the group capital test.

☐ Attached

8. Please demonstrate that the book value of each parent undertaking's investment in a subsidiary is a fair reflection of the consideration paid by the parent undertaking for that subsidiary. This includes subsidiaries that are not part of the investment firm group. Please substantiate your response by providing supporting evidence.

☐ Supporting evidence attached

9. Please provide details, including calculations, of the own funds and liquid assets requirements, which would apply if the group was subject to prudential consolidation in accordance with MIFIDPRU 2.5. Please indicate whether you are attaching this as a separate document.

☐ Attached

10. Please explain how the UK parent entity of the investment firm group complies with the systems requirement in MIFIDPRU 2.6.9R.

11. In the event the firm is not granted permission to apply the group capital test, please explain:

    a. how the investment firm group will comply with the consolidated requirements under MIFIDPRU 2.5; and

    b. how long the investment firm group would expect to take to achieve compliance with those consolidated requirements.

c. how the UK parent entity would comply with the systems requirements in MIFIDPRU 2.5.8R.

12. Please provide names and, where applicable, FRNs of the parent undertakings which will be required to complete MIF006 for GCT reporting purposes in accordance with MIFIDPRU 2.6.10R. If a parent undertaking listed below will not be completing MIF006 on its own behalf, please indicate which other parent undertaking will complete MIF006 on its behalf.

Name of parent undertaking	FRN of parent undertaking (where applicable)	Parent undertaking completing MIF006

Notification under MIFIDPRU 2.5.17R of intended use of proportional consolidation in respect of a relevant financial undertaking

2 Annex 3R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 3R

Notification under MIFIDPRU 2.5.17R of the intended use of proportional consolidation in respect of a relevant financial undertaking

1. Please provide the name of the UK parent entity:

2. Please provide details of the relevant financial undertaking(s) which are connected undertakings by virtue of a participation in accordance with MIFIDPRU 2.4.15R.

FRN (if applicable)	Name of relevant financial undertaking	Proportion included in prudential consolidation

3. By submitting this notification, you confirm that the UK parent entity (A) satisfies the following conditions in MIFIDPRU 2.5.17R(2) in order to be able to apply proportional consolidation in relation to each relevant financial undertaking listed above (B) and that if requested, you can readily provide information to demonstrate compliance.

   a. A's liability is limited to the share of capital that it holds in B;

   b. The liability of the other shareholders or members of B ("participating undertakings") is clearly established by means of a legally binding and enforceable contract between A and all participating undertakings which:

      i. limits the liability of the parties to the percentage of each shareholding;

      ii. clearly states that any potential losses arising from B will be borne by all shareholders or members proportionately to the share of capital held by each of them at such point in time;

      iii. clarifies that any changes in the share of capital of the shareholders or members are subject to the explicit consent of all the shareholders or members; and

iv. specifies that should B be recapitalised, A shall inform the FCA in a timely manner about the progress of the recapitalisation process and that each shareholder or member shall be liable to contribute to the recapitalisation no more than an amount that is proportionate to its current share of capital held in A;

c. There are no other agreements or arrangements between any of the following that would override or undermine any of the conditions in b.:

i. some or all of the participating undertakings; or

ii. some or all of the participating undertakings and one or more third parties;

d. Any participating undertakings who do not form part of the same investment firm group as A either:

i. are subject to prudential supervision; or

ii. can reasonably be expected to have sufficient resources to fund any contribution for which they may be liable under b.iv.; and

e. The solvency of the participating undertakings is satisfactory and can be expected to remain so.

Application under MIFIDPRU 2.5.19R for an exemption from liquidity requirements on a consolidated basis

2 Annex 4R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 4R

Application under MIFIDPRU 2.5.19R for exemption from consolidated liquidity requirements

1. Please list all MIFIDPRU investment firms within the investment firm group and confirm whether they are subject to the rules in MIFIDPRU 6 on an individual basis.

FRN	**MIFIDPRU investment firm name**	**Subject to liquidity requirements on individual basis?**
		Yes/No
		Yes/No
		Yes/No

2. Please explain, in detail, why an exemption from the consolidated application of the liquidity requirements in MIFIDPRU 6 is appropriate – taking into account the nature, scale and complexity of the investment firm group. Please substantiate your response by providing supporting information.

☐ Supporting information attached

Application under MIFIDPRU 2.5.34R(2) for permission to use offsetting positions when calculating K-NPR on a consolidated basis

2 Annex 5R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 5R

Application under MIFIDPRU 2.5.34R(2) for permission to use offsetting positions when calculating K-NPR on a consolidated basis

1. Please list the group undertakings that are party to the offsetting arrangement in respect of which this application is also being made.

FRN (if applicable)	Name of an undertaking	Location of undertaking

2. Please provide details of the offsetting arrangement and the positions subject to it.

3. Please explain the expected impact of the offsetting arrangement on the consolidated K-NPR requirement should the permission be granted.

4. Please explain how you meet the following conditions set out in article 325b of the UK CRR:

   a. There is a satisfactory allocation of own funds within the group

   b. The regulatory, legal, or contractual framework in which the undertakings operate guarantees mutual financial support within the group

5. Where undertakings are located in third countries, please explain how you additionally meet the following conditions:

   a. Such undertakings are authorised in a third country and are either a credit institution or a third country investment firm (as defined in article 4(1)(25) UK CRR)

   b. On an individual basis, such undertakings comply with own funds requirements equivalent to those laid down in the UK CRR

   c. No regulations exist in those third countries which might significantly affect the transfer of funds within the group

Application under MIFIDPRU 2.5.40R for permission to include a portfolio of a designated investment firm in consolidated K-CMG

2 Annex 6R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 6R

Application under MIFIDPRU 2.5.40R for permission to include a portfolio of a designated investment firm in a consolidated K-CMG requirement

Application to be made by UK parent entity or a MIFIDPRU investment firm within the same investment firm group that does not contain a credit institution.

1. Please specify the name and FRN of the designated investment firm.

Name of designated investment firm	
FRN of designated investment firm	

2. Please confirm that the applicant firm and the designated investment firm are not part of a group containing a credit institution.

☐ Yes

Note: Questions 3 to 16 must be completed separately for each portfolio this application relates to.

3. Please identify the portfolio for which a K-CMG permission is requested.

4. Please list all types of positions within the portfolio.

5. Please list all models used to value the positions within the portfolio.

6. Does the portfolio cover all of the designated investment firm's trading book positions?

Note: If the designated investment firm has positions outside of the trading book that give rise to foreign exchange or commodities risk, the FCA would generally expect K-NPR to be calculated in relation to these positions.

☐ Yes
☐ No ▸ Give details below

7. Please confirm that the clearing and settlement of transactions in the relevant portfolio take place under the responsibility of a clearing member of an authorised or recognised central counterparty.

☐ Yes

8. Please confirm which of the following applies:

a. The designated investment firm itself is the clearing member	*Yes/No*
b. The designated investment firm is a direct client of the clearing member	*Yes/No*
c. The designated investment firm is an indirect client of the clearing member	*Yes/No*

9. Where the designated investment firm is not itself the clearing member, please provide the following information:

Name of clearing member	
Status of clearing member	*Select one of the following:* • *a MIFIDPRU investment firm* • *other designated investment firm* • *a third country investment firm* • *a UK credit institution* • *a third country credit institution*
FRN/LEI of clearing member	

Where the designated investment firm is an indirect client of the clearing member, please provide the following information:

Name of intermediary	
Status of intermediary	*Select one of the following:* • *a MIFIDPRU investment firm* • *other designated investment firm* • *a third country investment firm* • *a UK credit institution* • *a third country credit institution*
FRN/LEI of intermediary	

Where the clearing member and/or the intermediary do not have an FRN or LEI, please explain why and provide alternative details.

10. One of the conditions of the K-CMG permission is that transactions in the relevant portfolio are either:

    a. centrally cleared in an authorised or recognised central counterparty; or

    b. settled on a delivery-versus-payment basis under the responsibility of the clearing member.

Please explain how this specific condition is satisfied.

11. In order to meet the conditions of the K-CMG permission, the designated investment firm is required to provide total margin calculated on the basis of a margin model that meets the criteria set out in MIFIDPRU 4.13.14R.

    a. Please confirm whether the margin model is operated:

By the authorised or recognised central counterparty *[applies to self-clearing firms]*	*Yes/No*
By the relevant clearing member *[applies to firms other than self-clearing firms]*	*Yes/No*

    b. Please provide further details of the margin model, including how it satisfies the specific criteria in MIFIDPRU 4.13.14R.

    c. Please confirm whether the parameters of the margin model meet the EMIR standards.

☐ Yes
☐ No ‣ Give details below of the mathematical adjustments that have been applied to produce an alternative margin requirement (see MIFIDPRU 4.13.14R(2))

    d. Please explain how this alternative requirement is at least equivalent to the margin requirement that would be produced by a margin model that meets the EMIR standards.

    e. Please attach a copy of the agreement with the clearing member concerning the margin model and collateral used.

☐ Attached

12. Please explain the rationale for the decision to calculate a consolidated K-CMG requirement in relation to the portfolio to which this application relates. In your response, please demonstrate that you have taken adequate account of the nature of, and risk arising from, the designated investment firm's trading activities, including whether:

    a. the main activities of the designated investment firm are essentially trading activities that are subject to clearing and margining under the responsibility of a clearing member; and

    b. other activities performed by the designated investment firm are material in comparison to those main activities.

13. Please confirm that the rationale for the decision has been clearly documented and approved by the relevant management body or risk management function.

    ☐ Yes

14. Please show how the consolidated capital requirement calculated using K-CMG compares with that calculated using K-NPR.

15. Please confirm who within the designated investment firm is accountable for the operation of the margin model used. Please provide details of the specific role or function where the knowledge about the margin model sits within the firm (e.g. Head of Risk Management, Head of Models, etc.), rather than an individual's name.

16. In order to meet the conditions for the K-CMG permission, the designated investment firm must have in place ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed, which take into account the understanding of relevant individuals within the firm of the margin model to determine whether:

    a. the resulting consolidated K-CMG requirement for the portfolio is sufficient to cover the relevant risks to which the designated investment firm is exposed; and

    b. the K-CMG permission remains appropriate in relation to the portfolio for which it was granted.

Please confirm that the designated investment firm's ongoing processes and systems satisfy these requirements.

☐ Yes

17. Please confirm your understanding that you must notify the FCA immediately if any of the conditions in MIFIDPRU 4.13.9R (as modified by MIFIDPRU 2.5.40R(3)) are no longer met by any of the portfolios to which this application relates.

    ☐ Yes

Application under MIFIDPRU 2.5.41R for permission to include portfolio of a third country entity in consolidated K-CMG

2 Annex 7R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 2 Annex 7R

Application under MIFIDPRU 2.5.41R for permission to include a portfolio of a third country entity in a consolidated K-CMG requirement

Application to be made by UK parent entity or a MIFIDPRU investment firm within the same investment firm group that does not contain a credit institution.

1. Please specify the name and (where applicable) FRN of the third country entity.

Name of third country entity	
FRN of third country entity	

2. Please confirm that the applicant firm and the third country entity are not part of a group containing a credit institution.

☐ Yes

Note: Questions 3 to 18 must be completed separately for each portfolio this application relates to.

3. Please identify the portfolio for which a K-CMG permission is requested.

4. Please list all types of positions within the portfolio.

5. Please list all models used to value the positions within the portfolio.

6. Please confirm if the portfolio covers all of the third country entity's trading book positions.

Note: If the third country entity has positions outside of the trading book that give rise to foreign exchange or commodities risk, the FCA would generally expect K-NPR to be calculated in relation to these positions.

☐ Yes
☐ No ‣ Give details below

7. Please confirm that the clearing and settlement of transactions in the relevant portfolio take place under the responsibility of a clearing member of an authorised or recognised central counterparty?

☐ Yes

8. Please confirm which of the following applies:

The third country entity itself is the clearing member	*Yes/No*
The third country entity is a direct client of the clearing member	*Yes/No*
The third country entity is an indirect client of the clearing member	*Yes/No*

9. Where the third country entity is not itself the clearing member, please provide the following information:

Name of clearing member	
Status of clearing member	*Select one of the following:* ● *a MIFIDPRU investment firm* ● *a designated investment firm* ● *a third country investment firm* ● *a UK credit institution* ● *a third country credit institution* ● *another entity that is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates*
FRN/LEI of clearing member	

Where the third country entity is an indirect client of the clearing member, please provide the following information:

Name of intermediary	
Status of intermediary	*Select one of the following:* ● *a MIFIDPRU investment firm* ● *a designated investment firm* ● *a third country investment firm* ● *a UK credit institution* ● *a third country credit institution* ● *another entity that is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates*
FRN/LEI of intermediary	

Where the clearing member and/or the intermediary do not have an FRN or LEI, please explain why and provide alternative details.

10. This question applies if, in response to question 9 above, the clearing member and/or the intermediary is not a third country investment firm or a third country credit institution, but is "another entity that is subject to appropriate prudential regulation and supervision in the jurisdiction in which it operates".

Please explain how the clearing member and/or the intermediary is/are subject to appropriate prudential regulation and supervision in the relevant jurisdiction(s) by describing the relevant prudential regulation and supervision. Please substantiate your response by providing supporting information.

☐ Supporting information attached

11. One of the conditions of the K-CMG permission is that transactions in the relevant portfolio are either:

    a. centrally cleared in an authorised or recognised central counterparty; or

    b. settled on a delivery-versus-payment basis under the responsibility of the clearing member.

Please explain how this specific condition is satisfied.

12. In order to meet the conditions of the K-CMG permission, the third country entity is required to provide total margin calculated on the basis of a margin model that meets the criteria set out in MIFIDPRU 4.13.14R.

    a. Please confirm whether the margin model is operated:

By the authorised or recognised central counterparty *[applies to self-clearing firms]*	*Yes/No*
By the relevant clearing member *[applies to firms other than self-clearing firms]*	*Yes/No*

    b. Please provide further details of the margin model, including how it satisfies the specific criteria in MIFIDPRU 4.13.14R.

c. Please confirm whether the parameters of the margin model meet the EMIR standards.

☐ Yes
☐ No ▸ Give details below of the mathematical adjustments that have been applied to produce an alternative margin requirement (see MIFIDPRU 4.13.14R(2))

d. Please demonstrate that this alternative requirement is at least equivalent to the margin requirement that would be produced by a margin model that meets the EMIR standards.

e. Please attach a copy of the agreement with the clearing member concerning the margin model and collateral used.

☐ Attached

13. Please explain the rationale for the decision to calculate a consolidated K-CMG requirement in relation to the portfolio to which this application relates. In your response, please demonstrate that you have taken adequate account of the nature of, and risk arising from, the third country entity's trading activities, including whether:

a. the main activities of the third country entity are essentially trading activities that are subject to clearing and margining under the responsibility of a clearing member; and

b. other activities performed by the third country entity are material in comparison to those main activities.

14. Please confirm that the rationale for the decision has been clearly documented and approved by the relevant management body or risk management function.

☐ Yes

15. Please provide an indication of how the consolidated capital requirement calculated using K-CMG compares with that calculated using K-NPR.

16. Please confirm who within the third country entity is accountable for the operation of the margin model used. Please provide details of the specific role or function where the knowledge about the margin model sits within the entity (e.g. Head of Risk Management, Head of Models, etc.), rather than an individual's name.

17. Please confirm that the third country entity's ongoing processes and systems for assessing the nature and level of risks to which it is, or might be, exposed take into account the understanding of relevant individuals identified in Question 17 of the margin model for the purposes of considering whether:

    a. the resulting consolidated K-CMG requirement for the portfolio is sufficient to cover the relevant risks to which the third country entity is exposed; and

       ☐ Yes

    b. the K-CMG permission remains appropriate in relation to the portfolio for which it was granted.

       ☐ Yes

18. Please confirm your understanding that you must notify the FCA immediately if the conditions in MIFIDPRU 4.13.9R, as modified by MIFIDPRU 2.5.41R(3), are no longer met by that portfolio.

    ☐ Yes

3 Own funds

3.1 Application and purpose

Application

3.1.1 R This chapter applies to:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity* that is required by *MIFIDPRU* 2.5.7R to comply with *MIFIDPRU* 3 on the basis of its *consolidated situation*.

3.1.2 R This chapter also applies to a *parent undertaking* that is subject to the *group capital test* in accordance with *MIFIDPRU* 2.6.5R, but with the following modifications:

(1) the definitions in *MIFIDPRU* 2.6.2R apply when calculating the *own funds instruments* of the *parent undertaking* for the purposes of the *group capital test*; and

(2) *MIFIDPRU* 3.2.2R and *MIFIDPRU* 3.2.3R do not apply, but *MIFIDPRU* 3.7 applies instead.

3.1.3 R For the purposes of this chapter:

(1) any reference to the "*UK CRR*" is to the *UK CRR* in the form in which it stood on 1 January 2022, read together with any CRR rules (as defined in section 144A of the *Act*) made by the *PRA* that applied on that date;

(2) where a term is not italicised but is defined in the *UK CRR*, the definition in the *UK CRR* applies;

(3) where this chapter applies to a *parent undertaking* that is not a *firm*, reference to a "*MIFIDPRU investment firm"* or a "*firm*" includes a reference to that *parent undertaking*; and

(4) where this chapter applies on the basis of the *consolidated situation* of an entity under *MIFIDPRU* 3.1.1R(2), a reference in this chapter to a "*firm*" is a reference to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*.

Purpose

3.1.4 G This chapter contains requirements for the calculation of a *MIFIDPRU investment firm's own funds*. These requirements are based on the provisions in Title I of Part Two of the *UK CRR*, but with the modifications set out in this chapter.

3.2 Composition of own funds and initial capital

3.2.1 R The *own funds* of a *firm* are the sum of its:

(1) *common equity tier 1 capital*;

(2) *additional tier 1 capital*; and

(3) *tier 2 capital*.

3.2.2 R A *firm* must, at all times, have *own funds* that satisfy all the following conditions:

(1) the *firm's common equity tier 1 capital* must be equal to or greater than 56% of the *firm's own funds requirement* under *MIFIDPRU* 4.3;

(2) the sum of the *firm's common equity tier 1 capital* and *additional tier 1 capital* must be equal to or greater than 75% of the *firm's own funds requirement* under *MIFIDPRU* 4.3; and

(3) the *firm's own funds* must be equal to or greater than 100% of the *firm's own funds requirement* under *MIFIDPRU* 4.3.

3.2.3 R A *firm's initial capital* must be made up of *own funds*.

3.2.4 G For the purposes of this chapter, the categorisation and the valuation of assets and off-balance sheet items should be carried out in accordance with the applicable accounting framework, unless a *rule* directs otherwise.

3.3 Common equity tier 1 capital

3.3.1 R (1) A *firm* must determine its *common equity tier 1 capital* in accordance with Chapter 2 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.

(2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

Prior permission to include interim profits or year-end profits in common equity tier 1 capital

3.3.2 R To apply for permission to include interim or year-end profits in its *common equity tier 1 capital* before the *firm* has taken a formal decision confirming the final profit or loss for the year in accordance with article 26(2) of the *UK CRR*, a *firm* must complete the form in *MIFIDPRU* 3 Annex 1R and submit it to the *FCA* using the *online notification and application system*.

Prior permission and notification of issuances of common equity tier 1 capital

3.3.3 R (1) To apply for permission to classify an issuance of capital instruments as *common equity tier 1 capital* in accordance with article 26(3) of the *UK CRR*, a *firm* must complete the form in *MIFIDPRU* 3 Annex 2R and submit it to the *FCA* using the *online notification and application system*.

(2) To notify the *FCA* in accordance with article 26(3) subparagraph two of the *UK CRR* about subsequent issuances of capital instruments for which it has already received the permission in (1), a *firm* must complete the form in *MIFIDPRU* 3 Annex 3R and submit it to the *FCA* using the *online notification and application system*.

3.3.4 G (1) Under article 26(3) of the *UK CRR*, a *firm* must normally obtain the *FCA's* permission before classifying an issuance of capital instruments as *common equity tier 1 capital*.

(2) However, where a *firm* has already obtained permission from the *FCA* for a previous issuance of instruments that have been classified as *common equity tier 1 capital*, the *firm* is not required to obtain the *FCA's* permission for a subsequent issuance of the same form of instruments if:

(a) the provisions governing the subsequent issuance are substantially the same as the provisions governing the issuance for which the *firm* has already received permission; and

(b) the *firm* has notified the *FCA* of the subsequent issuance sufficiently far in advance of the classification of the relevant instruments as *common equity tier 1 capital*.

(3) The *FCA* generally expects to receive a notification of a subsequent issuance of an existing form of *common equity tier 1 capital* instruments under article 26(3) of the *UK CRR* at least 20 *business days* before the *firm* intends to classify that issuance as *common equity tier 1 capital*.

Deductions from common equity tier 1 capital

3.3.5 R For the purposes of *MIFIDPRU*:

(1) *MIFIDPRU* 3.3.6R replaces article 36 of the *UK CRR*; and

(2) any reference to article 36 of the *UK CRR* or any part of that article in the following is a reference to *MIFIDPRU* 3.3.6R (or the equivalent part of it):

(a) another provision of the *UK CRR* that is incorporated by reference into *MIFIDPRU*; or

(b) any technical standard that applies to a *MIFIDPRU investment firm* under a provision of the *UK CRR* to which (a) applies.

3.3.6 R A *MIFIDPRU investment firm* must deduct the following from its common equity tier 1 items:

(1) losses for the current financial year;

(2) intangible assets;

(3) deferred tax assets that rely on future profitability;

(4) the value of any defined benefit pension fund assets on the balance sheet of the *firm* after deducting the amount of any associated deferred tax liability where that liability would be extinguished if the assets became impaired or were derecognised under the applicable accounting framework;

(5) direct, indirect and synthetic holdings by the *firm* of its own *common equity tier 1 instruments*, including own *common equity tier 1 instruments* that the *firm* is under an actual or contingent obligation to purchase by virtue of an existing contractual obligation;

(6) direct, indirect and synthetic holdings of the *common equity tier 1 instruments* of *financial sector entities* where those entities have a reciprocal cross holding with the *firm* that the *FCA* considers has been designed to inflate artificially the *own funds* of the *firm*;

(7) direct, indirect and synthetic holdings by the *firm* of *common equity tier 1 instruments* of *financial sector entities* where the *firm* does not have a significant investment in those entities;

(8) direct, indirect and synthetic holdings by the *firm* of the *common equity tier 1 instruments* of *financial sector entities* where the *firm* has a significant investment in those entities;

(9) the amount of items required to be deducted from additional tier 1 items under article 56 of the *UK CRR* that exceeds the additional tier 1 items of the *firm*; and

(10) any tax charge relating to common equity tier 1 items foreseeable at the moment of its calculation, except where the *firm* suitably adjusts the amount of common equity tier 1 items insofar as such tax charges reduce the amount up to which those items may be used to cover risks or losses.

3.3.7 R (1) For the purposes of *MIFIDPRU* 3.3.6R and *MIFIDPRU* 3.3.15R, holdings in a *fund* are to be treated as holdings in a *non-financial sector entity*.

(2) The requirement in (1) does not affect the meaning of the terms "*financial sector entity*" or "*non-financial sector entity*" when used in any other context in the *Handbook*.

Deferred tax assets that rely on future profitability

3.3.8 R A *firm* must deduct deferred tax assets that rely on future profitability from its common equity tier 1 items under *MIFIDPRU* 3.3.6R(3) without applying:

(1) article 39 of the *UK CRR* (tax overpayments, tax loss carry backs and deferred tax assets that do not rely on future profitability); or

(2) article 48 of the *UK CRR* (threshold exemptions from deduction from common equity tier 1 items).

Defined benefit pension fund assets on the firm's balance sheet

3.3.9 R A *firm* must deduct defined benefit pension fund assets on its balance sheet from its common equity tier 1 items under *MIFIDPRU* 3.3.6R(4) without applying article 41 of the *UK CRR* (deduction of defined benefit pension fund assets).

Holdings of common equity tier 1 instruments of financial sector entities

3.3.10 R (1) This *rule* applies to a *firm's* holdings of capital instruments that are not held in its *trading book*.

(2) Subject to *MIFIDPRU* 3.3.14R, a *firm* must deduct its direct, indirect and synthetic holdings of *common equity tier 1 instruments* of *financial sector entities* under *MIFIDPRU* 3.3.6R(7) without applying article 46 of the *UK CRR* (deduction of holdings of common equity tier 1 instruments where an institution does not have a significant investment in a financial sector entity).

3.3.11 R The following provisions do not apply to *common equity tier 1 instruments* held in the *trading book* of a *firm*:

(1) *MIFIDPRU* 3.3.6R(7); and

(2) article 46 of the *UK CRR*.

3.3.12 R Subject to *MIFIDPRU* 3.3.14R, a *firm* must deduct its direct, indirect and synthetic holdings in the *common equity tier 1 instruments* of *financial sector entities* under *MIFIDPRU* 3.3.6R(8) without applying article 48 of the *UK CRR* (threshold exemptions from deduction from common equity tier 1 items).

3.3.13 R Article 49 of the *UK CRR* (requirement for deduction where consolidation, supplementary supervision or institutional protection schemes are applied) does not apply for the purposes of this section.

Holdings of common equity tier 1 instruments issued by a financial sector entity within an investment firm group

3.3.14 R A *firm* is not required to deduct holdings of *common equity tier 1 instruments* issued by a *financial sector entity* from the *firm's* common equity tier 1 items in accordance with *MIFIDPRU* 3.3.6R if all of the following conditions are met:

(1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;

(2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;

(3) the *investment firm group* is subject to prudential consolidation under *MIFIDPRU* 2.5; and

(4) the risk evaluation, measurement and control procedures of a *parent undertaking* included within the *consolidated situation* of the *UK parent entity* of the *investment firm group* include the *financial sector entity*.

Qualifying holdings outside the financial sector

3.3.15 R (1) A *firm* must deduct from its common equity tier 1 items any amounts in excess of the following limits:

(a) a *qualifying holding* in a *non-financial sector entity* which exceeds 15% of the *firm's own funds*; and

(b) the total of all the *qualifying holdings* of the *firm* in *non-financial sector entities* which exceeds 60% of the *firm's own funds*.

(2) When calculating any amounts in (1), the following must not be included:

(a) shares in *non-financial sector entities* where any of the following conditions is met:

(i) the shares are held temporarily during a financial assistance operation referred to in article 79 of the *UK CRR*;

(ii) the holding of the shares is an underwriting position held for five *business days* or fewer; or

(iii) the shares are held in the name of the *firm* on behalf of others; and

(b) shares which are not fixed financial assets under Directive 86/635/EEC UK law (as defined in article 4(1)(128B) of the *UK CRR*).

Common equity tier 1 instruments of partnerships

3.3.16 R A *partner's* account in relation to a *firm* that is a *partnership* satisfies the conditions in article 28(1)(e) (perpetual) and article 28(1)(f) (reduction or repayment) of the *UK CRR* if:

(1) capital contributed by *partners* is paid into the account; and

(2) under the terms of the partnership agreement an amount representing capital may be withdrawn from the account by a *partner* ("A") only if:

(a) A ceases to be a *partner* and an equal amount is transferred to another *partner's* account by A's former *partners* or any *person* replacing A as their *partner*;

(b) any reduction in the capital credited to A's account is immediately offset by additional contributions of at least an equal aggregate amount to other *partner* accounts by one or more of A's *partners* (including any person becoming a *partner* of A at the time that the additional contribution is made);

(c) the *partnership* is wound up or dissolved; or

(d) the *firm* ceases to be *authorised* or no longer has a *Part 4A permission*.

Common equity tier 1 instruments of limited liability partnerships

3.3.17 R A member's account in relation to a *firm* that is a *limited liability partnership* will meet the conditions in article 28(1)(e) (perpetual) and article 28(1)(f) (reduction or repayment) of the *UK CRR* if:

(1) capital contributed by the members is paid into the account; and

(2) under the terms of the *limited liability partnership* agreement, an amount representing capital may be withdrawn from the account by a *partner* ("B") only if:

(a) B ceases to be a member and an equal amount is transferred to another member account by B's former fellow members or any *person* replacing B as a member;

(b) any reduction in the capital credited to B's account is immediately offset by additional contributions of at least an equal aggregate amount to other member accounts by one or more of B's fellow members (including any person becoming a fellow member of B at the time that the additional contribution is made);

(c) the *limited liability partnership* is wound up or dissolved; or

(d) the *firm* ceases to be *authorised* or no longer has a *Part 4A permission*.

3.4 Additional Tier 1 capital

3.4.1 R (1) A *firm* must determine its *additional tier 1 capital* in accordance with Chapter 3 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.

(2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

Trigger events and write-down or conversion

3.4.2 R The following provisions of the *UK CRR* do not apply in relation to the *additional tier 1 capital* of a *MIFIDPRU investment firm*:

(1) article 54(1)(a); and

(2) article 54(4)(a).

3.4.3 R (1) A *firm* must specify in the terms of an *additional tier 1 instrument* one or more trigger events for the purposes of article 52(1)(n) of the *UK CRR*.

(2) The trigger events specified under (1) must include a trigger event that occurs where the *common equity tier 1 capital* of the *firm* falls below a level specified by the *firm* that is no lower than 64% of the *firm's own funds requirement*.

(3) Article 54 of the *UK CRR* applies as if references to the trigger event in article 54(1)(a) of the *UK CRR* are references to the trigger event in (1).

(4) The full principal amount of an *additional tier 1 instrument* must be written down or converted when a trigger event occurs.

3.4.4 G *MIFIDPRU* 3.4.3R requires that the principal amount of an *additional tier 1 instrument* will convert into *common equity tier 1 capital* or will be written down if the *firm's common equity tier capital* falls below a specified level. This level must be set at no lower than 64% of the *firm's own funds requirement*. The *firm* may set the relevant trigger at a higher level (such as 70% of its *own funds requirement*) if it wishes. The *firm* may also specify additional trigger events alongside the required trigger event in *MIFIDPRU* 3.4.3R(1).

Holdings of additional tier 1 instruments of financial sector entities

3.4.5 R (1) This *rule* applies to a *firm's* holdings of capital instruments that are not held in its *trading book*.

(2) A *firm* must deduct its direct, indirect and synthetic holdings in *additional tier 1 instruments* of *financial sector entities* under article 56(c) of the *UK CRR* without applying article 60 of the *UK CRR* (deduction of holdings of additional tier 1 instruments where an institution does not have a significant investment in a financial sector entity).

(3) The requirement in article 56(c) of the *UK CRR* does not apply where *MIFIDPRU* 3.4.7R applies.

3.4.6 R The following provisions do not apply to *additional tier 1 instruments* held in the *trading book* of a *firm*:

(1) article 56(c) of the *UK CRR*; and

(2) article 60 of the *UK CRR*.

Holdings of additional tier 1 instruments issued by a financial sector entity within an investment firm group

3.4.7 R A *firm* is not required to deduct holdings of *additional tier 1 instruments* issued by a *financial sector entity* from the *firm's* additional tier 1 items in accordance with article 56 of the *UK CRR* if all of the following conditions are met:

(1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;

(2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;

(3) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *financial sector entity*; and

(4) the *group capital test* under *MIFIDPRU* 2.5 does not apply to the *investment firm group*.

3.5 Tier 2 capital

3.5.1 R (1) A *firm* must determine its *tier 2 capital* in accordance with Chapter 4 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.

(2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

Holdings of tier 2 instruments of financial sector entities

3.5.2 R (1) This *rule* applies to a *firm's* holdings of capital instruments that are not held in its *trading book*.

(2) A *firm* must deduct its direct, indirect and synthetic holdings in the *tier 2 instruments* of *financial sector entities* under article 66(c) of the *UK CRR* without applying article 70 of the *UK CRR* (deduction of tier 2 instruments where an institution does not have a significant investment in the relevant entity).

(3) The requirement in article 66(c) of the *UK CRR* does not apply where *MIFIDPRU* 3.5.4R applies.

3.5.3 R The following provisions do not apply to *tier 2 instruments* held in the *trading book* of the *firm*:

(1) article 66(c) of the *UK CRR*; and

(2) article 70 of the *UK CRR*.

Holdings of tier 2 instruments issued by a financial sector entity within an investment firm group

3.5.4 R A *firm* is not required to deduct holdings of *tier 2 instruments* issued by a *financial sector entity* from the *firm's tier 2 items* in accordance with article 66 of the *UK CRR* if all of the following conditions are met:

(1) the *financial sector entity* forms part of the same *investment firm group* as the *firm*;

(2) there is no current or foreseen material, practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the *financial sector entity*;

(3) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *financial sector entity*; and

(4) the *group capital test* under *MIFIDPRU* 2.6 does not apply to the *investment firm group*.

3.6 General requirements for own funds instruments

3.6.1 R (1) A *firm* must comply with Chapter 6 of Title I of Part Two of the *UK CRR*, as modified by the *rules* in this section.

(2) Any reference to the *UK CRR* in this section is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

Reduction of own funds instruments

3.6.2 R To apply for permission for the purposes of articles 77 and 78 of the *UK CRR* to do any of the following, a *firm* must complete the form in *MIFIDPRU* 3 Annex 4R and submit it to the *FCA* using the *online notification and application system*:

(1) reduce, redeem or repurchase any of its *common equity tier 1 instruments*;

(2) reduce, distribute or reclassify as another *own funds* item the share premium accounts related to any of its *own funds instruments*; or

(3) effect the call, redemption, repayment or repurchase of its *additional tier 1 instruments* or *tier 2 instruments* prior to the date of their contractual maturity;

3.6.3 R Permission under *MIFIDPRU* 3.6.2R is deemed to have been granted if the following conditions are met:

(1) either of the conditions in *MIFIDPRU* 3.6.4R apply;

(2) at least 20 *business days* before the *day* on which the reduction, repurchase, call or redemption is proposed to occur, the *firm* has notified the *FCA* of:

(a) the proposed reduction, repurchase, call or redemption; and

(b) the basis on which the *firm* has concluded that either condition in (1) is satisfied;

(3) the notification in (2) is made using the form in *MIFIDPRU* 3 Annex 5R and submitted using the *online notification and application system*; and

(4) the *FCA* has not notified the *firm* of any objection to the proposal before the *day* on which the reduction, repurchase, call or redemption is proposed to occur.

3.6.4 R The conditions referred to in *MIFIDPRU* 3.6.3R are that:

(1) before or at the same time as the reduction, repurchase, call or redemption, the *firm* replaces the relevant *own funds instruments* with *own funds instruments* of equal or higher

quality on terms that are sustainable for the income capacity of the *firm*; or

(2) the *firm* is redeeming *additional tier 1 instruments* or *tier 2 instruments* within five years of their date of issue and either:

(a) there is a change in the regulatory classification of the instruments that is likely to result in their exclusion from *own funds* or reclassification as a lower quality form of *own funds*, and both the following conditions are met:

(i) there are reasonable grounds to conclude that the change is sufficiently certain; and

(ii) the regulatory reclassification of the instruments was not reasonably foreseeable at the time of their issuance; or

(b) there is a change in the applicable tax treatment of those instruments which is material and was not reasonably foreseeable at the time of their issuance.

Notification of issuance of additional tier 1 and tier 2 instruments

3.6.5 R (1) A *firm* must notify the *FCA* at least 20 *business days* before the intended issuance date of the *firm's* intention to issue:

(a) *additional tier 1 instruments*; or

(b) *tier 2 instruments*.

(2) The notification requirement in (1) does not apply if:

(a) the *firm* has previously notified the *FCA* of an issuance of the same class of *additional tier 1 instruments* or *tier 2 instruments*; and

(b) the terms of the new instruments are identical in all material respects to the terms of the instruments in the issuance previously notified to the *FCA*.

(3) The notification under (1) must:

(a) be submitted to the *FCA* through the *online notification and application system* using the form in *MIFIDPRU* 3 Annex 6R; and

(b) include the following:

(i) confirmation of whether the instruments are intended to be classified as *additional tier 1 instruments* or *tier 2 instruments*;

(ii) confirmation of whether the instruments are intended to be issued to external investors or only to other members of the *firm's group* or connected parties;

(iii) a copy of the term sheet and details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the *firm* or widely available in the market;

(iv) confirmation from a member of the *firm's senior management* or *governing body* who has oversight of the intended issuance that the instrument meets the conditions in *MIFIDPRU* 3.4 or *MIFIDPRU* 3.5 (as applicable, and including any conditions in the *UK CRR* applied by those sections) to be classified as *additional tier 1 instruments* or *tier 2 instruments*; and

(v) a properly reasoned legal opinion from an appropriately qualified *individual*, confirming that the capital instruments meet the conditions in (iv).

3.6.6 G (1) *MIFIDPRU investment firms* that were classified as *CRR firms* immediately before 1 January 2022 should refer to *MIFIDPRU* TP 1 for transitional provisions relating to *own funds* permissions that were issued, and notifications that were made, before that date.

(2) *MIFIDPRU investment firms* that were in existence immediately before 1 January 2022, but were not classified as *CRR firms*, should refer to *MIFIDPRU* TP 7 for transitional provisions relating to *own funds* instruments issued before that date.

3.6.7 G *Firms* that are proposing to classify an issuance of capital instruments as *common equity tier 1 capital* should refer to the obligations and guidance in *MIFIDPRU* 3.3.3R and *MIFIDPRU* 3.3.4G. In particular, *firms* must obtain the *FCA's* prior permission for the first issuance of a class of instruments that is intended to comprise *common equity tier 1 capital*.

3.6.8 R (1) A *UK parent entity* must apply the modifications in (2) when either of the following apply on a *consolidated basis* in accordance with *MIFIDPRU* 2.5.7R:

(a) *MIFIDPRU* 3.3.2R to *MIFIDPRU* 3.3.4G; and

(b) *MIFIDPRU* 3.6.5R.

(2) The *Handbook* provisions in (1)(a) and (b) apply as if a reference to:

(a) a "*firm*" is a reference to the *UK parent entity*;

(b) "capital instruments" is a reference to capital instruments issued by the *UK parent entity*;

(c) "*additional tier 1 instruments*" and "*tier 2 instruments*" is a reference to these instruments issued by the *UK parent entity*; and

(d) "*common equity tier 1 capital*" is a reference to that type of capital as calculated on a *consolidated basis*.

3.6.9 G Submitting a notification in accordance with *MIFIDPRU* 3.6.5R to 3.6.8R does not guarantee that the relevant instruments meet the required conditions in *MIFIDPRU* 3.4 or *MIFIDPRU* 3.5 to qualify as *own funds*. The *firm* or *parent undertaking* must ensure that an instrument continues to meet the conditions to be counted as *own funds*, including if its terms are varied on a later date.

3.7 Composition of capital for parent undertakings subject to the group capital test

3.7.1 R This section applies to a *parent undertaking* in accordance with *MIFIDPRU* 3.1.2R.

3.7.2 R A *parent undertaking* must, at all times, have *own funds instruments* that satisfy the following conditions:

(1) the *parent undertaking's common equity tier 1 capital* must be at least equal to:

(a) the sum of the book value of the *parent undertaking's* holdings of the *common equity tier 1 capital* of the *relevant financial undertakings* under *MIFIDPRU* 2.6.5R; plus

(b) the total amount of all the *parent undertaking's* contingent liabilities in favour of the *relevant financial undertakings* under *MIFIDPRU* 2.6.5R;

(2) the sum of *common equity tier 1 capital* and *additional tier 1 capital* of the *parent undertaking* must be at least equal to the sum of:

(a) the amounts in (1)(a) and (1)(b); plus

(b) the sum of the book value of the *parent undertaking's holdings* in the *additional tier 1 capital* of the *relevant financial undertakings under MIFIDPRU* 2.6.5R; and

(3) the sum of the *parent undertaking's own funds instruments* must be at least equal to the total requirement under *MIFIDPRU* 2.6.5R.

3.7.3 G As explained in *MIFIDPRU* 2.6.6G, the *group capital test* effectively applies to each intermediate *parent undertaking*, as well as to the ultimate *parent undertaking* of the *investment firm group*.

3.7.4 R (1) Subject to (2), a *parent undertaking* must comply with:

(a) *MIFIDPRU* 3.3.2R to *MIFIDPRU* 3.3.4G when issuing *own funds instruments* which are intended to qualify as *common equity tier 1 capital*;

(b) *MIFIDPRU* 3.6.5R when issuing *own funds instruments* which are intended to qualify as *additional tier 1 instruments* or *tier 2 instruments*.

(2) Where the *Handbook* provisions in (1)(a) and (b) apply, they apply as if a reference to:

(a) a "*firm*" is a reference to the *parent undertaking*;

(b) "capital instruments" is a reference to capital instruments issued by the *parent undertaking*;

(c) "*additional tier 1 instruments*" and "*tier 2 instruments*" is a reference to these instruments issued by the *parent undertaking*; and

(d) "*common equity tier 1 capital*" is a reference to this type of capital as held by the *parent undertaking*.

3.7.5 R (1) This *rule* applies where a *responsible UK parent* applies the approach in *MIFIDPRU* 2.6.7R(2)(a) in relation to an *undertaking* established in a *third country*.

(2) Where this *rule* applies, a *responsible UK parent* must comply with *MIFIDPRU* 3.7.4R in relation to any issuance of own funds instruments by the *undertaking* established in a *third country*.

Application under MIFIDPRU 3.3.2R - permission to include interim or year-end profits as CET1

3 Annex 1R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 1R

Application under MIFIDPRU 3.3.2R for permission to include interim or year-end profits as common equity tier 1 (CET1) capital before the firm has taken a formal decision confirming the final profit and loss for the year

1. Please confirm which of the following the applicant firm is:

a.	MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking	☐
b.	MIFIDPRU investment firm that is a consolidating UK parent entity	☐
c.	MIFIDPRU investment firm that is a GCT parent undertaking	☐
d.	Consolidating UK parent entity (other than a MIFIDPRU investment firm)	☐
e.	GCT parent undertaking (other than a MIFIDPRU investment firm)	☐

Note: If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm/institution should be interpreted as to a consolidated situation of the UK parent.

2. Please confirm whether the following apply and if so, provide supporting evidence:

   a. The profits have been verified by persons independent of your institution, who are responsible for auditing the accounts of that institution:

Yes/No

   b. Any foreseeable charge or dividend has been deducted from the amount of those profits and the basis of this calculation:

Yes/No/Not applicable

   ☐ Supporting evidence attached (e.g. an independent auditor's letter confirming the above)

3. Please provide the following:

a. The start of your financial year:

DD/MM/YYYY

b. The period in which the interim/year-end profits were earned:

c. Profits as verified by auditors:

£

d. Foreseeable charges/deductions (e.g. dividends):

£

e. Amount to be included as profit:

£

f. Firm's total CET1 after the inclusion of any amounts to which this application relates (please complete for all that apply):

MIFIDPRU investment firm (solo CET1)	£
GCT parent undertaking (expected value of own funds instruments as specified in MIFIDPRU 2.6.2R(1))	£
Consolidating UK parent undertaking basis (consolidated CET1)	£

g. If you have calculated expected dividend pay-out by using a pay-out range instead of a fixed value, please confirm that you have used the upper end of that range:

Yes/No

h. If you have calculated expected dividend pay-out as a range, please confirm whether you wish to exclude any exceptional dividends paid during the period covered by that range:

Yes/No

If you have responded "Yes", please attach further information, and note that this will require a separate conversation with the FCA:

☐ Further information attached

i. Auditor's details (name, address, contact details):

4. Please confirm that the inclusion of the interim or year-end profits to which this application relates complies with the applicable material in the UK CRR and in MIFIDPRU.

☐ Yes

Application under MIFIDPRU 3.3.3R(1) - permission to classify capital instruments as CET1

3 Annex 2R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 2R

Application under MIFIDPRU 3.3.3R(1) for permission to classify an issuance of capital instruments as common equity tier 1 (CET1) capital

1. Please confirm which of the following the applicant firm is:

   a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking ☐

   b. MIFIDPRU investment firm that is a consolidating UK parent entity ☐

   c. MIFIDPRU investment firm that is a GCT parent undertaking ☐

   d. Consolidating UK parent entity (other than a MIFIDPRU investment firm) ☐

   e. GCT parent undertaking (other than a MIFIDPRU investment firm) ☐

Note: If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm/institution should be interpreted as to a consolidated situation of the UK parent.

2. For the instrument you would like to classify as CET1 capital, please provide the following information:

   a. Type of instrument (e.g. ordinary shares, partnership capital):

   b. If there is more than one class of the instrument, please list the different instrument classes:

   c. Total number of shares/units of instrument that have been issued or will be issued:

d. Nominal value per share/unit of instrument:

£

e. Share premium per share, if applicable:

£

f. Total amount of capital being raised:

£

g. Proposed date to be issued:

h. Total expected CET1 after the inclusion of the amounts to which this application relates (please complete for all that apply):

MIFIDPRU investment firm (solo CET1)	£
GCT parent undertaking (expected value of own funds instruments as specified in MIFIDPRU 2.6.2R(1))	£
Consolidating UK parent undertaking basis (consolidated CET1)	£

3. For capital instruments to qualify as CET1 instruments, the following conditions must be met (see article 28 of the UK CRR). Please confirm whether these conditions are met:

a. The instruments are issued directly by your institution, with prior approval of the owners or, if permitted by national law, the management body of the institution:

Yes/No

b. The instruments are paid up and their purchase is not funded directly or indirectly by your institution (indirect funding is defined under article 8 of the onshored Regulatory Technical Standard (RTS) 241/2014 on own funds):

Yes/No

c. The instruments meet all of the following conditions as regards their classification:

i. they qualify as capital within the meaning of Art 28(1)(c)(i) of the UK CRR:

Yes/No

ii. they are classified as equity within the meaning of the applicable accounting framework:

Yes/No

iii. they are classified as equity capital for the purposes of determining balance sheet insolvency, where applicable under national insolvency law:

Yes/No

d. The instruments are clearly and separately disclosed on the balance sheet in the financial statements of your institution:

Yes/No

e. The instruments are perpetual:

Yes/No

f. The principal amount of the instruments may not be reduced or repaid except in the following cases:

i. the liquidation of your institution; or

ii. discretionary repurchases of the instruments or other discretionary means of reducing capital (e.g. call, redemption or repayment), where your institution has been granted prior permission of the competent authority under article 77 of the UK CRR:

Yes/No

h. The provisions governing the instruments do not indicate expressly or implicitly that the principal amount of the instruments would or might be reduced or repaid other than in the liquidation of your institution, and your institution does not otherwise provide such an indication prior to or at issuance of the instruments:

Yes/No

i. The instruments meet the following conditions regarding distributions:

i. there is no preferential distribution treatment regarding the order of distribution payments, including in relation to other Common Equity Tier 1 instruments, and the terms governing the instruments do not provide preferential rights to payment of distributions:

Yes/No

ii. distributions to holders of the instruments may be paid only out of distributable items:

Yes/No

iii. the conditions governing the instruments do not include a cap or other restriction on the maximum level of distributions:

Yes/No

iv. the level of distributions is not determined on the basis of the amount for which the instruments were purchased at issuance:

Yes/No

v. the conditions governing the instruments do not include any obligation for your institution to make distributions to their holders and your institution is not otherwise subject to such an obligation:

Yes/No

vi. non-payment of distributions does not constitute an event of default of your institution:

Yes/No

vii. the cancellation of distributions imposes no restrictions on your institution:

Yes/No

j. Compared to all the capital instruments issued by your institution, the instruments absorb the first and proportionately greatest share of losses as they occur, and each instrument absorbs losses to the same degree as all other Common Equity Tier 1 instruments:

Yes/No

k. The instruments rank below all other claims in the event of insolvency or liquidation of your institution:

Yes/No

l. The instruments entitle their owners to a claim on the residual assets of your institution, which, in the event of its liquidation and after the payment of all senior claims, is proportionate to the amount of the instruments issued and is not fixed or subject to a cap:

Yes/No

m. The instruments are not secured, or subject to a guarantee that enhances the seniority of the claim by any of the following (answer "yes" if the instruments are not secured in this way):

   i. your institution or its subsidiaries:

   ii. the parent undertaking of your institution or its subsidiaries:

   iii. the parent financial holding company or its subsidiaries:

   iv. the mixed activity holding company or its subsidiaries:

   v. the mixed financial holding company and its subsidiaries:

   vi. any undertaking that has close links with the entities referred to in points i. to v.:

Yes/No

n. The instruments are not subject to any arrangement, contractual or otherwise, that enhances the seniority of claims under the instruments in insolvency or liquidation (answer "yes" if the instruments are not subject to any arrangement in this way):

Yes/No

4. Partnership capital (this section should only be completed by partnerships).

Is the capital contributed in accordance with MIFIDPRU 3.3.15R or MIFIDPRU 3.2.16R?

Yes/No

Material on how UK CRR article 28(1)(e) and (f) may be complied with can be found in MIFIDPRU 3.3.15R and 3.3.16R.

5. Please confirm whether the capital issuance to which this application relates meets the criteria required by the UK CRR and the onshored Regulatory Technical Standard (RTS) 241/2014 on own funds:

Yes/No

Please note that the FCA may request a copy of the terms of the instrument, or further information.

Notification under MIFIDPRU 3.3.3R(2) - issuance of additional capital instruments that have already been approved as CET1 instruments

3 Annex 3R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 3R

Notification under MIFIDPRU 3.3.3R(2) of issuance of additional capital instruments that have already been approved as CET1 instruments

1. Please confirm which of the following the notifying entity is:

   a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking ☐

   b. MIFIDPRU investment firm that is a consolidating UK parent entity ☐

   c. MIFIDPRU investment firm that is a GCT parent undertaking ☐

   d. Consolidating UK parent entity (other than a MIFIDPRU investment firm) ☐

   e. GCT parent undertaking (other than a MIFIDPRU investment firm) ☐

2. Please provide the following details in respect of the proposed issuance:

   a. Type of instrument (e.g. ordinary shares, partnership capital):

   b. Name of instrument:

   c. Date FCA permitted previous issuance to be treated as CET1:

DD/MM/YYYY

   d. Amount of additional instruments to be issued:

£

e. Proposed date on which the instruments will be classified as CET1 (*this should be at least 20 business days after this notification is sent to the FCA)*:

DD/MM/YYYY

By submitting this notification you confirm that the provisions governing the proposed issuance to which this notification relates are substantially the same as the provisions governing the issuance for which the firm has already received permission, and that you can provide supporting evidence if requested.

Application under MIFIDPRU 3.6.2R - permission to reduce own funds instruments when neither condition in MIFIDPRU 3.6.4R applies

3 Annex 4R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 4R

Application under MIFIDPRU 3.6.2R for permission to reduce own funds instruments where neither condition in MIFIDPRU 3.6.4R applies

1. Please confirm which of the following the applicant firm is:

   a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking ☐

   b. MIFIDPRU investment firm that is a consolidating UK parent entity ☐

   c. MIFIDPRU investment firm that is a GCT parent undertaking ☐

   d. Consolidating UK parent entity (other than a MIFIDPRU investment firm) ☐

   e. GCT parent undertaking (other than a MIFIDPRU investment firm) ☐

Note: If the application concerns more than one firm in the investment firm group, please submit separate applications for each firm.

For applications on consolidated basis, references to firm should be interpreted as to a consolidated situation of the UK parent.

2. Please confirm to which of the following the application relates:

   a. Permission to reduce, redeem or repurchase any of its CET1 instruments ☐

   b. Permission to reduce, distribute or reclassify as another own funds item the share premium accounts related to any of its own funds instruments ☐

   c. Permission to effect the call, redemption, repayment or repurchase of its additional tier 1 instruments or tier 2 instruments prior to the date of their contractual maturity ☐

3. Please provide the date of the intended capital reduction:

DD/MM/YYYY

4. Please confirm the amount of the intended reduction:

£

5. Please explain, in detail, the rationale for the reduction of own funds.

6. Please explain, and provide supporting calculations to demonstrate, how the firm meets the conditions in Article 78 of the UK CRR, and in particular:

   a. will have sufficient capital resources to meet its capital resources requirement immediately after the capital reduction;

   b. will have sufficient financial resources to meet its own funds threshold requirement immediately after the capital reduction; and

   c. will be able to meet the requirements in (a) and (b) above at all times (including in stress scenarios), for a minimum of three years.

☐ Supporting calculations attached

Notification under MIFIDPRU 3.6.3R - intended reduction in own funds instruments where a condition in MIFIDPRU 3.6.4R applies

3 Annex 5R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 5R

Notification under MIFIDPRU 3.6.3R of the intended reduction in own funds instruments where a condition in MIFIDPRU 3.6.4R applies

1. Please confirm which of the following the notifying entity is:

a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking	☐
b. MIFIDPRU investment firm that is a consolidating UK parent entity	☐
c. MIFIDPRU investment firm that is a GCT parent undertaking	☐
d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)	☐
e. GCT parent undertaking (other than a MIFIDPRU investment firm)	☐

Note: If the notification concerns more than one firm in the consolidated group, please submit separate notifications for each firm.

2. Please confirm to which of the following the application relates:

a. Permission to reduce, redeem or repurchase any of its CET1 instruments ☐

b. Permission to reduce, distribute or reclassify as another own funds item the share premium accounts related to any of its own funds instruments; or ☐

c. Permission to effect the call, redemption, repayment or repurchase of its additional tier 1 instruments or tier 2 instruments prior to the date of their contractual maturity. ☐

3. Date of the intended capital reduction:

DD/MM/YYYY

Note: The intended reduction must not take place until at least 20 business days after this notification is made.

4. The amount of the intended reduction:

£

5. A firm may only make use of this notification procedure if one of the conditions in MIFIDPRU 3.6.4R are met, otherwise it must apply for permission under MIFIDPRU 3.6.2R. Please explain the basis on which the firm has concluded that one of the conditions in MIFIDPRU 3.6.4R applies.

Notification under MIFIDPRU 3.6.5R of issuance of additional tier 1 or tier 2 instruments

3 Annex 6R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 3 Annex 6R

Notification under MIFIDPRU 3.6.5R of the intended issuance of AT1 or T2 instruments

1. Please confirm which of the following the notifying entity is:

a.	MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking	☐
b.	MIFIDPRU investment firm that is a consolidating UK parent entity	☐
c.	MIFIDPRU investment firm that is a GCT parent undertaking	☐
d.	Consolidating UK parent entity (other than a MIFIDPRU investment firm)	☐
e.	GCT parent undertaking (other than a MIFIDPRU investment firm)	☐

2. Please confirm which of the following categories of instruments the notification relates to:

a.	Additional tier 1 instruments	☐
b.	Tier 2 instruments	☐

3. Please provide the following details of the intended issuance:

a.	Type of instrument	
b.	Name of instrument	
c.	Amount of instruments to be issued	*£*
d.	Proposed issuance date (*this must be at least 20 business days after this notification is sent to the FCA)*	*DD/MM/YYYY*

4. Please confirm whether the instruments are intended to be issued to external investors or only to other members of the firm's group and connected parties:

a.	only to other members of the firm's group and connected parties	*Yes/No*

b. to other members of the firm's group and connected parties, as well as external investors	*Yes/No*
c. external parties only	*Yes/No*

5. Please attach a copy of the term sheet and provide details of any features of the capital instrument which are novel, unusual or different from a capital instrument of a similar nature previously issued by the firm or widely available in the market.

   ☐ Term sheet attached

6. Please confirm that the firm's senior management or governing body who has oversight of the intended issuance are satisfied that the instrument meets the conditions in MIFIDPRU 3.4 or MIFIDPRU 3.5 (as applicable, and including any conditions in the UK CRR applied by those sections) to be classified as AT1 or T2 instruments.

Yes/No

7. Please attach a legal opinion from an appropriately qualified individual, confirming that the capital instruments meet the conditions in MIFIDPRU 3.4 or MIFIDPRU 3.5 (as applicable, and including any conditions in the UK CRR applied by those sections).

   ☐ Legal opinion attached

4 Own funds requirements

4.1 Application

4.1.1 R This chapter applies to:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity* that is required by *MIFIDPRU* 2.5.7R to comply with *MIFIDPRU* 4 on the basis of its *consolidated situation*.

4.1.2 R Where this chapter applies to a *UK parent entity* under *MIFIDPRU* 4.1.1R(2), it applies with the following modifications:

(1) *MIFIDPRU* 4.2.1R (Initial capital requirement) does not apply; and

(2) any reference to a "*firm*" or "*MIFIDPRU investment firm*" in this chapter is to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*.

4.1.3 G *MIFIDPRU* 2.5 contains additional *guidance* on how a *UK parent entity* should apply the requirements in this chapter on a *consolidated basis*.

4.2 Initial capital requirement

4.2.1 R (1) At the point at which a *firm* is first authorised as a *MIFIDPRU investment firm*, it must hold *initial capital* of not less than the amount in (2).

(2) The relevant amount is the *permanent minimum capital requirement* that would apply if the *firm* had been granted the *permissions* that it has requested in its application for *authorisation*.

4.2.2 G (1) The initial capital requirement in *MIFIDPRU* 4.2.1R applies only at the point at which the *FCA* first grants *permission* to a *MIFIDPRU investment firm* to carry on *investment services and/or activities*. After a *firm* has been authorised as a *MIFIDPRU investment firm*, the *permanent minimum capital requirement* applies on an ongoing basis instead.

(2) Where a *MIFIDPRU investment firm* applies to vary its *permissions* to add new *investment services and/or activities* that would result in an increase in its *permanent minimum capital requirement*, the *FCA* would generally expect to refuse

the application unless the *firm* demonstrates that it can comply with the new *permanent minimum capital requirement*.

(3) The *FCA's* approach to the application of the initial capital requirement under *MIFIDPRU* is based on the existence of the *permanent minimum capital requirement* for *MIFIDPRU investment firms*. For the avoidance of doubt, this *guidance* does not affect the *FCA's* approach to whether the initial capital requirement under another prudential sourcebook applies on an ongoing basis.

4.3 Own funds requirement

4.3.1 R A *MIFIDPRU investment firm* must at all times maintain *own funds* that are at least equal to its *own funds requirement*.

4.3.2 R The *own funds requirement* of a *non-SNI MIFIDPRU investment firm* is the highest of:

(1) its *permanent minimum capital requirement* under *MIFIDPRU* 4.4;

(2) its *fixed overheads requirement* under *MIFIDPRU* 4.5; or

(3) its *K-factor requirement* under *MIFIDPRU* 4.6.

4.3.3 R The *own funds requirement* of an *SNI MIFIDPRU investment firm* is the higher of:

(1) its *permanent minimum capital requirement* under *MIFIDPRU* 4.4; or

(2) its *fixed overheads requirement* under *MIFIDPRU* 4.5.

4.4 Permanent minimum capital requirement

4.4.1 R (1) Where a *MIFIDPRU investment firm* has *permission* to carry on any of the *investment services and/or activities* in (2), its *permanent minimum capital requirement* is £750,000.

(2) The relevant *investment services and/or activities* are:

(a) *dealing on own account*;

(b) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis; or

(c) *operating an organised trading facility*, if the *firm* is not subject to a *limitation* that prevents it from carrying on the activities otherwise permitted by *MAR* 5A.3.5R.

4.4.2 G (1) Under *MAR* 5A.3.5R (Proprietary trading), a *firm* that has *permission* to *operate an organised trading facility* may *deal on* *own account* in the following ways without requiring separate *permissions* for *dealing on own account*:

(a) *matched principal trading* in the course of operating the *OTF*; or

(b) *dealing on own account* in relation to *sovereign debt* instruments for which there is no liquid market.

(2) A *firm* that is *operating an organised trading facility* and does not wish to carry on the activities in (1) may apply to the *FCA* under section 55H of the *Act* for a *limitation* that prohibits the *firm* from carrying on the activities on the basis of that *permission*.

(3) The effect of *MIFIDPRU* 4.4.1R(2)(c) is that if a *firm* is *operating an organised trading facility* and is not subject to the *limitation* described in (2), the *firm's permanent minimum capital requirement* is £750,000.

4.4.3 R (1) Where a *MIFIDPRU investment firm* satisfies the conditions in (2), its *permanent minimum capital requirement* is £150,000.

(2) The relevant conditions are:

(a) the *firm* has *permission* for any of the following:

(i) *operating a multilateral trading facility*;

(ii) *operating an organised trading facility*, if the *firm* is subject to a *limitation* that prevents it from carrying on the activities otherwise permitted by *MAR* 5A.3.5R;

(iii) holding *client money* or *client* assets in the course of *MiFID business*; and

(b) the *firm* does not have *permission* for any of the following:

(i) *dealing on own account*;

(ii) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;

(iii) *operating an organised trading facility*, if the *firm* is not subject to a *limitation* that prevents it from carrying on the activities otherwise permitted by *MAR* 5A.3.5R.

4.4.4 R (1) Where a *MIFIDPRU investment firm* satisfies the conditions in (2), its *permanent minimum capital requirement* is £75,000.

(2) The relevant conditions are:

(a) the only *investment services and/or activities* that the *firm* has *permission* to carry on are one or more of the following:

(i) reception and transmission of orders in relation to one or more *financial instruments*;

(ii) *execution of orders on behalf of clients*;

(iii) *portfolio management*;

(iv) *investment advice*; or

(v) placing of *financial instruments* without a firm commitment basis; and

(b) the *firm* is not permitted to hold *client money* or client assets in the course of *MiFID business*.

4.4.5 G The relevant *permanent minimum capital requirement* under this section applies to a *collective portfolio management investment firm* in parallel with its *base own funds requirement* under *IPRU-INV* 11. This means that a *collective portfolio management investment firm* must comply with both requirements, but they are not cumulative.

4.5 Fixed overheads requirement

4.5.1 R (1) The *fixed overheads requirement* of a *MIFIDPRU investment firm* is an amount equal to one quarter of the *firm's relevant expenditure* during the preceding year.

(2) When calculating its *fixed overheads requirement* in (1), a *firm* must use the figures resulting from the accounting framework applied by the *firm* in accordance with *MIFIDPRU* 4.5.2R.

(3) This *rule* is subject to *MIFIDPRU* 4.5.7R and *MIFIDPRU* 4.5.9R.

4.5.2 R (1) For the purposes of the calculation in *MIFIDPRU* 4.5.1R, a *firm* must use the figures in its most recent:

(a) audited *annual financial statements*; or

(b) unaudited *annual financial statements*, where audited financial statements are not available.

(2) If a *firm* has used unaudited *annual financial statements* in accordance with (1)(b) and audited *annual financial statements* subsequently become available, the *firm* must update the calculation in *MIFIDPRU* 4.5.1R using the audited figures.

(3) Where the financial statements in (1) do not cover a 12-*month* period, the firm must:

(a) divide the amounts included in those statements by the number of *months* the financial statements cover; and

(b) multiply the result of the calculation in (a) by 12 to produce an equivalent annual amount.

4.5.3 R (1) For the purpose of *MIFIDPRU* 4.5.1R(1), a *firm* must calculate its *relevant expenditure* by:

(a) calculating the *firm's* total expenditure before distribution of profits; and

(b) deducting any of the items in (2) from the total expenditure in (1)(a) to the extent that those items have been included in the expenditure.

(2) The items that a *firm* may deduct from its total expenditure are:

(a) any of the following, if they are fully discretionary:

(i) staff bonuses and other variable *remuneration*;

(ii) *employees*', *directors*', *partners*' and *limited liability partnership* members' shares in profits; and

(iii) other appropriations of profits;

(b) shared commission and fees payable that meet all of the following conditions:

(i) they are directly related to commission and fees receivable;

(ii) the commission and fees receivable are included within total revenue; and

(iii) the payment of the commission and fees payable is contingent on receipt of the commission and fees receivable;

(c) fees paid to *tied agents*;

(d) non-recurring expenses from non-ordinary activities;

(e) unless *MIFIDPRU* 4.5.4R applies, fees, brokerage and other charges paid to *central counterparties*, exchanges and other *trading venues* and intermediate brokers for the purposes of executing, registering and clearing transactions, provided that the fees, brokerage and charges are directly passed on and charged to customers;

(f) 80% of the value of any fees, brokerage and other charges, excluding any fees or charges to which *MIFIDPRU* 4.5.4R applies, paid to *central counterparties*, exchanges and other *trading venues* and intermediate brokers for the purposes of executing, registering and clearing transactions in relation to which:

(i) the *firm* is *dealing on own account*; and

(ii) the fees, brokerage or charges have not already been deducted under (e);

(g) interest paid to customers on *client money*, where there is no obligation of any kind to pay the interest;

(h) taxes where they fall due in relation to the annual profits of the *firm*;

(i) losses from trading on own account in *financial instruments*;

(j) payments related to contract-based profit and loss transfer agreements according to which the *firm* is obliged to transfer its annual profit to the *parent undertaking* following the preparation of the *firm's annual financial statements*;

(k) payments into a fund for general banking risk in accordance with article 26(1)(f) of the *UK CRR*, as applied by *MIFIDPRU* 3.3.1R; and

(l) other expenses, to the extent that their value has already been reflected in a deduction from *own funds* under *MIFIDPRU* 3.3.6R.

4.5.4 R The deducted amounts in *MIFIDPRU* 4.5.3R(2)(e) and (f) must not include fees and other charges necessary to maintain membership of, or otherwise meet loss-sharing financial obligations to, *central counterparties*, exchanges and other *trading venues*.

Additional deduction for commodity and emission allowance dealers

4.5.5 R In addition to the deductions in *MIFIDPRU* 4.5.3R(2), a *commodity and emission allowance dealer* may deduct expenditure on raw materials in connection with the underlying commodity of the commodity derivatives the *firm* trades.

Expenses incurred on behalf of the firm by third parties

4.5.6 R (1) A *firm* must add any fixed expenses that have been incurred on its behalf by a third party, including a *tied agent*, to the *firm's* total expenditure for the purposes of *MIFIDPRU* 4.5.3R in accordance with this *rule*.

(2) A *firm* is not required to add fixed expenses incurred on its behalf by a third party to the *firm's* expenditure if the expenses are already included in the figures resulting from *MIFIDPRU* 4.5.2R.

(3) Where a breakdown of the third party's expenses is available, the *firm* must add to the *firm's* total expenditure the share of the third party's expenses incurred on behalf of the *firm*.

(4) Where a breakdown of the third party's expenses is not available, the *firm* must:

(a) add to the *firm's* total expenditure the share of the third party's expenses incurred on behalf of the *firm* as projected in the *firm's* business plan; or

(b) if the *firm* does not have a business plan that projects the third party's expenses, reasonably estimate the share of those expenses that are attributable to the *firm's* business and add that estimated share of expenses to the *firm's* total expenditure.

Material change to projected relevant expenditure during the year

4.5.7 R (1) This *rule* applies where there:

(a) is an increase of 30% or more in the *firm's* projected *relevant expenditure* for the current year; or

(b) would be an increase of £2 million or more in the *firm's* *fixed overheads requirement* based on projected *relevant expenditure* for the current year.

(2) Where this *rule* applies, a *firm* must:

(a) immediately recalculate its *fixed overheads requirement* by applying the methodology in *MIFIDPRU* 4.5.3R to the projected *relevant expenditure*, taking into account the increase in (1);

(b) immediately substitute the revised *fixed overheads requirement* that results from the calculation in (a) for the *firm's* original *fixed overheads requirement* under *MIFIDPRU* 4.5.1R(1); and

(c) immediately recalculate its *basic liquid assets requirement* using the revised *fixed overheads requirement* in (b) and substitute the updated amount for its original *basic liquid assets requirement*.

4.5.8 G (1) Where there is a material increase in the *firm's* projected *relevant expenditure* that triggers the obligation in *MIFIDPRU* 4.5.7R, a *firm* should also consider the potential impact on its *ICARA process* and the conclusions documented in its last *ICARA document*. In particular, the *firm* should consider any potential impact on:

(a) the *liquid assets* that the *firm* must hold to comply with *MIFIDPRU* 6, as the requirements in that chapter are calibrated by reference to the *fixed overheads requirement*;

(b) the level of *own funds* and *liquid assets* that the *firm* must hold to comply with its obligations under *MIFIDPRU* 7; and

(c) the calibration of the *firm's wind-down triggers*.

(2) The review in (1) is particularly important if the *firm's own funds requirement* was determined by the *fixed overheads requirement* immediately before the change occurred.

4.5.9 R (1) This *rule* applies where there:

(a) is a decrease of 30% or more in the *firm's* projected *relevant expenditure* for the current year; or

(b) would be a decrease of £2 million or more in the *firm's fixed overheads requirement* based on projected *relevant expenditure* for the current year.

(2) Where this *rule* applies, a *firm* may:

(a) recalculate its *fixed overheads requirement* by applying the methodology in *MIFIDPRU* 4.5.3R to the projected *relevant expenditure*, taking into account the decrease in (1); and

(b) if it has obtained prior permission from the *FCA*, substitute the revised *fixed overheads requirement* that results from the calculation in (a) for the *firm's* original *fixed overheads requirement* under *MIFIDPRU* 4.5.1R.

(3) To obtain the permission in (2), a *firm* must:

(a) complete the application form in *MIFIDPRU* 4 Annex 11R and submit it to the *FCA* in accordance with the instructions on that form;

(b) demonstrate all of the following:

(i) that one of the conditions in (1)(a) or (b) is met and the projected reduction in the *firm's relevant expenditure* is a reasonable projection;

(ii) that the *firm* has adequately considered the impact of the reduction on the *firm's ICARA process* and the conclusions documented in the *firm's* last *ICARA document*; and

(iii) that there is a reasonable basis to conclude that, following the reduction in the *firm's fixed overheads requirement*, the *firm* will continue to hold sufficient *own funds* and *liquid assets* to comply with its obligations under *MIFIDPRU* 7.

4.5.10 G (1) Under *MIFIDPRU* 4.5.1R, a *MIFIDPRU investment firm* is required to calculate its *fixed overheads requirement* based on its *relevant expenditure* as set out in its *annual financial statements* for the previous year.

(2) Under *MIFIDPRU* 4.5.7R, if there is a material increase in the *firm's* projected *relevant expenditure* for the current year, the *firm* must recalculate its *fixed overheads requirement* on the basis of the projected increased *relevant expenditure*, taking into account the impact of that change.

(3) However, under *MIFIDPRU* 4.5.9R, if there is a material change that results in a decrease in the *firm's* projected *relevant expenditure* for the current year, the *firm* must obtain permission from the *FCA* before substituting a reduced *fixed overheads requirement* calculated on the basis of the projected decrease.

(4) In many cases, a material change of the type specified in *MIFIDPRU* 4.5.7R(1) or *MIFIDPRU* 4.5.9R(1) would result from planned changes to the *firm's* business. Examples of these changes may include:

(a) starting or ceasing a major business line;

(b) acquiring or disposing of a major business; or

(c) undertaking a significant investment, upgrade or restructuring programme.

A *firm* that is planning to implement a material change to its business should calculate the anticipated impact of that change on its *fixed overheads requirement* (and its broader *own funds requirement*) before executing the relevant change. This should include considering the potential impact on its *ICARA process* and its obligations under *MIFIDPRU* 7.

Firms that have been providing investment services and/or activities for less than one year

4.5.11 R (1) This *rule* applies where a *firm* has been in business for less than one year.

(2) For the purposes of the calculation in *MIFIDPRU* 4.5.1R, a *firm* must use the *relevant expenditure* included in its projections for the first 12 *months*' trading, as submitted in its application for *authorisation*.

4.6 Overall K-factor requirement

4.6.1 R The *K-factor requirement* of a *MIFIDPRU investment firm* is the sum of each of the following that apply to the *firm*:

(1) *K-AUM requirement*;

(2) *K-CMH requirement*;

(3) *K-ASA requirement*;

(4) *K-COH requirement*;

(5) *K-NPR requirement*;

(6) *K-CMG requirement*;

(7) *K-TCD requirement*;

(8) *K-DTF requirement*; and

(9) *K-CON requirement*.

4.6.2 G (1) The *rules* and *guidance* in *MIFIDPRU* 4.7 to 4.16 explain how a *MIFIDPRU investment firm* should calculate each component of its overall *K-factor requirement*.

(2) The manner in which *firms* carry on activities that are potentially relevant to one or more *K-factor metrics* may vary considerably. It is not practical for the *FCA* to give an exhaustive set of *rules* and *guidance* covering every conceivable business arrangement that *firms* may operate when carrying on such activities.

(3) If a *firm* is unsure whether a particular arrangement is within scope of one or more components of the *K-factor requirement*, the *FCA* expects the *firm* to apply a purposive approach to the interpretation of the requirement, as required by *GEN* 2.2.1R. Among other factors, the *FCA* would therefore expect the *firm* to consider:

(a) whether the arrangement is sufficiently analogous to another arrangement that is clearly covered by any *rules* or associated *guidance*;

(b) the risks that the relevant component of the *K-factor requirement* is designed to address and whether the same or similar risks arise in relation to the arrangement in question; and

(c) where the component of the *K-factor requirement* is calculated by reference to a specific *investment service and/or activity*, the approach that the *firm* has adopted to applying other *rules* or *guidance* elsewhere in the *Handbook* to the arrangement, where those *rules* or *guidance* refer to the same *investment service and/or activity*.

(4) The *FCA* expects that if asked, a *firm* will be able to justify the approach that the *firm* has taken to applying the *K-factor requirement* to a particular activity.

(5) *MIFIDPRU investment firms* are reminded that even if an activity does not contribute towards the *K-factor requirement*, they should still consider, in accordance with the requirements in *MIFIDPRU* 7, whether that activity may give rise to potential material risks of harm or may be relevant to the *firm's* wind-down analysis.

4.7 K-AUM requirement

4.7.1 R The *K-AUM requirement* of a *MIFIDPRU investment firm* is equal to 0.02% of the *firm's average AUM*.

4.7.2 R When measuring its *AUM*, a *MIFIDPRU investment firm* must include any amounts that relate to the *MiFID business* of the *firm* that is carried on by any *tied agents* acting on its behalf.

4.7.3 G The definition of *AUM* does not include any amounts arising from the *firm's* provision of the *ancillary service* in paragraph 3 of Part 3A of Schedule 2 to the *Regulated Activities Order* (i.e. providing advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings).

4.7.4 R A *firm* must calculate its *K-AUM requirement* on the first *business day* of each *month*.

4.7.5 R (1) A *firm* must calculate the amount of its *average AUM* by:

(a) taking the total *AUM* as measured on the last *business day* of each of the previous 15 *months*;

(b) excluding the 3 most recent monthly values; and

(c) calculating the arithmetic mean of the remaining 12 monthly values.

(2) When measuring the value of its *AUM* on the last *business day* of each *month*, a *firm* must convert any amounts in foreign currencies on that date into the *firm's* functional currency.

(3) For the purposes of the currency conversion in (2), a *firm* must:

(a) determine the conversion rate by reference to an appropriate market rate; and

(b) record the rate used.

4.7.6 G (1) The effect of *MIFIDPRU* 4.7.5R(2) is that when measuring the value of *AUM* at the end of each *month*, a *firm* must apply the relevant conversion rate on that date to the *AUM* attributable to that *month*. The *AUM* for each relevant preceding *month* should continue to be measured by reference to the conversion rate that was applicable at the end of that particular preceding *month*.

(2) For purposes of *MIFIDPRU* 4.7.5R(3), where a *firm* is carrying out a conversion that involves sterling, the *FCA* considers that an example of an appropriate market rate is the relevant daily spot exchange rate against sterling published by the Bank of England.

4.7.7 R (1) When measuring the amount of its *AUM*, a *firm* must:

(a) where available, use the market value of the relevant assets;

(b) where a market value is not available for an asset, use an alternative measure of fair value, which may include an estimated value calculated on a best efforts basis;

(c) exclude any amounts that are included in the *firm's* calculation of its *CMH*.

(2) When measuring the amount of its *AUM*, a *firm* may offset any negative values or liabilities attributable to positions within the relevant portfolios, so that *AUM* is equal to the net total value of the relevant assets.

4.7.8 R Where the *firm* has delegated the management of assets to another entity, the *firm* must include the value of those assets in its measurement of *AUM*.

4.7.9 R (1) Subject to (2), where a *financial entity* has formally delegated the management of assets to the *firm*, the *firm* may exclude the value of those assets from its measurement of *AUM*.

(2) The exclusion in (1) does not apply if the *financial entity* has excluded the relevant assets from the *financial entity's* calculation of its own capital requirements because the *financial entity* is also acting as a delegated manager.

(3) For the purposes of (1), formal delegation requires a legally binding agreement between the *financial entity* and the *firm* that sets out the rights and obligations of each party in relation to the delegation of the relevant *portfolio management* activities.

4.7.10 G (1) *MIFIDPRU* 4.7.8R and 4.7.9R apply where one entity delegates management of assets to another entity. For these purposes, delegation involves a delegating entity ("A") assuming a duty to the relevant *client* to manage the assets, and A then delegating the performance of that duty (in whole or in part) to another entity ("B").

(2) The following are not delegation for the purposes of *MIFIDPRU* 4.7.8R or 4.7.9R:

(a) where A only arranges for B to provide a service directly to a *client*, so that B owes a duty directly to the *client* to manage the assets and A does not; or

(b) where A advises a *client* to use B's management services for the *client's* assets, but A does not assume any responsibility to the *client* for managing the assets.

(3) *MIFIDPRU* 4.7.8R states that a *MIFIDPRU investment firm* cannot reduce its *AUM* by delegating management of assets to another entity. This is because the *firm* will normally continue to owe a duty directly to the *client*, even if performance of that duty has been delegated (wholly or partly) to another entity.

(4) However, *MIFIDPRU* 4.7.9R(1) permits a *firm* to which the management of assets has been formally delegated to exclude the value of the assets when measuring its *AUM* if the

delegating entity is a *financial entity*. However, if the delegation does not meet the requirements to be a formal delegation, the *firm* may not exclude the relevant assets from its measurement of *AUM*. The definition of a *financial entity* covers:

(a) entities that are subject to an AUM-based capital requirement that is similar to the *K-AUM requirement*;

(b) an *insurance undertaking* that forms part of the same *financial conglomerate* as the *firm* if the *FCA* is the *coordinator* for that *financial conglomerate*; and

(c) an *undertaking* that is part of the same *investment firm group* as the *firm*, provided that the *investment firm group* is subject to prudential consolidation under *MIFIDPRU* 2.5 and both entities are included within the resulting *consolidated situation* of the *UK parent entity* of that *investment firm group*.

(5) *MIFIDPRU* 4.7.9R(1) is a limited exclusion that applies where assets under management have been delegated to the *firm* by a *financial entity*. This reflects the fact that the *financial entity* will either have a minimum AUM-based capital requirement or the *FCA* will have additional supervisory powers to take into account the position of the *financial entity* because it forms part of the same *financial conglomerate* or prudential consolidation group as the *firm*. However, even where a *financial entity* is included within the same *financial conglomerate* or *investment firm group* to which *MIFIDPRU* 2.5 applies, *MIFIDPRU* 4.7.9R(1) may be disapplied by *MIFIDPRU* 4.7.9R(2) for sub-delegation arrangements. This is because extended chains of delegation may involve additional operational risks.

(6) *MIFIDPRU* 4.7.9R(2) applies if a *firm* is managing a portfolio under sub-delegation arrangements. Its effect is illustrated by the following example: Firm A (a *third country* entity that is a *financial entity*) formally delegates the management of a portfolio of assets to Firm B (a *MIFIDPRU investment firm*). Firm B formally sub-delegates the management of part of the portfolio to Firm C (another *MIFIDPRU investment firm*). Firm B may apply the exclusion in *MIFIDPRU* 4.7.9R(1), on the basis that Firm A is a *financial entity*. However, if Firm B applies the *MIFIDPRU* 4.7.9R(1) exclusion, Firm C cannot also exclude the value of the sub-delegated assets from Firm C's measurement of *AUM*. This is because *MIFIDPRU* 4.7.9R(2) disapplies the *MIFIDPRU* 4.7.9R(1) exclusion if the delegating entity has already applied a similar exclusion in relation to the same portfolio.

(7) *MIFIDPRU* 4.7.9R(2) also applies if the delegating entity is a *financial entity* in a *third country* and is applying an equivalent exclusion. For example, Firm D (an entity in a *third country*) delegates the management of a portfolio to Firm E (a *financial entity* in a *third country*). Firm E sub-delegates the management of part of that portfolio to Firm F (a *MIFIDPRU investment firm*). The *third country* rules to which Firm E is subject permit Firm E to exclude the value of the assets delegated by Firm D from Firm E's AUM-based capital requirement. If Firm E is relying on that exclusion, Firm F cannot rely on the exclusion in *MIFIDPRU* 4.7.9R(1).

4.7.11 G Where a *financial entity* ("A") provides *investment advice of an ongoing nature* to a *MIFIDPRU investment firm* ("B") and B undertakes discretionary *portfolio management*, the arrangement does not fall within *MIFIDPRU* 4.7.9R. This is because the arrangement is not a formal delegation of the management of assets by A to B, but involves 2 distinct activities: ongoing *investment advice* provided by A and discretionary *portfolio management* undertaken by B. In this situation, if A is a *MIFIDPRU investment firm*, it must include any assets in relation to which it is providing the advice in its measurement of *AUM*. Where B undertakes discretionary *portfolio management* in relation to the same assets, B must also include those assets in its own measurement of *AUM*.

4.7.12 R (1) This *rule* applies where a *firm* has been managing assets for its *clients* under discretionary *portfolio management* or non-discretionary arrangements constituting *investment advice of an ongoing nature* for less than 15 *months*.

(2) For the purposes of calculating *average AUM* under *MIFIDPRU* 4.7.5R, a *firm* must use the modified calculation in *MIFIDPRU* TP 4.11R(1) with the following adjustments:

(a) in *MIFIDPRU* TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has been managing assets for its *clients* under discretionary *portfolio management* or non-discretionary arrangements constituting *investment advice of an ongoing nature* (with the *month* during which the *firm* begins that activity counted as *month* zero); and

(b) during *month* zero of the calculation, the *firm* must:

(i) use a best efforts estimate of expected *AUM* for that *month* based on the *firm's* projections when beginning the new activity; and

(ii) use the estimate in (i) as its *average AUM*;

(c) during *month* 1 of the calculation and each *month* thereafter, the *firm* must apply the approach in (a) using observed historical data from the preceding *months*; and

(d) the modified calculation ceases to apply on the date that falls 15 *months* after the date on which the *firm* began managing assets under (1).

4.7.13 G *MIFIDPRU* 4.10.26G to *MIFIDPRU* 4.10.32G and *MIFIDPRU* 4 Annex 12G contain additional *guidance* on the interaction between the measurement of a *firm's AUM* and the measurement of a *firm's COH*.

Investment advice of an ongoing nature

4.7.14 G (1) The definition of *investment advice of an ongoing nature* includes:

(a) the recurring provision of *investment advice*; or

(b) *investment advice* given in the context of the continuous or periodic assessment and monitoring, or review of a *client* portfolio of *financial instruments*, including of the *investments* undertaken by the *client* on the basis of a contractual arrangement.

(2) In either case, the *firm* must provide *investment advice* as part of the relevant arrangement. This means that the *firm* must provide a personal recommendation to the *client*. Therefore, where a *firm* merely provides generic advice to a *client* that does not result in a personal recommendation, the *firm* does not need to include the value of any assets that are the subject of the generic advice in its measurement of *AUM*. *Firms* should refer to the *guidance* in *PERG* 13.3 for further information on *investment advice*, personal recommendations and generic advice.

(3) For example, a *firm* may undertake a periodic review of a *client's* portfolio to assess whether the balance between investments in equities and fixed income products is appropriate. If the *firm* advises the *client* only in general terms to invest a higher proportion of the portfolio in equities and a lower proportion in bonds, this would not normally constitute *investment advice*, unless the *firm* also gave advice on investing in specific equities or bonds. Provided that the *firm* does not give advice relating to specific investments (i.e. a personal recommendation), it therefore would not need to include the value of the portfolio when measuring its *AUM*.

4.7.15 G (1) When giving *investment advice of an ongoing nature*, the assets that the *firm* must include within its measurement of *AUM* will depend on the scope of the *firm's* obligation to provide *investment advice*.

(2) In some circumstances, a *firm* may have assumed a duty to provide *investment advice* in relation to the *client's* entire portfolio. For example, a financial adviser may agree to carry out periodic reviews of a *client's* entire portfolio and to make recommendations to the *client* about the specific *financial instruments* in which the *client* should invest. In that case, the *firm* must include the entire value of the *client's* portfolio (to the extent that the portfolio consists of *financial instruments*) in the *firm's* measurement of *AUM*. This is because the *firm* has assumed a duty to provide *investment advice of an ongoing nature* in relation to the entire portfolio.

(3) In other situations, the scope of the *firm's* duty to provide *investment advice* may be more limited. For example, a *firm* may agree with a *client* that the *firm* will provide *investment advice* only on a particular subset of assets or only when specifically requested by the *client*. In that case, the *firm's* duty to provide *investment advice of an ongoing nature* is limited to the relevant subset of assets, or the specific *financial instruments* in respect of which the *client* requests advice. Therefore, the *firm* would be required to include only the value of those particular assets or *financial instruments* when measuring its *AUM*.

(4) A *firm* may have assumed different duties in respect of different parts of a *client's* portfolio. For example, a *firm* may have agreed to carry out a general review of whether the *client's* portfolio is appropriately balanced in a manner that would constitute only generic advice, rather than a personal recommendation. However, the *firm* may also be under a duty to provide *investment advice* on the equities held within the portfolio. In that case, the general review would not constitute *investment advice* (as it is only generic advice) and therefore the *firm* does not need to include the entire value of the *client's* portfolio in the *firm's* measurement of *AUM*. However, as the *firm* does have an ongoing duty to provide *investment advice* in relation to the equities held in the portfolio, the *firm* must include the value of those assets within its measurement of *AUM*.

(5) Where a *firm* provides recurring *investment advice* to a *client* without assuming a continuing duty, the *firm* is only required to include the value of the particular *financial instruments* in respect of which it provides *investment advice* in the *firm's* measurement of its *AUM*.

4.7.16 G (1) *Investment advice of an ongoing nature* includes arrangements involving periodic or continuous *investment advice* and arrangements involving recurring *investment advice*.

(2) Periodic or continuous *investment advice* is most likely to arise where a *firm* agrees with a *client* that the *firm* will keep the *client's* portfolio under review or will provide advice to the *client* at various points during a specified period. For example, a *firm* may agree to manage a *client's* portfolio on a non-discretionary basis so that the *firm* has an ongoing duty to make personal recommendations to the *client*, but the *client* decides whether to proceed with each transaction. Alternatively, the *firm* may agree with the *client* to review the *client's* portfolio on, for example, a quarterly basis and to provide the *client* with personal recommendations following each review.

(3) Recurring *investment advice* does not require the *firm* to have assumed an ongoing or periodic duty to provide *investment advice* to the *client*. Instead, the *firm* provides *investment advice* to the same *client* repeatedly, even though there is no agreement with the *client* to establish a formal ongoing relationship. When considering whether *investment advice* is recurring for these purposes, a *firm* should assess whether, in substance, the type and pattern of advice that it provides is similar to periodic or continuous advice. This means that a *firm* cannot prevent what are, in substance, ongoing advisory arrangements for a *client* from constituting *investment advice of an ongoing nature* by artificially separating them into multiple individual agreements to provide advice to that *client*. If requested by the *FCA*, a *firm* should be able to justify why the *firm* has concluded that a particular set of advisory arrangements with a *client* does not constitute *investment advice of an ongoing nature*.

(4) *Investment advice of an ongoing nature* does not include genuinely isolated or sporadic instances of *investment advice* provided to the same *client* that do not, in substance, amount to ongoing arrangements. However, a *firm* should assess the potential harms arising from any *investment advice* that is not *investment advice of an ongoing nature* as part of its *ICARA process*.

4.7.17 G (1) Where a *firm* provides *investment advice* in the context of the continuous or periodic assessment and monitoring or review of a *client* portfolio of *financial instruments*, the value of *AUM* that the *firm* includes in respect of that portfolio should be determined by the scope of the *firm's* duty to the *client*.

(2) If the *firm* is under a duty to review the *client's* entire portfolio and provide *investment advice* as a result, the value

of all *financial instruments* in the portfolio should be included in *AUM*. If the *firm's* duty is limited to specific *financial instruments*, only those *financial instruments* need to be included in *AUM*.

4.7.18 R For the purposes of the calculation of *average AUM* in *MIFIDPRU* 4.7.5R:

(1) if the *firm* is under a duty to undertake a continuous assessment of the portfolio (or a subset of the portfolio), the *firm* must measure the value of *AUM* of the portfolio (or the relevant subset of it) on the last *business day* of each *month* during which that duty applies; and

(2) if the *firm* is under a duty to undertake periodic assessments of the portfolio (or a subset of the portfolio), the firm must use the value of the portfolio (or the relevant subset of it) at the time of the last review as the relevant value of *AUM* for each *month* until the next periodic review occurs (or the firm's duty ends, if earlier).

4.7.19 G The requirement in *MIFIDPRU* 4.7.18R(2) is illustrated by the following example:

(1) On 1 March, the *firm* reviews the *client's* entire portfolio of *financial instruments* and provides *investment advice* to the *client*. The value of the *client's* portfolio is 100 on that date. The *firm* is required to carry out its next review of the *client's* portfolio on 1 June. The *firm* would include a value of 100 in its *AUM* for each of March, April and May.

(2) On 1 June, the *firm* reviews the *client's* entire portfolio again and provides further *investment advice* to the *client*. The value of the *client's* portfolio on that date is 110. The *firm* would include a value of 110 in its *AUM* for June and each subsequent *month* until the time of the next review, or until the *firm's* duty to carry out a review of the *client's* portfolio ends (if earlier).

4.7.20 G (1) Where a *firm* provides recurring *investment advice* to a *client*, the value of *AUM* that the *firm* must include in respect of that *client* should be measured by the value of the *financial instruments* that are the subject of the relevant *investment advice*.

(2) Under *MIFIDPRU* 4.7.5R, to calculate its *average AUM*, a *firm* must take the 15 most recent monthly values of *AUM* and exclude the most recent 3 *months* before calculating the arithmetic mean of the remaining values. *MIFIDPRU* 4.7.21R explains how a *firm* should measure the monthly value of

AUM when it is providing recurring *investment advice* to a *client*.

4.7.21 R (1) Subject to (2), for the purposes of the calculation of *average AUM* under *MIFIDPRU* 4.7.5R, the value of *AUM* for recurring *investment advice* given in relation to a *client* in any given *month* is the sum of:

(a) the *AUM* arising from the recurring *investment advice* given by the *firm* to that *client* during that *month*; and

(b) the *AUM* arising from the *recurring investment advice* given by the *firm* to that *client* during the immediately preceding 11 *months*.

(2) When measuring *AUM* under (1), a *firm* may adjust the *AUM* figure to reflect the fact that the *firm* has previously given *investment advice* in relation to the same assets during the preceding 11 *months*.

4.7.22 G (1) The effect of *MIFIDPRU* 4.7.21R is illustrated by the following example.

(2) A *firm* provides recurring *investment advice* to a *client*. The dates on which the *firm* provides advice and the value of the *financial instruments* that are the subject of the advice are set out in the table below. In October 2022, the *firm* provides advice in relation to the same assets worth 25 on which the *firm* advised in March 2022, plus additional assets worth 45.

Date of advice	Value of financial instruments
January 2022	50
February 2022	No advice given
March 2022	25
April 2022	100
May 2022	No advice given
June 2022	50
July 2022	No advice given
August 2022	No advice given
September 2022	80

October 2022	70 (consisting of the same assets in March 2022 worth 25 and 45 of new assets)
November 2022	No advice given
December 2022	10
January 2023	No advice given
February 2023	No advice given
March 2023	30

(3) *MIFIDPRU* 4.7.21R means that *AUM* from recurring *investment advice* is cumulative across a rolling 12-*month* period. The following table shows how the *firm* in (2) would calculate the *AUM* attributable to the provision of recurring *investment advice* to the *client*.

Month	**Value of AUM**
January 2022	50
February 2022	50
March 2022	75 (i.e. 50 + 25)
April 2022	175 (i.e. 50 + 25 + 100)
May 2022	175
June 2022	225 (i.e. 50 + 25 + 100 + 50)
July 2022	225
August 2022	225
September 2022	305 (i.e. 50 + 25 + 100 + 50 + 80)
October 2022	350 (i.e. 50 + 25 + 100 + 50 +80 + 70 = 375

	375 – 25 (adjustment for the same assets in March 2022) = 350)
November 2022	350
December 2022	360 (i.e. 50 + 25 + 100 + 50 + 80 + 70 + 10 = 385 385 – 25 (adjustment for the same assets in March 2022) = 360)
January 2023	310 (i.e. 25 + 100 + 50 + 80 + 70 + 10 = 335 335 – 25 (adjustment for the same assets in March 2022) = 310)
February 2023	310
March 2023	340 (i.e. 100 + 50 + 80 + 70 + 10 + 30)

(4) At the end of March 2023, the *firm* would therefore calculate *average AUM* and the *K-AUM requirement* resulting from the above example of *investment advice of an ongoing nature* as follows:

Sum of the most recent 15 *months* of *AUM,* excluding the 3 most recent monthly values	50 + 50 + 75 + 175 + 175 + 225 +225 + 225 + 305 + 350 + 350 + 360 = 2,565
Average AUM	2,565 / 12 = 213.75
K-AUM requirement	213.75 * 0.0002 = 0.043

4.8 K-CMH requirement

4.8.1 R The *K-CMH requirement* of a *MIFIDPRU investment firm* is equal to the sum of:

(1) 0.4% of *average CMH* held by the *firm* in *segregated accounts*; and

(2) 0.5% of *average CMH* held by the *firm* in *non-segregated accounts*.

4.8.2 G (1) Generally, a *MIFIDPRU investment firm* should be holding *client money* in one or more *segregated accounts*. Under *MIFIDPRU* 4.8.9E, where a *firm* complies with the applicable requirements of *CASS* 7 in relation to an amount of *client money*, there is a presumption that the *client money* is being held in a *segregated account*.

(2) As a result, the *K-CMH requirement* for *non-segregated accounts* is most likely to be relevant where:

(a) the *K-CMH requirement* applies on a *consolidated basis* and:

(i) the *consolidated situation* includes one or more entities to which *CASS* does not apply, such as *third country* entities, that receive *money* from customers; and

(ii) the arrangements under which the entity in (i) holds *money* received from customers do not meet the conditions in *MIFIDPRU* 4.8.8R (as they apply on a *consolidated basis* under *MIFIDPRU* 2.5.30R); or

(b) a *MIFIDPRU investment firm* has not complied with the *CASS* 7 requirements, in which case the *firm* should treat any non-compliant arrangements as *non-segregated accounts* for the purposes of calculating any *K-CMH requirement* that includes that period of non-compliance.

(3) However, the scenario in (2)(b) does not affect any obligation that the *firm* has under *CASS*, or under any other *rule*, to take specified action or to notify the *FCA* where the *firm* has identified that it has breached the requirements of *CASS*.

4.8.3 R When calculating its *CMH* in accordance with this section, a *MIFIDPRU investment firm* must include any amounts that relate to *MiFID business* of the *firm* that is carried on by any *tied agent* acting on its behalf.

4.8.4 G As a result of the restrictions in *SUP* 12.6.5R and *SUP* 12.6.15R, the *FCA* generally expects that *MIFIDPRU* 4.8.3R would not be directly relevant to *MIFIDPRU investment firms* on an individual basis. However, where this section applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5 (Prudential consolidation), the *UK parent entity* must include any *CMH* attributable to a *tied agent* of a *third country investment firm* included within the *consolidated situation*.

4.8.5 G (1) The definition of *CMH* includes only *client money* which is *MiFID client money*. Therefore, *client money* which is received in connection with business other than *MiFID business* does not need to be included within a *MIFIDPRU investment firm's* calculation of *CMH*, except to the extent that *MIFIDPRU* 4.8.6R applies.

(2) The definition of *MiFID client money* includes the following:

(a) *money* deposited into a *client bank account* in accordance with *CASS* 7.13.3.R;

(b) *money* originally received in connection with *MiFID business* which a *firm* has placed in a *qualifying money market fund* in accordance with *CASS* 7.13.3R(4). This means that while the *units* or *shares* in the relevant *qualifying money market fund* must still be treated by the *firm* as *client* assets for the purposes of *CASS* and must be dealt with in accordance with *CASS* 7.13.26R, the value of those *units* or *shares* must be included in *CMH* for the purposes of *MIFIDPRU*;

(c) an amount of the *firm's* own *money* that the *firm* has paid into its *client bank account* for the purposes of:

(i) *prudent segregation*;

(ii) *alternative approach mandatory prudent segregation*; or

(iii) *clearing arrangement mandatory prudent segregation*; and

(d) *money* received from a *client* in connection with *MiFID business* which a *firm* has allowed a third party (such as an exchange, a *clearing house* or an *intermediate broker*) to hold in accordance with *CASS* 7.14 (Client money held by a third party).

(3) Where a *firm* controls *money* under a *mandate* in accordance with *CASS* 8, the *money* is not *MiFID client money* if it is not *client money* received or held by the *firm*. A *firm* is not required to include any *money* it controls but does not hold within its calculation of *CMH*.

(4) Although *money* that is not *MiFID client money* does not contribute to the *K-CMH requirement*, a *MIFIDPRU*

investment firm should still consider any potential material harms that may arise in connection with receiving *money* from *clients* as part of their *ICARA process* under *MIFIDPRU* 7. This includes any material harms that may arise in relation to amounts received that are not treated as *client money*, such as under a *title transfer collateral arrangement*.

4.8.6 R If a *MIFIDPRU investment firm* is unsure whether *client money* should be classified as *MiFID client money*, it must treat the relevant amount as *MiFID client money* for the purposes of this section until the *firm* is satisfied that the amount is not *MiFID client money*.

4.8.7 G *MIFIDPRU* 4.8.6R applies only for the purposes of determining how the *client money* concerned should be treated for the purposes of *MIFIDPRU*. It does not affect how the *client money* should be treated for the purposes of other provisions in the *Handbook* (such as *CASS* or *COBS*) or under any other legislation.

4.8.8 R An arrangement is a *segregated account* if it is an arrangement in respect of which a *firm* ("A") ensures that all of the following conditions are met:

(1) A keeps records and accounts enabling A, at any time and without delay, to distinguish assets held for one *client* from assets held for any other *client* and from A's own assets;

(2) A maintains its records and accounts in a way that ensures their accuracy, and in particular that they correspond to the assets held for *clients* and may be used as an audit trail;

(3) A conducts, on a regular basis, reconciliations between A's internal accounts and records and those of any third parties by whom those assets are held;

(4) A takes the necessary steps to ensure that deposited *client* funds are held in an account or accounts identified separately from any accounts used to hold funds belonging to A;

(5) A operates adequate organisational arrangements to minimise the risk of the loss or diminution of *client* assets or of rights in connection with those assets, as a result of misuse of the assets, fraud, poor administration, inadequate record-keeping or negligence; and

(6) the applicable national law provides that, in the event of A's insolvency or entry into resolution or administration, assuming that A has complied with (1) to (5), *client* funds cannot be used to satisfy claims against A, other than claims by the relevant *clients*.

4.8.9 E (1) This *rule* applies for the purposes of *MIFIDPRU* 4.8.8R.

(2) A *MIFIDPRU investment firm* which holds *client money* must comply with, among other requirements, the applicable requirements on:

(a) organisational requirements in relation to *client money* in *CASS* 7.12;

(b) segregation of *client money* in *CASS* 7.13 or *client money* held by a third party in *CASS* 7.14;

(c) records, accounts and reconciliations in *CASS* 7.15; and

(d) acknowledgement letters in *CASS* 7.18.

(3) Compliance with (2) in relation to an arrangement may be relied on as tending to establish compliance with the conditions for that arrangement to be classified as a *segregated account* in *MIFIDPRU* 4.8.8R.

(4) Contravention of (2) in relation to an arrangement may be relied on as tending to establish contravention of the conditions for that arrangement to be classified as a *segregated account* in *MIFIDPRU* 4.8.8R.

4.8.10 G The effect of *MIFIDPRU* 4.8.9E is that if a *MIFIDPRU investment firm* complies with the provisions of *CASS* specified in *MIFIDPRU* 4.8.9E(2) for a particular arrangement for *client money*, it can proceed on the basis that the *client money* is being held in a *segregated account* for the purposes of the *K-CMH requirement*. However, if the *firm* does not comply with the relevant *CASS* provisions in relation to a *client money* arrangement, this will generally be evidence that the relevant *client money* should be treated as being held in a *non-segregated account* for the purposes of calculating the *K-CMH requirement*.

4.8.11 G Where consolidation under *MIFIDPRU* 2.5 (Prudential consolidation) applies to an *investment firm group*, *MIFIDPRU* 2.5.30R and *MIFIDPRU* 2.5.31R explain how to calculate the consolidated *K-CMH requirement*.

4.8.12 R A *firm* must calculate its *K-CMH requirement* on the first *business day* of each *month*.

4.8.13 R A *firm* must calculate the amount of its *average CMH* by:

(1) taking the total *CMH* as measured at the end of each *business day* during the previous 9 *months*;

(2) excluding the daily values for the most recent 3 *months*; and

(3) calculating the arithmetic mean of the daily values for the remaining 6 *months*.

4.8.14 R For the purpose of the calculation in *MIFIDPRU* 4.8.13R, a *firm* must measure *CMH* in accordance with, to the extent applicable:

(1) any records, accounts and reconciliations that the *firm* maintains to comply with the requirements of *CASS* 7.15 (Records, accounts and reconciliations); and

(2) any values contained in accounting records.

4.8.15 R Where a *firm* has been holding *CMH* for less than 9 *months*, it must calculate its *average CMH* using the modified calculation in *MIFIDPRU* TP 4.11R(1) with the following adjustments:

(1) in *MIFIDPRU* TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has been holding *CMH* (with the *month* during which the firm begins that activity counted as *month* zero);

(2) during *month* zero of the calculation, the *firm* must:

(a) use a best efforts estimate of expected *CMH* for that *month* based on the *firm's* projections when beginning the new activity; and

(b) use the estimate in (a) as its *average CMH*;

(3) during *month* 1 of the calculation and each *month* thereafter, the *firm* must apply the approach in (1) using observed historical data from the preceding *months*;

(4) the modified calculation ceases to apply on the date that falls 9 *months* after the date on which the *firm* began holding *CMH*.

4.8.16 G (1) Under *MIFIDPRU* 4.8.13R(1), a *firm* must measure its *CMH* at the end of each *business day*. The relevant amount should reflect any subsequent adjustment that the *firm* must apply as a result of any requirement to carry out internal reconciliations in relation to *client money* (for example, under *CASS* 7.15). Therefore, where an internal reconciliation subsequently identifies that the amount of *CMH* recorded for a particular *business day* is incorrect, the *firm* should update the relevant amount to reflect the correct figure.

(2) Where the *K-CMH requirement* applies on a *consolidated basis*, the *guidance* in (1) also applies in relation to any reconciliations carried out in accordance with the requirements of the jurisdiction in which any *third country* entity included in the *consolidated situation* is based.

4.9 K-ASA requirement

4.9.1 R The *K-ASA requirement* of a *MIFIDPRU investment firm* is equal to 0.04% of the *firm's average ASA*.

4.9.2 R When calculating its *K-ASA requirement* in accordance with this section, a *MIFIDPRU investment firm* must include within its *ASA* any amounts that relate to *MiFID business* of the *firm* that is carried on by any *tied agents* acting on its behalf.

4.9.3 G Due to the limited types of activities in respect of which a *tied agent* may be exempt from the requirement for *authorisation* in the *UK* (as explained in *SUP* 12.2.7G), the *FCA* generally expects that *MIFIDPRU* 4.9.2R would not be directly relevant to a *MIFIDPRU investment firm* on an individual basis. However, where *MIFIDPRU* 4.9 applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5 (Prudential consolidation), the *UK parent entity* must include any *ASA* attributable to a *tied agent* of a *third country investment firm* included within the *consolidated situation*.

4.9.4 R A *firm* must exclude from its measurement of *ASA* any units or shares in a *qualifying money market fund* that are treated as *MiFID client money*.

4.9.5 G

(1) The definition of *ASA* includes only *client* assets held by a *MIFIDPRU investment firm* in the course of *MiFID business*. Therefore, *client* assets which are held in connection with business other than *MiFID business* do not need to be included within a *MIFIDPRU investment firm's* calculation of *ASA*, except to the extent that *MIFIDPRU* 4.9.6R applies.

(2) As explained in *MIFIDPRU* 4.8.5G, the definitions of *MiFID client money* and *CMH* include amounts that a *MIFIDPRU investment firm* has placed with *qualifying money market funds* in accordance with *CASS* 7.13.3R(4). As a result, although the resulting units or shares in a *qualifying money market fund* may be treated as *client* assets for the purposes of the *custody rules*, under *MIFIDPRU* 4.9.4R, their value must be included in *CMH* not in *ASA*.

(3) Although *client* assets that a *firm* holds other than in the course of *MiFID business* do not contribute to the *K-ASA requirement*, a *MIFIDPRU investment firm* should still consider any potential material harms that may arise in connection with receiving assets from *clients* as part of its *ICARA process* under *MIFIDPRU* 7.

(4) As part of its *ICARA process*, a *firm* should also consider material harms that may arise in relation to amounts received that are not treated as *client* assets for the purposes of the *custody rules* but in relation to which the *firm* may have future

obligations to a *client*, such as under a *title transfer collateral arrangement*.

4.9.6	R	If a *MIFIDPRU investment firm* is unsure whether *client* assets are held in the course of *MiFID business*, it must treat those assets as held in the course of *MiFID business* for the purposes of this section until it is satisfied that the assets are not held in the course of *MiFID business*.
4.9.7	R	A *firm* must calculate its *K-ASA requirement* on the first *business day* of each *month*.
4.9.8	R	A *firm* must calculate the amount of its *average ASA* by:

(1) taking the total *ASA* as measured at the end of each *business day* for the previous 9 *months*;

(2) excluding the values for the most recent 3 *months*; and

(3) calculating the arithmetic mean of the daily values for the remaining 6 *months*.

4.9.9	R	When measuring *ASA*, a *firm* must:

(1) where available, use the market value of the relevant assets; and

(2) where a market value is not available for an asset, use an alternative measure of fair value, which may include an estimated value calculated on a best efforts basis.

4.9.10	G	The values used by a *firm* under *MIFIDPRU* 4.9.8R should be consistent with the information on *client* assets in any relevant regulatory data reported by the *firm* to the *FCA*, and in any internal or external reconciliations and records maintained in accordance with *CASS* 6.6 (Records, accounts and reconciliations) unless a *rule* or relevant *guidance* requires the *firm* to take a different approach.
4.9.11	R	Where either of the following applies, a *firm* must include the value of the relevant assets in its measurement of *ASA*:

(1) the *firm* has delegated the safeguarding and administration of assets to another entity; or

(2) another entity has delegated the safeguarding and administration of assets to the *firm*.

4.9.12	G	The effect of *MIFIDPRU* 4.9.11R is that a *firm* will not reduce its level of *ASA* by delegating the safeguarding of assets to a third party. However, a *firm* will increase the level of its *ASA* by accepting the delegation of safeguarding and administration of assets to the *firm* by a third party. This reflects the harm that may result from a breach of

the *firm's* direct safeguarding responsibilities or the *firm's* responsibilities in relation to the selection, appointment and periodic review of any third party to which the *firm* has delegated safeguarding.

4.9.13 R Where a *firm* has been safeguarding assets constituting *ASA* for less than 9 *months*, it must calculate its *average ASA* using the modified calculation in *MIFIDPRU* TP 4.11R(1) with the following adjustments:

(1) in *MIFIDPRU* TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has been safeguarding assets (with the *month* during which the *firm* begins that activity counted as *month* zero); and

(2) during *month* zero of the calculation, the *firm* must:

(a) use a best efforts estimate of expected *ASA* for that *month* based on its projections when beginning the new activity;

(b) use the estimate in (a) as its *average ASA*;

(3) during *month* 1 of the calculation and each *month* thereafter, the *firm* must apply the approach in (1) using observed historical data from the preceding *months*; and

(4) the modified calculation ceases to apply on the date that falls 9 *months* after the date on which the *firm* began safeguarding assets constituting *ASA*.

4.10 K-COH requirement

4.10.1 R The *K-COH requirement* of a *MIFIDPRU investment firm* is equal to the sum of:

(1) 0.1% of *average COH* attributable to *cash trades*; and

(2) 0.01% of *average COH* attributable to *derivatives trades*.

4.10.2 R When calculating its *K-COH requirement* in accordance with this section, a *MIFIDPRU investment firm* must include within its *COH* any amounts that relate to *MiFID business* of the *firm* that is carried on by any *tied agent* acting on its behalf.

4.10.3 G The definition of *COH* includes orders that a *firm* handles when carrying on either of the following types of *MiFID business*:

(1) reception and transmission of client orders; and

(2) *execution of orders on behalf of a client*.

4.10.4 R A *firm* is not required to include the following in its measurement of *COH*:

(1) an order executed by a *firm* in its own name (including where the *firm* executes an order in its own name on behalf of a *client*);

(2) an order that a *firm* handles when acting in the capacity of the operator of a *multilateral trading facility* or *organised trading facility*;

(3) a transaction that falls within the definition of reception and transmission of *client* orders only as a result of the situation described in recital 44 of *MiFID*; and

(4) orders that are not ultimately executed.

4.10.5 G *MIFIDPRU* 4.10.6G to *MIFIDPRU* 4.10.17G contain further *guidance* on whether particular arrangements are included within the measurement of *COH*.

Execution of orders in the firm's own name

4.10.6 G Where a *firm* executes an order in its own name (irrespective of whether the order is ultimately for the benefit of a *client*), the order is included within the *firm's* measurement of its *DTF* under *MIFIDPRU* 4.15 (K-DTF requirement) and not within its measurement of *COH* under this section.

The extended ("bringing together") definition of reception and transmission

4.10.7 G Recital 44 of *MiFID* describes transactions that result from a *firm* bringing together 2 or more investors (such as introducing an issuer to a potential source of funding), but where the *firm* does not otherwise interpose itself within the chain of execution of any resulting order. In practice, this is most likely to be relevant in the context of *corporate finance business* or private equity business. A *firm* may exclude these transactions from its measurement of *COH* provided that its role does not go beyond this "extended" definition of reception and transmission. This is further described in the *guidance* in *PERG* 13.3 (Investment Services and Activities).

Matched principal trading

4.10.8 G A *firm* that trades in a matched principal capacity will be placing orders in its own name. These orders must therefore be included in the measurement of the *firm's DTF* and are not included in the calculation of *COH*.

Name give-up activities

4.10.9 G (1) The *FCA* understands that activities that are described as involving "name give-up" may take different forms.

(2) In certain cases, a *firm* may distribute indications of interest that indicate a willingness to enter into a transaction, but do not have fixed terms. The *firm* may then pass the names of the counterparties to each other following a match to allow them to facilitate the trade. These indications of interest and name-passing are not included within the measurement of *COH*. However, this does not mean that every transaction which begins with an indication of interest is outside the scope of *COH*. Where a *firm* is subsequently instructed to transmit an order on firm terms, or to execute an order, that transaction will be within the scope of *COH*, even if the order results from a process that began with an initial indication of interest.

(3) In some circumstances, a *firm* may disseminate orders on firm terms that result in a transaction as soon as they are confirmed by the recipient, following which the *firm* will disclose the name of the relevant counterparty. This activity is included within the measurement of *COH* because it involves reception and transmission of an order on firm terms.

Exchange give-up activities

4.10.10 G (1) A *firm* may facilitate trading by its *clients* on exchanges. Once a transaction has been executed, the relevant trade is then given up to the *client's* clearing firm.

(2) A *firm* should consider the exact capacity in which it is acting, and whether it incurs any liability as principal, when determining whether orders resulting from exchange give-up activities are included within the measurement of *COH*.

(3) If the *firm* enters into the transaction in its own name and therefore incurs principal liability, even for a short period, in relation to the trade before it is given up, the order should be included within the *firm's* measurement of *DTF* and not within its measurement of *COH*.

(4) If the *firm* does not incur liability as principal and merely acts as agent in the name of a third party in relation to the trade, the order should be included within the *firm's* measurement of *COH*.

Exchange block trades

4.10.11 G (1) A *firm* may be involved in negotiating a bilateral trade in relation to an exchange-traded instrument between counterparties that takes place off-exchange because the size of the trade exceeds certain specified levels. In some cases, the exchange may provide communications functionality to facilitate the block trades, but the trades are not executed on the exchange's public market.

(2) A *firm* must determine the capacity in which the *firm* is acting in relation to the block trade to determine if the value of the trade should be included in the *firm's* measurement of *COH*.

(3) If the *firm* enters into the block trade in its own name and the trade is then given up to a *client*, the *firm* should include the value of that trade in its measurement of *DTF*.

(4) If the *firm* executes the block trade as agent by committing the *client* to the terms of the trade, the *firm* should include the value of that trade in its measurement of *COH*.

(5) If the *firm* receives firm terms of the block trade from the *client* and transmits the terms to the counterparty in order for the counterparty to confirm the terms to create a binding transaction, the *firm* should include the value of that trade in its measurement of *COH*.

Broker functionality

4.10.12 G A *firm* may be a member of an exchange and may provide functionality whereby trades can be executed and booked directly into the account of the relevant *client*. In this case, the *FCA* considers that the trades should be included in the *firm's* measurement of *COH*, as the *firm* is still being used to execute the relevant trade.

Orders connected with the operation of trading venues

4.10.13 G (1) A *firm* which is *operating a multilateral trading facility* or *operating an organised trading facility* does not need to include any orders it handles solely in that capacity in its measurement of *COH*. However, it should consider as part of its *ICARA process* whether that activity gives rise to the risk of material potential harm which may require it to hold additional *own funds* or *liquid assets* under *MIFIDPRU* 7.

(2) However, if the operator of an *organised trading facility* is engaging in *matched principal trading*, as permitted by *MAR* 5A.3.5R, any matched principal trades are included in its measurement of *DTF* under *MIFIDPRU* 4.15 (K-DTF requirement).

4.10.14 G A *firm* that executes *client* orders on a *multilateral trading facility* or an *organised trading facility* when the *firm* is not acting in the capacity of the trading venue operator must include the orders in its measurement of *COH* (unless the *firm* executes the orders in its own name, in which case it must include the orders in its measurement of *DTF*).

4.10.15 G In certain circumstances, the same *firm* may both act as the operator of a *multilateral trading facility* or an *organised trading facility* and also submit an order on that *trading venue* on behalf of a *client*. In this case, although the *firm* is not required to measure *COH* in relation to its role as the operator of the *trading venue*, it must still measure *COH* (or *DTF* if it is possible to enter into transactions in its own name on the *trading venue* and it is executing in that capacity) in relation to the order that it executes for the *client*.

Orders that are never executed

4.10.16 G (1) The effect of *MIFIDPRU* 4.10.4R(4) is that where a *firm* receives a *client* order but that order is not ultimately executed, it does not have to include the value of that order in its measurement of *COH*. However, as part of its *ICARA process*, a *firm* should consider whether the fact that an order has not been executed gives rise to any material risks to the *firm* or to its *clients*. This may depend on the reasons why the *client* order has not been executed.

(2) If, for example, the order was not executed because market conditions did not allow the *firm* (or another entity to whom the order was ultimately transmitted) to achieve an appropriate outcome for the *client*, this may be consistent with the *firm's* contractual and regulatory duties. In that case, this may not give rise to any additional material risks.

(3) However, if the *firm* failed to transmit or execute an order because of an oversight or an internal systems failure, this may indicate that the *firm* has been failing in its duties to its *client* or in its regulatory obligations. Alternatively, the *firm* may have successfully transmitted an order, but failed to select an appropriate entity to receive and execute the order, and therefore may have failed to comply with its obligations to act in the best interests of the *client* when transmitting the order. In this case, the *firm* should consider as part of its *ICARA process* whether the failures may give rise to material risks and how these risks should be addressed.

4.10.17 G (1) Although failure to achieve the execution of an individual order does not necessarily indicate potential material harms, a series or pattern of failures may be evidence of potential material harms.

(2) A *firm's* analysis under its *ICARA process* is separate from the application of any individual regulatory or other legal duties owed to an individual *client*. Therefore, while a *firm* may conclude that an isolated oversight in relation to a *client* order

does not give rise to the risk of material harm under the *ICARA process*, this does not affect any obligations that the *firm* owes to the *client*.

Calculating COH

4.10.18 R A *firm* must calculate its *K-COH requirement* on the first *business day* of each *month*.

4.10.19 R (1) A *firm* must calculate the amount of its *average COH* by:

(a) taking the total *COH* measured throughout each *business day* over the previous 6 *months*;

(b) excluding the daily values for the most recent 3 *months*; and

(c) calculating the arithmetic mean of the daily values of the remaining 3 *months*.

(2) When measuring the value of *COH* for a particular *business day*, a *firm* must convert any amounts in foreign currencies on that date into the *firm's* functional currency.

(3) For the purposes of the currency conversion in (2), a *firm* must:

(a) determine the conversion rate by reference to an appropriate market rate; and

(b) record the rate used.

Measuring the value of orders for COH

4.10.20 R (1) When measuring its *COH*, a *firm* must use the sum of the absolute value of each buy order and sell order, as determined in accordance with the remainder of this *rule*.

(2) For *cash trades* relating to *financial instruments*, the value of the order is the amount paid or received on the trade at the time at which it is executed, unless the *firm* has applied the approach in *MIFIDPRU* 4.10.23R.

(3) For *derivatives trades* other than orders relating to interest rate derivatives, the value of the order is the notional amount of the contract, determined in accordance with *MIFIDPRU* 4.14.20R(2).

(4) For orders relating to interest rate derivatives, the value of the order is the notional amount of the contract determined in accordance with *MIFIDPRU* 4.14.20R(2), adjusted in accordance with *MIFIDPRU* 4.10.25R.

		(5)	A *firm* may calculate the value of an order by deducting any transaction costs to reflect the consideration received or paid by the *client* for the relevant instruments, provided that the transaction costs are not paid separately to the *firm* by the *client*.
4.10.21	G	(1)	Under the general approach in *MIFIDPRU* 4.10.20R(2), a *firm* determines the gross value of an order by multiplying the market price of the instrument by the quantity of the instrument being purchased or sold.
		(2)	However, *MIFIDPRU* 4.10.20R(5) permits (but does not require) a *firm* to calculate the value of an order by reference to the consideration paid or received by the *client* for the instruments (i.e. net of transaction costs), provided that the transaction costs are included in the gross value of the order and are not paid by the *client* to the *firm* separately.
		(3)	For example, Firm A executes an order for a *client* to buy 100 shares. The total cost of the order, including transaction costs, is £100. The *client* receives shares worth £88, after the *firm* uses £12 to cover transaction costs. Under the standard approach in *MIFIDPRU* 4.10.20R(2), the *firm* may record the value of the order in its *COH* as £100 (i.e. the gross cost of the order). The *firm* may, for example, choose this approach for reasons of simplicity and administrative convenience.
		(4)	Alternatively, in the example above, the *firm* may apply the approach under *MIFIDPRU* 4.10.20R(5) to record the value of the order in its *COH* as £88 (i.e. net of transaction costs paid by the *client* in relation to the transaction).
		(5)	However, a *firm* cannot rely on *MIFIDPRU* 4.10.20R(5) to reduce the value of an order by transaction costs that are paid separately by the *client* to the *firm*. For example, Firm B executes an order for a *client* to buy 100 shares. The total cost of the order is £100. The *client* additionally pays £12 to Firm B for transaction costs. In this case, the *firm* must record the net value of the order under *MIFIDPRU* 4.10.20R(5) in its *COH* as £100 (and not £88), as the transaction costs have been paid separately.
		(6)	The effect of *MIFIDPRU* 4.10.19R(2) is that when measuring the value of *COH* at the end of each *business day*, a *firm* must apply the relevant conversion rate on that date to any amounts in foreign currencies forming part of the *COH* attributable to that *business day*. The *COH* for each preceding *business day* should continue to be measured by reference to the conversation rate that was applicable on that preceding day.

(7) For the purposes of *MIFIDPRU* 4.10.19R(3), where a *firm* is carrying out a conversion that involves sterling, the *FCA* considers that an example of an appropriate market rate is the relevant daily spot exchange rate against sterling published by the Bank of England.

4.10.22 G For *cash trades* relating to exchange-traded options, the amount paid or received under *MIFIDPRU* 4.10.20R(2) is the premium paid for the option.

4.10.23 R (1) By way of derogation from *MIFIDPRU* 4.10.20R(2), a *firm* that receives and transmits an order that is a *cash trade* may apply the approach in this *rule* to determine the value of that order for the purposes of measuring *COH*.

(2) Where a *firm* applies the approach in this *rule*, the value of the order shall be determined by reference to:

(a) for an order which specifies a fixed price or limit price at which the order should be executed, that price; or

(b) for an order which does not specify a price, the market price of the relevant instrument at the end of the day on which the order is transmitted by the *firm*.

(3) A *firm* that applies the approach in this *rule* must apply it either:

(a) in relation to all *cash trades* that the *firm* receives and transmits; or

(b) only in relation to *cash trades* that the *firm* receives and transmits where it does not receive timely information from the executing entity about the terms on which the order was executed.

(4) A *firm* that applies the approach in this *rule* must document which basis in (3) applies.

4.10.24 G (1) The effect of *MIFIDPRU* 4.10.23R is to permit a *firm* that receives and transmits orders that are *cash trades* to determine the *COH* attributable to the orders using an alternative approach. A *firm* may either:

(a) apply the standard approach in *MIFIDPRU* 4.10.20R(2) and use the price at which the relevant order was ultimately executed, once this has been confirmed by the entity that executes the order; or

(b) apply the alternative approach in *MIFIDPRU* 4.10.23R and use a deemed price that is determined by reference to the limit price of the order or, if there is no limit price, the end-of-day market price at the time at which the order is transmitted.

(2) However, a *firm* must not use the alternative approach in *MIFIDPRU* 4.10.23R for regulatory arbitrage to reduce its *K-COH requirement*. To prevent this, a *firm* may only apply the alternative approach either:

(a) in relation to all *cash trades* that the *firm* receives and transmits; or

(b) in relation to *cash trades* that the *firm* receives and transmits where the *firm* does not receive timely information from the broker about the terms on which the order was executed. In this case, the *firm* must apply the standard approach in *MIFIDPRU* 4.10.20R(2) in relation to all other *cash trades*. This is designed to ensure that the *firm* can record daily information for *COH* in circumstances where information about the ultimate execution of the order is otherwise missing or significantly delayed.

4.10.25 R (1) For the purposes of *MIFIDPRU* 4.10.20R(4), a *firm* must adjust the notional amount of an interest rate derivative by multiplying the notional amount by the duration.

(2) The duration in (1) shall be determined in accordance with the following formula:

Duration = time to maturity (in years) / 10

Interaction between K-COH requirement and K-AUM requirement

4.10.26 G *MIFIDPRU* 4.10.27G to *MIFIDPRU* 4.10.32G and *MIFIDPRU* 4 Annex 12G explain the circumstances in which a *firm* must include orders that arise in connection with *portfolio management* or *investment advice* in, or may exclude orders from, its measurement of *COH*.

4.10.27 G (1) The basic definition of *COH* includes:

(a) orders that the *firm* executes when providing execution services for a *client*; and

(b) orders that the *firm* has received from a *client* and transmitted to another entity for execution.

(2) The *rules* and *guidance* in *MIFIDPRU* 4.10.28R to 4.10.32G explain how this definition applies in particular scenarios and certain exclusions or modifications that may apply.

4.10.28 R A *firm* may exclude from its calculation of *COH* any order that the *firm* generates in the course of providing either of the following in relation to a portfolio, if the portfolio is included in the *firm's* calculation of its *K-AUM requirement*:

(1) *portfolio management*; or

(2) *investment advice of an ongoing nature*.

4.10.29 R (1) This *rule* applies where:

(a) *portfolio management* has been delegated to a *firm* by a *financial entity*; and

(b) as a result of the delegation in (a), the *firm* has excluded the delegated portfolio from its calculation in *AUM* in accordance with *MIFIDPRU* 4.7.9R.

(2) The *firm* in (1) must include in its measurement of *COH* any orders that the *firm* executes in the course of providing *portfolio management* in relation to the delegated portfolio.

(3) The *firm* in (1) is not required to include in its measurement of *COH*:

(a) any order that the *firm* passes back to the delegating *financial entity* for execution (whether the order is executed by that *financial entity* or is transmitted by the *financial entity* to another entity for execution); or

(b) any order that the *firm* places with another entity for execution in the course of providing *portfolio management* in relation to the delegated portfolio.

4.10.30 G The exclusions in *MIFIDPRU* 4.7.9R, *MIFIDPRU* 4.10.28R and *MIFIDPRU* 4.10.29R(3) may result in a *firm* that carries on delegated *portfolio management* having no *K-AUM requirement* or *K-COH requirement* in relation to all or part of a delegated portfolio. Where one or more exclusions apply, a *firm* should still assess as part of its *ICARA process* whether the activity of providing delegated *portfolio management* may give rise to potential material harms that may need to be covered by additional financial resources. *Firms* should refer to the *rules* and *guidance* in *MIFIDPRU* 7 for additional information on the *ICARA process*.

4.10.31 G (1) *MIFIDPRU* 4.10.29R does not apply where a *financial entity* ("A") carries on *portfolio management* in relation to a portfolio and a *MIFIDPRU investment firm* ("B") provides *investment advice of an ongoing nature* to A in relation to that portfolio. In this situation, A has not delegated *portfolio management* to B. Instead, A provides the service of *portfolio management* to A's *client*, and B provides the separate service of *investment advice* to A. If A is a *MIFIDPRU investment firm*, A will include the value of the relevant portfolio when calculating its *K-AUM requirement*. B will calculate its own *K-AUM requirement* in relation to the same portfolio.

(2) Although *MIFIDPRU* 4.10.29R does not apply in this scenario, B may benefit from the separate exclusion in *MIFIDPRU* 4.10.28R(2) and therefore would not be required to include any orders that result from its ongoing *investment advice* within B's calculation of *COH*, because B will calculate a *K-AUM requirement* in relation to the relevant portfolio.

4.10.32 G When measuring *COH* for the purposes of *MIFIDPRU* 4.10.19R, a *firm* must include:

(1) an order that the *firm* executes, or receives and transmits, as a result of providing *investment advice* (other than *investment advice of an ongoing nature*, if the *firm* calculates a *K-AUM requirement* in relation to the advice) to a *client* and subsequently receiving instructions from the *client* to transmit or execute the relevant order; and

(2) an order that a *firm* receives from another *firm* ("X"), where:

(a) X provides *investment advice* (including *investment advice of an ongoing nature*) to a *client*;

(b) as a result of the advice in (a), the *client* instructs X to place an order with the *firm*; and

(c) the *firm* executes or receives and transmits the order received from X.

Firms with less than 6 months data on COH

4.10.33 R (1) This *rule* applies where a *firm* has been handling *client* orders constituting *COH* for less than 6 *months*.

(2) For the purposes of its calculation of *average COH* under *MIFIDPRU* 4.10.19R, a *firm* must use the modified calculation in *MIFIDPRU* TP 4.11R(1) with the following adjustments:

(a) in *MIFIDPRU* TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has been handling *client* orders constituting *COH* (with the *month* during which the firm begins that activity being counted as *month* zero); and

(b) during *month* zero of the calculation, the *firm* must:

(i) generate a best efforts estimate of expected *COH* for that *month* based on the *firm's* projections when beginning the new activity; and

(ii) use the estimate in (i) as its *average COH*;

(c) during *month* 1 of the calculation and each *month* thereafter, the *firm* must apply the approach in (a) using observed historical data from the preceding *months*; and

(d) the modified calculation ceases to apply on the date that falls 6 *months* after the date on which the *firm* began handling *client* orders constituting *COH*.

4.11 Trading book and dealing on own account: general provisions

4.11.1 G References to *trading book* positions in *MIFIDPRU* include all *trading book* positions of the *firm*, including positions in:

(1) equity instruments;

(2) debt instruments (including securitisation instruments);

(3) collective investment undertakings;

(4) foreign exchange;

(5) gold; and

(6) commodities and emissions allowances.

4.11.2 G (1) For the purposes of the definition of a *position held with trading intent* in relation to the *trading book*, positions arising from client servicing include those arising out of contracts in relation to which a *firm* is acting as principal (even in the context of activity described as 'broking' or 'customer business'). This applies even if the nature of the business means that the only risks incurred by the *firm* are counterparty risks (i.e. no market risk charges apply).

(2) If the nature of the business means that the only risks incurred by the *firm* are counterparty risks, the position will generally still be a *position held with trading intent*.

(3) The *FCA* understands that business carried out under International Uniform Brokerage Execution ("Give-Up") Agreements involve back to back trades as principal. If so, positions arising out of business carried out under such agreements should be allocated to a *firm's trading book*.

4.11.3 R (1) A *MIFIDPRU investment firm* must manage its *trading book* in accordance with Chapter 3 of Title I of Part Three of the *UK CRR* in the form in which it stood at 31 December 2021, with the following modifications:

(a) if a *firm* is unsure whether a position is a *position held with trading intent* or is held to hedge a *position held with trading intent*, the *firm* must include that position within its *trading book*;

(b) the following provisions of the *UK CRR* do not apply:

(i) article 102(1);

(ii) article 102(4);

(iii) article 104(2)(g); and

(iv) article 106;

(c) the reference in article 104(1) of the *UK CRR* to "policies and procedures for determining which position to include in the trading book" is a reference to "policies and procedures for identifying which positions form part of the trading book".

(2) Any reference to the *UK CRR* in this *rule* is to the *UK CRR* as applied and modified by (1).

4.11.4 R The following requirements only apply to a *firm* that *deals on own account*, whether on its own behalf or on behalf of its *clients*:

(1) the *K-NPR requirement*;

(2) the *K-CMG requirement*; and

(3) the *K-TCD requirement*.

4.11.5 R The *K-DTF requirement* applies to a *firm* that:

(1) *deals on own account*; or

(2) *executes orders on behalf of clients* in the *firm's* own name.

4.11.6 G A *MIFIDPRU investment firm* that *deals on own account* is also subject to the *K-CON requirement* in accordance with *MIFIDPRU* 5.

4.11.7 G A *MIFIDPRU investment firm* that has *permission* to *operate an organised trading facility* may rely on that *permission* to:

(1) carry out *matched principal trading* in certain types of *financial instruments* with *client* consent, in accordance with *MAR* 5A.3.5R(1); and

(2) *deal on own account* in illiquid *sovereign debt* instruments in accordance with *MAR* 5A.3.5R(2).

In either case, the *firm* will be *dealing on own account* and is therefore subject to the requirements in *MIFIDPRU* 4.11.4R and *MIFIDPRU* 4.11.5R to the extent relevant to the transactions it undertakes. *MIFIDPRU* 5 explains how the *K-CON requirement* applies to such *firms*.

4.11.8 R A *firm* to which *MIFIDPRU* 4.11.4R applies is required to calculate its *K-NPR requirement* and *K-CMG requirement* only in relation to:

(1) *trading book* positions; and

(2) positions other than *trading book* positions where the positions give rise to foreign exchange risk or commodity risk.

4.11.9 R (1) This *rule* applies where a *firm* has deliberately taken a position to hedge against the adverse impact of a foreign exchange rate on:

(a) the *firm's own funds requirement*; or

(b) an item which the *firm* has deducted from its *own funds*.

(2) A *firm* may exclude a position in (1) from its net open currency positions for the purpose of article 352 of the *UK CRR* (as applied by *MIFIDPRU* 4.12.2R) if the *firm* has prior permission from the *FCA*.

(3) To obtain the permission in (2), a *firm* must:

(a) complete the application form in *MIFIDPRU* 4 Annex 1R and submit it to the *FCA* using the *online notification and application system*;

(b) in the application, demonstrate to the satisfaction of the *FCA* that the position is:

(i) used for one of the hedging purposes in (1)(a) or (1)(b); and

(ii) of a non-trading or structural nature.

(4) This *rule* replaces article 352(2) *UK CRR* where that article would otherwise apply under *MIFIDPRU* 4.12.2R.

4.11.10 R A *firm* to which *MIFIDPRU* 4.11.4R applies is required to calculate its *K-TCD requirement* only in relation to the following:

(1) transactions that form part of its *trading book*; and

(2) transactions specified in *MIFIDPRU* 4.14.3R(7).

4.12 K-NPR requirement

4.12.1 R A *MIFIDPRU investment firm* must calculate its *K-NPR requirement* by reference to every position referred to in *MIFIDPRU* 4.11.8R that does not form part of a *portfolio* for which the *firm* has been granted a *K-CMG permission*.

4.12.2 R (1) The *K-NPR requirement* of a *MIFIDPRU investment firm* must be calculated in accordance with Title IV of Part Three of the *UK CRR* in the form in which it stood at 31 December 2021.

(2) Any reference in this section to the *UK CRR* is to the *UK CRR* as applied by (1) and modified by the *rules* in this section.

(3) When applying the *UK CRR* in accordance with (1):

(a) any provision in the *UK CRR* relating to the effect that the market risk of a position has on the “own funds requirement” should be interpreted as relating instead to the effect that the position has on the *K-NPR requirement* of the *MIFIDPRU investment firm*;

(b) article 363 of the *UK CRR* does not apply;

(c) any reference in Title IV of Part Three of the *UK CRR* to:

(i) article 363 of the *UK CRR* (permission to use internal models) refers to *MIFIDPRU* 4.12.4R to *MIFIDPRU* 4.12.7R; and

(ii) permissions granted under article 363 of the *UK CRR* refers to equivalent permissions granted under *MIFIDPRU* 4.12.4R to *MIFIDPRU* 4.12.7R.

Instruments for which no treatment is specified in the UK CRR

4.12.3 R (1) Where a *MIFIDPRU investment firm* has a position in a *financial instrument* for which no treatment is specified in the *UK CRR*, it must consider whether:

(a) the position is sufficiently similar to a position for which a treatment is specified in the *UK CRR*; and

(b) the application of the treatment in (a) would be prudent and appropriate.

(2) If there is a treatment in the *UK CRR* that meets the requirements in (1), the *firm* must calculate the *K-NPR requirement* resulting from that position by applying that treatment.

(3) If there are multiple treatments in the *UK CRR* that meet the requirements in (1), the *firm* must calculate the *K-NPR requirement* resulting from that position by applying the most appropriate treatment.

(4) If there are no appropriate treatments in the *UK CRR*, the *firm* must add an appropriate percentage of the current value of the position to its overall *K-NPR requirement*. An appropriate percentage is either 100%, or a percentage that takes into account the characteristics of the position.

(5) A *firm* must document its policies and procedures for calculating the *K-NPR requirement* of positions under this *rule* in its *trading book* policy statement.

Permission to use internal models

4.12.4 R (1) A *firm* must obtain prior permission from the *FCA* before using an internal model to calculate any of the following requirements under Part Three, Title IV, Chapter 5 of the *UK CRR*:

(a) general risk of equity instruments;

(b) specific risk of equity instruments;

(c) general risk of debt instruments;

(d) specific risk of debt instruments;

(e) foreign exchange risk; and

(f) commodities risk.

(2) To obtain the permission in (1), a *firm* must:

(a) complete the application form in *MIFIDPRU* 4 Annex 2R and submit it to the *FCA* using the *online notification and application system*; and

(b) in the application, demonstrate to the satisfaction of the *FCA* that:

(i) the *firm* meets the conditions for the use of the internal model specified in Part Three, Title IV, Chapter 5 of the *UK CRR,* as supplemented by the *rules* and *guidance* in this section; and

(ii) the internal model covers a significant share of the positions of the relevant risk category in (1).

(3) A *firm* must obtain a separate permission under this *rule* for each risk category in (1).

4.12.5 G *MIFIDPRU* 4.12.8R to 4.12.65G contain *rules* and *guidance* setting out requirements for internal models and explaining the factors that the *FCA* will consider when deciding whether to grant permission to use an internal model.

4.12.6 R (1) A *firm* that has a permission under *MIFIDPRU* 4.12.4R for an internal model must obtain approval from the *FCA* before it:

(a) implements a material change to the use of the model; or

(b) makes a material extension to the use of the model.

(2) To determine if a change or extension is material for the purposes of (1), a *firm* must apply the criteria and methodology set out in articles 3, 7a and 7b of the *Market Risk Model Extensions and Changes RTS*.

(3) To obtain the approval in (1), a *firm* must:

(a) complete the application form in *MIFIDPRU* 4 Annex 3R and submit it to the *FCA* using the *online notification and application system*; and

(b) perform an initial calculation of stressed value-at-risk in accordance with article 365(2) of the *UK CRR* on the basis of the model as changed or extended and submit the results as part of the application in (a).

4.12.7 R (1) A *firm* that has a permission under *MIFIDPRU* 4.12.4R for an internal model must notify the *FCA* before it:

(a) implements a change to the use of the model that is not a material change; or

(b) extends the use of the model in a manner that is not material.

(2) A *firm* must notify the *FCA* by completing the form in *MIFIDPRU* 4 Annex 4R and submitting it using the *online notification and application system*.

Use of internal models: risk capture

4.12.8 R A *MIFIDPRU investment firm* that has a permission to use an internal model in accordance with Part Three, Title IV, Chapter 5 of the *UK CRR* must:

(1) identify any material risks (or group of risks are material in aggregate) that are not captured by those models;

(2) hold *own funds* to cover those risk(s) in addition to the *own funds* required to comply with the *K-NPR requirement*, calculated in accordance with Part Three, Title IV, Chapter 5 of the *UK CRR*; and

(3) hold additional *own funds* for value-at-risk (VaR) and stressed value-at-risk (sVaR) models that apply to the *firm*.

4.12.9 G (1) The methodology for identifying the risks in *MIFIDPRU* 4.12.8R and calculating additional *own funds* for VaR and sVaR models is called the "Risks not in VaR (RNIV) framework". A *firm* is responsible for identifying these additional risks and this should be an opportunity for risk managers and the *firm's* management to better understand the shortcomings of the *firm's* models. Following this initial assessment, the *FCA* will engage with the *firm* to provide challenge and ensure an appropriate outcome.

(2) The RNIV framework is intended to ensure that *own funds* are held to meet all risks that are not captured, or not captured adequately, by the *firm's* VaR and sVaR models. These include, but are not limited to, missing and/or illiquid risk factors such as cross-risks, basis risks, higher-order risks, and calibration parameters. The RNIV framework is also intended to cover event risks that could adversely affect the relevant business.

(3) A *firm* should systematically identify and measure all risks that are not captured, or not captured adequately. This analysis should be carried out at least quarterly, but the *FCA* may request more frequent analysis. The measurement of these risks should capture the losses that could arise due to the risk factor(s) of all products that are within the scope of the permission for the relevant internal model, but are not adequately captured by the relevant internal model.

(4) On a quarterly basis, the *firm* should identify and assess individual risk factors covered by the RNIV framework. The *FCA* will review the results of this exercise and may require that *firms* identify additional risk factors as being eligible for measurement.

(5) (a) Where sufficient data is available, and where it is appropriate to do so, the *FCA* expects a *firm* to calculate a VaR and sVaR metric for each risk factor within scope of the framework. The stressed period for the RNIV framework should be consistent with that used for sVaR. No offsetting or diversification may be recognised across risk factors included in the RNIV framework. The multipliers used for VaR and sVaR should be applied to generate a *K-NPR requirement*.

(b) If it is not appropriate to calculate a VaR and sVaR metric for a risk factor, a *firm* should instead measure the size of the risk based on a stress test. The confidence level and capital horizon of the stress test should be commensurate with the liquidity of the risk, and should be at least as conservative as comparable risk factors under the internal model approach. The capital charge should be at least equal to the losses arising from the stress test.

Standardised approach for options

4.12.10 R (1) A *MIFIDPRU investment firm* may use its own estimates for delta for the purposes of the standardised approach for options under article 329, article 352(1) or article 358 of the *UK CRR* if:

(a) the option is:

(i) an over-the-counter option; or

(ii) is traded on an exchange, but delta for the option is not available from that exchange;

(b) the *firm* adequately reflects non-delta risks in the *K-NPR requirement* in accordance with the *Non-Delta Risk of Options RTS*;

(c) the model the *firm* uses meets the minimum standards set out in *MIFIDPRU* 4.12.12G to *MIFIDPRU* 4.12.18G (Minimum standards for own estimates of delta) for each type of option for which it calculates delta;

(d) the *firm* notifies the *FCA* that the requirements in (a) to (c) have been met before the *firm* begins to use its own estimates for the relevant delta; and

(e) the notification in (d) is made using the form in *MIFIDPRU* 4 Annex 5R and submitted using the *online notification and application system*.

(2) The value of delta is 1 where:

(a) a *MIFIDPRU investment firm* is not permitted to use its own estimates for delta in accordance with (1); and

(b) if the option is traded on an exchange, delta is not available from that exchange.

4.12.11 G If a *MIFIDPRU investment firm* has notified the *FCA* under *MIFIDPRU* 4.12.10R that a model meets the minimum standards for a particular option type, but is subsequently unable to demonstrate to the *FCA* that the model meets those minimum standards, the *FCA* may apply a capital add-on and agree a risk mitigation plan. If a *firm* does not comply with the risk mitigation plan within the mandated timeframe, the *FCA* may take further supervisory measures. This may include variation of a *firm's Part 4A permission* so that the *firm* is no longer allowed to trade the relevant option types.

Minimum standards for own estimates of delta

4.12.12 G The sophistication of a pricing model used to calculate own estimates of delta for use in the standardised approach for options should be proportionate to the complexity and risk of each option and the overall risk of the *firm's* options trading business. In general, the *FCA* considers that the risk of sold options will be higher than the risk of the same options when bought.

4.12.13 G Delta should be recalculated at least daily. A *firm* should also recalculate delta promptly if there are significant movements in the market parameters used as inputs to calculate delta.

4.12.14 G The pricing model used to calculate delta should be:

(1) based on appropriate assumptions that have been assessed and challenged by suitably qualified parties independent of the development process;

(2) independently tested, including validation of the mathematics, assumptions and software implementation; and

(3) developed or approved independently of the trading desk.

4.12.15 G A *firm* should use generally accepted industry standard pricing models for the calculation of own deltas where these are available, such as for relatively simple options.

4.12.16 G The IT systems used to calculate delta should be sufficient to ensure delta is calculated accurately and reliably.

4.12.17 G A *firm* should have adequate systems and controls in place when using a pricing model to calculate delta. This should include the following documented policies and procedures:

(1) clearly defined responsibilities of the various areas involved in the calculation;

(2) frequency of independent testing of the accuracy of the model used to calculate delta; and

(3) guidelines for the use of unobservable inputs, where relevant.

4.12.18 G A *firm* should ensure its risk management functions are aware of weaknesses of the model used to calculate a delta. Where a *firm* identifies weaknesses, it should ensure that estimates of delta result in a prudent contribution to the *K-NPR requirement*. The outcome should be prudent across the whole portfolio of options and underlying positions at all times.

Netting: convertible

4.12.19 R The netting of a *convertible* and an offsetting position in the underlying instrument is permitted for the purposes of article 327(2) of the *UK CRR* (Netting).

4.12.20 G For the purposes of article 327(2) of the *UK CRR*, the *convertible* should be:

(1) treated as a position in the *equity* into which it converts; and

(2) the component of the *firm's K-NPR requirement* attributable to the general and specific risk in its *equity* instruments should be adjusted by making:

(a) an addition equal to the current value of any loss that the *firm* would make if it did convert to *equity*; or

(b) a deduction equal to the current value of any profit that the *firm* would make if it did convert to *equity* (subject to a maximum deduction equal to the *K-NPR requirement* that would be attributable to the notional position underlying the *convertible*).

Offsetting derivative instruments

4.12.21 G Article 331(2) of the *UK CRR* (Interest rate risk in derivative instruments) sets out conditions that must be met before a *firm* not using interest rate pre-processing models can fully offset interest rate risk on derivative instruments. One of the conditions is that the reference rate (for floating-rate positions) or coupon (for fixed-rate positions) should be 'closely matched'. The *FCA* will normally consider a difference of less than 15 basis points as indicative of the reference rate or coupon being 'closely matched' for the purposes of this requirement. A *firm* that wishes to use sensitivity models to calculate interest rate risk on derivative instruments in accordance with article 331(1) of the *UK CRR* should refer to *MIFIDPRU* 4.12.66R.

Exclusion of overshootings when determining multiplication factor addends

4.12.22 G (1) The *FCA's* starting assumption is that all overshootings should be taken into account to calculate addends. If a *firm* believes that an overshooting should not count for that purpose, it should seek a variation of its VaR model permission from the *FCA* in accordance with *MIFIDPRU* 4.12.4R to exclude the overshooting.

(2) An example of when a *firm's* overshooting might properly be disregarded is when it has arisen as a result of a risk that is not captured in a *firm's* VaR model but against which *own funds* are already held.

Derivation of notional positions for standardised approaches: general

4.12.23 G *MIFIDPRU* 4.12.24G to *MIFIDPRU* 4.12.38G set out *guidance* for the derivation of notional positions for standardised approaches to market risk under the *UK CRR*.

Futures and forwards on a basket or index of debt securities

4.12.24 G Futures or forwards on a basket or index of debt securities should be converted into forwards on single debt securities as follows:

(1) futures or forwards on a single currency basket or index of debt securities should be treated as either:

(a) a series of forwards, one for each of the constituent debt securities in the basket or index, of an amount that is a proportionate part of the total underlying the contract, according to the weighting of the relevant debt security in the basket; or

(b) a single forward on a notional debt security; and

(2) futures or forwards on multiple currency baskets or indices of debt securities should be treated as either:

(a) a series of forwards (using the method in (1)(a)); or

(b) a series of forwards, each one on a notional debt security to represent one of the currencies in the basket or index, of an amount that is a proportionate part of the total underlying the contract according to the weighting of the relevant currency in the basket.

4.12.25 G Notional debt securities derived through this treatment should be assigned a specific risk position risk adjustment and a general market risk position risk adjustment equal to the highest that would apply to the debt securities in the basket or index.

4.12.26 G The debt security with the highest specific risk position risk adjustment within the basket might not be the same as the one with the highest general market risk position risk adjustment. A *firm* should select the highest percentages, even if they relate to different debt securities in the basket or index, and regardless of the proportion of those debt securities in the basket or index.

Bonds where coupons and principal are paid in different currencies

4.12.27 G Where a debt security pays coupons in one currency but will be redeemed in a different currency, it should be treated as:

(1) a debt security denominated in the coupon's currency; and

(2) a foreign currency forward to capture the fact that the debt security's principal will be repaid in a different currency from that in which it pays coupons, specifically:

(a) a notional forward sale of the coupon currency and purchase of the redemption currency, in the case of a long position in the debt security; or

(b) a notional forward purchase of the coupon currency and sale of the redemption currency, in the case of a short position in the debt security.

Interest rate risk on other futures, forwards and swaps

4.12.28 G Other futures, forwards, and swaps for which a treatment is not specified in article 328 of the *UK CRR* (Interest rate futures and forwards) should be treated as positions in zero specific risk securities, each of which:

(1) has a zero coupon;

(2) has a maturity equal to that of the relevant contract; and

(3) is long or short, as set out in the table in *MIFIDPRU* 4.12.29G.

4.12.29 G This table belongs to *MIFIDPRU* 4.12.28G.

Instrument	**Notional positions**

Foreign currency forward or future	A long position denominated in the currency purchased	and	A short position denominated in the currency sold
Gold forward or future	A long position if the forward or future involves an actual (or notional) sale of gold	or	A short position if the forward or future involves an actual (or notional) purchase of gold
Equity forward or future	A long position if the contract involves an actual (or notional) sale of the underlying equity	or	A short position if the contract involves an actual (or notional) purchase of the underlying equity

Deferred start interest rate swaps or foreign currency swaps

4.12.30 G Interest rate swaps or foreign currency swaps with a deferred start should be treated as two notional positions (one long, one short). The paying leg should be treated as a short position in a zero specific risk security with a coupon equal to the fixed rate of the swap. The receiving leg should be treated as a long position in a zero specific risk security that also has a coupon equal to the fixed rate of the swap.

4.12.31 G The maturities of the notional positions in *MIFIDPRU* 4.12.30G are set out in the table in *MIFIDPRU* 4.12.32G.

4.12.32 G This table belongs to *MIFIDPRU* 4.13.31G.

	Paying leg	**Receiving leg**
Receiving fixed and paying floating	The maturity equals the start date of the swap	The maturity equals the end date of the swap
Paying fixed and receiving floating	The maturity equals the end date of the swap	The maturity equals the start date of the swap

Swaps where only one leg is an interest rate leg

4.12.33 G For interest rate risk, a *firm* should treat a swap (such as an equity swap) with only one interest rate leg as a notional position in a zero specific risk security:

(1) with a coupon equal to that on the interest rate leg;

(2) with a maturity equal to the date that the interest rate will be reset; and

(3) that is a long position if the *firm* is receiving interest payments and is a short position if making interest payments.

Foreign exchange forwards, futures and contracts for differences

4.12.34 G (1) A *firm* should treat a foreign currency forward, future or contract for differences as two notional currency positions as follows:

(a) a long notional position in the currency that the *firm* has contracted to buy; and

(b) a short notional position in the currency that the *firm* has contracted to sell.

(2) In (1), the notional positions should have a value equal to either:

(a) the contracted amount of each currency to be exchanged in a forward, future or contract for differences held outside the *trading book*; or

(b) the present value of the amount of each currency to be exchanged in a forward, future or contract for differences held in the *trading book*.

Foreign currency swaps

4.12.35 G (1) A *firm* should treat a foreign currency swap as:

(a) a long notional position in the currency in which the *firm* has contracted to receive interest and principal; and

(b) a short notional position in the currency in which the *firm* has contracted to pay interest and principal.

(2) In (1), the notional positions should have a value equal to either:

(a) the nominal amount of each currency underlying the swap if it is held outside the *trading book*; or

(b) the present value amount of all cash flows in the relevant currency in the case of a swap held in the *trading book*.

Futures, forwards and contract for differences on a single commodity

4.12.36 G Where a forward, future or contract for differences settles according to:

(1) the difference between the price set on trade date and the price prevailing at contract expiry, the notional position should:

(a) equal the total quantity underlying the contract; and

(b) have a maturity equal to the expiry date of the contract;

(2) the difference between the price set on trade date and the average of prices prevailing over a certain period up to contract expiry, a notional position should be derived for each of the reference dates used in the averaging period to calculate the average price, which:

(a) equals a fractional share of the total quantity underlying the contract; and

(b) has a maturity equal to the relevant reference date.

Buying or selling a single commodity at an average of spot prices prevailing in the future

4.12.37 G Commitments to buy or sell at the average spot price of the commodity prevailing over some period between trade date and maturity should be treated as a combination of:

(1) a position equal to the full amount underlying the contract with a maturity equal to the maturity date of the contract, which should be:

(a) long, where the *firm* will buy at the average price; or

(b) short, where the *firm* will sell at the average price; and

(2) a series of notional positions, one for each of the reference dates where the contract price remains unfixed, each of which should:

(a) be long if the position under (1) is short, or short if the position under (1) is long;

(b) be equal to a fractional share of the total quantity underlying the contract; and

(c) have a maturity date of the relevant reference date.

Cash legs of repurchase agreements and reverse repurchase agreements

4.12.38 G The forward cash leg of a repurchase agreement or reverse repurchase agreement should be treated as a notional position in a zero specific risk security that:

(1) is a short notional position in the case of a repurchase agreement and a long notional position in the case of a reverse repurchase agreement;

(2) has a value equal to the market value of the borrowing or deposit;

(3) has a maturity equal to that of the borrowing or deposit, or the next date the interest rate is reset (if earlier); and

(4) has a coupon equal to:

(a) zero, if the next interest payment date coincides with the maturity date; or

(b) the interest rate on the borrowing or deposit, if any interest is due to be paid before the maturity date.

Expectations relating to internal models

4.12.39 G *MIFIDPRU* 4.12.40G to *MIFIDPRU* 4.12.65G describe some of the standards that the *FCA* expects to be met when it is considering an application under *MIFIDPRU* 4.12.4R to use an internal model.

High-level standards

4.12.40 G A *firm* should be able to demonstrate that it meets the risk management standards in article 368 of the *UK CRR* (Qualitative requirements) on a legal entity and business-line basis where appropriate. This is particularly important for a *subsidiary* in a *group* subject to matrix management where the business lines cut across legal entity boundaries.

Categories of position

4.12.41 G A VaR model permission generally sets out the broad classes of position within each risk category in its scope. It may also specify how individual products within one of the classes may be brought into or taken out of the scope of the VaR model permission. The broad classes of permission are:

(1) linear products, which comprise securities with linear pay-offs (such as bonds and *equities*) and derivative products which

have linear pay-offs in the underlying risk factor (such as interest rate swaps, *FRAs*, and total return swaps);

(2) European, American and Bermudan put and call options (including caps, floors, and swaptions) and investments with these features;

(3) Asian options, digital options, single barrier options, double barrier options, look-back options, forward-starting options, compound options and investments with these features; and

(4) all other option-based products (such as basket options, quantos, outperformance options, timing options, and correlation-based products) and investments with these features.

Data standards

4.12.42 G A *firm* should ensure that the data series used by its VaR model is reliable. Where a reliable data series is not available, the *firm* may use proxies or any other reasonable value-at-risk measurement if the model meets the requirements in article 367(2)(e) of the *UK CRR* (Requirements on risk measurement). The technique must be appropriate and must not materially understate the modelled risks.

4.12.43 G Data may be insufficient if, for example, it contains missing data points or data points that contain stale data. For less liquid risk factors or positions, the *FCA* expects the *firm* to make a conservative assessment of those risks, using a combination of prudent valuation techniques and alternative VaR estimation techniques to ensure there is a sufficient cushion against risk over the close-out period, which takes account of the illiquidity of the risk factor or position.

4.12.44 G A *firm* is expected to update data sets to maintain standards of reliability in accordance with the frequency set out in its VaR model permission, or more frequently if necessary due to volatility in market prices or rates. This is in order to ensure a prudent calculation of the VaR measure.

Aggregating VaR measures

4.12.45 G (1) In determining whether it is appropriate for a *firm* to use empirical correlations within risk categories and across risk categories within a model, the *FCA* will consider whether such an approach is sound and implemented with integrity. In general, the *FCA* expects a *firm* to determine the aggregate VaR measure by adding the relevant VaR measure for each category, unless the *firm's* permission provides for a different method of aggregating VaR measures that is empirically sound.

(2) The *FCA* does not expect a *firm* to use the square root of the sum of the squares approach when aggregating measures across risk categories unless the assumption of zero correlation between these categories is empirically justified. If correlations between risk categories are not empirically justified, the VaR measures for each category should simply be added to determine its aggregate VaR measure. However, to the extent that a *firm's* VaR model permission provides for a different way of aggregating VaR measures:

(a) that method applies instead; and

(b) if the correlations between risk categories used for that purpose cease to be empirically justified then the *firm* is expected to notify the *FCA* immediately.

Testing prior to model validation

4.12.46 G A *firm* should demonstrate its ability to comply with the requirements for a VaR model permission. In general, a *firm* should have a back-testing programme in place and should provide 3 *months* of back-testing history.

4.12.47 G A *firm* should carry out a period of initial monitoring or live testing before the *FCA* will recognise a VaR model. This will be agreed on a *firm*-by-*firm* basis.

4.12.48 G The *FCA* will take into account the results of internal model validation procedures used by the *firm* to assess the VaR model when assessing the *firm's* VaR model and risk management.

Back-testing

4.12.49 G *MIFIDPRU* 4.12.50G to *MIFIDPRU* 4.12.53G provide further *guidance* on how a *firm* should comply with the requirements in article 366 of the *UK CRR* (Regulatory back testing and multiplication factors).

4.12.50 G If the *day* on which a loss is made is day n, the value-at-risk measure for that *day* will be calculated on day n-1, or overnight between day n-1 and day n. Profit and loss figures are produced on day n+1, and back-testing also takes place on day n+1. The *firm's* supervisor should be notified of any overshootings by close of business on day n+2.

4.12.51 G Any overshooting initially counts for the purpose of the calculation of the plus factor, even if subsequently the *FCA* agrees to exclude it. Therefore, where the *firm* experiences an overshooting and already has 4 or more overshootings during the previous 250 *business days*, changes to the multiplication factor resulting from changes to the plus factor become effective at day n+3.

4.12.52 G A longer time period generally improves the power of back-testing. However, a longer time period may not be desirable if the VaR model or market conditions have changed to the extent that historical data is no longer relevant.

4.12.53 G The *FCA* will review a *firm's* processes and documentation relating to the derivation of profit and loss used for back-testing when assessing a VaR model permission application under *MIFIDPRU* 4.12.4R. A *firm's* documentation should clearly set out the basis for cleaning profit and loss. To the extent that certain profit and loss elements are not updated every *day* (for example, certain reserve calculations), the documentation should clearly set out how such elements are included in the profit and loss series.

Planned changes to the VaR model

4.12.54 G Under *MIFIDPRU* 4.12.6R, a *firm* must provide the *FCA* with details of any significant planned changes to the VaR model before those changes are implemented. This must include detailed information about the nature of the change, including an estimate of the impact on VaR numbers and the incremental risk charge. Material changes to internal models or material extensions to the use of internal models will require prior approval from the *FCA*.

Bias from overlapping intervals for 10-day VaR and stressed VaR

4.12.55 G The use of overlapping intervals of 10-*day* holding periods for article 365 of the *UK CRR* (VaR and sVaR calculation) introduces an autocorrelation into the data that would not exist should truly independent 10-*day* periods be used. This may give rise to an under-estimation of the volatility and the VaR at the 99% confidence level. To obtain clarity on the materiality of the bias, a *firm* should measure the bias arising from the use of overlapping intervals for 10-*day* VaR and sVaR when compared to using independent intervals. A report on the analysis, including a proposal for a multiplier on VaR and sVaR to adjust for the bias, should be submitted to the *FCA* for review and approval.

Stressed VaR calculation

4.12.56 G Under article 365 of the *UK CRR* (VaR and sVaR calculation), a *firm* that uses an internal model for calculating its *K-NPR requirement* must calculate, at least weekly, a sVaR of their current portfolio. The *FCA* would expect a sVaR internal model to contain the features in *MIFIDPRU* 4.12.57G to *MIFIDPRU* 4.12.60G before the *FCA* will grant permission to use the relevant model.

Quantile estimator

4.12.57 G A *firm* should calculate the sVaR measure to be greater than or equal to the average of the second and third worst loss in a 12-*month* time series comprising of 250 observations. The *FCA* expects, as a minimum, that a corresponding linear weighting scheme should be applied if the *firm* uses a larger number of observations.

Meaning of 'period of significant financial stress relevant to the institution's portfolio'

4.12.58 G A *firm* should ensure that the sVaR period chosen is equivalent to the period that would maximise VaR, given the *firm's* portfolio. A stressed period should be identified at each legal entity level at which capital is reported. Therefore, group level sVaR measures should be based on a period that maximises the group level VaR, whereas entity level sVaR should be based on a period that maximises VaR for that entity.

Antithetic data

4.12.59 G The *firm* should consider whether the use of antithetic data in the calculation of the sVaR measure is appropriate to the *firm's* portfolio. The *firm* should provide a justification to the *FCA* for using or not using antithetic data as part of an application to use an internal model.

Absolute and relative shifts

4.12.60 G In its application to use an internal model, the *firm* should explain the reasons for the choice of absolute or relative shifts for both VaR and sVaR methodologies. In particular, the *firm* should evidence the statistical processes driving the risk factor changes for both VaR and sVaR.

4.12.61 R A *firm* that uses an internal model must submit the following information to the *FCA* on a quarterly basis:

(1) analysis to support the equivalence of the *firm's* current approach to a VaR-maximising approach on an ongoing basis;

(2) the reasons for the selection of key major risk factors used to find the period of significant financial stress;

(3) a summary of ongoing internal monitoring of stressed period selection for the current portfolio;

(4) analysis to support capital equivalence of upscaled 1-*day* VaR and sVaR measures to corresponding full 10-*day* VaR and sVaR measures;

(5) a graphed history of sVaR/VaR ratio;

(6) analysis to demonstrate accuracy of partial revaluation approaches specifically for sVaR purposes (for *firms* using revaluation ladders or spot/vol-matrices), including a review of the ladders/matrices or spot/vol-matrices, ensuring that they

are extended to include wider shocks to risk factors that occur in stress scenarios; and

(7) minutes of risk committee meetings or other evidence of governance and senior management oversight of sVaR methodology.

4.12.62 G Under article 372 of the *UK CRR* (Requirement to have an internal IRC model), a *firm* that uses an internal model for calculating own funds requirements for specific risk of traded debt instruments must also have an internal incremental default and migration risk (IRC) model in place to capture the default and migration risk of its trading book positions that are incremental to the risks captured by its VaR model. When the *FCA* considers a *firm's* application for permission to use an IRC internal model under *MIFIDPRU* 4.12.4R, it expects that the matters in *MIFIDPRU* 4.12.63G to *MIFIDPRU* 4.12.65G will be included to demonstrate compliance with the standards in article 372.

Basis risks for migration

4.12.63 G The *FCA* expects the IRC model to capitalise pre-default basis risk. In this respect, the model should reflect that in periods of stress the basis could widen substantially. The *firm* should disclose to the *FCA* its material basis risks that are incremental to those already captured in existing market risk capital measures (VaR-based and others). This must take into account actual close-out periods during periods of illiquidity.

Price/spread change model

4.12.64 G The price/spread change model used to capture the profit and loss impact of migration should calibrate spread changes to long-term averages of differences between spreads for relevant ratings. These should either be conditioned on actual rating events, or use the entire history of spreads regardless of migration. Point-in-time estimates are not acceptable, unless the *firm* can demonstrate that they are as conservative as long-term averages.

Dependence of the recovery rate on the economic cycle

4.12.65 G To achieve a soundness standard comparable to those under the Internal Ratings Based (IRB) approach, loss given default (LGD) estimates should reflect the economic cycle. Therefore, the *FCA* expects a *firm* to incorporate dependence of the recovery rate on the economic cycle into the IRC model. If the *firm* uses a conservative parameterisation to comply with the IRB standard of the use of downturn estimates, the *firm* should submit evidence of this in its quarterly reporting to the *FCA*. A *firm* should note that for trading portfolios that contain long and short positions, downturn estimates will not be a conservative choice in all cases.

Permission to use sensitivity models to calculate interest rate risk on derivative instruments

4.12.66 R (1) A *firm* must obtain prior permission from the *FCA* to use a sensitivity model in accordance with article 331(1) of the *UK CRR* to calculate the interest rate risk for positions in:

(a) derivative instruments under articles 328 to 330 of the *UK CRR*; or

(b) any bond which is amortised over its residual life, rather than via one final payment of principal.

(2) To obtain the permission in (1), a *firm* must:

(a) where the permission relates to one or more of the derivative instruments in (1)(a), mark to market the instruments and manage the interest rate risk on the instruments on a discounted cash flow basis;

(b) complete the form in *MIFIDPRU* 4 Annex 6R and submit it using the *online notification and application system*; and

(c) in its application under (b), demonstrate to the satisfaction of the *FCA* that:

(i) the model generates positions that have the same sensitivity to interest rate changes as the underlying cash flows; and

(ii) the sensitivity in (i) is assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 in article 339 of the *UK CRR*.

(3) Where a *firm* has been granted permission to apply a sensitivity model under this *rule*, any relevant positions must be included in the *firm's* calculation of its general risk of debt instruments for its *K-NPR requirement*.

4.13 K-CMG requirement

4.13.1 R (1) Subject to (2), the *K-CMG requirement* applies to a *MIFIDPRU investment firm* for *portfolios* for which the *firm* has been granted a *K-CMG permission*.

(2) A *MIFIDPRU investment firm* must include a position specified in *MIFIDPRU* 4.11.8R within the calculation of its *K-NPR requirement* if that position:

(a) is included in a *portfolio* for which the *firm* has been granted a *K-CMG permission*;

(b) is a proprietary position of the *firm* that results from a trade that has settled;

(c) is not included in the calculation of the required margin under the margin model of the *clearing member* or *authorised central counterparty* in *MIFIDPRU* 4.13.9R(2)(b); and

(d) is not a position to which the *clearing member* or *authorised central counterparty* has applied a "haircut" of the type specified in *MIFIDPRU* 4.13.6R(2).

4.13.2 G *MIFIDPRU* 4.13.1R(2) is intended to cover the risks arising from proprietary trades that form part of a *portfolio* for which a *firm* has a *K-CMG permission*. Where trades have settled, the resulting proprietary position of the *firm* may no longer be included within the margin requirement calculated by the *clearing member* or *authorised central counterparty* for that *portfolio* and therefore would not contribute to the *firm's K-CMG requirement*. The *firm* should therefore include these positions within its calculation of the *K-NPR requirement* to take account of the resulting market risk. For these purposes, a *firm* is not required to apply this approach to a position that results from client servicing.

4.13.3 G In an application for a *K-CMG permission*, a *firm* must identify each *portfolio* for which it wishes to calculate a *K-CMG requirement*.

4.13.4 G *MIFIDPRU* 4.11.8R(2) includes positions held outside the *trading book* that give rise to foreign exchange or commodities risk. The *FCA* considers that it is unlikely that such positions would be eligible for a *K-CMG permission*. Therefore, even if the *FCA* has granted a *K-CMG permission* in relation to all *portfolios* in the *firm's trading book*, a *firm* may need to calculate a *K-NPR requirement* in relation to positions it holds outside of the *trading book*.

4.13.5 R The *K-CMG requirement* of a *MIFIDPRU investment firm* must be calculated using the following formula:

K-CMG requirement = TM * 1.3

where TM is the third highest amount of total margin as calculated under *MIFIDPRU* 4.13.6R required from the *firm* on a daily basis over the preceding 3 *months*.

4.13.6 R For the purposes of *MIFIDPRU* 4.13.5R, the total margin must be calculated as the sum of the following in relation to all *clearing* *members* and to the extent that *MIFIDPRU* 4.13.9R(2)(c)(i) applies, all *authorised central counterparties*:

(1) the amount of margin required by the margin model referenced in *MIFIDPRU* 4.13.9R(2)(e); plus

(2) the value of any "haircut" applied by the *clearing member* or *authorised central counterparty* to positions included in the *portfolio* that represent settled trades and which the *clearing member* or *authorised central counterparty* is treating as collateral to secure the present or future obligations of the *MIFIDPRU investment firm*.

4.13.7 G *MIFIDPRU* 4.13.6R requires a *MIFIDPRU investment firm* to determine the amount of margin that is required under the relevant margin model of each *clearing member* (or, for a self-clearing *firm*, of each *authorised central counterparty*) for *portfolios* in respect of which the *firm* has been granted a *K-CMG permission*. For these purposes, the *clearing member's* (or, where applicable, *authorised central counterparty's*) margin model must satisfy the criteria in *MIFIDPRU* 4.13.14R. The effect of *MIFIDPRU* 4.13.6R is that if, notwithstanding the requirement under the margin model, the *MIFIDPRU investment firm* agrees with the *clearing member* or *authorised central counterparty* to provide a different amount of margin, it is the amount required under the model that must be used for the purposes of calculating the *firm's K-CMG requirement* and not the amount of margin that is actually provided by the *firm*. This ensures that the *firm's K-CMG requirement* is not artificially reduced by commercial negotiations that may result in the *clearing member* or *authorised central counterparty* accepting a lower amount of margin than the model requires.

4.13.8 G The calculation in *MIFIDPRU* 4.13.5R means that for each trading *day* during the calculation period, the *firm* must calculate the total combined margin in accordance with *MIFIDPRU* 4.13.6R provided to all clearing members in aggregate in respect of the relevant *portfolios*. The *K-CMG requirement* is then calculated on the basis of the third highest daily aggregate amount.

4.13.9 R To obtain a *K-CMG permission* for a *portfolio*, a *firm* must:

(1) complete the application form in *MIFIDPRU* 4 Annex 7R and submit it using the *online notification and application system*;

(2) in the application, demonstrate to the satisfaction of the *FCA* that:

(a) the *firm* is not part of a *group* containing a *credit institution*;

(b) the clearing and settlement of the transactions in the relevant *portfolio* take place under the responsibility of a *clearing member* of an *authorised central counterparty*;

(c) the *clearing member* in (b) is one of the following:

(i) a *MIFIDPRU investment firm* (which may be the *firm* itself, where it is self-clearing);

(ii) a *UK credit institution*;

(iii) a *designated investment firm*;

(iv) a *third country investment firm*; or

(v) a *credit institution* established in a *third country*;

(d) transactions in the relevant *portfolio* are either:

(i) centrally cleared in an *authorised central counterparty*; or

(ii) settled on a delivery-versus-payment basis under the responsibility of the *clearing member* in (b);

(e) the *firm* is required to provide total margin calculated on the basis of a margin model that satisfies the criteria in *MIFIDPRU* 4.13.14R and is operated by:

(i) where the *clearing member* in (b) (where applicable, including the *firm* itself) is a *MIFIDPRU investment firm* or a *third country investment firm*, the *authorised central counterparty* in (b); or

(ii) in any other case, the relevant *clearing member* in (b);

(f) the reasons for the *firm's* choice of calculating a *K-CMG requirement* for the *portfolio* have been clearly documented and approved by the *firm's management body* or risk management function; and

(g) the choice of the *portfolio* to be subject to a *K-CMG requirement* has not been made with a view to engaging in regulatory arbitrage between the *K-NPR requirement* and the *K-CMG requirement* in a disproportionate or prudentially unsound manner.

4.13.10 R (1) A *firm* that has been granted a *K-CMG permission* for a *portfolio* must notify the *FCA* immediately if it becomes aware that any of the conditions in *MIFIDPRU* 4.13.9R are no longer met in relation to the *portfolio*.

(2) The notification in (1) must be made using the form in *MIFIDPRU* 4 Annex 8R and submitted via the *online notification and application system*.

4.13.11 G The *FCA* may revoke a *K-CMG permission* for a *portfolio* where one or more of the conditions in *MIFIDPRU* 4.13.9R is no longer met in relation to that *portfolio*. The *FCA* may review the appropriateness of any *K-CMG permissions* as part of any *SREP* it undertakes in relation to the *firm* in accordance with *MIFIDPRU* 7.

4.13.12 R A *firm* that is an *indirect client* of a *clearing member* may obtain a *K-CMG permission* if:

(1) the indirect clearing arrangement satisfies all of the conditions in *MIFIDPRU* 4.13.9R and both the *clearing member* and the *client* of the *clearing member* that is providing clearing services to the *firm* are entities that are listed in *MIFIDPRU* 4.13.9R(2)(c); and

(2) the *FCA* is satisfied that the relevant arrangement does not result in undue risks.

4.13.13 R (1) A *firm* that is relying on a *K-CMG permission* must ensure that:

(a) the *individuals* in the *firm* who are responsible for the *firm's* risk management function, or for the oversight of that function, have a reasonable understanding of the operation of the margin model referred to in *MIFIDPRU* 4.13.9R(2)(e); and

(b) the *firm* integrates this understanding of the margin model into its *ICARA process* for the purposes of considering whether:

(i) the resulting *K-CMG requirement* is sufficient to cover the relevant risks to which the *firm* is exposed; and

(ii) the *K-CMG permission* remains appropriate in relation to the *portfolio(s)* for which it was granted.

(2) For the purposes of (1), a *firm* may use suitable advice or analysis provided by an appropriate third party, but the *firm* is responsible for ensuring that the *individuals* in (1)(a) have the necessary knowledge and understanding of the margin model.

(3) An appropriate third party under (2) includes:

(a) a suitably qualified professional adviser;

(b) the relevant *clearing member*; or

(c) another *undertaking* within the same *investment firm group* as the *firm* where *individuals* within that *undertaking* have the requisite knowledge and understanding of the margin model.

4.13.14 R (1) The criteria referred to in *MIFIDPRU* 4.13.9R(2)(e) are that:

(a) the margin requirements are sufficient to cover losses that may result from at least 99% of the exposures movements over an appropriate time horizon with at least a two-*business day* holding period; and

(b) the margin model used by the *clearing member* or *authorised central counterparty* to call the margin is always designed to achieve a level of prudence similar to that required in the provisions on margin requirements in article 41 of *EMIR*.

(2) If the parameters of a margin model operated by a *clearing member* or *authorised central counterparty* do not meet the criteria in (1)(a), those criteria shall nonetheless be deemed to be met if:

(a) an adjustment mechanism is applied to produce an alternative margin requirement; and

(b) the alternative requirement in (a) is at least equivalent to the margin requirement that would be produced by a margin model that meets the criteria in (1)(a).

(3) An adjustment mechanism under (2) may be applied by either of the following, provided that the conditions in (4) are met:

(a) the relevant *clearing member*; or

(b) the *MIFIDPRU investment firm* that has been granted the relevant *K-CMG permission*.

(4) The conditions are that the *MIFIDPRU investment firm* that has been granted the relevant *K-CMG permission*:

(a) can provide to the *FCA* upon request a reasonable explanation of the adjustment that has been applied under (2); and

(b) monitors and reviews the effectiveness of the adjustment mechanism on an ongoing basis as part of its *ICARA process*.

4.13.15 G (1) *MIFIDPRU* 4.13.14R(2) permits the output of a margin model of a *clearing member* or *authorised central counterparty* to be adjusted to meet the criteria in *MIFIDPRU* 4.13.14R(1)(a). The adjustment is used solely to determine the *K-CMG requirement* of a *firm*. It does not affect the actual amount of margin that the *clearing member* or *authorised central counterparty* will receive from the *firm*, which will continue to be determined by the underlying (unadjusted) model.

(2) For example, the *clearing member's* or *authorised central counterparty's* original margin model may produce margin requirements that are sufficient to cover losses that may result from at least 95% of the exposures movements over a two-*business day* holding period. This would not meet the minimum criteria in *MIFIDPRU* 4.13.14R(1)(a). To determine the *firm's K-CMG requirement,* the output of that model may be adjusted to produce a requirement that would cover losses that may result from at least 99% of the exposures movements over that same holding period. If the conditions in *MIFIDPRU* 4.13.14R(3) and (4) are satisfied, the minimum criteria in *MIFIDPRU* 4.13.14R(1)(a) will be deemed to be met when the adjustment is applied. This is the case even though the actual margin received by the *clearing member* or *authorised central counterparty* is determined by the underlying (unadjusted) model.

4.13.16 G Where the margin model of a *clearing member* uses parameters that are more conservative than the minimum criteria in *MIFIDPRU* 4.13.14R(1), the output of the model may be adjusted downwards under *MIFIDPRU* 4.13.14R(2) to produce margin requirements that are consistent with the minimum criteria. The requirements in *MIFIDPRU* 4.13.14R(3) and (4) still apply to a downwards adjustment. A *firm* is not required to apply a downwards adjustment to a more conservative model.

4.13.17 G The *FCA* will consider whether the *firm's* reasons for choosing a *K-CMG requirement* under *MIFIDPRU* 4.13.9R(2)(f) have taken adequate account of the nature of, and risks arising from, the *firm's* trading activities, including whether:

(1) the main activities of the *firm* are essentially trading activities that are subject to clearing and margining under the responsibility of a *clearing member*; and

(2) other activities performed by the *firm* are immaterial in comparison to those main activities.

4.13.18 G (1) For the purposes of *MIFIDPRU* 4.13.9R(2)(g), the fact that a *K-CMG permission* for a *portfolio* may result in a *K-CMG requirement* that is lower than the equivalent *K-NPR requirement* for that *portfolio* does not automatically mean that the choice to apply a *K-CMG requirement* has been made with a view to engaging in regulatory arbitrage in a disproportionate or prudentially unsound manner.

(2) When considering whether the condition in *MIFIDPRU* 4.13.9R(2)(g) is satisfied, a *firm* should consider whether the *K-CMG requirement* that would result from the relevant *K-CMG permission* more closely reflects the underlying economic risk of the relevant *portfolio* when compared with the equivalent *K-NPR requirement* for the same *portfolio*.

(3) The *FCA* considers that even in circumstances where the *K-CMG requirement* is considerably lower than the equivalent *K-NPR requirement*, this does not automatically prevent a *firm* from meeting the conditions for a *K-CMG permission*. A significant difference between the two requirements may result from the calculation of the *K-CMG requirement* being better adapted for capturing the economic risks of the particular *portfolio* in question. For example, the margin model underlying the *K-CMG requirement* may have been specifically designed for *firms* that specialise in trading that type of *portfolio*. A *firm* that is applying for a *K-CMG permission* should provide a clear explanation of how the conditions in *MIFIDPRU* 4.13.9R(2) are satisfied for the *portfolio*. The *firm* should keep the appropriateness of a *K-CMG permission* under regular review as part of its *ICARA process*.

4.13.19 R (1) Except where (2) applies, a *firm* that has a *K-CMG permission* for a *portfolio* must calculate a *K-CMG requirement* for that *portfolio* for a continuous period of at least 24 *months* from the date that the permission is granted.

(2) The requirement in (1) does not apply if:

(a) the *FCA* revokes the relevant *K-CMG permission* in relation to that *portfolio* on its own initiative in the circumstances described in *MIFIDPRU* 4.13.11G; or

(b) the business strategy or operations of the *trading desk* with responsibility for the *portfolio* have changed to such an extent that it has become a different *trading desk*.

4.13.20 R (1) Where a *firm* that has been granted a *K-CMG permission* in relation to a *portfolio* subsequently chooses to calculate a *K-NPR requirement* for that *portfolio*, the *firm* must submit the notification in (2) to the *FCA* before the *firm* begins to calculate the *K-NPR requirement*.

(2) The notification in (1) must:

(a) confirm that the requirement in *MIFIDPRU* 4.13.19R(1) has been met in relation to the *portfolio*, or that the circumstance in *MIFIDPRU* 4.13.19R(2)(b) applies;

(b) specify the date on which the *K-CMG permission* should cease to apply to the *firm*; and

(c) be made using the form in *MIFIDPRU* 4 Annex 9R and submitted using the *online notification and application system*.

4.13.21 G Where a *firm* has submitted a notification in *MIFIDPRU* 4.13.20R(2), the *FCA* will not normally grant another *K-CMG permission* for the same *portfolio* until at least 24 *months* after the previous *K-CMG permission* ceased to apply.

4.14 K-TCD requirement

4.14.1 R (1) The *K-TCD requirement* of a *MIFIDPRU investment firm* is an amount equal to the sum of the *TCD own funds requirement* for all transactions specified in (2).

(2) This *rule* applies to the transactions in *MIFIDPRU* 4.14.3R where the transactions:

(a) are recorded in the *trading book* of a *firm dealing on own account* (whether for itself or on behalf of a *client*); or

(b) in the case of the transactions specified in *MIFIDPRU* 4.14.3R(7), are carried out by a *firm* that has the necessary *permissions* to *deal on own account*.

4.14.2 G (1) The effect of *MIFIDPRU* 4.14.1R(2)(b) is that where a *firm* is authorised to *deal on own account*, it must include in the calculation of its *K-TCD requirement* any transactions specified in *MIFIDPRU* 4.14.3R(7). This applies even if the *firm's* involvement in the transaction does not constitute *dealing on own account* and the transaction may not be recorded in its *trading book*.

(2) A *firm* that is not authorised to *deal on own account* is not subject to the *K-TCD requirement* under *MIFIDPRU* 4.14.1R, even if it is involved in a transaction that would otherwise fall within *MIFIDPRU* 4.14.3R(7).

Transactions to which K-TCD applies

4.14.3 R Subject to *MIFIDPRU* 4.14.5R, the transactions to which *MIFIDPRU* 4.14.1R applies are as follows:

(1) derivative contracts listed in Annex II to the *UK CRR*, with the exception of the following:

(a) derivative contracts directly or indirectly cleared through a *CCP*, where all of the following conditions are met:

(i) the positions and assets of the *firm* related to the contracts are distinguished and segregated, at the level of both the *clearing member* and the *CCP*, from the position and assets of the *clearing member* and the other clients of that *clearing member* and, as a result of that distinction and segregation, those positions and assets are bankruptcy remote under applicable law in the event of default or insolvency of the *clearing member* or one or more of its other clients;

(ii) the legal requirements applicable to or binding the *clearing member* facilitate the transfer of the client's positions relating to the contracts and of the corresponding collateral to another *clearing member* within the applicable margin period of risk in the event of default or insolvency of the original *clearing member*; and

(iii) the *firm* has obtained an independent, written and reasoned legal opinion that concludes that, in the event of a legal challenge, the *firm* would bear no losses on account of the insolvency of its *clearing member* or of any of its *clearing member's* clients;

(b) exchange-traded derivative contracts; and

(c) derivative contracts held for hedging a position of the *firm* resulting from an activity outside the *trading book*;

(2) *long settlement transactions*;

(3) *repurchase transactions*;

(4) *securities or commodities lending or borrowing transactions*;

(5) *margin lending transactions*;

(6) any other types of *securities financing transactions*; and

(7) credits and loans referred to in the activity in point 2 of paragraph 1 of Part 3A of Schedule 2 to the *Regulated Activities Order*, if the *firm* is:

(a) executing the trade in the name of the *client*; or

(b) receiving and transmitting the order without executing it.

4.14.4 R A derivative contract that is directly or indirectly cleared through an *authorised central counterparty* is deemed to meet the conditions in *MIFIDPRU* 4.14.3R(1)(a).

4.14.5 R The *K-TCD requirement* does not apply to transactions with the following counterparties:

(1) central governments and central banks, where the underlying exposures would receive a 0% risk weight under article 114 of the *UK CRR*;

(2) multilateral development banks listed in article 117(2) of the *UK CRR*; or

(3) international organisations listed in article 118 of the *UK CRR*.

4.14.6 R (1) With the prior consent of the *FCA*, a *firm* may exclude transactions with the following counterparties from the calculation of its *K-TCD requirement* under *MIFIDPRU* 4.14.1R:

(a) its *parent undertaking*;

(b) its *subsidiary*;

(c) a *subsidiary* of its *parent undertaking*; or

(d) an *undertaking* with which the *firm* is linked by *majority common management*.

(2) To obtain the *FCA* consent in (1), the *firm* must demonstrate all of the following to the satisfaction of the *FCA*:

(a) the counterparty is subject to appropriate prudential requirements and is one of the following:

(i) a *credit institution*;

(ii) an *investment firm*; or

(iii) a *financial institution*;

(b) the counterparty is:

(i) included in the same prudential consolidation group as the *firm* on a full basis in accordance with the *UK CRR* or the consolidation provisions in *MIFIDPRU* 2.5; or

(ii) supervised along with the *firm* for compliance with the group capital test in *MIFIDPRU* 2.6;

(c) the counterparty is subject to the same risk evaluation, measurement and control procedures as the *firm*;

(d) the counterparty is established in the *UK*; and

(e) there is no current or foreseen material practical or legal impediment to the prompt transfer of *own funds* or repayment of liabilities from the counterparty to the *firm*.

(3) To apply for *FCA* consent under (1), a *firm* must complete the form in *MIFIDPRU* 4 Annex 10R and submit it using the *online notification and application system*.

Calculation of TCD own funds requirement

4.14.7 R The *TCD own funds requirement* for each transaction or *netting set* must be calculated using the following formula:

TCD own funds requirement = α * EV * RF * CVA

where:

(1) α = 1.2

(2) EV = the exposure value calculated in accordance with *MIFIDPRU* 4.14.8R

(3) RF = the risk factor applicable to the counterparty type as set out in the table in *MIFIDPRU* 4.14.29R

(4) CVA = the credit valuation adjustment calculated in accordance with *MIFIDPRU* 4.14.30R

Exposure value

4.14.8 R The exposure value must be calculated using the following formula:

Exposure value = Max (0; RC + PFE – C)

where:

(1) RC = the replacement cost calculated in accordance with *MIFIDPRU* 4.14.9R (which may be a positive value, thereby increasing the exposure value, or a negative value, thereby decreasing the exposure value)

(2) PFE = potential future exposure calculated in accordance with *MIFIDPRU* 4.14.10R

(3) C = collateral as determined in accordance with *MIFIDPRU* 4.14.24R and *MIFIDPRU* 4.14.25R (which may be a positive value, thereby decreasing the exposure value, or a negative value, thereby increasing the exposure value)

Replacement cost

4.14.9 R (1) A *firm* must calculate the replacement cost for all transactions referred to in *MIFIDPRU* 4.14.3R.

(2) The replacement cost must be determined as follows:

(a) for derivative contracts, the replacement cost is the *CMV*;

(b) for *long settlement transactions*, the replacement cost is the settlement amount of cash to be paid or to be received by the *firm* upon settlement, with a receivable being treated as a positive amount and a payment being treated as a negative amount;

(c) unless (d) applies, for *repurchase transactions* and *securities or commodities lending or borrowing transactions*, the replacement cost is the amount of cash lent or borrowed, with cash lent by the *firm* being treated as a positive amount and cash borrowed by the *firm* being treated as a negative amount;

(d) for *securities financing transactions*, where both legs of the transaction are securities, the replacement cost is the *CMV* of the security lent by the *firm*, increased by the corresponding volatility adjustment in *MIFIDPRU* 4.14.25R; and

(e) for *margin lending transactions* and the credits and loans referred to in *MIFIDPRU* 4.14.3R(7), the replacement cost is the book value of the asset in accordance with the applicable accounting framework.

Potential future exposure

4.14.10 R (1) A *firm* is required to calculate potential future exposure (PFE) only for derivative contracts.

(2) A *firm* must calculate the potential future exposure for derivative contracts in a *netting set* using one of the following approaches:

(a) the hedging approach in *MIFIDPRU* 4.14.14R; or

(b) the derivative netting ratio approach in *MIFIDPRU* 4.14.18R.

4.14.11 R Where a single derivative contract cannot be allocated to a *netting set* with other derivative contracts, it must be treated as a separate *netting set* for the purposes of *MIFIDPRU* 4.14.10R.

4.14.12 R A *firm* must apply its chosen approach under *MIFIDPRU* 4.14.10R:

(1) continuously for at least 24 *months*; and

(2) consistently across all its *netting sets*.

Potential future exposure: hedging approach

4.14.13 G (1) If a derivative contract has a negative replacement cost, a *firm* should still calculate a PFE in relation to that contract if it is possible for the replacement cost to become positive before the maturity date.

(2) As the replacement cost of an individual written option can never be a positive amount, written options are exempt from the requirement to calculate a PFE, unless they are subject to netting with contracts other than written options for the purposes of calculating PFE in accordance with *MIFIDPRU* 4.14.14R and *MIFIDPRU* 4.14.16R.

(3) If a written option is subject to netting for the purposes of calculating PFE, a *firm* may cap the PFE in relation to that option at an amount that would result in a replacement cost of zero.

4.14.14 R (1) For the purposes of calculating the PFE of derivative contracts included within a *netting set* under *MIFIDPRU* 4.14.16R, a *firm* must:

(a) calculate the effective notional amount of each contract (EN) in accordance with *MIFIDPRU* 4.14.20R;

(b) allocate each derivative contract to an asset class in accordance with (2) and (3); and

(c) calculate a separate net notional amount for each asset class in (b) by netting the EN of all derivative contracts allocated to that asset class, with long positions to be treated as positive amounts and short positions to be treated as negative amounts.

(2) Subject to (3), a *firm* must assign derivative contracts to separate asset classes as follows:

(a) except as specified in (b) to (d), a derivative contract must be allocated to the relevant asset class specified in the table in *MIFIDPRU* 4.14.22R;

(b) interest rate derivatives must be allocated to separate asset classes according to their currency;

(c) foreign exchange derivatives must be allocated to separate asset classes according to each currency pair; and

(d) derivative contracts falling within the "other" class in *MIFIDPRU* 4.14.22R may be allocated to the same class if their primary risk driver is identical, but otherwise must each be treated as a separate class.

(3) Derivative contracts that would fall within a specific asset class under (2) must be allocated to a separate asset class if:

(a) they reference the basis between two risk factors and are denominated in a single currency (i.e. they are basis transactions), in which case all basis transactions referencing that same pair of risk factors must be allocated to a separate asset class; or

(b) they reference the volatility of a risk factor (i.e. they are volatility transactions), in which case all volatility transactions referencing that same risk factor must be allocated to a separate asset class.

4.14.15 G (1) *MIFIDPRU* 4.14.14R(2) defines the main asset classes to which derivative contracts should be assigned to calculate the potential future exposure of a *netting set*. For example, a single name equity derivative would be allocated to the equity single name asset class in *MIFIDPRU* 4.14.22R, while a credit derivative would be allocated to the credit asset class in that *rule*.

(2) *MIFIDPRU* 4.14.14R(3) requires basis transactions or volatility swaps that would otherwise fall within one of the main asset classes in *MIFIDPRU* 4.14.14R(2) to be allocated to separate asset classes. The separate asset classes are defined according to the relevant risk factor or pair of risk factors.

(3) For example, an equity index future on Equity Index A and another equity index future on Equity Index B would be allocated to the same asset class under *MIFIDPRU* 4.14.14R(2)(a), as they both fall within the asset class (i.e. equity indices) in *MIFIDPRU* 4.14.22R. However, a volatility swap that references Equity Index A must be allocated to a separate class under *MIFIDPRU* 4.14.14R(3)(b), but can be

grouped with another volatility swap that also references Equity Index A (i.e. the same risk factor).

(4) For derivative contracts relating to foreign exchange, a *firm* may net contracts relating to a currency pair (for example, USD/EUR) against contracts relating to the inverse pair (i.e. in this example, EUR/USD) by treating one pair as a long position and the inverse pair as a short position.

(5) For interest rate derivative contracts that have multiple legs, the *firm* should add together the notional amounts of the positive (receive) and negative (pay) legs, after adjusting for the duration and the supervisory delta in accordance with the calculation of the effective notional amount in *MIFIDPRU* 4.14.20R. The net amount should then be included in the calculation of PFE.

4.14.16 R For the purposes of *MIFIDPRU* 4.14.10R(2)(a), a *firm* must calculate the potential future exposure of derivative contracts included within a *netting set* by:

(1) multiplying the absolute value of the net notional amount under *MIFIDPRU* 4.14.14R(1)(c) for each asset class within the *netting set* by the supervisory factor for that asset class specified in *MIFIDPRU* 4.14.22R;

(2) adding together the product of the calculation in (1) for all asset classes within the *netting set*; and

(3) multiplying the sum under (2) by:

(a) 0.42, for *netting sets* of transactions with financial or non-financial counterparties for which, if required, collateral is exchanged bilaterally with the counterparty in accordance with the conditions laid down in article 11 of *EMIR*; or

(b) 1, for other *netting sets*.

Potential future exposure: derivative netting ratio approach

4.14.17 G (1) If a derivative contract has a negative replacement cost, a *firm* should still calculate a potential future exposure (PFE) in relation to that contract if it is possible for the replacement cost to become positive before the maturity date.

(2) As the replacement cost of an individual written option can never be a positive amount, written options are exempt from the requirement to calculate a PFE, unless they are subject to netting with contracts other than written options for the purposes of calculating PFE in accordance with *MIFIDPRU* 4.14.18R.

4.14.18 R A *firm* must calculate a net potential future exposure for each *netting set* using the following formula:

$$\text{PFEnet} = \frac{\text{RCnet}}{\text{RCgross}} \cdot \text{PFEgross}$$

where:

(1) PFEnet = the net potential future exposure for the *netting set*;

(2) PFEgross = the sum of the potential future exposure of all derivative contracts included in the *netting set*, calculated by multiplying the absolute value of the effective notional amount of each derivative contract (as calculated in accordance with *MIFIDPRU* 4.14.20R) by the relevant supervisory factor for the corresponding asset class specified in *MIFIDPRU* 4.14.22R;

(3) RCnet = the sum of the replacement cost (as determined in accordance with *MIFIDPRU* 4.14.9R) of all transactions included in the *netting set*, unless that sum is a negative amount, in which case RCnet is zero; and

(4) RCgross = the sum of the replacement cost (as determined in accordance with *MIFIDPRU* 4.14.9R) of all transactions included in the *netting set* that have a positive *CMV*.

4.14.19 R For the purposes of *MIFIDPRU* 4.14.10R(2)(b), the potential future exposure for the derivative contracts included within a *netting set* is the product of multiplying PFEnet (as determined in accordance with *MIFIDPRU* 4.14.18R) by:

(1) 0.42, for *netting sets* of transactions with financial or non-financial counterparties for which, if required, collateral is exchanged bilaterally with the counterparty in accordance with the conditions laid down in article 11 of *EMIR*; or

(2) 1, for other *netting sets*.

Effective notional amount

4.14.20 R (1) The effective notional amount is calculated as follows:

Effective notional amount = N * D * SD

where:

(a) N = the notional amount, determined in accordance with (2);

(b) D = the duration, calculated in accordance with (3); and

(c) SD = the supervisory delta, calculated in accordance with (5).

(2) The notional amount, unless clearly stated and fixed until maturity, is determined as follows:

(a) for foreign exchange derivative contracts:

(i) if one leg of the contract is in the domestic currency, the notional amount is the notional amount of the foreign currency leg of the contract, converted into the domestic currency;

(ii) if both legs of the contract are denominated in currencies other than the domestic currency, the notional amount of each leg must be converted into the domestic currency and the leg with the larger value in the domestic currency is the notional amount; and

(iii) the term "domestic currency", when used in this *rule*, refers to the currency in which the *firm* reports to the *FCA*;

(b) for equity and commodity derivatives contracts and emissions allowances and derivatives thereof, the notional amount is the product of the market price of one unit of the instrument and the number of units referenced by the trade;

(c) for transactions with multiple pay-offs that are state contingent including digital options or target redemption forwards, a *firm* must calculate the notional amount for each state and use the largest resulting calculation;

(d) where the notional is a formula of market values, the *firm* must use the *CMVs* to determine the trade notional amount;

(e) for variable notional swaps such as amortising and accreting swaps, a *firm* must use the average notional over the remaining life of the swap as the trade notional amount;

(f) leveraged swaps must be converted to the notional amount of the equivalent unleveraged swap so that where all of the rates in a swap are multiplied by a factor, the stated notional amount is multiplied by the factor on the interest rates to determine the notional amount; and

(g) for a derivative contract with multiple exchanges of principal, the stated notional amount must be multiplied by the number of exchanges of principal in the derivative contract to determine the notional amount.

(3) The duration must be determined in accordance with the following:

(a) for all derivative contracts other than interest rate contracts and credit derivative contracts, the duration is 1;

(b) for interest rate contracts and credit derivative contracts, the duration is determined in accordance with the following formula in which the time to maturity is specified in years:

Duration = (1 – exp (-0.05 * time to maturity)) / 0.05

(4) The maturity of a contract must be determined as follows:

(a) for an option, the maturity is the latest contractual exercise date as specified by the contract;

(b) for a derivative contact that is structured such that on specified dates, any outstanding exposure is settled and the terms are reset so that the fair value of the contract is zero, the remaining maturity is the time until the next reset date;

(c) for any other derivative contract, the maturity is the latest date on which the contract may still be executed; and

(d) in each case, if the derivative contract references the value of another interest rate or credit instrument, the time period must be determined on the basis of that underlying instrument.

(5) The supervisory delta must be determined as follows:

(a) for options and swaptions, the *firm* may calculate the supervisory delta itself by using an appropriate model if:

(i) the model the *firm* uses meets the minimum standards set out in *MIFIDPRU* 4.12.12G to 4.12.18G (Minimum standards for own estimates of delta), as modified by *MIFIDPRU* 4.14.21R, for each type of option or swaption for which it calculates delta;

(ii) the *firm* has notified the *FCA* that the minimum standards in (i) are met before the *firm* begins to use its own estimates for the relevant supervisory delta; and

(iii) the notification in (ii) is made using the form in *MIFIDPRU* 4 Annex 5R and submitted using the *online notification and application system*;

(b) for transactions other than options and swaptions, or transactions in respect of which a *firm* is unable to use an appropriate model in accordance with (a), the supervisory delta is 1 or -1; and

(c) in each case, the supervisory delta must reflect the relationship between the contract and the underlying, whereby a contract that increases exposure (by increasing RC) as the underlying increases shall have a positive supervisory delta, and a contract that decreases exposure (by decreasing RC) as the underlying increases shall have a negative supervisory delta.

4.14.21 R (1) When applying the minimum standards in *MIFIDPRU* 4.12.12G to 4.12.18G for the purposes of *MIFIDPRU* 4.14.20R(5)(a), the standards apply with the following modifications:

(a) a reference to the "standardised approach" is a reference to the *rules* in this section relating to the calculation of the *K-TCD requirement*; and

(b) a reference to the *K-NPR requirement* is a reference to the *K-TCD requirement*.

(2) In addition to the minimum standards in *MIFIDPRU* 4.12.12G to 4.12.18G a *firm* must also confirm to the *FCA* that the relevant model estimates the rate of change of the value of the option for small changes in the market value of the underlying.

4.14.22 R The supervisory factor for each asset class is set out in the following table:

Asset class	Supervisory factor
Interest rate	0.5%
Foreign exchange	4%
Credit	1%

Equity single name	32%
Equity index	20%
Commodity and emission allowance	18%
Other	32%

4.14.23 R Transactions relating to gold or gold derivatives must be allocated to the foreign exchange asset class in *MIFIDPRU* 4.14.22R.

Value of collateral

4.14.24 R (1) This *rule* applies for the purposes of determining the value of C under *MIFIDPRU* 4.14.8R.

(2) For the transactions specified in *MIFIDPRU* 4.14.3R(1), (5) and (7), the value of the C is the notional amount of collateral received by the *firm*, decreased in accordance with the relevant volatility adjustment specified in *MIFIDPRU* 4.14.25R.

(3) Unless (4) applies, for the transactions specified in *MIFIDPRU* 4.14.3R(2), (3), (4) and (6), the value of the C is the sum of:

(a) the *CMV* of the *security* leg; and

(b) the net amount of collateral posted or received by the *firm*.

(4) For *securities financing transactions* where both legs of the transaction are *securities*, the value of the C is the *CMV* of the *security* borrowed by the *firm*.

(5) Where the *firm* is purchasing or has lent the *security*, the *CMV* of the *security* shall be treated as a negative amount and shall be decreased to a larger negative amount, using the volatility adjustment specified in *MIFIDPRU* 4.14.25R.

(6) Where the *firm* is selling or has borrowed the security, the *CMV* of the *security* shall be treated as a positive amount and be decreased by the volatility adjustment specified in *MIFIDPRU* 4.14.25R.

(7) Where different types of transactions are covered by a contractual netting agreement that meets the requirements in *MIFIDPRU* 4.14.28R(3), the applicable volatility adjustments in column C (volatility adjustment other transactions) of the table in *MIFIDPRU* 4.14.25R must be

applied to the respective amounts calculated under (3)(a) and (b) on an issuer basis within each asset class.

(8) Where there is a currency mismatch between the transaction and the collateral received or posted, an additional currency mismatch volatility adjustment of 8% shall apply.

4.14.25 R (1) A *firm* must apply the volatility adjustments in (2) to all transactions referred to in *MIFIDPRU* 4.14.3R.

(2) Collateral for bilateral and cleared transactions shall be subject to volatility adjustments in accordance with the following table:

(A)		**(B)**	**(C)**
Asset class		**Volatility adjustment: repurchase transactions and securities lending and borrowing transactions**	**Volatility adjustment: other transactions**
Debt securities issued by central governments or central banks	≤ 1 year	0.707%	1%
	> 1 year ≤ 5 years	2.121%	3%
	> 5 years	4.243%	6%
Debt securities issued by other entities	≤ 1 year	1.414%	2%
	> 1 year ≤ 5 years	4.243%	6%
	> 5 years	8.485%	12%
Securitisation positions (excluding re-securitisation positions)	≤ 1 year	2.828%	4%
	> 1 year ≤ 5 years	8.485%	12%
	> 5 years	16.970%	24%
Listed equities and convertibles		14.143%	20%
Other financial instruments (including re-securitisation positions) and commodities		17.678%	25%
Gold		10.607%	15%
Cash		0%	0%

4.14.26 G The references to years in column A of the table in *MIFIDPRU* 4.14.25R are references to the remaining maturity of the relevant security or position.

4.14.27 G The following is an example of how the volatility adjustment under *MIFIDPRU* 4.14.24R and *MIFIDPRU* 4.14.25R applies. A *firm* enters into an OTC derivative contract and receives collateral in the form of a debt security issued by a central bank with a maturity of 6 years. The notional value of the debt security is 100. *MIFIDPRU* 4.14.24R(2) requires the notional value of the collateral to be decreased by the applicable volatility adjustment. In accordance with the table in *MIFIDPRU* 4.14.25R, the relevant volatility adjustment is 6%. The resulting value of the collateral after the volatility adjustment has been applied is therefore 94.

Netting

4.14.28 R For the purposes of calculating its *K-TCD requirement*, a *firm* may, in the following order:

(1) first, treat perfectly matching contracts included in a netting agreement as if they were a single contract with a notional principal equivalent to the net receipts;

(2) second, net other transactions subject to novation under which all obligations between the *firm* and its counterparty are automatically amalgamated in such a way that the novation legally substitutes one set single net amount for the previous gross obligations; and

(3) third, net other transactions where the *firm* ensures that the following conditions have been met:

(a) the transactions are covered by a netting contract with the counterparty, or by another agreement that creates a single legal obligation, such that the *firm* would have either a claim to receive, or obligation to pay, only the net sum of the positive and negative mark-to-market values of the individual transactions if a counterparty fails to perform due to any of the following:

(i) default;

(ii) bankruptcy;

(iii) liquidation; or

(iv) similar circumstances;

(b) in the event of default of a counterparty, the netting contract does not contain any clause that permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulting party even if the defaulting party is a net creditor;

(c) the *firm* has obtained an independent, written and reasoned legal opinion that, in the event of a legal challenge to the netting agreement, the *firm's* claims and obligations would be equivalent to those referred to in (a) under each of the following legal regimes:

(i) the law of the jurisdiction in which the counterparty is incorporated;

(ii) if a foreign branch of a counterparty is involved, the law of the jurisdiction in which the branch is located;

(iii) the law that governs the individual transactions included in the netting agreement; or

(iv) the law that governs any contract or agreement necessary to effect the netting.

Risk factor

4.14.29 R The risk factor for a counterparty is set out in the following table:

Counterparty type	Risk factor
Central governments, central banks and public sector entities	1.6%
Credit institutions and *investment firms*	1.6%
Other counterparties	8%

Credit valuation adjustment

4.14.30 R (1) For the purposes of this *rule*, the "credit valuation adjustment" (CVA) means an adjustment to the mid-market valuation of the portfolio of transactions with a counterparty that reflects the *CMV* of the credit risk of the counterparty to the *firm*, but does not reflect the *CMV* of the credit risk of the *firm* to the counterparty.

(2) The CVA for all transactions is 1.5, except for the transactions in (3).

(3) The CVA for the following transactions is 1:

(a) the following transactions, if they do not exceed the clearing threshold specified in article 10(3) and (4) of *EMIR*:

(i) transactions with non-financial counterparties (as defined in point (9) of article 2 of *EMIR*); or

(ii) transactions with non-financial counterparties established in a *third country*;

(b) intra-group transactions as provided for in article 3 of *EMIR*;

(c) *long settlement transactions*;

(d) *securities financing transactions* unless the *FCA* has notified the *firm* that the *firm's* CVA risk exposures arising from those transactions are material; and

(e) credits and loans referred to in *MIFIDPRU* 4.14.3R(7).

4.15 K-DTF requirement

4.15.1 R Subject to *MIFIDPRU* 4.15.11R, the *K-DTF requirement* of a *MIFIDPRU investment firm* is equal to the sum of:

(1) 0.1% of *average DTF* attributable to *cash trades*; and

(2) 0.01% of *average DTF* attributable to *derivatives trades*.

4.15.2 G (1) The definition of *DTF* includes transactions that a *firm* enters into when *dealing on own account* or when executing *client* orders in the *firm's* own name.

(2) A *firm* that has *permission* to *operate an organised trading facility* may engage in:

(a) *matched principal trading* in certain types of *financial instruments* with *client* consent, in accordance with *MAR* 5A.3.5R(1); and/or

(b) *dealing on own account* in illiquid *sovereign debt* instruments in accordance with *MAR* 5A.3.5R(2).

(3) Where a *firm* engages in either activity in (2), it must include those transactions in the measurement of its *DTF*.

(4) Except for the transactions in (2), *DTF* does not include orders that a *firm* handles in the course of *operating an organised trading facility*. However, *DTF* includes transactions entered into by a *firm* in its own name through an *organised trading*

facility where the *firm* is not operating that *organised trading facility*.

4.15.3 R A *firm* must calculate its *K-DTF requirement* on the first *business day* of each *month*.

4.15.4 R (1) A *firm* must calculate the amount of its *average DTF* as:

(a) taking the total *DTF* as measured throughout each *business day* in each of the previous 9 *months*;

(b) excluding the daily values for the most recent 3 *months*; and

(c) calculating the arithmetic mean of the daily values for the remaining 6 *months*.

(2) When measuring the value of *DTF* for a particular *business day*, a *firm* must convert any amounts in foreign currencies on that date into the *firm's* functional currency.

(3) For the purposes of the currency conversion in (2), a *firm* must:

(a) determine the conversion rate by reference to an appropriate market rate; and

(b) record the rate that was chosen.

4.15.5 G (1) The effect of *MIFIDPRU* 4.15.4R(2) is that when measuring the value of *DTF* at the end of each *business day*, a *firm* must apply the relevant conversion rate on that date to any amounts in foreign currencies forming part of the *DTF* attributable to that *business day*. The *DTF* for each preceding *business day* should continue to be measured by reference to the conversion rate that was applicable on that preceding day.

(2) For the purposes of *MIFIDPRU* 4.15.4R(3), where a *firm* is carrying out a conversion that involves sterling, the *FCA* considers that an example of an appropriate market rate would be the relevant daily spot exchange rate against sterling published by the Bank of England.

4.15.6 R (1) When measuring its *DTF*, a *firm* must use the sum of the absolute value of each buy order and sell order, as determined in accordance with this *rule*.

(2) For *cash trades* relating to *financial instruments*, the value of the order is the amount paid or received on the trade.

(3) For *derivatives trades* other than orders relating to interest rate derivatives, the value of the order is the notional amount of the

contract, determined in accordance with *MIFIDPRU* 4.14.20R(2).

(4) For orders relating to interest rate derivatives, the value of the order is the notional amount of the contract determined in accordance with *MIFIDPRU* 4.14.20R(2), adjusted in accordance with *MIFIDPRU* 4.15.8R.

4.15.7 G For *cash trades* relating to exchange-traded options, the amount paid or received on the trade under *MIFIDPRU* 4.15.6R(2) is the premium paid for the option.

4.15.8 R (1) For the purposes of *MIFIDPRU* 4.15.6R(4), a *firm* must adjust the notional amount of an interest rate derivative by multiplying that notional amount by the duration.

(2) For the purposes of (1), the duration must be determined in accordance with the following formula:

Duration = time to maturity (in years) / 10

4.15.9 G When measuring *DTF* for the purposes of *MIFIDPRU* 4.15.4R, a *firm* must include transactions executed by a *firm* in its own name either for itself or on behalf of a *client*.

4.15.10 R (1) This *rule* applies where a *firm* has had a *daily trading flow* for less than 9 *months*.

(2) For the purposes of its calculation of *average DTF* under *MIFIDPRU* 4.15.4R, a *firm* must use the modified calculation in *MIFIDPRU* TP 4.11R(1) with the following adjustments:

(a) in *MIFIDPRU* TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has had a *daily trading flow* (with the *month* during which the *firm* begins that activity being counted as *month* zero); and

(b) during *month* zero of the calculation, the *firm* must:

(i) use a best efforts estimate of expected *DTF* for that *month* based on its projections when beginning the new activity; and

(ii) use the estimate in (i) as its *average DTF*;

(c) during *month* 1 of the calculation and each *month* thereafter, the *firm* must apply the approach in (a) using observed historical data from the preceding *months*;

(d) the modified calculation ceases to apply on the date that falls 9 *months* after the date on which the *firm* first had a *daily trading flow*.

Adjusted coefficient in stressed market conditions

4.15.11 R (1) This *rule* applies where a *firm's* measurement of its *DTF* under *MIFIDPRU* 4.15.4R includes a proportion of *daily trading flow* that occurred on a trading segment of a *trading venue* to which stressed market conditions (as defined in article 6 of the *Market Making RTS*) applied.

(2) Where this *rule* applies, a *firm* may apply the following adjusted coefficients:

(a) for *cash trades*, a coefficient determined in accordance with (3) instead of the relevant coefficient in *MIFIDPRU* 4.15.1R(1); or

(b) for *derivatives trades*, a coefficient determined in accordance with (4) instead of the relevant coefficient in *MIFIDPRU* 4.15.1R(2).

(3) For *cash trades*, the adjusted coefficient must be determined by using the following formula:

CadjCash = C * (DTFexcl/DTFincl)

where:

(a) CadjCash = the adjusted coefficient in (2)(a);

(b) C = the original coefficient in *MIFIDPRU* 4.15.1R(1);

(c) DTFexcl = the *average DTF* of *cash trades* calculated in accordance with *MIFIDPRU* 4.15.4R, excluding the value of any *cash trade* that occurred on a trading segment of a *trading venue* between the time at which the *trading venue* determined that:

(i) stressed market conditions began to apply; and

(ii) stressed market conditions ceased to apply;

(d) DTFincl = the *average DTF* of all *cash trades* calculated in accordance with *MIFIDPRU* 4.15.4R.

(4) For *derivative trades*, the adjusted coefficient must be determined by using the following formula:

CadjDer = C * (DTFexcl/DTFincl)

where:

(a) CadjDer = the adjusted coefficient in (2)(b);

(b) C = the original coefficient in *MIFIDPRU* 4.15.1R(2);

(c) DTFexcl = the *average DTF* of *derivative trades* calculated in accordance with *MIFIDPRU* 4.15.4R, excluding the value of any *derivative trade* that occurred on a trading segment of a *trading venue* between the time at which the *trading venue* determined that:

(i) stressed market conditions began to apply; and

(ii) stressed market conditions ceased to apply;

(d) DTFincl = the *average DTF* of all *derivative trades* calculated in accordance with *MIFIDPRU* 4.15.4R.

4.15.12 G (1) *MIFIDPRU* 4.15.11R permits a *firm* to apply a reduced coefficient for the purposes of determining its *K-DTF requirement* where part of the *firm's average DTF* for the relevant period is attributable to transactions that took place on a segment of a *trading venue* to which stressed market conditions applied. The relevant coefficient must be calculated separately for *cash trades* and *derivatives trades*.

(2) *MIFIDPRU* 4.15.11R permits a *firm* to substitute a reduced coefficient that applies to the *firm's average DTF* for the relevant calculation period. The size of the reduction is proportional to the value of trades that were placed on a segment of a *trading venue* during stressed market conditions within the calculation period, relative to the overall value of trades entered into by the *firm* during that period.

4.15.13 G (1) The following is an example of how the adjusted coefficient in *MIFIDPRU* 4.15.11R applies.

(2) A *firm* executes total *cash trades* in its own name worth £9,600m during the 6-*month* calculation period for determining *average DTF* under *MIFIDPRU* 4.15.4R(1)(c). That 6-*month* period includes 128 *business days*.

(3) The total £9,600m of *cash trades* includes £375m of *cash trades* that were executed on *trading venues* during stressed market conditions (as defined in article 6 of the *Market Making RTS*).

(4) In this example:

DTFincl = £9,600m / 128 days = £75m

DTFexcl = (£9,600m - £375m) / 128 days =
£9,225m / 128 days = £72.07m

C = 0.1%

CadjCash = 0.1% x (72.07 / 75) =
0.1% x 0.961 = 0.0961%

(5) To calculate its *K-DTF requirement* for this calculation period, the *firm* multiplies the full amount of its *average DTF* for the period by the adjusted coefficient (CadjCash). Therefore:

K-DTF requirement for *cash trades* = £75m x 0.0961% = £72,075

4.16 K-CON requirement

4.16.1 G *MIFIDPRU* 5 contains the provisions relating to the calculation of the *K-CON requirement* of a *MIFIDPRU investment firm*.

Application under MIFIDPRU 4.11.9R – permission to exclude hedges from article 352 of the UK CRR

4 Annex 1R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 1R

Application under MIFIDPRU 4.11.9R for permission to exclude positions taken to hedge against the adverse effect of the exchange rate on the own funds or an item deducted from capital from net open currency positions for the purpose of article 352 of the UK CRR

1. Please list other group undertakings in respect of which this application is also being made, if applicable.

FRN	MIFIDPRU investment firm name

2. Please confirm to which of the following this application relates:

a. Positions which are deliberately taken in order to hedge against the adverse effect of the exchange rate on the firm's own funds requirement ☐

b. Positions which are deliberately taken in order to hedge against the adverse effect of the exchange rate on an item which the firm has deducted from its own capital ☐

3. Please describe the positions requested to be excluded:

4. For each of the statements in the below table, please confirm whether it is met and provide further information to demonstrate how it is met:

Statement	**Meets Statement? (Yes/No)**	**Rationale** *Please demonstrate how the statement is met by providing supporting commentary and evidence.*
a. Structural FX positions are deliberately taken in order to protect capital adequacy ratios against adverse movements in FX rates.		
b. Positions are of a non-trading or structural nature.		
c. Mismatches resulting in an open position are avoided as much as possible.		
d. Positions are monitored proactively and on a regular basis to detect and remediate mismatches, where applicable.		
e. Positions are accounted for so that capital ratios are protected.		
f. Any residual risks arising from structural FX positions are considered and capitalised in the ICARA assessment of the firm.		
g. Any residual risks arising from structural FX positions are avoided as far as possible.		
h. Policies and procedures are clearly articulated and are made available to the Board and to regulators on an annual basis.		
i. The structural FX hedging strategy is clearly articulated		

to investors and is included in MIFIDPRU 8 disclosures.		
j. Books containing structural FX positions are segregated from other trading activities.		
k. Traders' remuneration structures do not in any way incentivise structural FX positions becoming a profit centre.		
l. Oversight of structural FX positions is carried out by the appropriate committees of the Boards of both the foreign entity and the group on at least a quarterly basis.		

Application under MIFIDPRU 4.12.4R – internal market risk models

4 Annex 2R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 2R

Application under MIFIDPRU 4.12.4R for permission to use an advanced internal market risk model

Note: MIFIDPRU 4.12.8R to 4.12.65G set out requirements for internal models and explain the factors that the FCA will consider when deciding whether to grant permission to use an advanced internal model. Please refer to these rules and guidance when completing your application.

1. Please list all MIFIDPRU investment firms covered by the model on behalf of which this application is made:

FRN	**MIFIDPRU investment firm name**

2. Please confirm which of the following the firm wishes to calculate using an internal model:

   a. General risk of equity instruments

   b. Specific risk of equity instruments

   c. General risk of debt instruments

   d. Specific risk of debt instruments

   e. Foreign exchange risk

   f. Commodities risk

3. For the risk categories selected, please explain which classes of position within each risk category the firm would like to apply the model to (e.g. government debt instruments, corporate debt instruments, etc.).

4. Please explain how the firm meets the relevant conditions for the use of internal model specified in Part Three, Title IV, Chapter 5 of the UK CRR as it applied on 31 December 2021.

5. Please explain how the internal model this application relates to covers a significant share of the positions of each relevant risk category.

6. Proposed implementation date (date from which the firm proposes to start using the model, subject to receiving the necessary approval).

DD/MM/YYYY

7. Please attach the following information to support your application:

   a. Organisational charts for all functions that either execute trading activities or execute a control function over trading activities including internal audit.

   b. A list of all policies that govern activities by all of the above functions.

   c. List of all meetings where trading activities and the activities of control functions are discussed (we may request minutes and supporting documentation for some of these meetings).

   d. 6 months of front-office profit/loss (P/L) flashes and all subsequent P/L reporting for the same period.

   e. All management reporting by finance and product control functions for 6 months that:

      i. Provide P/L explanations

      ii. Validate trade booking and any necessary adjustments

      iii. Contain monthly confirmation of position reconciliations

      iv. Contain monthly price testing reports

   f. All management reporting by Risk Management staff, including:

      i. A list of all market risk limits currently in place

      ii. All market risk reporting concerning limits

      iii. All changes to market risk limits in the past 6 months along with any supporting documentation

   g. All documentation related to the advanced market risk model (VAR), including:

      i. Model description

      ii. Model validation

      iii. List of all pricing models used within the advanced market risk model

   iv. List of model validation documents for (iii) and the date of last review

   v. List of all risks not captured by the advanced market risk model

   vi. List of all documentation describing how items in (v) are estimated

   vii. List of all validation of items in (vi)

h. Model output and pro-forma reporting for at least 3 months, which provides:

   i. A comparison of clean P/L, raw P/L and model output

   ii. An explanation of significant deviations between clean P/L and raw P/L

   iii. An explanation of any exceptions

   iv. An explanation for any significant deviations in the number of exceptions observed

i. All management reporting by Compliance functions for the past 6 months that:

   i. Attests to the adherence to policies and procedures by trading staff

   ii. Reports any violation of policies and procedures by trading staff

j. The following documentation from internal audit:

   i. A list of all audit activities for the current year

   ii. All audit reports from the previous year

k. A status report on all outstanding actions identified by internal audit in trading and control functions.

Application under MIFIDPRU 4.12.6R – material change or extension to internal market risk models

4 Annex 3R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 3R

Application under MIFIDPRU 4.12.6R for permission to make a material change or a material extension to the use of an advanced internal market risk model

1. Please confirm to which of the following the application relates:

   a. A material change to the use of an internal model ☐

   b. A material extension to the use of an internal model ☐

2. In order to determine if a change or extension to an internal market risk model is material, a firm must apply the criteria and methodology set out in articles 3, 7a and 7b of *the onshored Market Risk Model Extensions and Changes RTS 529/2014.*

   Please identify which of the RTS conditions the change or extension fulfils to be considered a material change or extension.

3. For group applications, please list the MIFIDPRU investment firms covered by the model on behalf of which this application is made:

FRN	MIFIDPRU investment firm name

4. Please confirm to which of the following this material change/extension applies:

   a. General risk of equity instruments

   b. Specific risk of equity instruments

   c. General risk of debt instruments

   d. Specific risk of debt instruments

   e. Foreign exchange risk

   f. Commodities risk

5. Please explain the rationale for the proposed change/extension.

6. Please describe the proposed change/extension in detail.

7. Proposed implementation date.

Note: This is the date from which changes are intended to affect capital calculations, subject to receiving the necessary approval.

DD/MM/YYYY

Notification under MIFIDPRU 4.12.7R – non-material change or extension to use of an internal model

4 Annex 4R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 4R

Notification under MIFIDPRU 4.12.7R of the intended non-material change or extension to the use of an internal model

1. Please list all FCA investment firms covered by the model on behalf of which this notification is made:

FRN	FCA investment firm name

2. Please confirm which of the following the notification relates to:

   a. non-material change to the use of an internal model ☐

   b. non-material extension to the use of an internal model ☐

3. Please provide details of the model this notification relates to:

4. In order to determine if a change or extension to an internal market risk model is material or not, a firm must apply the criteria and methodology set out in articles 3, 7a and 7b of *the Market Risk Model Extensions and Changes RTS.*

Please confirm that you have determined the change or extension to be non-material based on the application of the specific criteria and methodologies set out in the RTS.

Yes/No

5. Please provide a summary of the intended non-material change or extension:

6. Effective date of the change or extension:

DD/MM/YYYY

Notification under MIFIDPRU 4.12.10R and 4.14.20R – use of own delta estimates for standardised approach for options (K-NPR)

4 Annex 5R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 5R

Notification under MIFIDPRU 4.12.10R and 4.14.20R of the intended use of own delta estimates

1. Please list all other FCA investment firms on behalf of which this notification is made, if applicable:

FRN	FCA investment firm name

2. Please confirm for which of the following purposes you intend to use own estimates for delta:

    a. the standardised approach for options under UK CRR Article 329 ☐

    b. the standardised approach for options under UK CRR Article 352(1) ☐

    c. the standardised approach for options under UK CRR Article 358 ☐

    d. calculating TCD own funds requirement (supervisory delta) ☐

Note: Article 329, 352(1) and 358 UK CRR as applicable at 31 December 2021.

3. The pricing model used to calculate delta estimates is required to meet the following minimum standards set out in MIFIDPRU 4.12.12G to MIFIDPRU 4.12.18G for each type of option:

    a. The level of sophistication of the pricing model is proportionate to the complexity and risk of each option, and the overall risk of the firm's options trading business.

    b. Delta is re-calculated at least daily, and promptly following significant movements in the market parameters used as inputs to calculate delta.

    c. The pricing model used to calculate delta:

        i. is based on appropriate assumptions that have been assessed and challenged by suitably qualified parties independent of the development process

        ii. has been independently tested, including validation of the mathematics, assumptions, and software implementation and

iii. has been developed or approved independently of the trading desk.

d. Where available, generally accepted industry standard pricing models, such as for relatively simple options, have been used for the calculation of own deltas.

e. The IT systems used to calculate delta are sufficient to ensure that delta can be calculated accurately and reliably.

f. Adequate systems and controls are in place when using a pricing model to calculate a delta. This includes the following documented policies and procedures:

i. clearly defined responsibilities of the various areas involved in the calculation

ii. frequency of independent testing of the accuracy of the model used to calculate delta; and

iii. guidelines for the use of unobservable inputs, where relevant.

g. Risk management functions are aware of weaknesses of the model used to calculate a delta.

h. Where a weakness is identified, estimates of delta result in a prudent contribution to the K-NPR requirement or, for supervisory delta, the K-TCD requirement. The outcome is prudent across the whole portfolio of options and underlying positions at all times.

Please confirm that the pricing model used by the firm to calculate delta estimates meets these minimum standards and that the firm is able to demonstrate this by providing supporting evidence upon request.

☐ Yes

4. Please complete the Option Price Template[1] and attach it with the notification.

☐ Attached

5. Date from when own estimates will be used:

DD/MM/YYYY

[1] *Editor's note:* This template is available at the following address: https://www.fca.org.uk/publication/documents/option-price-template-for-notification.xlsx

Application under MIFIDPRU 4.12.66R to use sensitivity models to calculate interest rate risk on derivative instruments

4 Annex 6R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 6R

Application under MIFIDPRU 4.12.66R for permission to use sensitivity models to calculate interest rate risk on derivative instruments in accordance with article 331(1) of the UK CRR

1. Please list all other MIFIDPRU investment firms in respect of which this application is being made, if applicable.

FRN	MIFIDPRU investment firm name

Note: For group applications, the below section must be completed separately for each firm requiring the permission. Questions 3 and onwards must be completed separately for each set of instruments for which a net sensitivity position, weighted by maturity, is computed.

2. Please give a brief description of the nature of your business and a full and clear explanation of why you are applying for this permission.

3. Please provide summary information for each of the items listed in the below table. For some items you are required to attach additional documentation.

Item	Summary Information
a. Describe the current methodology used for interest rate risk on derivative instruments covered in articles 328 to 330 UK CRR.	
b. Describe the sensitivity models used to calculate interest rate risk under article 331 UK CRR.	
c. Product scope of the requested permission – please indicate the instruments for which net sensitivity positions are used and the currencies in which those positions are denominated.	

d. For the product scope requested, confirm that the interest rate risk is managed on a discounted cashflow basis.	
e. For the product scope requested, briefly indicate any growth plans for the exposures.	
f. Capital impact of changing the calculation methodology from the existing approach (i.e. the capital impact of applying article 331 UK CRR) and total capital and market risk capital held at the same date.	
g. Provide worked examples of capital calculation under the current methodology and the new (article 331 UK CRR) methodology for a test portfolio composed of: • Long 100,000 1Y ATM equity index call option • Short 100,000 1Y ATM equity index put option • Long 100,000 2Y ATM equity index call option • Short 100,000 5Y ATM equity index call option • Short 3M equity index futures in sufficient quantity to hedge the equity delta of the options Assume that the base index level is 100 and that the equity index volatility is 20%. Please use the interest rate curve included for the purposes of calculating the interest rate exposure. All options are European style exercise.	
h. Provide documentation describing how you construct interest rate curves from market data. List all models that rely on these curves to calculate sensitivity to interest rate movements. For each model, Provide the list of products to which it applies and the date of the last validation.	
i. Explain how you calculate the interest rate sensitivity of your portfolio in each bucket.	
j. Explain how you handle interest rate basis risk.	

4. Please complete the following interest rate inputs template[2] and submit it with your application.

[2] *Editor's note:* This template is available at the following address: http://www.fca.org.uk/your-fca/documents/forms/crr-article-331-interest-rate-inputs

☐ Attached

5. Please confirm whether each of the standards in the table below is met and provide information to demonstrate how it is met:

Standard	Meets Standard? (Yes/No)	Firm Analysis *Please demonstrate using examples where appropriate how the minimum standards are met*
a. Sensitivity models generate positions which have the same sensitivity to interest rate changes as the underlying cash flows.		
b. Sensitivities are assessed with reference to independent movements in sample rates across the yield curve, with at least one sensitivity point in each of the maturity bands set out in Table 2 in article 339 UK CRR.		
c. Sensitivities are appropriate to produce accurate valuation changes based on the assumed interest rate changes set out in Table 2 of article 339 UK CRR.		

Application under MIFIDPRU 4.13.9R – permission for K-CMG

4 Annex 7R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 7R

Application under MIFIDPRU 4.13.9R for permission to apply K-CMG to a portfolio, instead of K-NPR

1. Please confirm that the applicant firm is not part of a group containing a credit institution.

☐ Yes

Note: Questions 2-15 must be completed separately for each portfolio this application relates to.

2. Please identify the portfolio for which a K-CMG permission is requested.

3. Please list all types of positions within the portfolio.

4. Please list all models used to value the positions within the portfolio.

5. Please confirm whether the portfolio covers all of the firm's trading book positions.

If the firm has positions outside of the trading book that give rise to foreign exchange or commodities risk, the FCA would generally expect it to calculate K-NPR in relation to these positions.

☐ Yes
☐ No ‣ Give details below

6. Please confirm that the clearing and settlement of transactions in the relevant portfolio take place under the responsibility of a clearing member of an authorised or recognised central counterparty.

☐ Yes

7. Please confirm which of the following applies:

The firm itself is the clearing member	*Yes/No*
The firm is a direct client of the clearing member	*Yes/No*
The firm is an indirect client of the clearing member	*Yes/No*

8. Where the firm is not the clearing member itself, please provide the following information:

Name of clearing member	
Status of clearing member	*Select one of the following:* • *other MIFIDPRU investment firm* • *a designated investment firm* • *a third country investment firm* • *a UK credit institution* • *a third country credit institution*
FRN/LEI of clearing member	

Where the firm is an indirect client of the clearing member, please provide the following information:

Name of intermediary	
Status of intermediary	Select one of the following: • *other MIFIDPRU investment firm* • *a designated investment firm* • *a third country investment firm* • *a UK credit institution* • *a third country credit institution*
FRN/LEI of intermediary	

Where the clearing member and/or the intermediary do not have an FRN or LEI, please explain why and, if applicable, provide alternative details.

9. One of the conditions of the K-CMG permission is that transactions in the relevant portfolio are either:

   a. centrally cleared in an authorised or recognised central counterparty; or

   b. settled on a delivery-versus-payment basis under the responsibility of the clearing member.

Please explain how this specific condition is satisfied:

10. In order to meet the conditions of the K-CMG permission, the firm is required to provide total margin calculated on the basis of a margin model that meets the criteria set out in MIFIDPRU 4.13.14R.

a. Please confirm whether the margin model is operated:

By the authorised or recognised central counterparty *[applies to self-clearing firms]*	*Yes/No*
By the relevant clearing member *[applies to firms other than self-clearing firms]*	*Yes/No*

b. Please provide further details of the margin model, including how it satisfies the specific criteria in MIFIDPRU 4.13.14R:

c. Please confirm if the parameters of the margin model meet the EMIR standards.

☐ Yes
☐ No ▸ Give details below of the mathematical adjustments that have been applied to produce an alternative margin requirement (see MIFIDPRU 4.13.14R(2))

d. If you answered "no" under (c), please demonstrate that the alternative requirement is at least equivalent to the margin requirement that would be produced by a margin model that meets the EMIR standards.

e. Please attach a copy of the agreement with the clearing member concerning the margin model and collateral used.

☐ Attached

11. Please explain the rationale for the decision to calculate a K-CMG requirement in relation to the portfolio to which this application relates. In your response, please demonstrate that you have taken adequate account of the nature of, and risk arising from, the firm's trading activities, including whether:

a. the main activities of the firm are essentially trading activities that are subject to clearing and margining under the responsibility of a clearing member; and

b. other activities performed by the firm are material in comparison to those main activities.

12. Please confirm that the rationale for the decision has been clearly documented and approved by the firm's management body or risk management function.

    ☐ Yes

13. Please show how the firm's capital requirement calculated using K-CMG compares with that calculated using K-NPR.

14. Please confirm who within the firm is accountable for the operation of the margin model used. Please provide details of the specific role or function where the knowledge about the margin model sits within the firm (e.g. Head of Risk Management, Head of Models, etc.), rather than an individual's name.

15. Please confirm that the firm's understanding of the margin model is integrated into its ICARA process to determine whether:

    a. the resulting K-CMG requirement is sufficient to cover the relevant risks to which the firm is exposed; and

       ☐ Yes

    b. the K-CMG permission remains appropriate in relation to the portfolio for which it was granted.

       ☐ Yes

16. Please confirm your understanding that you must notify the FCA immediately if any of the conditions in MIFIDPRU 4.13.9R are no longer met by any of the portfolios to which this application relates.

    ☐ Yes

Notification under MIFIDPRU 4.13.10R – K-CMG conditions no longer satisfied

4 Annex 8R	[*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 8R

Notification under MIFIDPRU 4.13.10R that a firm no longer satisfies all the conditions of a K-CMG permission previously granted in relation to a portfolio

1. We are notifying that we no longer meet one or more of the conditions of a K-CMG permission we currently hold in relation to the following portfolio:

2. Please provide the following information:

Condition(s) no longer met	
Date condition(s) ceased to be met	*DD/MM/YYYY*

3. Please confirm what the firm's revised capital requirement would be if it was required to calculate K-NPR for this portfolio:

£

4. Please confirm whether the firm would be able to meet its revised capital requirements if it was required to calculate K-NPR for this portfolio.

Yes/No

Note: The FCA may review or revoke the K-CMG permission in response to this notification.

Notification under MIFIDPRU 4.13.20R – cancellation of K-CMG permission

4 Annex 9R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 9R

Notification under MIFIDPRU 4.13.20R to cancel a K-CMG permission for a portfolio and calculate K-NPR instead

1. We are notifying that we intend to calculate a K-NPR requirement in relation to a portfolio, for which we currently hold a K-CMG permission.

2. Please provide the following information:

a. Details of the portfolio to which K-CMG permission relates	
b. Date K-CMG permission was granted	*DD/MM/YYYY*
c. Date K-CMG permission should cease to apply	*DD/MM/YYYY*

3. Please provide the rationale for the decision to calculate a K-NPR requirement rather than a K-CMG requirement for the above portfolio:

4. A firm that has obtained a K-CMG permission in relation to a portfolio must calculate a K-CMG requirement for that portfolio for a continuous period of at least 24 months from the date that the permission is granted. The exception is where the business strategy or operations of the trading desk with responsibility for the relevant portfolio have changed to such an extent that it has become a different trading desk.

   If this notification is made following a period shorter than 24 months from the date the permission was granted, please explain how the above exception criteria are met:

Note: The FCA is unlikely to grant another K-CMG permission in relation to the portfolio to which this notification relates for at least 24 months from when the previous K-CMG permission ceases to apply.

Application under MIFIDPRU 4.14.6R – permission to exclude transactions with some counterparties from K-TCD

4 Annex 10R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 10R

Application under MIFIDPRU 4.14.6R for permission to exclude transactions with some counterparties from K-TCD requirement

1. Please list all other MIFIDPRU investment firms in respect of which this application is being made, if applicable.

FRN	MIFIDPRU investment firm name

2. Please provide the following information about the counterparty or counterparties that the applicant firm wishes to exclude from the calculation of its K-TCD requirement.

FRN/LEI	**Name**	**Relationship**	**Type of firm**	**Location**
		Select one of the following: *● Parent* *● Subsidiary* *● Subsidiary of parent* *● Linked by majority common management*	*Select one of the following:* *● Credit institution* *● Investment firm* *● Financial institution*	

3. Confirm whether the applicant firm and the counterparty or counterparties are:

Part of the same prudential consolidation group under the UK CRR	*Yes/No*
Part of the same prudential consolidation group under MIFIDPRU 2.5	*Yes/No*
Supervised together for compliance with the group capital test under MIFIDPRU 2.6	*Yes/No*

4. Please attach a group structure chart which clearly identifies the applicant firm and the above counterparty or counterparties.

☐ Attached

5. In order for a firm to be granted permission to exclude transactions with a counterparty or counterparties from its K-TCD requirement, the counterparty or counterparties concerned must be subject to the same risk evaluation measurement and control procedures as the firm.

Please explain how the firm's counterparty or counterparties satisfy this requirement and provide supporting information to substantiate your response.

☐ Supporting information attached

6. To the best of your knowledge, are there any current or foreseen material practical or legal impediments to the prompt transfer of own funds or repayment of liabilities from the counterparty, or counterparties, to the firm?

☐ Yes ‣ Give details below
☐ No

Application under MIFIDPRU 4.5.9R – permission to rebase fixed overhead requirement

4 Annex 11R [*Editor's note*: the form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 4 Annex 11R

Application under MIFIDPRU 4.5.9R for permission to rebase fixed overhead requirement to a lower amount where firm's projected relevant expenditure decreases by a material amount

1. Please confirm the basis on which this application is made by selecting one or both of the following options:

   a. There has been a decrease of 30% or more in the firm's projected relevant expenditure for the current year ☐

   b. There has been a decrease of £2 million or more in the firm's fixed overheads requirement based on projected relevant expenditure for the current year ☐

2. Please attach relevant forecast information which demonstrates the projected decrease in the firm's relevant expenditure in (1) and the revised fixed overhead requirement calculation on the basis of that projected decrease.

   ☐ Attached

3. Please explain the key drivers for this material change in the firm's projected relevant expenditure for the current year.

4. Please explain the impact of the reduction on the firm's ICARA process and the conclusions documented in the firm's last ICARA document.

5. Please demonstrate that the firm continues to hold own funds and liquid assets to comply with your threshold requirements under MIFIDPRU 7.

4 Annex 12G **Guidance on the interaction between K-AUM and K-COH**

12.1 G (1) This annex contains *guidance* on the interaction between the *K-AUM requirement* and the *K-COH requirement* in certain scenarios.

(2) The scenarios contained in this annex are not intended to be exhaustive. *MIFIDPRU investment firms* should analyse any arrangement that is not covered by the *guidance* in this annex by reference to the *rules* and *guidance* in *MIFIDPRU* 4.7 (in relation to the *K-AUM requirement*) and *MIFIDPRU* 4.10 (in relation to the *K-COH requirement*). *Firms* should also refer to the *guidance* in *MIFIDPRU* 4.6.2G.

12.2 G (1) The following table indicates whether a *MIFIDPRU investment firm* is required to calculate a *K-AUM requirement* or a *K-COH requirement* in a particular scenario.

(2) In the table, a reference to:

(a) "DPM" is to the activity of discretionary *portfolio management*;

(b) "IF1" is to the first *MIFIDPRU investment firm*;

(c) "IF2" is to the second *MIFIDPRU investment firm*;

(d) "IF3" is to the third *MIFIDPRU investment firm*;

(e) a dash (-) indicates that there is no second *MIFIDPRU investment firm* involved in the relevant scenario;

(f) "Yes" means that the relevant requirement applies to that activity; and

(g) "No" means that the relevant requirement does not apply to that activity.

	IF1	**IF1 K-AUM**	**IF1 K-COH**	**IF2**	**IF2 K-AUM**	**IF2 K-COH**
1	DPM, executes the resulting orders	Yes	No	-	-	-

2	DPM, delegates DPM to IF2	Yes	No	Undertakes delegated DPM and executes the resulting orders	No	Yes
3	DPM, delegates DPM to IF2. Receives orders back from IF2 to execute	Yes	No	Undertakes delegated DPM and passes orders back to IF1 to execute	No	No
4	DPM, delegates DPM to IF2	Yes	No	Undertakes delegated DPM and passes orders back to IF3 to execute	No	No
5	DPM, delegates DPM to IF2. Receives orders back from IF2 and passes them to IF3 to execute	Yes	No	Undertakes delegated DPM and passes orders back to IF1	No	No
6	DPM, passes orders to IF2 for execution	Yes	No	Executes orders on behalf of IF1	No	Yes
7	DPM, receives ongoing advice from IF2	Yes	No	Gives ongoing advice on assets managed by IF1	Yes	No
8	Provides ongoing investment advice in relation to assets and executes resulting orders	Yes	No	-	-	-
9	Provides ongoing investment advice in relation to assets, with orders executed by IF2	Yes	No	Executes orders received from IF1 for execution	No	Yes
10	Provides “one-off” investment advice to a client. Any orders are passed to IF2 for execution	No	Yes	Executes orders received from IF1 for execution	No	Yes
11	Provides “one-off” investment advice to a client. Executes any resulting orders	No	Yes	-	-	-
12	Execution only of client orders	No	Yes	-	-	-

13	Client orders received are passed to IF2 for execution	No	Yes	Executes orders received from IF1 for execution	No	Yes

5 Concentration risk

5.1 Application and purpose

Application: Who?

5.1.1 R This chapter applies to:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity* that is required by *MIFIDPRU* 2.5.7R to comply with *MIFIDPRU* 5 on the basis of its *consolidated situation*.

5.1.2 R Where this chapter applies on the basis of the *consolidated situation* of the *UK parent entity*, any reference to a "*firm*" or "*MIFIDPRU investment firm*" in this chapter is a reference to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*.

5.1.3 G *MIFIDPRU* 2.5.45G and 2.5.46G contain additional *guidance* on how a *UK parent entity* should apply the requirements in this chapter on a *consolidated basis*.

5.1.4 G *MIFIDPRU* 5.2 to 5.10 do not apply to a *commodity and emission allowance dealer* in the circumstances set out in *MIFIDPRU* 5.11.

Application: What?

5.1.5 R *MIFIDPRU* 5.2 applies to all of a *firm's* activities that may give rise to *concentration risk*.

5.1.6 G *MIFIDPRU* 5.2 is therefore relevant to both a *MIFIDPRU investment firm* that *deals on own account* and one that does not (e.g. an *SNI MIFIDPRU investment firm*).

5.1.7 R *MIFIDPRU* 5.3 to 5.10 apply to a *firm* when *dealing on own account* in relation to transactions that are recorded in the *trading book*.

5.1.8 G *MIFIDPRU* 5.3 to 5.10 apply whether a *firm* is *dealing on own account* for itself or on behalf of a *client*.

5.1.9 G A *MIFIDPRU investment firm* that has *permission* to *operate an organised trading facility* may rely on that *permission* to:

(1) engage in *matched principal trading* in certain types of *financial instruments* with *client* consent, in accordance with *MAR* 5A.3.5R(1); and

(2) *deal on own account* in illiquid *sovereign debt instruments* in accordance with *MAR* 5A.3.5R(2).

Purpose

5.1.10 G This chapter contains:

(1) *Rules* and *guidance* on how a *MIFIDPRU investment firm* must monitor and control *concentration risk* (*MIFIDPRU* 5.2).

(2) *Rules* and *guidance* on the *concentration risk* requirements that apply to the *trading book* exposures of a *MIFIDPRU investment firm* that is *dealing on own account* (*MIFIDPRU* 5.3 to 5.10). *MIFIDPRU* 5.3 sets out an overview of these requirements.

(3) *Rules* and *guidance* on when a *commodity and emission allowance dealer* is exempt from the requirements of this chapter (*MIFIDPRU* 5.11).

Interpretation

5.1.11 G In this chapter, references to *client* include any counterparty of the *firm*.

5.1.12 R Subject to *MIFIDPRU* 5.1.13R to *MIFIDPRU* 5.1.16R, a *group of connected clients* means:

(1) two or more *persons* who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has *control* over the other or others; or

(2) two or more *persons* between whom there is no relationship of *control* as described in (1) but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, in particular funding or repayment difficulties, the other or all of the others would also be likely to encounter funding or repayment difficulties.

5.1.13 R Where a central government has direct *control* over, or is directly interconnected with, more than one *person*, they do not all have to be treated as a single *group of connected clients*. Instead, the existence of a *group of connected clients* may be assessed separately at the level of each *person* directly *controlled* by or directly interconnected with the central government, which must include all of the natural and legal *persons* which are *controlled* by or interconnected with that *person*, including the central government.

5.1.14 R Regional governments and local authorities, whether in the *United Kingdom* or a *third country*, may be treated in the same way as central governments under *MIFIDPRU* 5.1.13R if there is no difference in the risk they pose compared to central governments.

5.1.15 G (1) There may be no difference in the risk posed by a regional government or local authority if it has specific revenue-raising powers, or if there are specific institutional arrangements which reduce the risk of default.

(2) The *PRA* maintains a list of all regional governments and local authorities within the *United Kingdom* which it treats as exposures to the central government of the *United Kingdom*, in accordance with article 115 of the *UK CRR*. A *firm* may have regard to this list when applying the test in *MIFIDPRU* 5.1.14R to regional governments and local authorities in the *United Kingdom.*

5.1.16 R Two or more *persons* do not constitute a single *group of connected clients* solely because of their direct exposure to the same *central counterparty* for clearing purposes.

Exposures to trustees

5.1.17 R For the purposes of this chapter, if a *firm* has an exposure to a *person* ('A') when A is acting on its own behalf, and also an exposure to A when A acts in the capacity of trustee, custodian or general partner of an investment trust, unit trust, venture capital or other investment fund, pension fund or a similar fund (a "fund"), the *firm* may treat the latter exposure as if it was to the fund as a separate *client*, unless such treatment would be misleading.

5.1.18 G When considering whether such treatment would be misleading, a *firm* should consider factors such as:

(1) the degree of independence of control of the fund, including the relation of the fund's board and senior management to the *firm* or to other funds or to both;

(2) the terms on which the counterparty, when acting as trustee, is able to satisfy its obligation to the *firm* out of the fund of which it is trustee;

(3) whether the beneficial owners of the fund are connected to the *firm*, or related to other funds managed within the *firm's* group, or both; and

(4) for a counterparty that is connected to the *firm* itself, whether the exposure arises from a transaction entered into on an arm's length basis.

5.1.19 G In deciding whether a transaction is at arm's length, the following factors should be taken into account:

(1) the extent to which the *person* to whom the *firm* has an exposure ('A') can influence the *firm's* operations through, for example, the exercise of voting rights;

(2) the management role of A where A is also a *director* of the *firm*; and

(3) whether the exposure would be subject to the *firm's* usual monitoring and recovery procedures if repayment difficulties emerged.

5.2 Monitoring obligation

5.2.1 R A *firm* must monitor and control its *concentration risk* using sound administrative and accounting procedures and robust internal control mechanisms.

5.2.2 G *MIFIDPRU* 5.2.1R requires a *firm* to monitor and control all sources of *concentration risk*. This is not limited to *trading book* exposures, but also includes any concentration in assets not recorded in a *trading book* (for example, trade debts) and off-balance sheet items. It also includes any *concentration risk* that may arise from the following:

(1) the location of *client money*;

(2) the location of *custody assets*;

(3) a *firm's* own cash deposits; and

(4) earnings.

5.3 Overview of concentration risk requirements for dealing on own account

5.3.1 G *MIFIDPRU* 5.4 to 5.10 contain the *concentration risk* requirements that apply to the *trading book* exposures of a *MIFIDPRU investment firm* that is *dealing on own account*:

(1) *MIFIDPRU* 5.4 explains how a *firm* should calculate the value of its exposure to each *client* or *group of connected clients* (the *exposure value* or *EV*).

(2) *MIFIDPRU* 5.5.1R explains how a *firm* should calculate the *concentration risk soft limit* for its exposure to a *client* or *group of connected clients*.

(3) *MIFIDPRU* 5.5.3R explains how a *firm* should calculate the value by which its exposure to each *client* or *group of connected clients* exceeds the *concentration risk soft limit* (the *exposure value excess* or *EVE*). The *EVE* is relevant to the calculation of the *K-CON requirement*.

(4) *MIFIDPRU* 5.6 contains the obligation to calculate the *K-CON requirement* and to notify the *FCA* if the value of a *firm's* exposure to a *client* or *group of connected clients* exceeds the *concentration risk soft limit*.

(5) *MIFIDPRU* 5.7 explains how to calculate the *K-CON requirement*.

(6) *MIFIDPRU* 5.8 contains *rules* designed to prevent *firms* from avoiding the *K-CON requirement*.

(7) *MIFIDPRU* 5.9 contains the 'hard' concentration risk limits, and associated provisions.

(8) *MIFIDPRU* 5.10 excludes certain exposures from the *concentration risk* requirements in *MIFIDPRU* 5.4 to 5.9.

5.4 Calculation of exposure value (EV)

5.4.1 R For the purposes of *MIFIDPRU* 5.5 to 5.10, a *firm* must calculate an *exposure value* (*EV*) for each *client* or *group of connected clients* by adding together the following items:

(1) the positive excess of the *firm's* long positions over its short positions in all the *trading book financial instruments* issued by the *client* in question, using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R to calculate the net position for each instrument; and

(2) the exposure value of contracts and transactions referred to in *MIFIDPRU* 4.14.3R with the *client* in question, calculated using the approach specified for K-TCD in *MIFIDPRU* 4.14.8R.

5.4.2 R For the purposes of *MIFIDPRU* 5.4.1R(1), where a *firm* calculates a *K-CMG requirement* in relation to a *portfolio*, it must calculate its net position for the exposures in that *portfolio* using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R.

5.4.3 R The *EV* with regard to a *group of connected clients* must be calculated by adding together the exposures to the individual *clients* within the group, which must be treated as a single exposure.

5.4.4 R When calculating *EVs*, a *firm* must take all reasonable steps to identify underlying assets in relevant transactions and the counterparty of the underlying exposures.

5.5 The concentration risk soft limit and exposure value excess

The concentration risk soft limit

5.5.1 R (1) The *concentration risk soft limit* for *EVs* to an individual *client* or *group of connected clients* is 25% of a *firm's own funds*, subject to (2) and (3).

(2) Where an individual *client* is a *MIFIDPRU-eligible institution*, the *concentration risk soft limit* for that *client* is the higher of:

(a) 25% of the *firm's own funds*; or

(b) £150 million or 100% of the *firm's own funds*, whichever is the lower.

(3) Where a *group of connected clients* includes one or more *MIFIDPRU-eligible institutions*, the *concentration risk soft limit* for the group is the higher of:

(a) 25% of the *firm's own funds*; or

(b) £150 million or 100% of the *firm's own funds*, whichever is the lower, provided that for the sum of *exposure values* with regard to all connected *clients* that are not *MIFIDPRU-eligible institutions*, the *concentration risk soft limit* remains at 25% of the *firm's own funds*.

5.5.2 G The *Handbook* definition of *MIFIDPRU-eligible institution* includes private or public *undertakings*, including the branches of such *undertakings*, provided that those *undertakings*, if they were established in the *UK*, would be *UK credit institutions* or *MIFIDPRU investment firms*, and provided that those *undertakings* have been authorised in a *third country* that applies prudential supervisory and regulatory requirements comparable to those applied in the *UK*.

The exposure value excess (EVE)

5.5.3 R (1) A *firm* that exceeds the *concentration risk soft limit* for a *client* or *group of connected clients* must calculate the *exposure value excess* (*EVE*).

(2) A *firm* must calculate the *EVE* for an individual *client* or *group of connected clients* using the following formula:

$$EVE = EV - \mathrm{L}$$

where:

L = the *concentration risk soft limit* specified in *MIFIDPRU* 5.5.1R.

5.6 Obligations for a firm that exceeds the concentration risk soft limit

5.6.1 R For as long as a *firm* exceeds the *concentration risk soft limit* for one or more *clients* or *groups of connected clients*, it must calculate the *K-CON requirement*.

5.6.2 R When a *firm* exceeds the *concentration risk soft limit* for a *client* or *group of connected clients*, it must notify the *FCA* without delay of the amount of the *EVE*, and the name of the individual *client* or *group of connected clients*.

5.6.3 R A *firm* must make the notification referred to in *MIFIDPRU* 5.6.2R by completing Part A of the form in *MIFIDPRU* 5 Annex 1R and submitting it using the *online notification and application system*.

5.7 Calculating K-CON

5.7.1 R The *K-CON requirement* of a *MIFIDPRU investment firm* is equal to the sum of the *CON own funds requirement* for each *client* or *group of connected clients* for which the *EV* exceeds the *concentration risk soft limit*.

5.7.2 R The *CON own funds requirement* for each *client* or *group of connected clients* in *MIFIDPRU* 5.7.1R must be calculated by:

(1) determining the own funds requirement for the excess (*OFRE*) in accordance with *MIFIDPRU* 5.7.3R; and

(2) applying the relevant multiplication factor or factors in accordance with *MIFIDPRU* 5.7.4R.

5.7.3 R (1) The *OFRE* must be calculated using the following formula:

$$OFRE = \frac{OFR}{EV} \times EVE$$

(2) (a) The *OFR* for an individual *client* is the sum of:

(i) the *TCD own funds requirement* for exposures to that *client*; and

(ii) the *K-NPR requirement* for the exposures to that *client*, subject to (b).

(b) Where exposures arise from the positive excess of a *firm's* long positions over its short positions in all the *trading book financial instruments* issued by the *client* in question, the net position of each instrument calculated using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R shall only include specific-risk requirements.

(c) A *firm* that calculates a *K-CMG requirement* for a *portfolio* must calculate the *OFR* using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R, subject to (b).

(d) The *OFR* for a *group of connected clients* must be calculated by adding together the exposures to individual *clients* within the group, and then determining a single own funds requirement for exposures to the group as if the group were a single *undertaking*.

5.7.4 R (1) Where the excess has persisted for 10 *business days* or less, the *CON own funds requirement* is the *OFRE* multiplied by 200%.

(2) Where the excess has persisted for more than 10 *business days*:

(a) the *EVE* must be apportioned according to the tranches in each row of Column 1 of Table 1;

(b) the proportion of the *EVE* in each tranche must be calculated as a percentage of the overall *EVE*;

(c) the *OFRE* must be pro-rated according to the proportion of *EVE* falling within each tranche;

(d) each portion of the *OFRE* must be multiplied by the relevant Factor in Column 2 of Table 1; and

(e) the *CON own funds requirement* is the sum of the amounts calculated in accordance with (d).

(3)

Table 1	
Column 1: **_EVE_ as a percentage of own funds**	**Column 2: Factors**
For the amount up to and including 40%	200%
For the amount over 40% up to and including 60%	300%
For the amount over 60% up to and including 80%	400%
For the amount over 80% up to and including 100%	500%
For the amount over 100% up to and including 250%	600%
For the amount over 250%	900%

5.7.5 G (1) K-CON is an additional *K-factor* own funds requirement for *concentration risk* in the *trading book*.

(2) A *firm* must calculate a *CON own funds requirement* for each *client* or *group of connected clients* for which the *exposure value* exceeds the *concentration risk soft limit*. The *CON own funds requirement* for each *client* or *group of connected clients* is then added together determine the *K-CON requirement*.

(3) Determining the *CON own funds requirement* for each *client* or *group of connected clients* involves a two-step calculation:

(a) The first step involves an exposure-based calculation, known as the *OFRE* (the own funds requirement for the excess).

(b) The second step involves applying a multiplying factor to the *OFRE* (or applying different multiplying factors to tranches of the *OFRE*) based on the length of time for which the excess has persisted and by how much (as a percentage of own funds) the *exposure value* exceeds the *concentration risk soft limit*.

(4) The reference to how long an excess has persisted relates to how long a *firm* has had an exposure to a *client* or *group of connected clients* that exceeds the *concentration risk soft limit*, irrespective of whether the constituent parts that make up that total exposure change over the duration of that total exposure.

(5) The 10-*business day* period referred to in *MIFIDPRU* 5.7.4R runs from the start of the *business day* on which the excess occurred.

5.7.6 G The following example shows how to calculate the *CON own funds requirement* for an excess to a *client* that has persisted for 10 *business days* or less:

(1) A *firm* has:

(a) *own funds* of 1000;

(b) a *concentration risk soft limit* of 250 (25% of 1000);

(c) an *EV* of 262; and

(d) an *EVE* of 12 (262 - 250 = 12).

(2) The exposure is all due to debt securities that have a specific risk own funds requirement of 8% (according to Table 1 in article 336 of *UK CRR*) for the purposes of K-NPR. There is zero K-TCD to this *client*.

In this example, the *OFR* = 262 × 8% = 20.96

(3) To calculate the *OFRE*:

OFRE = *OFR*/*EV***EVE* = 20.96/262 ×12 = 0.96

(4) As the excess has persisted for 10 *business days* or less:

CON own funds requirement = 0.96 × 200% = 1.92

5.7.7 G The following example shows how to calculate the *CON own funds requirement* for an excess that has persisted for more than 10 *business days*:

(1) A *firm* has:

(a) *own funds* of 1000;

(b) a *concentration risk soft limit* of 250 (25% of 1000);

(c) an *EV* of 780; and

(d) an *EVE* of 530 (780 - 250 = 530).

(2) The exposure is all due to debt securities that have a specific risk own funds requirement of 8% (according to Table 1 in article 336 of *UK CRR*) for the purposes of K-NPR. There is zero K-TCD to this client.

In this example, the *OFR* = 780 × 8% = 62.4

(3) To calculate the *OFRE*:

OFRE = *OFR*/*EV***EVE* = 62.4/780 × 530 = 42.4

(4) As the excess has persisted for more than 10 *business days*, the *CON own funds requirement* is calculated by apportioning the *OFRE* in accordance with the relevant *EVE* tranche in Table 2, multiplying each part of the *OFRE* by the applicable factor, and then adding the resulting amounts together:

Application of Table 2			
K-CON factor tranche as per Table 1	***EVE* split by tranche**	***OFRE* allocated across K-CON tranche by *EVE* split**	***CON own funds requirement* (*OFRE* × factor in Table 1)**
Up to 40%	400	400/530 × 42.4 = 32	32 × 200% = 64
40%-60%	130	130/530 × 42.4 = 10.4	10.4 × 300% = 31.2
Total:	530	42.4	95.2

(5) The *CON own funds requirement* is the total amount in the last column, 95.2.

5.8 Procedures to prevent investment firms from avoiding the K-CON own funds requirement

5.8.1 R A *firm* must not deliberately avoid the *K-CON requirement* by:

(1) undertaking artificial transactions to close out an exposure and create a new exposure; or

(2) temporarily transferring an exposure to another *undertaking*, whether within the same group or not.

5.8.2 R A *firm* must maintain systems which ensure that any closing out or transfer that is prohibited by *MIFIDPRU* 5.8.1R is immediately reported to the *FCA* in accordance with *SUP* 15.7 (Form and method of notification).

5.9 The 'hard' limits on concentration risk

5.9.1 R (1) Whilst an exposure exceeding the *concentration risk soft limit* has persisted for 10 *business days* or less, a *firm's EV* for the individual *client* or *group of connected clients* must not exceed 500% of the *firm's own funds*.

(2) Whilst a *firm* has one or more exposures exceeding the *concentration risk soft limit* that have persisted for more than 10 *business days*, the aggregate *EVEs* for all such exposures must not exceed 600% of the *firm's own funds*.

5.9.2 G (1) An exposure exceeding the *concentration risk soft limit* persists for as long as the overall exposure exceeds the *concentration risk soft limit*, irrespective of whether the constituent parts that make up that total exposure change over the duration of that total exposure.

(2) For the purpose of *MIFIDPRU* 5.9.1R(2), the 600% limit applies to the aggregate of all individual *EVEs* for excesses that have persisted for more than 10 *business days*, irrespective of whether the individual concentrated exposures are connected to one another.

(3) The 10 *business day* period referred to in *MIFIDPRU* 5.9.1R runs from the start of the *business day* on which the excess occurred.

5.9.3 R If a *firm* breaches the requirement in *MIFIDPRU* 5.9.1R, it must notify the *FCA* without delay of:

(1) the amounts of the exposure or exposures which give rise to the breach;

(2) the name or names of the *clients* concerned; and

(3) any steps which the *firm* or any other *person* has taken or intends to take to rectify the breach and prevent any future potential occurrence.

5.9.4 R A *firm* must make the notification referred to in *MIFIDPRU* 5.9.3R using Part B of the form in *MIFIDPRU* 5 Annex 1R, and must submit it using the *online notification and application system*.

5.10 Exclusions

5.10.1 R The requirements in *MIFIDPRU* 5.4 to 5.9 do not apply to the following exposures:

(1) exposures which are entirely deducted from a *MIFIDPRU investment firm's own funds*;

(2) exposures incurred in the ordinary course of the settlement of payment services, foreign currency transactions, securities transactions and the provision of money transmission;

(3) exposures constituting claims against:

(a) central governments, central banks, public sector entities, international organisations or multilateral development banks and exposures guaranteed by or attributable to such *persons*, where those exposures would receive a 0% risk weight under articles 114 to 118 of the *UK CRR*;

(b) regional governments and *local authorities* of the *UK* or a *third country* which pose no difference in risk compared to a central government covered by (a); and

(c) *central counterparties* and default fund contributions to *central counterparties*;

(4) exposures incurred by a *firm* to its *parent undertaking*, to other *subsidiaries* or *connected undertakings* of that *parent undertaking* or to its own *subsidiaries* or *connected undertakings*, insofar as those *undertakings* are supervised on a consolidated basis in accordance with *MIFIDPRU* 2.5 or with *UK CRR*, are supervised for compliance with the *group capital test* in accordance with *MIFIDPRU* 2.6, or are supervised in accordance with comparable standards in force in a *third country*, and provided that the following conditions are met:

(a) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities; and

(b) the risk evaluation, measurement and control procedures of the *parent undertaking* include the *firm* and any relevant *subsidiary* or *connected undertaking*.

5.11 Exemption for commodity and emission allowance dealers

5.11.1 R A *commodity and emission allowance dealer* is not required to comply with *MIFIDPRU* 5.2 to 5.10 where all of the following conditions are met:

(1) the other counterparty is a non-financial counterparty;

(2) both counterparties are subject to appropriate centralised risk evaluation, measurement and control procedures;

(3) the transaction can be assessed as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group; and

(4) the *firm* complies with *MIFIDPRU* 5.11.2R.

5.11.2 R (1) Before relying on the exemption in *MIFIDPRU* 5.11.1R, a *firm* must notify the *FCA*.

(2) A *firm* must notify the *FCA* annually thereafter in order to continue to rely on the exemption in *MIFIDPRU* 5.11.1R.

(3) The notification must explain how the *firm* expects to meet or continue to meet the conditions in *MIFIDPRU* 5.11.1R.

(4) If there is a material change to the information provided in (1) or (2), a *firm* must notify the *FCA* without delay.

(5) The notifications in (1), (2) and (4) must be made using the form in *MIFIDPRU* 5 Annex 2R, and must be submitted using the *online notification and application system*.

Notification under MIFIDPRU 5.6.3R and 5.9.3R that limits for concentration risk have been exceeded

5 Annex 1R [*Editor's note*: The forms can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 5 Annex 1R (A)

Notification under MIFIDPRU 5.6.3R that the concentration risk soft limit has been exceeded

1. We are notifying that we have exceeded the concentration risk soft limit for a client or a group of connected clients.

2. Please provide the following information:

a. Client or group of connected clients to which this notification relates	
b. Exposure Value Excess (EVE) amount	*£*
c. Date soft limit exceeded	*DD/MM/YYYY*

3. By submitting this notification, you confirm your understanding that the firm is required to calculate the K-CON requirement for as long as it exceeds the concentration risk soft limit for one or more clients or groups of connected clients.

MIFIDPRU 5 Annex 1R (B)

Notification under MIFIDPRU 5.9.3R of the concentration risk hard limit breach

4. We are notifying that we have exceeded the concentration risk hard limit for the following client(s) or group(s) of connected clients:

Client or group of connected clients concerned	Amount of exposure(s) which give rise to the breach (£)	Details of the breach including circumstances, threshold breached, time it is expected to persist, etc.

5. Date the breach occurred:

DD/MM/YYYY

6. Please explain what steps have been, and/or are intended to be, taken by the firm or any other person to rectify the breach and prevent any potential reoccurrence:

Notification under MIFIDPRU 5.11.2R of use of exemption for commodity and emission allowance dealers

5 Annex 2R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 5 Annex 2R

Notifications under MIFIDPRU 5.11.2R in respect of the exemption from K-CON requirement for commodity and emission allowance dealers

1. Please select the notification that applies:

   a. Notification that we intend to rely on the exemption for commodity and emission allowance dealers from the requirements for concentration risk (K-CON). ☐

   b. Annual notification that we intend to rely on the exemption for commodity and emission allowance dealers from the requirements for concentration risk (K-CON). ☐

   c. Notification of a material change to the information provided as part of previous notification of reliance on the exemption from the requirements for concentration risk (K-CON). ☐

2. For notifications a. and b., please explain below how you expect to meet or continue to meet the specific conditions under MIFIDPRU 5.11.1R:

Notification date (i.e. effective date for the exemption to apply):

DD/MM/YYYY

3. For notification c., please explain the material change to how you previously stated you would meet or continue to meet the specific conditions under MIFIDPRU 5.11.1R:

Please confirm the date the material change is effective from:

DD/MM/YYYY

6 Basic liquid assets requirement

6.1 Application and purpose

6.1.1 R This chapter applies to:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity* that is required by *MIFIDPRU* 2.5.11R to comply with *MIFIDPRU* 6 on the basis of its *consolidated situation*.

6.1.2 R Where this chapter applies on the basis of the *consolidated situation* of the *UK parent entity*, any reference to a "*firm*" or "*MIFIDPRU investment firm*" in this chapter is a reference to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*.

6.1.3 G *MIFIDPRU* 2.5.47R and 2.5.48G contain additional *rules* and *guidance* on how a *UK parent entity* should apply the requirements in this chapter on a *consolidated basis*. A *UK parent entity* may apply for an exemption from the application of this chapter on a consolidated basis under *MIFIDPRU* 2.5.19R.

Purpose and interpretation

6.1.4 G This chapter contains:

(1) a *basic liquid assets requirement* for *MIFIDPRU investment firms* (*MIFIDPRU* 6.2); and

(2) *rules* and *guidance* on which assets count as *core liquid assets* for the purposes of the *basic liquid assets requirement* (*MIFIDPRU* 6.3).

6.1.5 G (1) Where this chapter applies to a *MIFIDPRU investment firm* on a solo basis, the *firm* must comply with this chapter relying only on the *core liquid assets* it holds itself.

(2) However, the *FCA* recognises that there are circumstances in which it may be appropriate for a *firm* to rely on liquidity support provided by other entities within its group. Therefore, a *firm* that is subject to prudential consolidation may apply for an exemption from the application of this chapter on an individual basis under *MIFIDPRU* 2.3.2R(1).

6.1.6 G *MIFIDPRU* 7 contains requirements relating to a *MIFIDPRU investment firm's* systems and controls for the identification, monitoring and management of material potential harms that arise out of liquidity risk.

6.1.7 G The *basic liquid assets requirement* in this chapter is based on a proportion of a *firm's fixed overheads requirement* and any guarantees provided to *clients*. A *firm* may need to hold more *liquid assets* to comply with its *liquid assets threshold requirement* under *MIFIDPRU* 7.

6.2 Basic liquid assets requirement

6.2.1 R A *firm* must hold an amount of *core liquid assets* equal to the sum of:

(1) one third of the amount of its *fixed overhead requirement*; and

(2) 1.6% of the total amount of any guarantees provided to *clients*.

6.2.2 R Where a *firm* calculates a total amount for guarantees under *MIFIDPRU* 6.2.1R(2), it must calculate:

(1) the total value of guarantees that the *firm* has outstanding at the end of each *business day*; or

(2) an average value for the guarantees that the *firm* has had outstanding over an appropriate time period, which must be updated at regular, appropriate intervals.

6.2.3 G (1) *MIFIDPRU* 6.2.2R(2) is intended to allow a *firm* to smooth out its liquidity requirement for guarantees, where the value of its outstanding guarantees fluctuates on a daily basis.

(2) An appropriate time period for calculating and updating this amount is likely to be a period that produces an average value that is representative of the overall liquidity risk arising out of the provision of guarantees to *clients*.

6.2.4 G The approach in *MIFIDPRU* 6.2.2R(2) is illustrated by the following example:

(1) a *firm* that executes orders on behalf of a *client* may guarantee the settlement of any resulting transactions between the *client* and a third party;

(2) in this case, it may be appropriate for the *firm* to use the principles for calculating *average COH* to calculate an average value for the guarantees that the *firm* has had outstanding over an appropriate time period;

(3) *average COH* is calculated as the arithmetic mean of historic daily *COH* values. The *firm* could use the arithmetic mean of historic daily values for outstanding guarantees to calculate its amount for guarantees;

(4) *average COH* is calculated by reference to the historic three-*month* period beginning six *months* ago (i.e. excluding the three most recent *months*). The *firm* could calculate its amount for guarantees by reference to the same time period, if this produces an average value

for guarantees that is representative of the overall liquidity risk in these guarantees; and

(5) a *firm* could update this calculation monthly, in line with the requirement to update *average COH* in *MIFIDPRU* 4, if this produces a value that is representative of the overall liquidity risk.

6.3 Core liquid assets

6.3.1 R Subject to *MIFIDPRU* 6.3.3R to 6.3.5R, a *core liquid asset* means any of the following, when denominated in pound sterling:

(1) coins and banknotes;

(2) short-term deposits at a *UK-authorised credit institution*;

(3) assets representing claims on or guaranteed by the UK government or the Bank of England;

(4) units or shares in a *short-term MMF*;

(5) units or shares in a *third country* fund that is comparable to a *short-term MMF*; and

(6) *trade receivables*, if the conditions in *MIFIDPRU* 6.3.3R are met.

6.3.2 G When assessing whether a *third country* fund is comparable to a *short-term MMF*, a *firm* should consider factors such as:

(1) whether the restrictions on instruments eligible for inclusion in the fund are comparable to the restrictions on instruments in article 10(1) of the *Money Market Funds Regulation*; and

(2) whether the fund is subject to requirements concerning portfolio diversification and risk management which are comparable to the requirements applicable to *short-term MMFs* in the *Money Market Funds Regulation*.

6.3.3 R A *firm* may treat *trade receivables* as *core liquid assets* if:

(1) the *firm* is:

(a) an *SNI MIFIDPRU investment firm*; or

(b) a *MIFIDPRU investment firm* that does not have permission to carry on:

(i) *dealing on own account*; or

(ii) underwriting of *financial instruments* and/or placing of *financial instruments* on a firm commitment basis;

(2) they are receivable within 30 *days*;

(3) they account for no more than one third of the requirement based upon the *fixed overheads requirement* in *MIFIDPRU* 6.2.1R(1);

(4) they are not used to meet the requirement for guarantees in *MIFIDPRU* 6.2.1R(2); and

(5) they are subject to a minimum haircut of 50%.

6.3.4 R (1) If a *firm's relevant expenditure* or guarantees are incurred in a currency other than pound sterling, the *firm* may also treat the following assets as *liquid assets*, when denominated in that currency:

(a) coins and banknotes;

(b) short-term deposits at a *credit institution*;

(c) assets representing claims on or guaranteed by a central bank or government in a *third country*;

(d) units or shares in a *short-term MMF*;

(e) units or shares in a *third country* fund that is comparable to a *short-term MMF*; and

(f) *trade receivables*, if the conditions in *MIFIDPRU* 6.3.3R are met.

(2) The assets in (1) must not account for more than the proportion of fixed overheads or guarantees that the *firm* incurs in that currency.

(3) This *rule* is subject to *MIFIDPRU* 6.3.5R.

6.3.5 R A *firm* must not treat any of the following as a *core liquid asset*:

(1) any asset that belongs to a *client*; and

(2) any other asset that is encumbered.

6.3.6 G (1) For the purposes of *MIFIDPRU* 6.3.5R(1), an asset may belong to a *client* even if the asset is held in the *firm's* own name. Examples of assets belonging to a *client* include money or other assets held under the *FCA's client asset rules*.

(2) For the purposes of *MIFIDPRU* 6.3.5R(2), an asset may be encumbered if it is pledged as security or collateral, or subject to some other legal restriction (for example, due to regulatory or contractual requirements) which affects the *firm's* ability to liquidate, sell, transfer, or assign the asset.

7 Governance and risk management

7.1 Application

7.1.1 G (1) *MIFIDPRU* 7 applies to the following:

(a) a *MIFIDPRU investment firm*;

(b) a *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5; and

(c) a *parent undertaking* that operates a *group ICARA process* in accordance with *MIFIDPRU* 7.9.5R.

(2) *MIFIDPRU* 7.1.3R explains how each section of *MIFIDPRU* 7 applies to the undertakings in (1).

7.1.2 G The following table summarises the content of *MIFIDPRU* 7:

Section	Summary of content
MIFIDPRU 7.2	General requirements relating to a *firm's* governance arrangements
MIFIDPRU 7.3	Requirements relating to risk, remuneration and nomination committees
MIFIDPRU 7.4	The *overall financial adequacy rule* and a *firm's* baseline obligations in relation to the *ICARA process*
MIFIDPRU 7.5	The requirements of the *ICARA process* relating to capital and liquidity planning, stress testing and wind-down planning
MIFIDPRU 7.6	*Rules* and *guidance* explaining how a *firm* should assess and monitor the adequacy of its *own funds*
MIFIDPRU 7.7	*Rules* and *guidance* explaining how a *firm* should assess and monitor the adequacy of its *liquid assets*
MIFIDPRU 7.8	Requirements relating to the periodic review of the *ICARA process* and record keeping requirements

MIFIDPRU 7.9	Requirements for *firms* to monitor *group* risk and *rules* explaining when an *investment firm group* may operate a *group*-level *ICARA process*
MIFIDPRU 7.10	*Guidance* explaining the *FCA's* general approach to the *SREP*
MIFIDPRU 7 Annex 1G	General *guidance* on assessing potential harms that is potentially relevant to all *MIFIDPRU investment firms*
MIFIDPRU 7 Annex 2G	Additional *guidance* on assessing potential harms that is relevant for *MIFIDPRU investment firms dealing on own account* and *firms* with significant investments on their balance sheet
MIFIDPRU 7 Annex 3R to 6R	Notification forms
MIFIDPRU 7 Annex 7G	Table mapping the *rules* in *MIFIDPRU* 7 about the *ICARA process* to their associated *guidance* provisions

7.1.3 R *MIFIDPRU* 7 applies as follows:

Section of *MIFIDPRU* 7	**Application to *SNI MIFIDPRU investment firms***	**Application to *non-SNI MIFIDPRU investment firms***	**Application at the level of an *investment firm group***
MIFIDPRU 7.2 (Senior management and systems and controls)	Applies	Applies	Applies to the *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5
MIFIDPRU 7.3 (Risk, remuneration and nomination committees)	Does not apply	Applies if the *firm* does not qualify for the exclusion in *MIFIDPRU* 7.1.4R	Does not apply
MIFIDPRU 7.4 (*Overall financial*	Applies	Applies	Applies if the *investment firm group* is

adequacy rule and baseline ICARA obligations)			operating a *group ICARA process*
MIFIDPRU 7.5 (Capital and liquidity planning, stress testing and wind-down planning)	Applies	Applies	Applies if the *investment firm group* is operating a *group ICARA process*
MIFIDPRU 7.6 (Assessing adequacy of *own funds*)	Applies	Applies	Applies if the *investment firm group* is operating a *group ICARA process*
MIFIDPRU 7.7 (Assessing adequacy of *liquid assets*)	Applies	Applies	Applies if the *investment firm group* is operating a *group ICARA process*
MIFIDPRU 7.8 (Periodic review of the *ICARA process* and record keeping)	Applies	Applies	Applies if the *investment firm group* is operating a *group ICARA process*
MIFIDPRU 7.9 (Group risks and the *group ICARA process*)	Applies	Applies	Applies if the *investment firm group* is operating a *group ICARA process*
MIFIDPRU 7.10 (The *FCA's* general approach to the *SREP*)	Applies as *guidance*	Applies as *guidance*	Applies as *guidance*

7.1.4 R (1) *MIFIDPRU* 7.3 (Risk, remuneration and nomination committees) does not apply to a *non-SNI MIFIDPRU investment firm*:

(a) where the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or

(b) where:

(i) the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and

(ii) the conditions in (2) are (where they are relevant to a *firm*) satisfied.

(2) The conditions referred to in (1)(b)(ii) are that the:

(a) exposure value of the *firm's* on- and off-balance sheet *trading book* business is equal to or less than £150 million; and

(b) exposure value of the *firm's* on- and off-balance sheet derivatives business is equal to or less than £100 million.

(3) For the purposes of paragraph (1), paragraph (4) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.

(4) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

7.1.5 G (1) For the purposes of *MIFIDPRU* 7.1.4R(3), the *FCA* expects a *non-SNI MIFIDPRU investment firm* to have insufficient data for a period only where it did not carry on any *MiFID business* during that period, or where (for periods prior to the application of *MIFIDPRU*) the firm did not record the relevant data on a monthly basis.

(2) Where a *firm* does not have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a firm has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the firm could sensibly calculate its rolling average by using the quarterly figure for each of the three monthly data points in each quarter.

7.1.6 R (1) The amounts referred to in *MIFIDPRU* 7.1.4R must be calculated on an individual basis, and:

(a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;

(b) in the case of *off-balance sheet items*, using the full nominal value.

(2) The value of the on-balance sheet assets and *off-balance sheet items* in *MIFIDPRU* 7.1.4R(1)(a) and (b) must be the arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.

(3) A *firm* may choose the *day* of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.

7.1.7 R (1) When calculating the amounts referred to in *MIFIDPRU* 7.1.4R(1)(a) and (b), a *firm* must use the total amount of its on-balance sheet assets and *off-balance sheet items*.

(2) A *firm* must calculate the exposure values referred to in *MIFIDPRU* 7.1.4R(2)(a) and (b) by adding together the following items:

(a) the positive excess of the *firm's* long positions over its short positions in all *trading book financial instruments*, using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R to calculate the net position for each instrument; and

(b) the exposure value of contracts and transactions referred to in *MIFIDPRU* 4.14.3R, calculated using the approach specified for K-TCD in *MIFIDPRU* 4.14.8R.

(3) Any amounts in foreign currencies must be converted into sterling using the relevant conversion rate.

(4) A *firm* must determine the conversion rate in (3) by reference to an appropriate market rate and must record which rate was chosen.

7.1.8 G An example of an appropriate market rate for the purposes of *MIFIDPRU* 7.1.7R(4) is the relevant daily spot exchange rate against sterling published by the Bank of England.

7.1.9 R (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet the conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b) but subsequently does.

(2) *MIFIDPRU* 7.3 (Risk, remuneration and nomination committees) ceases to apply to the *firm* in (1) if:

(a) the *firm* has met the conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b) for a continuous period of at least 6 *months* (or such longer period as may have elapsed before the *firm* submits the notification in (b)); and

(b) the *firm* has notified the *FCA* that it has met the conditions in (a).

(3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in *MIFIDPRU* 7Annex 3R.

7.1.10 G The effect of *MIFIDPRU* 7.1.9R(2)(a) is that a *firm* may move between meeting the conditions in *MIFIDPRU* 7.1.4R(3)(a) and (b) during the 6-*month* period.

7.1.11 R Where a *non-SNI MIFIDPRU investment firm* has met the conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b) but then ceases to do so, it must comply with *MIFIDPRU* 7.3 within 6 *months* from the date on which the *firm* ceased to meet the conditions.

7.1.12 R (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b), it must promptly notify the *FCA*.

(2) The notification in (1) must be submitted through the *online notification and application system* using the form in *MIFIDPRU* 7 Annex 3R.

7.1.13 G Where a *firm* ceases to meet the conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to *MIFIDPRU* 7.3 6 *months* after the date on which it first ceased to meet the conditions. The *firm* will only cease to be subject to *MIFIDPRU* 7.3 where it meets the conditions in *MIFIDPRU* 7.1.9R.

7.2 Senior management and systems and controls

Internal governance

7.2.1 R (1) A *MIFIDPRU investment firm* must have robust governance arrangements, including:

(a) a clear organisational structure with well defined, transparent and consistent lines of responsibility;

(b) effective processes to identify, manage, monitor and report the risks the *firm* is or might be exposed to, or the *firm* poses or might pose to others; and

(c) adequate internal control mechanisms, including sound administration and accounting procedures.

(2) The arrangements in (1) must:

(a) be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the *firm*; and

(b) be compatible with the requirements in the *FCA Handbook* relating to risk management and internal governance, for example those in *MIFIDPRU* 7 and *SYSC*, that apply to the *firm*.

7.2.2 G When establishing and maintaining the arrangements in *MIFIDPRU* 7.2.1R(1), a *firm* should consider at least the following:

(1) the requirements that apply to the *firm* under *MIFIDPRU* 7 and *SYSC* 19G (MIFIDPRU Remuneration Code);

(2) the legal structure of the *firm*, including its ownership and funding structure;

(3) whether the *firm* is part of a *group*;

(4) the type of activities for which the *firm* is authorised, including the complexity and volume of those activities;

(5) the business model and strategy of the *firm*, including its risk strategy, risk appetite and risk profile;

(6) the types of client the *firm* has;

(7) the outsourced functions and distribution channels of the *firm*; and

(8) the *firm's* existing IT systems, including continuity systems.

7.3 Risk, remuneration and nomination committees

Risk committee

7.3.1 R (1) Subject to (2), a *non-SNI MIFIDPRU investment firm* to which this *rule* applies must establish a risk committee.

(2) Subject to (3), a *firm* must ensure that:

(a) at least 50% of the members of the risk committee are members of the *management body* who do not perform any executive function in the *firm*; and

(b) the chair of the risk committee is a member of the *management body* who does not perform any executive function in the *firm*.

(3) The requirements in (2) do not apply to a *firm* that, solely because of its legal structure, cannot have members of the *management body* who do not perform any executive function in the *firm*.

(4) Members of the risk committee must have the appropriate knowledge, skills and expertise to fully understand, manage and monitor the risk strategy and the risk appetite of the *firm*.

(5) The risk committee must advise the *management body* on the *firm's* overall current and future risk appetite and strategy and assist the *management body* in overseeing the implementation of that strategy by *senior management*.

(6) Notwithstanding the role of the risk committee, the *management body* of a *firm* has overall responsibility for the *firm's* risk strategies and policies.

7.3.2 G (1) *MIFIDPRU* 7.3.1R(2) only applies to *firms* that are required to establish a risk committee under *MIFIDPRU* 7.3.1R(1).

(2) The chair may be included for the purposes of calculating the 50% referred to in *MIFIDPRU* 7.3.1R(2)(a).

(3) Where a *firm* has established a risk committee, its responsibilities should typically include:

(a) providing advice to the *firm's management body* on risk strategy, including the oversight of current risk exposures of the *firm*, with particular, but not exclusive, emphasis on prudential risks;

(b) developing proposals for consideration by the *management body* in respect of overall risk appetite and tolerance, as well as the metrics to be used to monitor the *firm's* risk management performance;

(c) overseeing and challenging the design and execution of stress and scenario testing;

(d) overseeing and challenging the day-to-day risk management and the executive's oversight arrangements;

(e) overseeing and challenging due diligence on risk issues relating to material transactions and strategic proposals that are subject to approval by the *management body*;

(f) providing advice to the *firm's remuneration* committee, as appropriate, in relation to the development, implementation and review of remuneration policies and practices that are consistent with, and promote, effective risk management;

(g) providing advice, oversight and challenge necessary to embed and maintain a supportive risk culture throughout the *firm*.

Remuneration committee

7.3.3 R (1) Subject to (2), a *non-SNI MIFIDPRU investment firm* to which this *rule* applies must establish a *remuneration* committee.

(2) The obligation in (1) will be deemed to be satisfied where:

(a) the *non-SNI MIFIDPRU investment firm* is part of an *investment firm group* that is subject to prudential consolidation in accordance with *MIFIDPRU* 2.5; and

(b) the *UK parent entity* has established a *remuneration* committee that:

(i) meets the requirements of *MIFIDPRU* 7.3.3R(3) (read in conjunction with *MIFIDPRU* 7.3.3R(4));

(ii) has the power to comply with those obligations on behalf of the *non-SNI MIFIDPRU investment firm*; and

(iii) has members with the appropriate knowledge, skills and expertise in relation to the *non-SNI MIFIDPRU investment firm*.

(3) Subject to (4), a *firm* must ensure that:

(a) at least 50% of the members of the *remuneration* committee are members of the *management body* who do not perform any executive function in the *firm*; and

(b) the chair of the *remuneration* committee is a member of the *management body* who does not perform any executive function in the *firm*.

(4) The requirements in (3) do not apply to a *firm* that, solely because of its legal structure, cannot have members of the *management body* who do not perform any executive function in the *firm*.

(5) A *firm* must ensure that the *remuneration* committee is constituted in a way that enables it to exercise competent and independent judgment on *remuneration* policies and practices and the incentives created for managing risk, capital and liquidity.

(6) The *remuneration* committee must be responsible for preparing decisions regarding *remuneration*, including decisions which have implications for the risk and risk management of the *firm* and which are to be taken by the *management body*.

(7) When preparing the decisions, the *remuneration* committee must take into account the public interest and the long-term interests of shareholders, investors and other stakeholders in the *firm*.

7.3.4 G (1) *MIFIDPRU* 7.3.3R(3) only applies to *firms* that are required to establish a *remuneration* committee under *MIFIDPRU* 7.3.3R(1).

(2) The chair may be included for the purposes of calculating the 50% referred to in *MIFIDPRU* 7.3.3R(3)(a).

Nomination committee

7.3.5 R (1) A *non-SNI MIFIDPRU investment firm* to which this *rule* applies must establish a nomination committee.

(2) Subject to (3), a *firm* must ensure that:

(a) at least 50% of the members of the nomination committee are members of the *management body* who do not perform any executive function in the *firm*; and

(b) the chair of the nomination committee is a member of the *management body* who does not perform any executive function in the *firm*.

(3) The requirements in (2) do not apply to a *firm* that, solely because of its legal structure, cannot have members of the *management body* who do not perform any executive function in the *firm*.

(4) A *firm* must ensure that the nomination committee:

(a) is able to use any forms of resources the nomination committee deems appropriate, including external advice; and

(b) receives appropriate funding.

7.3.6 G (1) *MIFIDPRU* 7.3.5R(2) only applies to *firms* that are required to establish a nomination committee under *MIFIDPRU* 7.3.5R(1).

(2) The chair may be included for the purposes of calculating the 50% referred to in *MIFIDPRU* 7.3.5R(2)(a).

Establishing committees at group level

7.3.7 G (1) A *firm* may apply to the *FCA* for a modification under section 138A of the *Act* to permit the *firm* to establish a risk committee, remuneration committee, or nomination committee at *group* level instead of complying with the requirement on an individual basis.

(2) The *FCA* may grant a modification under section 138A of the *Act* if:

(a) compliance by the *firm* with the requirement to establish a committee on an individual basis would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and

(b) granting the modification would not adversely affect the advancement of any of the *FCA's* objectives.

(3) To be satisfied that granting the modification would not affect the advancement of any of the *FCA's* objectives under (2)(b), the *FCA* would normally expect the *firm* to demonstrate that the committee established at *group* level:

(a) meets the composition requirements in *MIFIDPRU* 7.3.1R(2), *MIFIDPRU* 7.3.3R(3) or *MIFIDPRU* 7.3.5R(2), as applicable; and

(b) has members with the appropriate knowledge, skills and expertise in relation to the *firm* subject to the requirement to establish a committee.

7.4 Internal capital adequacy and risk assessment (ICARA) process: overview and baseline obligations

7.4.1 R This section applies to a *MIFIDPRU investment firm*.

Purpose

7.4.2 G *MIFIDPRU* 7.4 to *MIFIDPRU* 7.9 contain *rules* and *guidance* which supplement the overarching requirements for *MIFIDPRU investment firms* under:

(1) the appropriate resources *threshold condition* in Schedule 6 to the *Act* (as explained in *COND* 2.4) under which a *firm* must have appropriate resources in relation to the *regulated activities* that it carries on; and

(2) *Principle* 4 (Financial prudence) under which a *firm* must maintain adequate financial resources.

7.4.3 G (1) The overall purpose of the *rules* in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.9, together with the other requirements in *MIFIDPRU*, is to ensure that a *MIFIDPRU investment firm*:

(a) has appropriate systems and controls in place to identify, monitor and, where proportionate, reduce all potential material harms that may result from the ongoing operation of its business or winding down its business; and

(b) holds financial resources that are adequate for the business it undertakes.

(2) The requirement for adequate financial resources is designed to achieve 2 key outcomes for *MIFIDPRU investment firms*:

(a) to enable a *firm* to remain financially viable throughout the economic cycle, with the ability to address any potential material harms that may result from its ongoing activities (including both *regulated activities* and *unregulated activities*); and

(b) to enable the *firm* to conduct an orderly wind-down while minimising harm to *consumers* or to other market participants, and without threatening the integrity of the wider *UK* financial system.

(3) The *rules* and *guidance* in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.9 build on the *FCA's* general approach to assessing the adequacy of financial resources explained in Finalised Guidance FG20/1. *Firms* should also refer to that *guidance* when considering their obligations under those sections of *MIFIDPRU*.

7.4.4 G The *FCA* recognises that:

(1) there is a vast range of potential harms and it will not be possible for the *FCA* or *firms* to eliminate all potential risks and sources of harm;

(2) the *FCA* and *firms* should focus on material harms, adopting a proportionate and risk-based approach to each *firm's* business and operating model; and

(3) some *firms* may still fail, but the *FCA* and *firms* should aim to ensure that any wind-down of those *firms* occurs in an orderly manner, minimising the impact on *consumers* and the wider market.

Proportionality and application to different business models

7.4.5 G Although all *MIFIDPRU investment firms* are subject to the appropriate resources *threshold condition* and *Principle* 4, the practical steps that a *firm* must take to meet these requirements will vary according to the *firm's* business model and operating model. Therefore, a *firm* with a more complex business or operating model should generally take a more detailed approach to the monitoring and management of a wider range of potential harms than a smaller *firm* carrying on simpler activities.

7.4.6 G *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 contain a set of core requirements that every *MIFIDPRU investment firm* should incorporate into its *ICARA process*. This does not mean that the manner in which each *firm* implements these core requirements will be identical. When considering the appropriate way to satisfy these core requirements, a *firm* should focus on the potential material harms that may arise:

(1) from the ongoing operation of its business; and

(2) during a wind-down of its business.

Overall financial adequacy rule

7.4.7 R (1) A *firm* must, at all times, hold *own funds* and *liquid assets* which are adequate, both as to their amount and their quality, to ensure that:

(a) the *firm* is able to remain financially viable throughout the economic cycle, with the ability to address any material potential harm that may result from its ongoing activities; and

(b) the *firm's* business can be wound down in an orderly manner, minimising harm to *consumers* or to other market participants.

(2) The requirement in (1) is known as the *overall financial adequacy rule*.

7.4.8 G (1) The *overall financial adequacy rule* establishes the standard that the *FCA* applies to determine whether a *MIFIDPRU investment firm* has adequate financial resources. The amount and quality of *own funds* and *liquid assets* that each *firm* must hold will vary according to its business model and operating model, the environment in which it operates and the nature of its internal systems and controls.

(2) The remainder of this section explains the basic requirements of the *ICARA process*. The *ICARA process* is the collective term for the internal systems and controls that a *firm* must operate to identify and manage potential material harms that may arise from the operation of its business, and to ensure that its operations can be wound down in an orderly manner.

(3) A *firm* should use the *ICARA process* to identify whether it complies with the *overall financial adequacy rule*. The focus of the *ICARA process* is on identifying and managing risks that may result in material harms. Depending on the nature of the potential harms identified, the only realistic option to manage them and to comply with the *overall financial adequacy rule* may be to hold additional *own funds* or additional *liquid assets* above the *firm's own funds requirement* or *basic liquid assets requirement*. However, in other cases, there may be more appropriate or effective ways to manage the potential harms. *MIFIDPRU* 7.4.16G contains further *guidance* on reducing the risk of material potential harms.

(4) *MIFIDPRU* 7.6 contains *rules* and *guidance* about how a *firm* should use the *ICARA process* to assess the *own funds* that the *firm* requires to comply with the *overall financial adequacy rule*.

(5) *MIFIDPRU* 7.7 contains *rules* and *guidance* about how a *firm* should use the *ICARA process* to assess the *liquid assets* that the *firm* requires to comply with the *overall financial adequacy rule*.

(6) *MIFIDPRU* 7.10 contains *guidance* on how the *FCA* will normally conduct a *SREP* on a *firm's ICARA process* or may conduct a thematic review of a sector in which multiple *firms* are active. Where the *FCA* considers that the *firm's ICARA process* has not adequately identified and managed the risks of material harm, the *FCA* may require the *firm* to take corrective action. In appropriate cases, this may include requiring the *firm* to hold additional *own funds* or *liquid assets* to ensure that the *firm* is complying with the *overall financial adequacy rule*. The *FCA* may also take supervisory action in connection with the prudential requirements of a *MIFIDPRU investment firm* outside the context of a *SREP*. Where the *FCA* has conducted a sectoral review, it may impose additional requirements on some or all *firms* that are active in the relevant sector.

ICARA process: baseline obligations

7.4.9 R (1) A *firm* must have in place appropriate systems and controls to identify, monitor and, if proportionate, reduce all material potential harms:

(a) that the ongoing operation of the *firm's* business may cause to:

(i) the *firm's clients* and counterparties;

(ii) the markets in which the *firm* operates; and

(iii) the *firm* itself; and

(b) that may result from winding down the *firm's* business, to ensure that the *firm* can be wound down in an orderly manner.

(2) If any material potential harms remain after a *firm* has implemented the systems and controls in (1), the *firm* must assess whether to:

(a) hold additional *own funds* to address the harms in accordance with *MIFIDPRU* 7.6.2R; and

(b) hold additional *liquid assets* to address the harms in accordance with *MIFIDPRU* 7.7.2R.

(3) The requirements in this *rule* apply to a *firm's* entire business, including:

(a) all *regulated activities*, irrespective of whether they are *MiFID business*; and

(b) any *unregulated activities*.

(4) The systems, controls and procedures operated by a *firm* to comply with the requirements in this *rule* are known as the *ICARA process*.

7.4.10 R A *firm's ICARA process* must be proportionate to the nature, scale and complexity of the business carried on by the *firm*.

7.4.11 R A *firm* must ensure that its *ICARA process* complies with the requirements in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 in a consistent and coherent manner.

7.4.12 G (1) *MIFIDPRU* 7.4.11R requires a *firm* to ensure that the inputs to, analyses applied by, and conclusions arising from, its *ICARA process* are properly linked and reflect a consistent and coherent analysis of the *firm's* business and operating model.

(2) The following are examples of the consistency and coherence required by the *ICARA process*:

(a) the potential material harms that the *firm* identifies under *MIFIDPRU* 7.4.13R are consistent with the *firm's* articulation of its business model and strategy under *MIFIDPRU* 7.5.2R(1) and with the *firm's* stated risk appetite under *MIFIDPRU* 7.5.2R(2);

(b) the *firm's* analysis under *MIFIDPRU* 7.5.2R(4) of the *own funds* and *liquid assets* that are necessary to comply with the *overall financial adequacy rule* is consistent with:

(i) the potential impact of the potential material harms that the *firm* identifies under *MIFIDPRU* 7.4.13R;

(ii) the *firm's* projections of its future requirements under *MIFIDPRU* 7.5.2R(4); and

(iii) the impact of the stressed scenarios that the *firm* has identified under *MIFIDPRU* 7.5.2R(5);

(c) the potential recovery actions specified by the *firm* under *MIFIDPRU* 7.5.5R(2) are consistent with the *firm's* projections of its future requirements under *MIFIDPRU* 7.5.2R(4) and the potential stressed scenarios that the *firm* has identified under *MIFIDPRU* 7.5.2R(5);

(d) the *firm's* wind-down planning under *MIFIDPRU* 7.5.7R is consistent with the levels of *own funds* and *liquid assets* that the *firm* has assessed would be necessary to wind-down the *firm* for the purposes of the *overall financial adequacy rule* and with the *firm's* assessment of the potential harms that might result from winding down its business under *MIFIDPRU* 7.4.13R; and

(e) the *firm's* wind-down planning is consistent with the potential recovery actions specified by the *firm* under *MIFIDPRU* 7.5.5R(2) and the circumstances in which the *firm* has concluded that no further recovery actions would be feasible or desirable.

ICARA process: identifying harms

7.4.13 R As part of its *ICARA process*, a *firm* must assess its business model and identify all material harms that could result from:

(1) the ongoing operation of the *firm's* business; and

(2) the winding-down of the *firm's* business.

7.4.14 G When assessing potential material harms for the purpose of *MIFIDPRU* 7.4.13R, the *FCA* considers that the following non-exhaustive list of considerations will be relevant:

(1) the level of detail required in the assessment is likely to vary depending on the complexity of the business and operating model. More complex business and operating models are likely to involve a wider range of potential material harms and so will generally require a more detailed assessment;

(2) the obligation under *MIFIDPRU* 7.4.13R is to identify all material harms that could result from the *firm's* business, even if those harms can be appropriately mitigated. It is important that a *firm* starts by identifying all potential material harms that could arise from its business and operating model. The issue of how the identified harms can be mitigated should be considered separately, including assessing under *MIFIDPRU* 7.6 and 7.7 whether the *firm* should hold additional *own funds* and *liquid assets*;

(3) the potential for harm may evolve throughout the course of an economic cycle. Therefore, the assessment should consider how the risk of harm may develop in the future, rather than simply performing a static assessment based on current economic circumstances;

(4) risks to the *firm* itself may result in an increased risk of harm to the *firm's clients* or counterparties and therefore should form part of the assessment. For example, if the *firm* is affected by a significant disruption or suffers a significant loss, this may prevent the *firm* from providing important services to *clients* or from being able to meet its liabilities to counterparties. Significant and unexpected financial losses sustained by a *firm* may also decrease the financial resources available to the *firm* to address other potential harms and

may increase the risk of disorderly wind-down and sudden disruption of services to the *firm's clients*; and

(5) *firms* should refer to the guidance in Finalised Guidance FG20/1 on "Identifying and assessing the risk of harm" when assessing the impact of potential harms.

7.4.15 G (1) *MIFIDPRU* 7 Annex 1 contains additional *guidance* on identifying potential material harms that are relevant to the business models of most *firms*.

(2) *MIFIDPRU* 7 Annex 2 contains additional *guidance* on identifying potential material harms that are likely to be relevant to *firms* that *deal on own account* or hold significant investments on their balance sheets. This *guidance* is intended to apply in addition to the general *guidance* in *MIFIDPRU* 7 Annex 1.

(3) The *FCA* may issue further *guidance* or publish additional information to reflect its observations of how *firms* are implementing the *ICARA process* or to take into account developments in relation to particular products or sectors. *Firms* should consider any additional *guidance* or information that the *FCA* has published when applying the requirements in this section.

ICARA process: risk mitigation

7.4.16 G (1) The *ICARA process* is an internal risk management process that a *MIFIDPRU investment firm* must operate on an ongoing basis. As part of that process, a *firm* should consider whether the risk of material potential harms can be reduced through proportionate measures (other than holding additional financial resources) and, if so, whether it is appropriate to implement the measures. The nature of any potential measures will vary depending on the *firm's* business and operating model. Examples may include implementing additional internal systems and controls, strengthening governance and oversight processes or changing the manner in which the *firm* conducts certain business. A *firm* will need to form a judgement about what is appropriate and proportionate for its particular circumstances. That judgement will be informed by the *firm's* risk appetite.

(2) A *firm* must assess whether it should hold additional *own funds* or additional *liquid assets* to mitigate any material potential harms that it has identified. This may be the case where the *firm* cannot identify other appropriate, proportionate measures to mitigate harms, or where it has applied these measures, but a residual risk of material harm remains. Any assessment must be realistic and based on severe but plausible assumptions.

7.5 ICARA process: capital and liquidity planning, stress testing, wind-down planning and recovery planning

7.5.1 R This section applies to a *MIFIDPRU investment firm*.

Business model assessment and capital and liquidity planning

7.5.2 R As part of its *ICARA process*, a *firm* must:

(1) have a clearly articulated business model and strategy;

(2) have a clearly articulated risk appetite that is consistent with the business model and strategy identified under (1);

(3) identify any material risks of misalignment between the *firm's* business model and operating model and the interests of its *clients* and the wider financial markets, and evaluate whether those risks have been adequately mitigated;

(4) consider on a forward-looking basis the *own funds* and *liquid assets* that will be required to meet the *overall financial adequacy rule*, taking into account any planned future growth; and

(5) consider relevant severe but plausible stresses that could affect the *firm's* business and consider whether the *firm* would still have sufficient *own funds* and *liquid assets* to meet the *overall financial adequacy rule*.

Stress testing and reverse stress testing requirement

7.5.3 G *MIFIDPRU* 7.5.2R(5) requires a *firm* to use stress testing to identify whether it holds sufficient *own funds* and *liquid assets*. *Firms* should refer to Finalised Guidance FG20/1 for specific guidance on the *FCA's* expectations in relation to stress testing.

7.5.4 G (1) As part of their business model assessment and capital and liquidity planning under *MIFIDPRU* 7.5.2R, *firms* with more complex businesses or operating models should also undertake:

(a) more in-depth stress testing of their business model and strategy; and

(b) reverse stress testing.

(2) *Firms* should refer to *MIFIDPRU* 7 Annex 1.15G to *MIFIDPRU* 7 Annex 1.20G for additional information about the *FCA's* expectations in relation to more in-depth stress testing and reverse stress testing.

(3) The *FCA* may request individual *firms* to carry out more in-depth stress testing or reverse stress testing. In appropriate cases, the *FCA* will consider whether it is necessary or desirable to impose a *requirement* on a *firm* to carry out such stress testing. This may involve inviting a *firm* to apply for the voluntary imposition of a *requirement* under section 55L(5) of the *Act* or the *FCA* imposing a

requirement on the *FCA's* own initiative under section 55L(3) of the *Act*.

Recovery actions

7.5.5 R As part of its *ICARA process*, a *firm* must identify:

(1) levels of *own funds* and *liquid assets* that the *firm* considers, if reached, may indicate that there is a credible risk that the *firm* will breach its *threshold requirements*; and

(2) potential recovery actions that the *firm* would expect to take:

(a) to avoid a breach of the *firm's threshold requirements* where the *firm's own funds* or *liquid assets* fall below the levels identified in (1); and

(b) to restore compliance with its *threshold requirements* if the *firm* were to breach its *threshold requirements* during a period of financial difficulty.

7.5.6 G (1) When a *firm* is considering potential recovery actions that the *firm* may take for the purposes of *MIFIDPRU* 7.5.5R, it should consider at least the following:

(a) the governance arrangements of the *firm*, and in particular which *individuals* will be responsible for taking the relevant decisions within the required timeframe;

(b) the key business lines operated by the *firm* and the critical functions that the *firm* will need to maintain, and the steps necessary to ensure that these can continue to operate;

(c) the level of *own funds* and *liquid assets* that the *firm* is likely to need to restore compliance with the *threshold requirements*;

(d) the options available to the *firm* to raise additional *own funds* or *liquid assets*;

(e) the options available to the *firm* to conserve existing *own funds* or *liquid assets*;

(f) any significant risks that may arise in connection with proposed recovery actions; and

(g) any material impediments that may exist to implementing proposed recovery actions and whether these can be resolved or mitigated.

(2) A *firm* should adopt a proportionate approach to identifying potential recovery actions, taking into account the nature, scale and complexity of the *firm's* business and operating model. The actions

that the *firm* proposes must be credible and justifiable, taking into account the circumstances in which the actions may be likely to be required.

Wind-down planning and wind-down triggers

7.5.7 R As part of its *ICARA process*, a *firm* must:

(1) identify the steps and resources that would be required to ensure the orderly wind-down and termination of the *firm's* business in a realistic timescale; and

(2) evaluate the potential harms arising from winding down the *firm's* business and identify how to mitigate them.

7.5.8 G When carrying out a wind-down planning assessment under *MIFIDPRU* 7.5.7R and determining the timeline and any required actions, a *firm* should refer to the guidance in the *FCA's* Wind-Down Planning Guide and in Finalised Guidance FG20/1.

7.5.9 R (1) A *firm* must use its wind-down analysis under *MIFIDPRU* 7.5.7R to assess the amount of *own funds* and *liquid assets* that would be required to ensure an orderly wind-down of its business for the purposes of the *overall financial adequacy rule*.

(2) The *firm's* assessment in (1) must not result in amounts that are lower than:

(a) in the case of *own funds*, the *firm's fixed overheads requirement*; and

(b) in the case of *liquid assets*, the *firm's basic liquid assets requirement*.

7.5.10 G (1) The *overall financial adequacy rule* requires a *MIFIDPRU investment firm* to hold sufficient *own funds* and *liquid assets* to ensure that it can wind-down its business in an orderly manner (as well as operate its business on an ongoing basis). *MIFIDPRU* 7.5.9R requires a *firm* to use its wind-down analysis to assess the appropriate level of *own funds* and *liquid assets* for these purposes.

(2) A *firm's* assessment of the amounts that it needs to hold under the *overall financial adequacy rule* to ensure that it can be wound down in an orderly manner must never be lower than its *wind-down triggers*. The *firm* may conclude that it requires amounts that are higher than these minimum amounts to ensure an orderly wind-down.

(3) In appropriate cases, the *FCA* may consider that either or both of a *firm's wind-down triggers* should be set at a higher level. In this case, the *FCA* may invite a *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or may impose a *requirement* on the

FCA's own initiative under section 55L(3) of the *Act*, for the *firm* to use an alternative *wind-down trigger*.

(4) If the *firm's own funds* fall below the *own funds wind-down trigger* or if the *firm's liquid assets* fall below the *liquid assets wind-down trigger*, the *FCA* would normally expect that the *firm* would commence winding down, unless the *firm's governing body* has determined that there is an imminent and credible likelihood of recovery. The supervisory actions that the *FCA* may take in these circumstances are explained in further detail in *MIFIDPRU* 7.6 in relation to the *own funds wind-down trigger* and *MIFIDPRU* 7.7 in relation to the *liquid assets wind-down trigger*.

(5) Where a *firm's own funds* or *liquid assets* fall below the level that is required to ensure an orderly wind-down of the *firm*, the *firm* will breach the *overall financial adequacy rule*. However, as explained further in *MIFIDPRU* 7.6 in relation to *own funds* and *MIFIDPRU* 7.7 in relation to *liquid assets*, this does not mean that a *firm* must commence winding down immediately. It is only when the *firm* breaches one or both of the *wind-down triggers* that there is a general presumption that the *firm* should wind-down. Where the *firm* has breached the *overall financial adequacy rule* but continues to hold *own funds* and *liquid assets* that exceed the *wind-down triggers*, the *FCA* would typically take the intervention measures set out in *MIFIDPRU* 7.6.15G and *MIFIDPRU* 7.7.17G. However, there may be cases where the *firm's* financial position and the projections of its likely future financial resources mean that commencing a wind-down is appropriate, even though the *firm* has not yet breached the *wind-down triggers*. The *FCA* will consider the appropriate supervisory actions according to the facts in each case.

7.6 ICARA process: assessing and monitoring the adequacy of own funds

7.6.1 R This section applies to a *MIFIDPRU investment firm*.

7.6.2 R As part of its *ICARA process*, a *firm* must produce a reasonable estimate of the *own funds* it needs to hold to address:

(1) any potential material harms that the *firm* has identified under *MIFIDPRU* 7.4.13R and in relation to which it has not taken any measures to reduce the impact of the harms under *MIFIDPRU* 7.4.9R; and

(2) any residual potential material harms that remain after the *firm* has taken measures to reduce the impact of the harms under *MIFIDPRU* 7.4.9R.

7.6.3 R (1) A *firm* must assess on the basis of its analysis under *MIFIDPRU* 7.6.2R whether it should hold additional *own funds* in excess of its *own funds requirement* to comply with the *overall financial adequacy rule*.

(2) When carrying out the assessment in (1), a *firm* must not:

(a) determine that it needs a lower level of *own funds* for an activity or harm than is required by a *rule* in *MIFIDPRU* 4 (Own funds requirements) or *MIFIDPRU* 5 (Concentration risk); or

(b) use components of the *own funds requirement* to cover potential material harms that cannot reasonably be attributed to that component.

7.6.4 G (1) The *overall financial adequacy rule* requires a *firm* to hold adequate *own funds* to ensure that:

(a) the *firm* is able to remain financially viable throughout the economic cycle, with the ability to address any potential material harms that may result from its ongoing activities; and

(b) the *firm's* business can be wound down in an orderly manner.

(2) To comply with the *overall financial adequacy rule*, a *firm* must therefore hold the higher of:

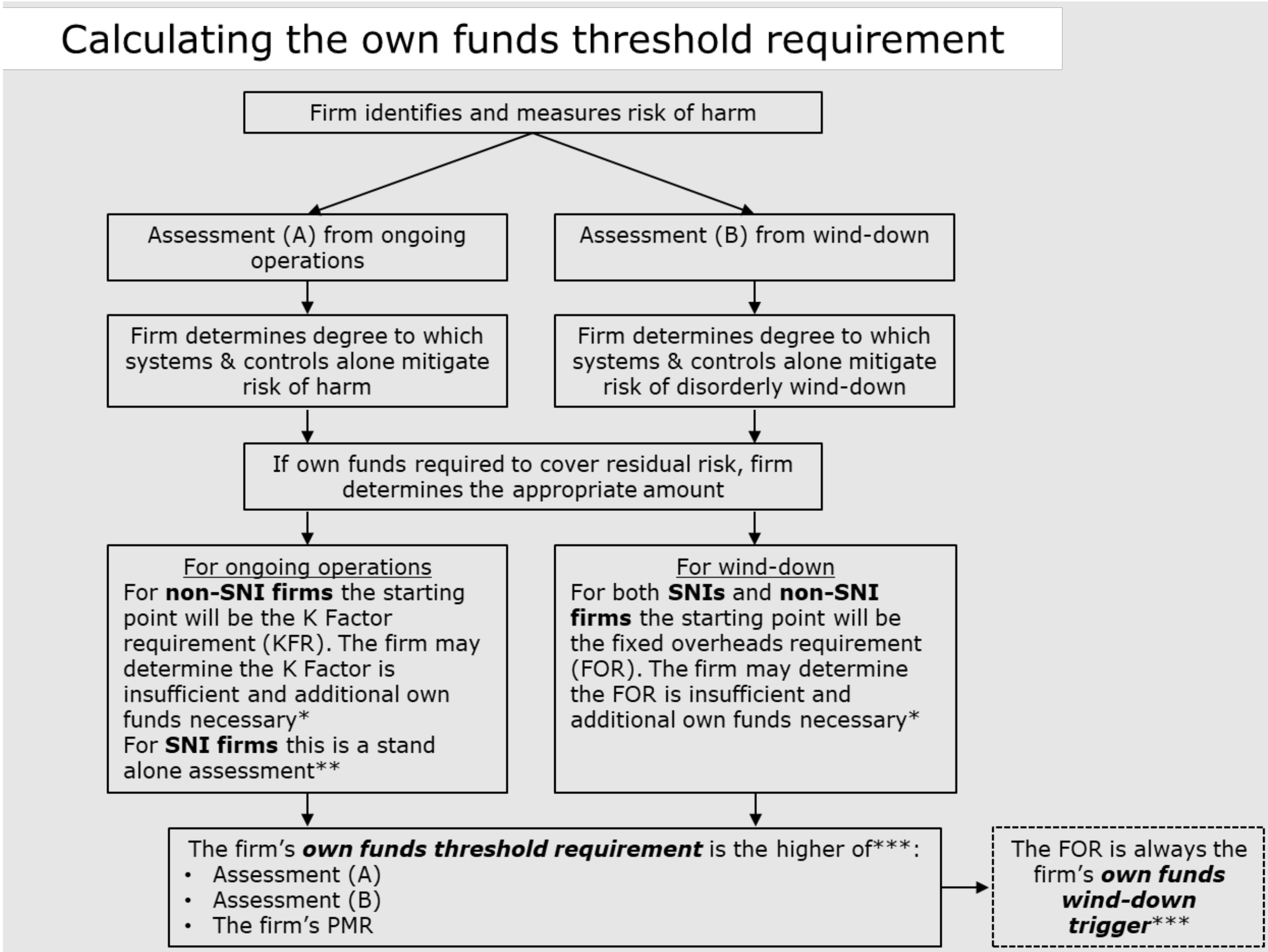
(a) the amount of *own funds* that the *firm* requires at any given point in time to fund its ongoing business operations, taking into account potential periods of financial stress during the economic cycle; and

(b) the amount of *own funds* that a *firm* would need to hold to ensure that the *firm* can be wound down in an orderly manner.

(3) The *own funds threshold requirement* is the amount of *own funds* that a *firm* needs to hold at any given time to comply with the *overall financial adequacy rule*.

(4) The *firm's* analysis of potential material harms under *MIFIDPRU* 7.6.2R is particularly relevant when it is considering the level of *own funds* that are necessary for the ongoing operation of its business. It is also be relevant when considering how the *firm* should address potential material harms as part of an orderly wind-down.

(5) The following diagram summarises the process that a *firm* should undertake to determine its *own funds threshold requirement*:



* The *own funds threshold requirement* cannot be lower than the *K-factor requirement* or the *fixed overheads requirement*.

** The *K-factor requirement* does not apply to *SNI MIFIDPRU investment firms* and the *permanent minimum capital requirement* (PMR) is not linked to harm.

*** Unless otherwise specified by the *FCA*.

7.6.5 R (1) Unless (2) applies, a *firm* must meet its *own funds threshold requirement* with *own funds* that satisfy the following conditions:

(a) subject to (b), at least 75% of the *own funds threshold requirement* must be met with any combination of *common equity tier 1 capital* and *additional tier 1 capital*; and

(b) at least 56% of the *own funds threshold requirement* must be met with *common equity tier 1 capital*.

(2) The *FCA* may specify an alternative combination of *own funds* for the purpose of (1) in a *requirement* applied to a *firm*.

7.6.6 G (1) *MIFIDPRU* 7.6.7G and 7.6.8G explain the approach a *non-SNI MIFIDPRU investment firm* should apply to carry out the assessment in *MIFIDPRU* 7.6.3R.

(2) *MIFIDPRU* 7.6.9G explains the approach that an *SNI MIFIDPRU investment firm* should apply to carry out the assessment in *MIFIDPRU* 7.6.3R.

(3) *MIFIDPRU* 7.6.10G explains the approach that all *MIFIDPRU investment firms* should apply when assessing their *own funds threshold requirement*.

7.6.7 G (1) *MIFIDPRU* 4 and 5 explain how a *firm* must determine its *own funds requirement*. Where, as part of its *ICARA process*, a *firm* has identified potential material harms that cannot be fully mitigated, the *firm* should first consider the extent to which the impact of the residual harm on *own funds* is covered (wholly or partly) by the framework in *MIFIDPRU* 4 and 5.

(2) Example 1: If the potential material harm arises from the ordinary course of the *firm's portfolio management* business, a *non-SNI MIFIDPRU investment firm* should consider the potential impact of the harm by comparison with the *firm's K-AUM requirement*. If the harm is a harm that might typically arise from *portfolio management*, the *firm* may treat the harm as covered by the *K-AUM requirement*. However, if the harm is unusual in nature or might be particularly severe (for example, fraud or other irregularities), it would be unreasonable for the *firm* to treat the harm as fully covered by the *K-AUM requirement*. This is because the *K-AUM requirement* is designed to address typical harms from ordinary *portfolio management*, and not every conceivable material harm that might result from this activity.

(3) Example 2: If the potential material harm arises from the ordinary course of the *firm* investing its own proprietary capital in positions allocated to the *trading book*, a *non-SNI MIFIDPRU firm* should consider the nature of that harm. For example, if the harm relates to the ordinary operational aspects of *dealing on own account*, the *firm* may treat the harm as covered by the *K-DTF requirement*, unless the harm is unusual or particularly severe. If the harm arises from adverse market movements in relation to the *firm's trading book* positions, the *firm* may treat the harm as covered by the *K-NPR requirement* (or *K-CMG requirement* if the position arises in a *portfolio* for which the *firm* has received a *K-CMG permission*), unless the relevant positions have particular features that mean the harm may be unusual or particularly severe.

(4) Example 3: Some components of the *K-factor requirement*, such as the *K-CON requirement*, reflect specific types of harm. In this case, the *firm* should consider the purpose of the relevant requirement. As the *K-CON requirement* is designed to address the potential

harm arising from a *firm* having concentrated exposures to a counterparty or group of connected counterparties, a *non-SNI MIFIDPRU investment firm* should only compare a harm to the *K-CON requirement* where that harm arises from, or is connected to, these concentrated exposures.

(5) Example 4: When assessing harms that may occur during a wind-down of the *firm's* business, a *non-SNI MIFIDPRU investment firm* should consider the potential impact of the harm by comparison with its *fixed overheads requirement*. In this case, the *firm* should identify the likely costs of winding down the *firm* and the potential financial impact of any material harms that might occur while doing so and compare the aggregate amount with the *fixed overheads requirement*. This will allow a *firm* to determine whether they are holding sufficient *own funds* to ensure an orderly wind-down, as required by the *overall financial adequacy rule*.

7.6.8 G (1) Some harms may not fit within the *own funds requirement* framework in *MIFIDPRU* 4 or 5 because they cannot reasonably be attributed to the activities or risks that the *rules* in those chapters are designed to address. Where the harms are potentially material in nature, a *non-SNI MIFIDPRU investment firm* will need to assess their potential financial impact separately and cannot treat those harms as covered (either wholly or partly) by a requirement under *MIFIDPRU* 4 or 5. This includes potential material harms resulting from any *regulated activities* that are not *MiFID business* and from any *unregulated activities*.

(2) Example 1: A *non-SNI MIFIDPRU investment firm* undertakes significant amounts of *corporate finance business*. The *K-factor requirement* does not include any components which are designed to address the potential harms arising from this type of business, as none of the *K-factor metrics* relate to *corporate finance business*. If the *firm* identifies potential material harms that may arise from its corporate finance activities, it cannot therefore compare that harm to any part of the *K-factor requirement*. In this case, the *firm* will need to assess the potential financial impact of that harm and will need to hold additional *own funds* to cover that impact.

(3) Example 2: A *non-SNI MIFIDPRU investment firm* holds *client money* in connection with *designated investment business* that is not *MiFID business*. The *K-CMH requirement* applies only to *MiFID client money*. If the *firm* identifies potential material harms that result from holding *client money* for non-*MiFID business*, it will therefore need to assess the potential financial impact of that harm and hold additional *own funds* to cover that impact. Similarly, if there are material issues arising from currency mismatches in relation to *MiFID client money*, this may be a risk that is not adequately covered by the *K-CMH requirement*.

(4) A *firm* is not required to map the financial impact of every potential material harm to components of its *K-factor requirement*. In some circumstances, it may be impractical or disproportionate to allocate the potential financial impact of harms in this way. Alternatively, it may not be clear that a harm can be allocated to one or more components of the *K-factor requirement*. A *firm* may therefore hold an amount that is additional to its *K-factor requirement* to address a particular harm without determining whether that harm might already be partly covered by the *K-factor requirement*.

(5) Example 3: A *non-SNI MIFIDPRU investment firm* determines that there is a risk of material harm from a cyber incident affecting its IT systems. The *firm's* IT systems are used across all its business lines and the *firm* considers that it is impractical to allocate the financial impact of the cyber incident between particular components of the *K-factor requirement*. In this situation, the *firm* may hold an additional amount of *own funds* (i.e. over and above its *K-factor requirement*) to cover the potential financial impact of the cyber incident without mapping the impact of the harm to specific components of the *K-factor requirement*. However, the *firm* should clearly record the basis on which it has determined the amount of additional *own funds* that are required.

7.6.9 G (1) An *SNI MIFIDPRU investment firm* is not subject to the *K-factor requirement*. In practice, this means that its *own funds requirement* is typically determined by the *fixed overheads requirement*, although for smaller *firms*, the *permanent minimum capital requirement* may be determinative.

(2) An *SNI MIFIDPRU investment firm* should therefore identify all relevant potential material harms from its ongoing business operations that cannot be mitigated by other means and estimate their impact on the *firm's own funds*. It should then compare the aggregate financial impact on *own funds* with the *firm's fixed overheads requirement* (or, if higher, the *permanent minimum capital requirement*).

(3) Separately, an *SNI MIFIDPRU investment firm* should also identify the likely costs of winding down the *firm* and the potential financial impact of any material harms that might occur while doing so and should compare the aggregate amount with the *fixed overheads requirement*. This will allow the *firm* to determine if it is holding sufficient *own funds* to ensure an orderly wind-down, as required by the *overall financial adequacy rule*.

(4) Where an *SNI MIFIDPRU investment firm* is close to exceeding one or more of the thresholds in *MIFIDPRU* 1.2.1R that would result in the *firm* being reclassified as a *non-SNI MIFIDPRU investment firm*, the *firm* should begin to compare its assessment of the *own funds* that it needs to comply with the *overall financial adequacy rule* with the *K-factor requirement* that would apply to

the *firm* if it were a *non-SNI MIFIDPRU investment firm*. The *guidance* in *MIFIDPRU* 7.6.7G and 7.6.8G is relevant in these circumstances. Comparison with the future *K-factor requirement* will ensure that the *firm* is better prepared to comply with the additional obligations in *MIFIDPRU* 4 and 5, and that its *ICARA process* is calibrated appropriately, at the point at which the *firm* becomes a *non-SNI MIFIDPRU investment firm*.

7.6.10 G (1) *MIFIDPRU* 7.6.7G to *MIFIDPRU* 7.6.9G explain the approach that a *firm* should take to determine if a potential harm is covered by the *firm's own funds requirement*. Where a *firm* has identified potential harms that are not covered by its *own funds requirement*, or are covered only partly by its *own funds requirement*, the *firm* should aggregate the estimated financial impact of those harms to determine the overall additional amount of *own funds* (i.e. above its *own funds requirement*) that the *firm* needs to comply with the *overall financial adequacy rule*.

(2) Where the *FCA* disagrees with a *firm's* assessment of the amount of *own funds* that is required by the *overall financial adequacy rule*, the *FCA* may provide individual *guidance* to that *firm* about the amount of *own funds* that the *FCA* considers is necessary to comply with that *rule*. Alternatively, the *FCA* may apply a *requirement* to the *firm* that specifies an amount of *own funds* that the *firm* must hold for that purpose.

(3) The effect of *MIFIDPRU* 7.6.3R(2) is that a *firm* must not:

(a) determine that it needs a lower level of *own funds* for an activity or harm than is required by a component of the *own funds requirement* that addresses that risk or harm; or

(b) use components of the *own funds requirement* to cover harms that cannot be attributed to that component.

This is illustrated by the example in (4).

(4) Example: A *non-SNI MIFIDPRU investment firm* carries on *portfolio management* and determines that its *K-AUM requirement* is £50,000. However, the *firm* estimates that the actual financial impact of potential harm that may result from its *portfolio management* activities is only £30,000. The *firm* also carries on corporate finance advisory business (which does not give rise to a *K-factor requirement*) and estimates that the financial impact of the potential harm arising from this business is £40,000. The *firm* should not conclude that its *own funds threshold requirement* is £70,000. This is because the *firm* is not permitted to:

(a) conclude that the amount of *own funds* that it holds in relation to its *portfolio management* activities is less than the *K-AUM requirement*. This means that the *firm* is not permitted to substitute its own estimate of £30,000 for the minimum *K-AUM requirement* of £50,000; or

(b) use part of the *K-AUM requirement* to cover potential material harms that do not arise in connection with *portfolio management*. This means that the *firm* cannot reallocate part of the *own funds* that should be held to cover the *K-AUM requirement* to cover risks arising from its corporate finance business.

(5) Instead, assuming that there are no other relevant potential materials harms to be taken into account, the *firm* should conclude that its *own funds threshold requirement* is £90,000, which is the sum of the *K-AUM requirement* and the *firm's* estimate of the potential financial impact of harms arising from its corporate finance business.

Requirement to notify the FCA of certain levels of own funds

7.6.11 R (1) A *firm* must notify the *FCA* immediately in each case where its *own funds* fall below the level of the *firm's*:

(a) *early warning indicator*;

(b) *own funds threshold requirement*; or

(c) *own funds wind-down trigger*, or the *firm* considers that there is a reasonable likelihood that its *own funds* will fall below that level in the foreseeable future.

(2) A notification under (1) must include the following information:

(a) a clear statement of the current level of the *firm's own funds* in comparison to:

(i) its *own funds threshold requirement*; and

(ii) in the case of a notification under (1)(c), the *firm's own funds wind-down trigger*;

(b) an explanation of why the *firm's own funds* have reached the current level;

(c) in the case of a notification made under (1)(a), where the *firm* has identified that its *own funds* may fall below a level specified by the *firm* for the purposes of *MIFIDPRU* 7.5.5R(1), the recovery actions that the *firm* intends to take, as identified under *MIFIDPRU* 7.5.5R(2)(a) and 7.5.6G;

(d) in the case of a notification made under (1)(a), confirmation of whether the *firm* expects that its *own funds* could fall below its *own funds threshold requirement* in the foreseeable future and an explanation of why the *firm* expects this to happen;

(e) in the case of a notification made under (1)(b), the recovery actions specified for the purposes of *MIFIDPRU* 7.5.5R(2)(b) and 7.5.6G that the *firm* has already taken or will take to restore compliance with its *own funds threshold requirement*; and

(f) in the case of a notification made under (1)(c), the *firm's* intentions in relation to activating its wind-down plan.

(3) A *firm* must submit the notification in (1) through the *online notification and application system* using the form in *MIFIDPRU* 7 Annex 4R.

7.6.12 G In appropriate cases, the *FCA* may consider that the *early warning indicator* should be set at a different level from 110% of a *firm's own funds threshold requirement*. In this case, the *FCA* may invite a *firm* to apply for a *requirement* in accordance with section 55L(5) of the *Act*, or may impose a *requirement* on the *FCA's* own initiative in accordance with section 55L(3) of the *Act*, to provide for notification to the *FCA* if the *firm's own funds* reach the alternative level.

7.6.13 G (1) The notification requirement in *MIFIDPRU* 7.6.11R does not replace a *firm's* obligations under:

(a) *Principle* 11 to disclose appropriately to the *FCA* anything relating to the *firm* of which the *FCA* would reasonably expect notice; or

(b) the general notification requirements in *SUP* 15.3.

(2) Where a *firm* has submitted a notification under *MIFIDPRU* 7.6.11R, the notification will generally discharge a *firm's* obligations under *Principle* 11 and the general notification requirements in *SUP* 15.3 in relation to the matters contained in the notification. However, a *firm* must still consider whether the *FCA* should be notified of developments before any of the notification indicators in *MIFIDPRU* 7.6.11R occur. In addition, *Principle* 11 and *SUP* 15.3 may require a *firm* to notify the *FCA* of additional material information that is not specifically referenced in *MIFIDPRU* 7.6.11R.

(3) A *MIFIDPRU investment firm* should notify the *FCA* at an early stage of any significant event which creates a material risk of a *firm* ceasing to hold adequate financial resources, even if the impact of that event has not yet fully materialised.

FCA approach to intervention in relation to own funds

7.6.14 G (1) The table in *MIFIDPRU* 7.6.15G explains the interventions that the *FCA* would generally expect to make where there is evidence that a *MIFIDPRU investment firm* may be at risk of breaching the requirements that apply to its *own funds*. The table sets out the points at which the *FCA* would normally intervene and what actions it would normally take.

(2) The *FCA* would generally expect that the interventions in the table would be cumulative – i.e. in a declining prudential situation, as the *firm* hits each intervention point in turn, the *FCA* would take some or all of the actions associated with that particular point. The actions are intended to be proportionate and progressively stronger responses to address the prudential concerns raised by each intervention point.

(3) However, if a *firm* experiences a sudden adverse event which causes the *firm* to hit multiple intervention points simultaneously, the *FCA* may immediately take the actions associated with the most severe point.

(4) The actions specified in the table do not prevent the *FCA* from taking alternative or additional actions in appropriate cases. The purpose of the table is to provide greater clarity for *firms* on the *FCA's* general expectations and approach to interventions, to assist *firms'* own planning and responses.

7.6.15 G This table belongs to *MIFIDPRU* 7.6.14G.

Intervention point	**Purpose**	**Potential *FCA* supervisory actions**
Early warning indicator: When the *early warning indicator* is triggered, the *firm* must notify the *FCA* under *MIFIDPRU* 7.6.11R(1)(a)	This is intended as an early warning to the *FCA* that the *firm* may be at risk of breaching its *own funds threshold requirement*. This will allow the *firm* and the *FCA* to consider any preventative action that may be appropriate.	Where the notification is not the expected result of planned action by the *firm*, the *FCA* would normally expect the following to occur: (a) a dialogue between the *FCA* and the *firm* based on the information provided in the notification to understand the reason for the decline in the *firm's own funds* and the *firm's* future plans; and (b) enhanced monitoring and supervision of the *firm* by the *FCA*. After having considered the information provided by the *firm* about its proposed actions, if the *FCA* reasonably considers that the *firm* may breach its *own funds*

		threshold requirement in the foreseeable future, the *FCA* may consider the following additional actions: (c) requesting that the *firm* cease making discretionary distributions of capital, loans to affiliated entities, payments of dividends or payments of variable remuneration; (d) requesting that the *firm* take some or all of the recovery actions identified by the *firm* under *MIFIDPRU* 7.5.5R(2) and 7.5.6G; (e) requesting that the *firm* report additional information to the *FCA*; (f) requesting that the *firm* improve its internal risk management and systems and controls; (g) requesting that the *firm* cease making acquisitions; or (h) where appropriate, inviting the *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or imposing a *requirement* on the *FCA's* own initiative under section 55L(3) of the *Act*, in relation to (c) – (g) above.
Threshold requirement notification: *Firm* holding insufficient *own funds* to meet its *own funds threshold requirement*	In the *FCA's* view, where a *firm* is failing to hold sufficient *own funds* to comply with its *own funds threshold requirement*, the *firm* will be failing to meet the appropriate resources *threshold condition*.	The *FCA* would normally expect that: (a) the *firm* will have taken any relevant recovery actions identified by the *firm* under *MIFIDPRU* 7.5.5R(2)(a) and 7.5.6G before breaching its *own funds threshold requirement* and will be preparing to take, or will have taken, any relevant recovery actions identified under *MIFIDPRU* 7.5.5R(2)(b); and (b) the *firm* will cease making discretionary distributions of

	This trigger is intended to prompt the *firm* and the *FCA* to address the breach of *threshold conditions* in a timely manner. Where appropriate, the focus should be on recovery of the *firm* (unless the *firm* chooses to exit the market by voluntarily winding down). However, any proposed actions for recovery must be credible and achievable within a reasonable and realistic timeframe.	capital, loans to affiliated entities, payments of dividends or payments of variable remuneration. After having considered the information provided by the *firm* about its proposed actions, if the *FCA* reasonably considers that the *firm* may fail to restore its *own funds* to the level required by the *own funds threshold requirement* within a reasonable timeframe, the *FCA* may consider the following additional actions: (c) requesting that the *firm* cease taking on new business; (d) Requesting that the *firm* report additional information to the *FCA*; (e) requesting that the *firm's parent undertaking* provides additional *own funds* for the *firm*; (f) where appropriate, inviting the *firm* or its *parent undertaking* to apply for a *requirement* under section 55L(5) or section 143K(1) of the *Act*, or imposing a *requirement* on the *FCA's* own initiative under section 55L(3) or section 143K(2) of the *Act*, in relation to (a) – (e) above; or (g) where appropriate, inviting the *firm* to apply for variation or cancellation of *permission* under section 55H of the *Act*, or varying or cancelling the *firm's permission* on the *FCA's* own initiative under section 55J of the *Act*. The *FCA* would also expect the *firm* to consider whether it is appropriate to trigger the *firm's* wind-down plan under *MIFIDPRU* 7.5.7R to ensure an orderly wind-down of its business. This may be the case where the *firm's* identified

		wind-down actions will require a reasonable length of time to execute, such as where the *firm* will need to transfer customers or close out its own positions.
Wind-down trigger notification: *Firm's own funds* fall below its *own funds wind-down trigger*	The *own funds wind-down trigger* is intended to specify a level of *own funds* that is sufficient to ensure an orderly wind-down of the *firm*. Where the *firm's own funds requirement* is determined by the *fixed overheads requirement* and the *firm* has not identified that it needs to hold additional *own funds* to comply with the *overall financial adequacy rule*, the *own funds wind-down trigger* may be equal to the *firm's own funds threshold requirement*. In that case, the *FCA* may proceed directly to applying the interventions in this row, rather than those specified for a breach of the *own funds threshold requirement* above. In order to maximise the	The *FCA* would normally expect the following to occur: (a) the *firm's governing body* will make a formal decision to initiate the *firm's* wind-down plan, unless the *governing body* has a reasonable basis for determining that there is an imminent and credible likelihood of the *firm's* recovery; and (b) where the *firm* decides to initiate its wind-down plan, the *FCA* will invite the *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or will impose a *requirement* on the *FCA's* own initiative under section 55L(3) of the *Act*, that prevents the *firm* from taking on any new business. The *FCA* may consider the following additional actions if it has concerns that without such actions, the potential risk of harm to consumers or the markets is likely to increase: (c) taking appropriate action to protect any *client money* or *client* assets, including, where appropriate, inviting the *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or imposing a *requirement* on the *FCA's* own initiative under section 55L(3) of the *Act*, to achieve any necessary protection; and (d) where appropriate, inviting the *firm* to apply for variation or cancellation of *permission* under section 55H of the *Act*, or varying or cancelling the *firm's*

	potential for an orderly wind-down, the *FCA* expects that *firms* that breach this trigger should normally commence winding down immediately, unless the *firm's governing body* and the *FCA* determine that there is an imminent and credible likelihood of recovery.	*permission* on the *FCA's* own initiative under section 55J of the *Act*. If a *firm* refuses to commence an orderly wind-down despite its *governing body* or the *FCA* having concluded that there is no imminent and credible likelihood of recovery, the *FCA* will consider the full range of its supervisory powers. In particular, the *FCA* may use a combination of its own initiative powers under section 55L(3) and section 55J of the *Act* to: (e) prevent the *firm* from continuing to carry on any *regulated activities*; and (f) require the *firm* to take appropriate actions to ensure the fair treatment and appropriate protection of *clients* and counterparties during any run-off period for its existing regulated business.

7.7 ICARA process: assessing and monitoring the adequacy of liquid assets

7.7.1 R This section applies to a *MIFIDPRU investment firm*.

7.7.2 R (1) As part of its *ICARA process*, a *firm* must produce a reasonable estimate of the maximum amount of *liquid assets* that the *firm* would require to:

(a) fund its ongoing business operations during each quarter over the next 12 *months*; and

(b) ensure that the *firm* could be wound down in an orderly manner.

(2) The assessment in (1) must take into account any potential material harms that the *firm* has identified under *MIFIDPRU* 7.4.9R and been unable to reduce appropriately through its systems and controls.

(3) Without prejudice to the ongoing nature of the *ICARA process*, the *firm* must update the analysis in (1) immediately following any material change in the *firm's* business model or operating model.

(4) To produce the estimate in (1), the *firm* must ensure that it has in place reliable management information systems to provide timely and forward-looking information on its liquidity position.

7.7.3 G (1) The *overall financial adequacy rule* requires a *firm* to hold adequate *liquid assets* to ensure that:

(a) the *firm* is able to remain financially viable throughout the economic cycle, with the ability to address any potential harm that may result from its ongoing activities; and

(b) the *firm's* business can be wound down in an orderly manner.

(2) To comply with the *overall financial adequacy rule*, a *firm* must therefore hold the sum of the *basic liquid assets requirement* and the higher of:

(a) the amount of *liquid assets* that the *firm* requires to fund its ongoing business operations, taking into account potential periods of financial stress during the economic cycle; or

(b) the additional amount of *liquid assets* that a *firm* would need to hold when commencing its wind-down process to ensure that the *firm* could be wound down in an orderly manner.

(3) The *firm* should use the analysis it produces under *MIFIDPRU* 7.7.2R to ensure that it complies with the *overall financial adequacy rule*.

(4) The *liquid assets threshold requirement* is the amount of *liquid assets* that a *firm* needs to hold at any given time to comply with the *overall financial adequacy rule*.

7.7.4 G (1) When considering the *liquid assets* that are required to fund its ongoing business operations under *MIFIDPRU* 7.7.2R(1), a *firm* should consider, among other factors:

(a) the ordinary level of *liquid assets* that would typically be required to operate the *firm's* underlying business, taking into account any seasonal variations;

(b) any material harms that may realistically occur during the next 12 *months* and their potential impact on the *firm's* liquidity position;

(c) any *liquid assets* that a *firm* may need to use as collateral or to meet margining requirements; and

(d) any estimated gaps in funding, including during periods of severe but plausible stress.

(2) The *liquid assets* that a *firm* requires at any given time during the 12-*month* period in *MIFIDPRU* 7.7.2R(1) may fluctuate, depending on the timing of a *firm's* expected liabilities and the nature of its business. Therefore, a *firm* should divide the 12-*month* period into quarters and assess the highest amount of *liquid assets* that it would require in each quarter. The *FCA* accepts that forecasts of the *liquid assets* that a *firm* requires may become less accurate for later quarters, but expects *firms* to use a 12-*month* time horizon to ensure that adequate attention is given to potential harms and significant liquidity outflows that may occur during that period.

(3) As a *firm's* liquidity requirements are typically dynamic in nature, *MIFIDPRU* 7.7.2R requires a *firm* to update its *liquid assets* assessment where there has been a material change in the *firm's* business model or operating model. This ensures that the *firm* updates its liquidity analysis to reflect material changes in its circumstances that may affect the availability of *liquid assets* or the *firm's* liquidity requirements, while also assessing future needs over a rolling 12-*month* time horizon.

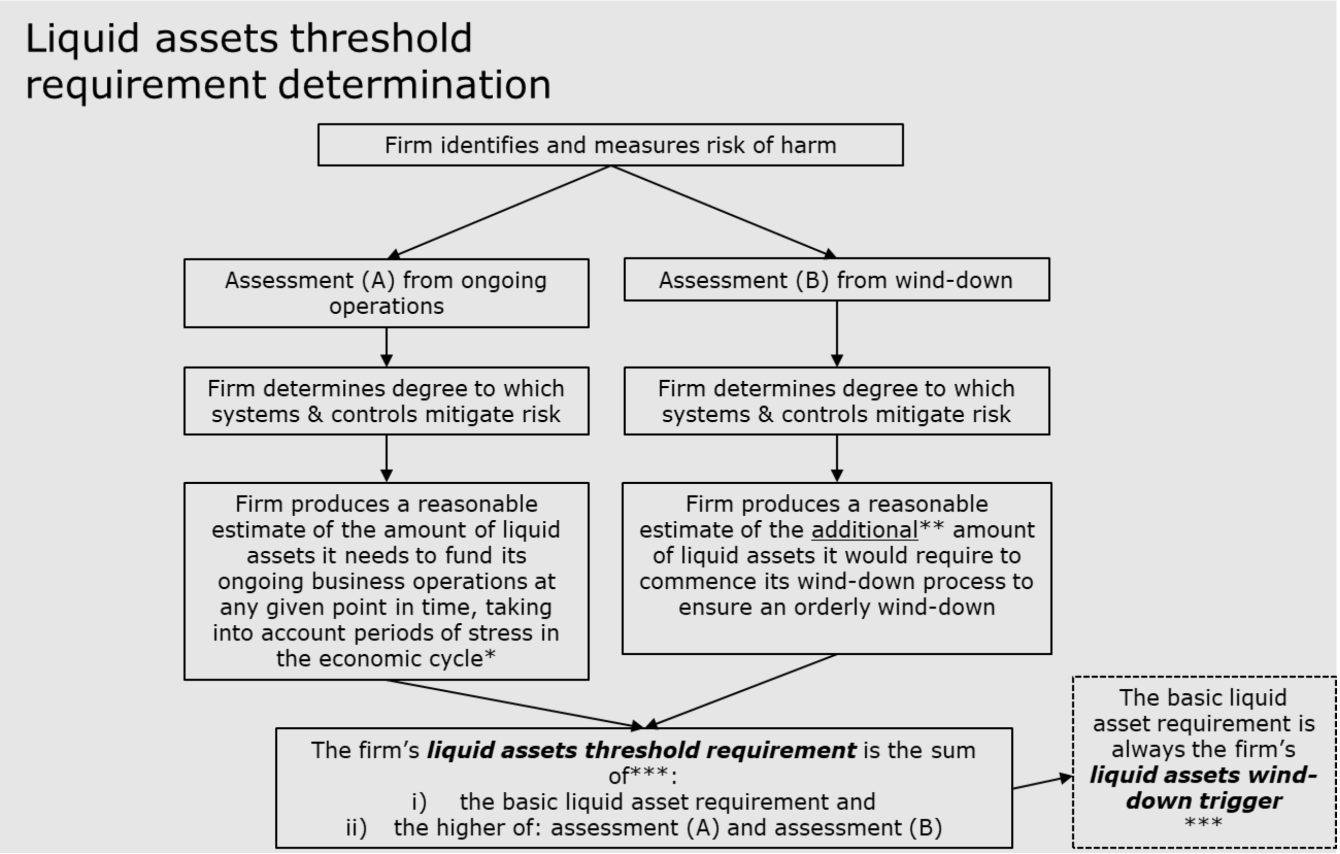
(4) As part of its reporting obligations under *MIFIDPRU* 9, a *firm* must report liquidity information to the *FCA* on a regular basis. The *FCA* will use this information to monitor both the *liquid assets* that the *firm* is holding and the *firm's* assessment of its *liquid assets threshold requirement*.

7.7.5 G (1) A *firm's basic liquid assets requirement* provides a minimum level of *core liquid assets* that the *firm* must maintain at all times. The purpose of the *basic liquid assets requirement* is to ensure that the *firm* always has a minimum stock of *liquid assets* to fund the initial stages of its wind-down process if wind-down becomes necessary. The *firm* cannot, therefore, use the value of the *core liquid assets* that it holds to meet the *basic liquid assets requirement* as *liquid assets* for the liquidity needs of its ongoing business.

(2) The *basic liquid assets requirement* may, however, be insufficient to provide the *liquid assets* that the *firm* has assessed would be necessary to facilitate an orderly wind-down as part of its wind-down planning under *MIFIDPRU* 7.5.7R. Therefore, the *firm* may identify that it needs to hold an additional amount of *liquid assets* to meet its funding needs as part of the wind-down process. This is not necessarily the whole amount of the *liquid assets* that would be required to fund the entire wind-down process, because in some circumstances, the *firm* may reasonably expect to generate additional *liquid assets* during wind-down. However, the *firm* should identify if it could have a funding gap during the wind-down

process that the *firm* needs to cover by holding more *liquid assets* at the point that wind-down begins.

(3) The following diagram summarises the process that a *firm* should undertake to determine its *liquid assets threshold requirement*:



* When a *firm* assesses the amount of *liquid assets* it needs for ongoing operations, it cannot use the value of the *core liquid assets* held to meet the *basic liquid assets requirement* to fund those operations.

** The *basic liquid assets requirement* may be insufficient to provide the *liquid assets* that the *firm* has assessed would be necessary to facilitate an orderly wind-down. Therefore, the *firm* may identify that it needs to hold an additional amount of *liquid assets* to meet its funding needs to commence its wind-down process.

*** Unless otherwise specified by the *FCA*.

7.7.6 R (1) Subject to (2) and (3), a *firm* may hold the *liquid assets* necessary to comply with its *liquid assets threshold requirement* in any combination of:

(a) any *core liquid asset*, except trade receivables under *MIFIDPRU* 6.3.3R; or

(b) any *non-core liquid asset*, as defined in *MIFIDPRU* 7.7.8R, provided that the *firm* applies an appropriate haircut in accordance with *MIFIDPRU* 7.7.9R.

(2) This *rule* does not apply in relation to the *liquid assets* that a *firm* is holding to meet its *basic liquid assets requirement*, which must be *core liquid assets*.

(3) A *firm* may only use a *non-core liquid asset* for the purpose in (1) if the *firm* is satisfied that the asset can easily and promptly be converted into cash, even in stressed market conditions.

7.7.7 G When considering whether a *non-core liquid asset* meets the requirement in *MIFIDPRU* 7.7.6R(3), a *firm* should take into account the following principles:

(1) low risk: assets that are less risky tend to have higher liquidity. High credit standing of the issuer and a low degree of subordination tends to increase an asset's liquidity. Low duration, low legal risk, low inflation risk and denomination in a convertible currency with low foreign exchange risk all tend to enhance an asset's liquidity;

(2) ease and certainty of valuation: an asset's liquidity tends to increase if market participants are more likely to agree on its valuation. Assets with more standardised, homogenous and simple structures tend to be more fungible, promoting liquidity. The pricing formula of a high-quality liquid asset should be easy to calculate and not depend on strong assumptions. The inputs into the pricing formula should also be publicly available. In practice, this should rule out the inclusion of most structured or exotic products;

(3) low correlation with risky assets: the stock of assets should not be subject to wrong-way (highly correlated) risk. For example, assets issued by financial institutions are more likely to be illiquid in times of liquidity stress in the financial sector;

(4) listed on a developed and recognised exchange: being listed tends to increase an asset's transparency and liquidity;

(5) active and sizable market: the asset should have an active market at all times. This means that:

(a) there should be historical evidence of market breadth and market depth. This could be demonstrated by low bid-ask spreads, high trading volumes, a large and diverse number of market participants, and the existence of a repo market. Diversity of market participants reduces market concentration and increases the reliability of the liquidity in the market; and

(b) there should be robust market infrastructure in place. The presence of multiple committed market makers increases liquidity as quotes will most likely be available for buying or selling the asset;

(6) low volatility: assets whose prices remain relatively stable and are less prone to sharp price declines over time will have a lower probability of triggering forced sales to meet liquidity requirements. Volatility of traded prices and spreads are simple proxy measures of market volatility. There should be historical evidence of relative stability of market terms (e.g. prices and haircuts) and volumes during stressed periods; and

(7) flight to quality: historically, the market has shown tendencies to move into these types of assets in a systemic crisis. The correlation between proxies of market liquidity and financial system stress is one simple measure that could be used.

7.7.8 R (1) Except as specified in (2), the following assets are eligible as *non-core liquid assets*:

(a) short-term deposits at a *credit institution* that does not have a *Part 4A permission* in the *UK* to *accept deposits*;

(b) assets representing claims on, or guaranteed by, multilateral development banks and international organisations;

(c) assets representing claims on, or guaranteed by, any *third country* central bank or government;

(d) *financial instruments*; and

(e) any other instrument eligible as collateral against the margin requirement of an *authorised central counterparty*.

(2) A *firm* must not treat any of the following as a *non-core liquid asset*:

(a) any asset that belongs to a *client*;

(b) any other asset that is encumbered; or

(c) any asset issued by the *firm* or any of its affiliated entities, except a short-term deposit with an affiliated *credit institution*.

7.7.9 G (1) For the purposes of *MIFIDPRU* 7.7.8R(2)(a), an asset may belong to a *client* even if the asset is held in the *firm's* own name. Examples of assets belonging to a *client* include money or other assets held under the *FCA's client asset rules*.

(2) For the purposes of *MIFIDPRU* 7.7.8R(2)(b), an asset may be encumbered if it is pledged as security or collateral, or subject to some other legal restriction (for example, due to regulatory or contractual requirements) which affects the *firm's* ability to liquidate, sell, transfer, or assign the asset.

7.7.10 R A *firm* must apply an appropriate haircut to the value of a *non-core liquid asset* to reflect the potential loss of value when converting the asset into cash during stressed market conditions.

7.7.11 G The *FCA* considers that a minimum haircut of no less than that in the range specified in the table in *MIFIDPRU* 7.7.12G is likely to be appropriate for the purposes of *MIFIDPRU* 7.7.10R.

7.7.12 G This table belongs to *MIFIDPRU* 7.7.11G.

Non-core liquid asset	Haircut
Short-term deposits at a *credit institution* that does not have *permission* in the *UK* to *accept deposits*	0%
Assets representing claims on, or guaranteed by, multilateral development banks or international organisations	0%
Assets representing claims on, or guaranteed by, any *third country* central bank or government	0% - 50%
Regulated covered bonds, or comparable covered bonds regulated in a *third country*	7% - 30%
Asset-backed securities eligible for 'STS' designation under the *Securitisation Regulation*, and backed by residential loans, personal loans, leases or commercial loans for purposes other than commercial real estate development, or comparable asset-backed securities regulated in a *third country*	25% - 35%
High-quality corporate debt securities	15% - 50%
Shares that form part of a major stock index	50%

Financial instruments not covered above for which there is a liquid market as defined in article 42(1)(17) of *MiFIR* or article 42(1)(17) of *EU MiFIR*	55%
Other instruments eligible as collateral against the margin requirement of an *authorised central counterparty*	25% - 55%

7.7.13 G For the purposes of applying *MIFIDPRU* 7.7.10R and 7.7.11G to shares or units in a *CIU*:

(1) where a *firm* is aware of the exposures underlying the *CIU*, it may look through to the underlying exposures to assign an appropriate haircut;

(2) where a *firm* is not aware of the exposures underlying the *CIU*, it should assume that the *CIU* invests, up to the maximum amount allowed under its mandate, in the highest risk assets permissible; and

(3) in either case, a *firm* should consider applying an additional haircut to reflect any additional loss of value that could result from the underlying exposures being held through a *CIU*.

Requirement to notify the FCA of certain levels of liquid assets

7.7.14 R (1) A *firm* must notify the *FCA* immediately in each case where:

(a) its *liquid assets* fall below its *liquid assets threshold requirement*; or

(b) its *liquid assets* fall below its *liquid assets wind-down trigger* or the *firm* considers that there is a reasonable likelihood that its *liquid assets* will fall below its *liquid assets wind-down trigger* in the foreseeable future.

(2) A notification under (1) must include the following information:

(a) a clear statement of the current level of the *firm's liquid assets* in comparison to:

(i) the *firm's liquid assets threshold requirement*; and

(ii) in the case of a notification under (1)(b), the *firm's liquid assets wind-down trigger*;

(b) an explanation of why the *firm's liquid assets* have reached the current level;

(c) in the case of a notification under (1)(a), an explanation of the recovery actions specified for the purposes of *MIFIDPRU* 7.5.5R(2)(b) and 7.5.6G that the *firm* has already taken or will take to restore compliance with its *liquid assets threshold requirement*; and

(d) in the case of a notification under (1)(b), the *firm's* intentions in relation to activating its wind-down plan.

(3) A *firm* must submit the notification in (1) through the *online notifications and applications system* using the form in *MIFIDPRU* 7 Annex 5R.

7.7.15 G (1) The notification requirement in *MIFIDPRU* 7.7.14R does not replace a *firm's* obligations under:

(a) *Principle* 11 to disclose appropriately to the *FCA* anything relating to the *firm* of which the *FCA* would reasonably expect notice; or

(b) the general notification requirements in *SUP* 15.3.

(2) Where a *firm* has submitted a notification under *MIFIDPRU* 7.7.14R, the notification will generally discharge a *firm's* obligations under *Principle* 11 and the general notification requirements in *SUP* 15.3 in relation to the matters contained in the notification. However, a *firm* must still consider whether the *FCA* should be notified of developments before any of the notification indicators in *MIFIDPRU* 7.7.14R occur. In addition, *Principle* 11 and *SUP* 15.3 may require a *firm* to notify the *FCA* of additional material information that is not specifically referenced in *MIFIDPRU* 7.7.14R.

(3) A *MIFIDPRU investment firms* should notify the *FCA* at an early stage of any significant event which creates a material risk of a *firm* ceasing to hold adequate financial resources, even if the impact of that event has not yet fully materialised.

FCA approach to intervention in relation to liquid assets

7.7.16 G (1) The table in *MIFIDPRU* 7.7.17G explains the interventions that the *FCA* would generally expect to make where a *MIFIDPRU investment firm* has breached, or there is evidence that the *firm* may be at risk of breaching, its *liquid assets* requirements. The table sets out the points at which the *FCA* would normally intervene and what actions it would normally take. Note that unlike for *own funds*, there is no *early warning indicator* requirement in relation to *liquid assets*.

(2) The *FCA* would generally expect that the interventions in the table would be cumulative – i.e. in a declining prudential situation, as the *firm* hits each intervention point in turn, the *FCA* would take some or all of the actions associated with that particular point. The actions are intended to be proportionate and progressively stronger responses to address the prudential concerns raised by each intervention point.

(3) However, if the *firm* experiences a sudden adverse event which causes the *firm* to hit multiple intervention points simultaneously, the *FCA* may immediately take the actions associated with the most severe point.

(4) The actions specified in the table do not prevent the *FCA* from taking alternative or additional actions in appropriate cases. The purpose of the table is to provide greater clarity for *firms* on the *FCA's* general expectations and approach to interventions, to assist *firms'* own planning and responses.

7.7.17 G This table belongs to *MIFIDPRU* 7.7.16G.

Intervention point	Purpose	Potential *FCA* supervisory actions
Threshold requirement notification: *Firm* holding insufficient *liquid assets* to meet its *liquid assets threshold requirement*	The *liquid assets threshold requirement* is the amount of *liquid assets* that the *firm* needs at any point in time to comply with the *overall financial adequacy rule*. The *FCA* will monitor a *firm's* assessment of its *liquid assets threshold requirement* through the information that the *firm* provides under *MIFIDPRU* 9. This notification is intended to prompt the *firm* and the *FCA* to address the breach of *threshold*	The *FCA* would normally expect that: (a) the *firm* will have considered taking the recovery actions identified under *MIFIDPRU* 7.5.5R(2)(a) and *MIFIDPRU* 7.5.6G before breaching its *liquid assets threshold requirement* and will be considering whether to take, or will have taken, any relevant recovery actions identified under *MIFIDPRU* 7.5.5R(2)(b); (b) the *firm's governing body* will regularly evaluate whether the *firm* should take additional actions to restore its level of *liquid assets* to at least the level of the *liquid assets threshold requirement*; and (c) the *FCA* will consider whether to request the *firm* to report

	conditions in a timely manner. Where a *firm* has ceased to hold sufficient *liquid assets* to meet its *liquid assets threshold requirement*, the focus should be on restoring *liquid assets* to at least the level of the *liquid assets threshold requirement* and recovery of the *firm* (unless the *firm* chooses to exit the market by voluntarily winding down). However, any proposed actions for recovery must be credible and achievable within a reasonable and realistic timeframe.	additional information to the *FCA*. If, having considered the information provided by the *firm* about its proposed actions, the *FCA* reasonably considers that the *firm* may fail to restore its *liquid assets* to the level required by the *liquid assets threshold requirement* within a reasonable timeframe, the *FCA* may consider the following actions: (d) requesting that the *firm* cease making discretionary payments; (e) requesting that the *firm* cease taking on new business; (f) requesting that the *firm's parent undertaking* provides additional *liquid assets* for the *firm*; (g) where appropriate, inviting the *firm* or its *parent undertaking* to apply for a *requirement* under section 55L(5) or section 143K(1) of the *Act*, or imposing a *requirement* on the *FCA's* own initiative under section 55L(3) or section 143K(2) of the *Act*, in relation to (a) – (f) above; or (h) where appropriate, inviting the *firm* to apply for variation or cancellation of *permission* under section 55H of the *Act*, or varying or cancelling the *firm's permission* on the *FCA's* own initiative under section 55J of the *Act*. The *FCA* would also expect the *firm* to consider whether it is appropriate to trigger the *firm's* wind-down plan under *MIFIDPRU* 7.5.7R to ensure an orderly wind-down of its business. This may be the case where the *firm's*

		identified wind-down actions will require a reasonable length of time to execute, such as where the *firm* will need to transfer customers or close out its own positions.
Wind-down trigger notification: *Firm's liquid assets* fall below its *liquid assets wind-down trigger*	The *liquid assets wind-down trigger* is an absolute minimum level of *liquid assets* that a *firm* must maintain at all times to provide the necessary financial resources to commence wind-down. This is equal to the *firm's basic liquid assets requirement* (or such higher amount as the *FCA* may have imposed for these purposes in a *requirement*). In order to maximise the potential for an orderly wind-down, the *FCA* expects that *firms* that breach this trigger should normally commence winding down immediately unless the *firm's governing body* and the *FCA* determine that there is an imminent and credible likelihood of recovery.	The *FCA* would normally expect the following to occur: (a) the *firm's governing body* will make a formal decision to initiate the *firm's* wind-down plan, unless the *governing body* has a reasonable basis for determining that there is an imminent and credible likelihood of the *firm's* recovery; and (b) where the *firm* decides to initiate its wind-down plan, the *FCA* will invite the *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or will impose a *requirement* on the *FCA's* own initiative under section 55L(3) of the *Act*, that prevents the *firm* from taking on any new business. The *FCA* may consider the following additional actions if it has concerns that without these actions, the potential risk of harm to consumers or the markets is likely to increase: (c) taking appropriate action to protect any *client money* or *client* assets, including, where appropriate, inviting the *firm* to apply for a *requirement* under section 55L(5) of the *Act*, or imposing a *requirement* on the *FCA's* own initiative under section 55L(3) of the *Act*, to achieve any necessary protection; and (d) where appropriate, inviting the *firm* to apply for variation or cancellation of *permission*

		under section 55H of the *Act*, or varying or cancelling the *firm's permission* on the *FCA's* own initiative under section 55J of the *Act*. If a *firm* refuses to commence an orderly wind-down despite its *governing body* or the *FCA* having concluded that there is no imminent and credible likelihood of recovery, the *FCA* will consider the full range of its supervisory powers. In particular, the *FCA* may use a combination of its own initiative powers under section 55L(3) and section 55J of the *Act* to: (e) prevent the *firm* from continuing to carry on any *regulated activities*; and (f) direct the *firm* to take appropriate actions to ensure the fair treatment and appropriate protection of *clients* and counterparties during any run-off period for its existing regulated business.

7.8 Reviewing and documenting the ICARA process

7.8.1 R This section applies to a *MIFIDPRU investment firm*.

7.8.2 R A *firm* must review the adequacy of its *ICARA process*:

(1) at least once every 12 *months*; and

(2) irrespective of any review carried out under (1), following any material change in the *firm's* business model or operating model.

7.8.3 G The effect of *MIFIDPRU* 7.8.2R(2) is that if there is a significant change in the *firm's* business model or operating model, the *firm* should not wait until the next scheduled review of its *ICARA process*, but should carry out a review promptly. For example, if a *firm* launches a material new product or business line or merges with another business, the *firm* should, as part of its preparation for that event, analyse the impact on the *firm's ICARA process*. Similarly, if a *firm's* business undergoes a significant change due to external factors (for example, significant changes in the structure of a market sector), the *firm* should consider the effects on the *firm's ICARA process* in a timely manner.

7.8.4 R (1) A *firm* must notify the *FCA* of the date on which the *firm* will submit *data item* MIF007 (ICARA assessment questionnaire) in accordance with:

(a) in the case of a *non-SNI MIFIDPRU investment firm*, *MIFIDPRU* 9.2.2R; and

(b) in the case of an *SNI MIFIDPRU investment firm*, *MIFIDPRU* 9.2.4R.

(2) The submission date that the *firm* notifies under (1) continues to apply unless the *firm* notifies the *FCA* of a change of the submission date in accordance with (3).

(3) A *firm* may notify the *FCA* of a revised submission date for the purpose of (1), provided that the revised date will not result in the *firm* not submitting *data item* MIF007 to the *FCA* for more than 12 *months*.

(4) The notifications in (1) and (3) must be submitted through the *online notification and application system* using the form in *MIFIDPRU* 7 Annex 6R.

(5) The *FCA* may direct a *firm* to submit *data item* MIF007 on a different date from the date in (2) to ensure that the *FCA* has access to appropriate and timely information on the *firm's* financial position.

(6) If the *FCA* gives a direction to a *firm* in accordance with (5), the *firm* must submit *data item* MIF007 to the *FCA* on the date specified in that direction until the *FCA* directs otherwise.

7.8.5 G (1) *Firms* may operate different internal arrangements for reviewing the adequacy of their *ICARA process*. When considering the timetable for a review, a *firm* should take into account the following 3 dates:

(a) the date on which the underlying data used to carry out the review of the *ICARA process* was prepared (the "reference date");

(b) the date on which the *firm's* review of the *ICARA process* is carried out (the "review date"); and

(c) the date on which the *firm* will submit *data item* MIF007 to report on its review of the *ICARA process* (the "submission date"), as notified to the *FCA* under *MIFIDPRU* 7.8.4R.

(2) When deciding on a submission date under *MIFIDPRU* 7.8.4R, a *firm* should consider the following:

(a) the period between the reference date and the review date should be reasonable, taking into account the time that the *firm* is likely to need to carry out a robust assessment of its *ICARA process* to meet the requirements in this section and the importance of using relevant data for these purposes; and

(b) the period between the review date and the submission date should also be reasonable, taking into account the importance of the *FCA* receiving timely information in relation to the *firm* and the time that is required for the *firm* to complete *data item* MIF007 accurately and completely.

(3) A *firm* should design its internal timetable for the review of its *ICARA process* and the submission of *data item* MIF007 in a reasonable way, reflecting the importance of proper internal risk management. The *FCA* has provided *firms* with flexibility under *MIFIDPRU* 7.8.4R to adopt a review and reporting timetable that fits best with the *firm's* internal processes. However, under *MIFIDPRU* 7.8.4R(5), the *FCA* may direct a *firm* to report on an alternative date if the *FCA* considers that the *firm's* proposed review and reporting timetable would not result in the *FCA* receiving the necessary information in an appropriate and timely manner.

(4) A *firm* may change the date on which it submits *data item* MIF007 by notifying the *FCA* in accordance with *MIFIDPRU* 7.8.4R(3). However, a *firm* is not permitted to specify a revised date that would result in the *firm* not submitting *data item* MIF007 to the *FCA* for more than 12 *months*. For example, a *firm* has a submission date of 1 April each year. The *firm* submits *data item* MIF007 on 1 April 2023. On 1 March 2024, the *firm* wishes to change its submission date to 31 December. The *firm* would not be permitted to change the submission date in this way, as the next submission date would be 31 December 2024, which would be more than 12 *months* after 1 April 2023. However, the *firm* could have notified the *FCA* on, for example, 1 December 2023 that it intended to change its submission date to 31 December. This is because the next submission of *data item* MIF007 would then have occurred on 31 December 2023, which would be within 12 *months* of the previous submission on 1 April 2023.

7.8.6 R Where a *firm* carries out a review of its *ICARA process* in accordance with *MIFIDPRU* 7.8.2R(2) following a change in its business model or operating model:

(1) the *firm* must submit *data item* MIF007 to the *FCA* within 20 *business days* of the *governing body* having approved the *ICARA document* resulting from that review in accordance with *MIFIDPRU* 7.8.8R; and

(2) the requirement in *MIFIDPRU* 7.8.4R to notify the *FCA* of the submission date of *data item* MIF007 does not apply to a *data item* submitted under (1).

7.8.7 R (1) A *firm* must document any review carried out under *MIFIDPRU* 7.8.2R.

(2) The documentation produced by the *firm* to comply with (1):

(a) may consist of multiple documents, provided that the relationship between them is clear, they are prepared on a consistent basis and they can all be provided to the *FCA* promptly if requested; and

(b) is collectively referred to as the *ICARA document*.

(3) The *ICARA document* must include the following:

(a) a clear description of the *firm's* business model and strategy and how it aligns with the *firm's* risk appetite;

(b) an explanation of the activities carried on by the *firm*, with a focus on the most material activities;

(c) where the *firm* has concluded that the *ICARA process* is fit for purpose, a clear explanation of why the *firm* reached this conclusion;

(d) where the *firm* has concluded that the *ICARA process* requires further improvement, a clear explanation of:

(i) the improvements needed;

(ii) the steps needed to make those improvements and the timescale for taking them; and

(iii) who within the *firm* is responsible for taking the steps in (ii);

(e) a clear explanation of any other changes to the *firm's* *ICARA process* that have occurred following the review and the reasons for those changes;

(f) an analysis of the effectiveness of the *firm's* risk management processes during the period covered by the review;

(g) a summary of the material harms identified by the *firm* under *MIFIDPRU* 7.4.13R and any steps taken to mitigate them;

(h) an overview of the business model assessment and capital and liquidity planning undertaken by the *firm* under *MIFIDPRU* 7.5.2R;

(i) a clear explanation of how the *firm* is complying with the *overall financial adequacy rule*, including a clear breakdown of the following as at the review date:

(i) available *own funds*;

(ii) available *liquid assets*; and

(iii) the *firm's* assessment of its *threshold requirements*;

(j) a summary of any stress testing and reverse stress testing carried out by the *firm*;

(k) the levels of *own funds* and *liquid assets* that, if reached, the *firm* has identified under *MIFIDPRU* 7.5.5R(1) may indicate that there is a credible risk that the *firm* will breach its *threshold requirements*;

(l) the potential recovery actions that the *firm* has identified under *MIFIDPRU* 7.5.5R(2) and 7.5.6G; and

(m) an overview of the *firm's* wind-down planning under *MIFIDPRU* 7.5.7R, including:

(i) any required actions;

(ii) the anticipated timelines for actions to be taken; and

(iii) any key assumptions or qualifications.

Senior management responsibility for the ICARA process

7.8.8 R (1) The content of the *ICARA document* must be reviewed and approved by the *firm's governing body* within a reasonable period after the review under *MIFIDPRU* 7.8.2R has been completed.

(2) As part of its review under (1), the *governing body* must specifically review and approve the key assumptions underlying the *ICARA document*.

7.8.9 G (1) Under *COCON* 2.2.2R, *senior conduct rules staff members* must take reasonable steps to ensure that the business of the *firm* for which they are responsible complies with the relevant requirements and standards of the *regulatory system*.

(2) In particular, *COCON* 4.2.12G explains that *senior conduct rules staff members* should take reasonable steps to ensure that the business for which they are responsible:

(a) has operating procedures and systems with well-defined steps for complying with the detail of relevant requirements and standards of the *regulatory system*; and

(b) is run prudently.

(3) The *FCA* considers that the *ICARA process* is a key requirement of the *regulatory system* for *MIFIDPRU investment firms* and is an essential part of a *firm's* internal systems and procedures for ensuring that the *firm's* business is run prudently. Accordingly, *senior conduct rules staff members* should take an active role in contributing to the analysis required under the *ICARA process* in respect of the business areas for which they are responsible and in embedding its requirements into those business areas.

(4) *Firms* and *senior conduct rules staff members* should refer to the provisions in *COCON*, and in particular the *guidance* in *COCON* 3 and *COCON* 4, for further information on the *FCA's* general approach to assessing compliance with the relevant conduct rules.

Record keeping requirements

7.8.10 R (1) A *firm* must keep adequate records of the following:

(a) its *ICARA document*; and

(b) the review and approval of the *ICARA document* by the *firm's governing body* under *MIFIDPRU* 7.8.8R.

(2) A *firm* must retain the records in (1) for at least 3 years from the date on which the relevant document was approved.

7.9 ICARA process: firms forming part of a group

7.9.1 G This section contains:

(1) a requirement for individual *MIFIDPRU investment firms* to take into account group risk as part of their *ICARA process*;

(2) *rules* and *guidance* on the extent to which an *investment firm group* may manage risks on a *group* basis and may operate a *group ICARA process*; and

(3) *rules* and *guidance* on the extent to which the position of multiple *MIFIDPRU investment firms* may be combined with a single *ICARA document*.

Analysis of group risk by individual firms

7.9.2 R Where a *MIFIDPRU investment firm* is a part of a *group*, the *firm's ICARA process* must take into account any material risks or potential harms that may result from the *firm's* relationship with other members of that *group* or the *group* as a whole.

7.9.3 G The requirement in *MIFIDPRU* 7.9.2R applies in relation to:

(1) any *group*, irrespective of whether that *group* is an *investment firm group*; and

(2) any relationship that the *firm* has with any member of that *group*, irrespective of whether the other entity is an *authorised person*.

Group ICARA process

7.9.4 G (1) An *investment firm group* to which *MIFIDPRU* 2.5 (Prudential consolidation) applies is not normally required to operate an *ICARA process* on a *consolidated basis*.

(2) However, in exceptional circumstances, the *FCA* may determine that a particular *investment firm group* should operate an *ICARA process* on a *consolidated basis*. For example, the *FCA* may conclude that the individual *ICARA process* operated by a *MIFIDPRU investment firm* within an *investment firm group*, or the *group ICARA process* operated by an *investment firm group*, does not adequately reflect certain material risks that arise in the context of the *investment firm group* as a whole. Therefore, in appropriate cases, the *FCA* may:

(a) invite a *UK parent entity* to apply for the imposition of a *requirement* to operate a consolidated *ICARA process* under section 55L(5) or section 143K(1) of the *Act*; or

(b) impose a *requirement* on the *FCA's* own initiative on a *UK parent entity* to operate a consolidated *ICARA process* under section 55L(3) or section 143K(3) of the *Act*.

(3) Where the *FCA* decides to impose a *requirement* on a *UK parent entity* to operate an *ICARA process* on a *consolidated basis*, it will normally discuss its expectations around the operation of that *ICARA process* in further detail with the *UK parent entity*.

(4) In appropriate cases, the *FCA* may specify that a particular entity (whether or not it is an *authorised person*) should be excluded from the *consolidated situation*. Where this is the case, the consolidated *ICARA process* should reflect the modified scope of

the *consolidated situation*. The *FCA* may adopt this approach where, for example, the inclusion of the entity within the *consolidated situation* would result in a misleading assessment of the financial resources available to, or the harms posed by, the relevant *investment firm group*.

7.9.5 R Subject to *MIFIDPRU* 7.9.7R, an *investment firm group* (whether it is subject to *MIFIDPRU* 2.5 or not) may operate a *group ICARA process*, provided that the following conditions are satisfied:

(1) the *group ICARA process* is consistent with the manner in which the business of the *investment firm group*, and the risks arising from it, are operated and managed in practice;

(2) any assessment under the *group ICARA process* of *own funds* or *liquid assets* that are required to cover the identified risks is allocated between individual *firms* within the *investment firm group* on a reasonable basis and that basis is properly documented;

(3) each *MIFIDPRU investment firm* covered by the *group ICARA process* complies with the *overall financial adequacy rule* on an individual basis;

(4) each *MIFIDPRU investment firm* covered by the *group ICARA process* maintains a separate wind-down plan for the purposes of *MIFIDPRU* 7.5.7R and applies the *wind-down triggers* on an individual basis;

(5) the notification requirements in *MIFIDPRU* 7.6.11R and 7.7.13R apply in relation to each individual *MIFIDPRU investment firm* included within the *group ICARA process*, using the amounts determined in accordance with (2) to (4);

(6) the management of any risks on a *group* basis takes place within one of the following entities:

(a) a *MIFIDPRU investment firm* within the *investment firm group*; or

(b) the *UK parent entity* of the *investment firm group*;

(7) the *governing body* of the relevant entity in (6) has accepted overall responsibility for the *group ICARA process* and for ensuring compliance with this *rule*;

(8) the requirement in *MIFIDPRU* 7.8.8R for the *governing body* of an individual *MIFIDPRU investment firm* to approve the content of the *ICARA document* applies to the *governing body* of the relevant entity in (7); and

(9) each individual *MIFIDPRU investment firm* included within the *group ICARA process* submits *data item* MIF007 (ICARA assessment questionnaire) to the *FCA* on an individual basis, reflecting the position of that *firm* as it results from the conclusions of the *group ICARA process*.

7.9.6 R Except as specified in *MIFIDPRU* 7.9.5R, a *MIFIDPRU investment firm* that is included within a *group ICARA process* is not required to comply with the requirements in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 on an individual basis.

7.9.7 R (1) An *investment firm group* must not:

(a) operate a *group ICARA process* if the *FCA* has directed the *investment firm group* to manage or assess the risks arising from its business on a different basis because one or more of the conditions in (2) applies in relation to that *investment firm group*; or

(b) include within a *group ICARA process* any *MIFIDPRU investment firm* that the *FCA* has directed to manage or assess the risks arising from its business on a different basis because one or more of the conditions in (2) applies in relation to that *firm*.

(2) The relevant conditions are that:

(a) there is a material risk that potential harms arising in relation to the *firm* or *investment firm group* would not be adequately captured through a *group ICARA process*;

(b) there is a material risk that a *group ICARA process* would result in excessive complexity that would interfere with the *FCA's* ability to supervise the compliance of the *investment firm group*, or any of the individual *MIFIDPRU investment firms* within it, with its obligations under *MIFIDPRU* 7; or

(c) the *investment firm group* previously operated, or the *firm* was previously included within, a *group ICARA process* that did not meet the requirements in *MIFIDPRU* 7.9.

7.9.8 R Except as otherwise specified in *MIFIDPRU* 7.9.5R, a *group ICARA process* must comply with the requirements in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 as if the references in those sections to a "*MIFIDPRU investment firm*" are references to the *investment firm group* operating that *group ICARA process*.

7.9.9 G (1) Under *MIFIDPRU* 7.9.7R, if an *investment firm group* is operating a *group ICARA process* that is inadequate to address the potential harms arising from its business, the *FCA* may direct all members of the *investment firm group*, or individual *MIFIDPRU investment firms* within it, to apply the *ICARA process* on an individual basis.

(2) In addition, a *group ICARA process* must satisfy the requirements in *MIFIDPRU* 7.9.5R on an ongoing basis. If any of the conditions in that *rule* for the use of the *group ICARA process* are not met, all *MIFIDPRU investment firms* covered by that *group ICARA process* must operate individual *ICARA processes* instead.

(3) An *investment firm group* that wishes to operate a *group ICARA process* must therefore ensure that its risk management processes are sufficiently robust to satisfy the requirements in *MIFIDPRU* 7.9.5R and that there is appropriate accountability of the responsible *governing body* in accordance with the requirements of that *rule*.

(4) The *FCA* considers that it is important that there is a proper analysis of how the *overall financial adequacy rule* and wind-down planning arrangements apply to each individual *MIFIDPRU investment firm* within the *investment firm group*. This reflects the fact that the solvency of *firms* must be assessed on an individual basis and legal entities must be wound down separately.

Combined ICARA documents covering multiple group entities

7.9.10 R Where an *investment firm group* contains multiple *MIFIDPRU investment firms*, the *ICARA document* for each *firm* may be combined within a single document, provided that:

(1) to the extent that any risks are managed under a *group ICARA process*, this is clearly documented and explained; and

(2) for any risks that are managed on an individual basis, and for any requirements that *MIFIDPRU* 7.9.5R specifies must always apply on an individual basis under a *group ICARA process*, the combined *ICARA document* clearly explains the position of each individual *firm* and how it complies with the relevant requirements.

7.9.11 G The effect of *MIFIDPRU* 7.9.10R is that even where an *investment firm group* does not operate a *group ICARA process*, a single *ICARA document* can be used to document the individual *ICARA processes* operated by multiple *MIFIDPRU investment firms* within that *investment firm group*. However, the single *ICARA document* must clearly explain how each *MIFIDPRU investment firm* meets the applicable requirements on an individual basis.

7.10 Supervisory review and evaluation process

Application

7.10.1 G (1) This section contains *guidance* on the *FCA's* approach to the *supervisory review and evaluation process* (*SREP*) of the *ICARA process*.

(2) Although there are no *rules* in this section that impose direct obligations on *MIFIDPRU investment firms* or *UK parent entities*, these entities may find the *guidance* in this section helpful in understanding the *FCA's* general approach to considering whether *MIFIDPRU investment firms* are complying with the *overall financial adequacy rule* and the other requirements of the *ICARA process*.

(3) The *guidance* in this section relates only to the *FCA's* approach to the *SREP*. It does not apply to any other supervisory action that the *FCA* may take, except where stated.

Purpose

7.10.2 G The *own funds* and *liquid assets* necessary to comply with the *overall financial adequacy rule* need to be assessed by the *firm* and, where appropriate, the *FCA*. This involves:

(1) the *ICARA process* applied by the *firm*, or, in the circumstances set out in *MIFIDPRU* 7.9, by the *investment firm group*;

(2) the *FCA's* monitoring of the information provided by a *firm* under its ongoing reporting obligations in *MIFIDPRU* 9; and

(3) in appropriate cases, a *SREP*, which is conducted by the *FCA*.

Decision to conduct a SREP

7.10.3 G (1) There is no mandatory frequency with which the *FCA* will conduct a *SREP* on a particular *MIFIDPRU investment firm* or *investment firm group*. Instead, the *FCA* will prioritise its resources to conduct *SREPs* by taking into account a range of factors, which include:

(a) the nature, scale and complexity of the business carried on by a *firm* or *investment firm group*;

(b) the *FCA's* analysis of the risks associated with the *firm* or *investment firm group* and its potential to cause harm to *consumers* or to the financial markets;

(c) the information provided by a *firm* or other members of its *group* to the *FCA* under any notification and reporting obligations under *MIFIDPRU* or other obligations in the *Handbook*;

(d) the history of the *firm's* or *investment firm group's* interactions with the *FCA*;

(e) any broader concerns about the types of products or services offered by the *firm* or the *investment firm group*, or the markets in which it operates; and

(f) any concerns relating to the *firm* or *investment firm group* which may be notified to the *FCA* by other regulators (including non-financial services regulators).

(2) In appropriate cases, the *FCA* may conduct a review of a particular population of *MIFIDPRU investment firms* or *investment firm groups* that share common features (for example, because they are all active in a particular market sector). As a result, the *FCA* may issue *guidance* on a sectoral basis or impose additional *requirements* on all, or only a subset of, the entities included within that review.

(3) The scale of a *SREP* that the *FCA* carries out on an individual *MIFIDPRU investment firm* or *investment firm group* may vary, depending on the nature of the *FCA's* concerns and the potential degree of risk posed by the *firm* or *investment firm group*. In certain cases, the *FCA* may limit its review to only a subset of the information and factors that it would normally consider under the general approach described in *MIFIDPRU* 7.10.4G and 7.10.5G.

Information and factors considered by the FCA when conducting a SREP

7.10.4 G When conducting a *SREP*, the *FCA* will take into the following:

(1) the *firm's* or *investment firm group's ICARA document*;

(2) any relevant information provided by the *firm* or other members of its *group* as part of its reporting obligations under *MIFIDPRU* 9 or other obligations in the *Handbook*;

(3) any other information or documents requested by the *FCA* for the purposes of the *SREP*;

(4) interviews with members of the *firm's governing body*, or its employees, advisers, service providers, and auditors;

(5) information shared by other authorities; and

(6) any other relevant information that the *FCA* holds.

7.10.5 G The following is a non-exhaustive list of factors that the *FCA* will normally consider when conducting its *SREP*:

(1) the extent to which the *firm's* or *investment firm group's* risk management framework includes a clearly defined risk appetite;

(2) the governance arrangements operated by the *firm* or *investment firm group*, including whether there are clear lines of accountability and evidence of appropriate senior management involvement;

(3) whether the *firm* or *investment firm group* has appropriately identified and assessed the materiality of:

(a) the harms that may arise from the ongoing operation of the *firm's* or *group's* business;

(b) the harms that may result from a disorderly wind-down of the *firm* or other members of its *group*;

(4) whether the *firm* or *investment firm group* has adequate systems and controls in place to monitor and manage the risks arising from its business;

(5) whether the *firm* or *investment firm group* has properly integrated its *ICARA process* into day-to-day decision making within its business;

(6) whether the *firm*, and where applicable, other individual members of its *investment firm group*, have adequate *own funds* and *liquid assets* to comply with the *overall financial adequacy rule*;

(7) whether the capital and liquidity planning and business model analysis (and, where applicable, stress testing and reverse stress testing) conducted by the *firm* or *investment firm group* is based on plausible scenarios that are relevant to the business it undertakes; and

(8) whether the wind-down planning assessment conducted by the *firm*, and where applicable, other individual members of its *investment firm group*, is adequate, contains a clear explanation of the key steps needed to ensure an orderly wind-down and is based on realistic assumptions.

Examples of actions that the FCA may take following a SREP

7.10.6 G (1) Once the *FCA* has completed a *SREP*, it will consider whether any corrective action is necessary to ensure that (among other outcomes) a *firm*:

(a) complies with the *overall financial adequacy rule*;

(b) has an appropriate plan in place to ensure an orderly wind-down; and

(c) appropriately identifies and manages the material potential harms that may result from the ongoing operation of the *firm's* business.

(2) When considering the action that it may take, the *FCA* will consider its powers and the potential harms that it has identified during the *SREP*. The following is a non-exhaustive list of actions that the *FCA* may take:

(a) requiring a *firm* to hold additional *own funds* or *liquid assets*;

(b) requiring a *firm* to implement new risk management or governance arrangements;

(c) requiring a *firm* to provide to the *FCA*, within a specified period, an improvement plan to ensure that the *firm* complies with the applicable requirements in the *Handbook* or other legislation;

(d) requiring a *firm* to apply a particular policy for provisioning or for the treatment of assets when calculating its *own funds* or *own funds requirement*;

(e) restricting the activities that a *firm* may undertake as part of its business (which may be on a permanent basis, for a specified period of time, or until certain specified conditions are met);

(f) requiring a *firm* to reduce the level of risk involved in the products or services it provides, including in relation to activities that it has outsourced to third parties;

(g) requiring a *firm* to reduce or limit the amount of variable remuneration it pays;

(h) requiring a *firm* to reduce or limit its distributions of profits;

(i) imposing additional or more frequent reporting requirements on a *firm*;

(j) requiring a *firm* to hold an *own funds* or *liquid assets* buffer in excess of the amounts necessary to comply with the *overall financial adequacy rule*;

(k) requiring a *firm* to make additional public disclosures;

(l) requiring a *firm* to strengthen its data security, confidentiality or data protection processes;

(m) requiring a *firm* to provide additional information to *clients* or counterparties;

(n) withdrawing a permission previously granted under *MIFIDPRU* to apply a specific treatment (such as a *K-CMG permission*, or a permission to use an internal model for the purposes of the *K-NPR requirement*);

(o) requiring a *firm* to use a different *wind-down trigger*;

(p) requiring a *firm* to modify its legal structure or the structure of its *group*, where doing so would improve the *FCA's* ability to supervise the *firm*;

(q) giving individual *guidance* to the *firm* on any of the above matters or on any other matter that the *FCA* considers is relevant.

7.10.7 G The *FCA* would normally expect to take the actions described in *MIFIDPRU* 7.10.6G by using one or more of the following approaches:

(1) exercising the powers under section 55J of the *Act* permitting the *FCA* to vary or cancel a *firm's permission* on the *FCA's* own initiative;

(2) inviting a *firm* to make a voluntary application for the imposition of a *requirement* under section 55L(5) of the *Act*;

(3) imposing a *requirement* on a *firm* on the *FCA's* own initiative under section 55L(3) of the *Act*;

(4) withdrawing a *MIFIDPRU* permission in accordance with the *rules* in *MIFIDPRU*;

(5) imposing a *requirement* on a *parent undertaking* in accordance with section 143K of the *Act*;

(6) requiring a *firm* or *parent undertaking* to provide additional information to the *FCA* under section 165 of the *Act*;

(7) requiring a report by a *skilled person* in accordance with section 166 of the *Act*; or

(8) giving individual *guidance* to a *firm* under section 139A of the *Act*, as further described in *SUP* 9.3.

General FCA approach to requiring a firm to hold additional own funds or liquid assets

7.10.8 G (1) Following a *SREP*, the *FCA* may conclude that a *firm* should hold an additional amount of *own funds* or *liquid assets* to comply with the *overall financial adequacy rule*.

(2) In this case, the *FCA* will normally specify an amount of *own funds* and/or *liquid assets* that the *firm* should hold by:

(a) issuing individual *guidance*; or

(b) imposing a *requirement* on the *firm*.

(3) The amount in (2) normally represents the *FCA's* assessment of the *firm's* overall *own funds threshold requirement* or *liquid assets threshold requirement*. However, in some cases, it may be specified on a different basis (such as by reference to a specific component of the *threshold requirement* or to a particular risk or harm).

(4) Where the *FCA* has undertaken a sectoral review, as described in *MIFIDPRU* 7.10.3G(2), it may issue *guidance* to, or impose a *requirement* on, some or all *firms* that are active in that sector, without conducting an individual *SREP* in relation to each *firm*. The *guidance* or *requirement* may relate to:

(a) additional amounts of *own funds* or *liquid assets* that the *firms* must hold; or

(b) other actions that the *firms* must undertake.

7.10.9 G (1) The *FCA* will determine whether a *requirement* or *guidance* is more appropriate. Where the *FCA* issues *guidance*, this will normally explain how the *FCA* will approach supervising the *overall financial adequacy rule* in relation to the *firm*. The *FCA* expects that the *firm* would normally confirm to the *FCA* that the *firm* will treat the amounts specified in that *guidance* as its *threshold requirements* going forward (and will therefore hold the relevant of *own funds* and *liquid assets* to comply with the *overall financial adequacy rule*), unless the *firm* subsequently determines under its *ICARA process* that higher amounts are required.

(2) Where the *FCA* applies a *requirement* in connection with the *overall financial adequacy rule*, it may invite a *firm* to make a voluntary application under section 55L(5) of the *Act* to impose a *requirement* on the *firm* to hold the level of *own funds* or *liquid assets* that the *FCA* has assessed as being the *firm's threshold requirements*.

(3) If a *firm* declines to make a voluntary application to impose the relevant *requirement*, the *FCA* may use its powers under section 55L(3) of the *Act* to impose the *requirement* on the *firm* on the *FCA's* own initiative.

(4) The *FCA* may also consider whether it is appropriate to invite a *parent undertaking* of the *firm* to make a voluntary application under section 143K(1) of the *Act*, or to impose a *requirement* on

the *parent undertaking* on the *FCA's* own initiative under section 143K(3) of the *Act*. This *requirement* may operate by reference to the status of the *investment firm group* as a whole. Examples of when the *FCA* may choose to apply this approach include where:

(a) an *investment firm group* is operating an *ICARA process* that covers multiple *firms* in accordance with *MIFIDPRU* 7.9; or

(b) the *FCA* considers that the potential harms arising from a *firm's* membership of its *group* can be addressed more effectively by imposing a *requirement* on the *parent undertaking*.

(5) *Guidance* on a *threshold requirement* issued by the *FCA* (or, where applicable, a *requirement* to hold a minimum level of *own funds* or *liquid assets* imposed on a *firm* by the *FCA*) will apply until the *FCA* issues *guidance* on a revised *threshold requirement* (or varies or removes the *requirement* relating to *own funds* or *liquid assets*) in relation to the *firm*.

(6) If a *firm* subsequently determines, as a result of its *ICARA process*, that it needs to hold a higher level of *own funds* or *liquid assets* to satisfy the *overall financial adequacy rule*, it must hold that higher level. This is because the *FCA's* assessment of a *firm's threshold requirement* (or a *requirement* applied to the *firm* by the *FCA*) reflects an assessment carried out at that point in time and does not relieve the *firm* of its obligation to comply with the *overall financial adequacy rule* at all times.

(7) A *firm's* business model or operating model may change significantly, with the result that the *firm* considers that the *threshold requirement* specified in the *guidance* issued by, or the *requirement* applied by, the *FCA* exceeds the amount of *own funds* or *liquid assets* that the *firm* requires to comply with the *overall financial adequacy rule*. In this case, the *firm*:

(a) should undertake its own assessment of the amounts that the *firm* requires to comply with the *overall financial adequacy rule* or, where applicable, to address the risks in relation to which the *requirement* was imposed; and

(b) having undertaken the determination in (a), may contact the *FCA* to request a review of the existing *guidance* or *requirement*.

7.10.10 G The following is a non-exhaustive list of situations in which the *FCA* may assess that a *firm* must hold additional *own funds* to comply with the *overall financial adequacy rule*:

(1) the business of the *firm* or *investment firm group* may result in material harm that is not sufficiently covered by the *firm's*

assessment of its *own funds threshold requirement* and has not otherwise been adequately mitigated;

(2) the *firm* or *investment firm group* does not comply with the governance requirements in *MIFIDPRU* 7.2 or 7.3;

(3) the *firm's* or *investment firm group's ICARA process* does not comply with the relevant requirements in *MIFIDPRU* 7;

(4) the adjustments in relation to the prudent valuation of the *firm's* or *investment firm group's trading book* are insufficient to enable the *firm* or *investment firm group* to sell out or hedge its positions within a short period without incurring material losses under normal market conditions;

(5) the review of the *firm's* use of internal models or own estimates of delta for the purposes of the *K-NPR requirement* or *K-TCD requirement* indicates that non-compliance with the requirements for applying those models is likely to lead to inadequate levels of *own funds*;

(6) the manner in which the *firm* or *investment firm group* operates its business suggests that there is a significant risk that it will fail to comply with the *overall financial adequacy rule* in the foreseeable future; or

(7) the *firm's* wind-down plan does not identify realistic and credible actions for ensuring an orderly wind-down or is based on unreasonable or unrealistic assumptions.

7.10.11 G The *FCA* may provide *guidance* on a *firm's own funds threshold requirement* (or, where applicable, impose a *requirement*) by reference to:

(1) a percentage of the *firm's own funds requirement*;

(2) the requirement that would result from applying a modified co-efficient to one or more *K-factor metrics* for the purposes of the *firm's K-factor requirement*; and/or

(3) a fixed amount.

7.10.12 G A *firm* must meet any *own funds threshold requirement* with *own funds* that satisfy the conditions in *MIFIDPRU* 7.6.5R unless the *FCA* applies an alternative *requirement* to the *firm*.

7.10.13 G The following is a non-exhaustive list of situations in which the *FCA* may assess that a *firm* needs to hold additional *liquid assets* to comply with the *overall financial adequacy rule*:

(1) the business of the *firm* or *investment firm group* may result in material harm that is not sufficiently covered by the *liquid assets*

threshold requirement as assessed by the *firm* and has not otherwise been adequately mitigated;

(2) the *firm* or *investment firm group* does not comply with the governance requirements in *MIFIDPRU* 7.2 or 7.3 in one or more material respects;

(3) the *firm's* or *investment firm group's ICARA process* does not comply with the requirements in *MIFIDPRU* 7;

(4) the *firm* or *investment firm group's* funding profile indicates that there may be a significant liquidity mismatch between amounts payable and receivables;

(5) the manner in which the *firm* or *investment firm group* operates its business suggests that there is a significant risk that it will fail to comply with the *overall financial adequacy rule* in the foreseeable future; or

(6) the *firm's* wind-down plan does not identify realistic and credible actions for ensuring an orderly wind-down or is based on unreasonable or unrealistic assumptions.

7.10.14 G (1) A *firm* can normally meet its *liquid assets threshold requirement* with any type of *liquid assets*. This is subject to the overriding requirement that in all cases, a *firm* must meet its *basic liquid assets requirement* with *core liquid assets*.

(2) However, in appropriate cases, the *FCA* may require a *firm* to meet all or part of its *liquid assets threshold requirement* with a more limited subset of *liquid assets*. For example, in certain cases, the *FCA* may require a *firm* to hold *core liquid assets* to cover particular risks or may disallow the use of certain *non-core liquid assets*.

(3) The *FCA* may also:

(a) require a *firm* to apply modified haircuts to *non-core liquid assets*; or

(b) impose certain requirements relating to a *firm's* funding profile and the matching of expected liquidity outflows and inflows.

(4) Where the *FCA* wishes to apply the approaches in (2) or (3), it will normally invite the *firm* to apply for the imposition of a *requirement* to that effect under section 55L(5) of the *Act*. In appropriate cases, the *FCA* may impose such a *requirement* on its own initiative in accordance with section 55L(3) of the *Act*.

7 Annex 1 Guidance on assessing potential harms that is potentially relevant to all firms

Purpose

1.1	G	(1)	This annex contains *guidance* on how a *MIFIDPRU investment firm* can assess the potential harms arising from its business as part of the *ICARA process*.
		(2)	This *guidance* is designed to be of relevance to all *firms*, but not every aspect of this *guidance* will be relevant to every *firm*. A *firm* should consider this *guidance* in light of its particular business model.
		(3)	A *firm's ICARA process* must be proportionate to the nature, scale and complexity of its activities. This *guidance* should be interpreted by reference to what is proportionate and appropriate for a particular *firm*.

General approach to assessing material potential harms

1.2	G	(1)	For the purposes of its *ICARA process*, a *firm* should identify potential harms by considering plausible hypothetical scenarios that may occur in relation to the activities that the *firm* carries on. The *firm* should also consider the possibility that certain scenarios may occur at the same time or that there may be a correlation between connected scenarios.	
		(2)	A *firm* should generally estimate the nature and size of potential harms by using its own knowledge and experience.	
		(3)	Where appropriate, a *firm* may use peer analysis to estimate potential harms. In this case, the *firm* should take into account any material differences between the *firm's* business and the business carried on by its peer, and to the extent that it is aware of them, any material differences in their respective systems and controls.	
		(4)	A *firm* may, but is not required to, use statistical models to identify potential harms, but where it does, the *firm* should consider the following factors:	
			(a)	the importance of ensuring that the statistical model is properly integrated into the *firm's* wider approach to mitigating risk under the *ICARA process* and appropriately takes into account the *guidance* on assessing harm in *MIFIDPRU* 7;
			(b)	the *FCA's* expectation that relevant *individuals* within the *firm* who are responsible for the *firm's* risk management function or for the oversight of that function should fully understand how the model operates, including any relevant assumptions or limitations and

should be able to explain how this contributes to compliance with the *overall financial adequacy rule*;

(c) the accuracy of the model depends on ensuring that the inputs into the model are appropriate and properly reflect the *firm's* business;

(d) the importance of periodically checking that the outputs of the model remain appropriate. This includes model validation; and

(e) the fact that excessive reliance on the model may result in the *firm* failing to operate wider risk management systems and controls.

(5) In some cases, it may be reasonable for a *firm* to take into account the impact of insurance when assessing potential harms and considering how the *firm* manages risks. However, *firms* should note that in many cases, insurance may not be an adequate substitute for financial resources that are required to address harm immediately. *Firms* should also consider the terms of any insurance, including any limitations or exclusions, when assessing the extent to which insurance may be an appropriate and effective risk mitigant.

Examples of situations that may result in material harm to clients

1.3 G The following are non-exhaustive examples of risks to *clients* or to the market that may arise from a *firm's* business:

(1) breach of an investment mandate, resulting in *clients* being exposed to risks outside of their specified tolerance or to investments which are otherwise unsuitable for their objectives;

(2) trading or dealing errors that result in losses to *clients*;

(3) outages in, or other problems with, the *firm's* systems that cause disruption to the continuity of the *firm's* services (for example, by preventing the *firm's clients* from being able to see the value of their investments or from being able to issue trading instructions), leading to financial losses for *clients*;

(4) corporate finance advice which results in a legal claim against the *firm*;

(5) losses to *clients* caused by the activities of the *firm's tied agents* or *appointed representatives* (including in respect of any business which is not *MiFID business* for which the *firm* may be liable as principal) for which the *firm* is responsible;

(6) provision of unsuitable *investment advice*, for example in relation to pension transfers or investments, resulting in *clients* suffering losses;

(7) failure to comply with any applicable provisions of *CASS*, resulting in potential losses to *clients*; and

(8) the inability to return money received by the *firm* by way of *title transfer collateral arrangement* promptly to a *client* when required.

Examples of situations that may result in harm to the firm

1.4 G (1) Events that result in material harm to a *firm* may affect the viability of the *firm's* business. In turn, that may affect the *firm's* ability to meet its obligations to *clients* or to its other counterparties and may increase the risk of a disorderly wind-down.

(2) The following are non-exhaustive examples of situations that may result in material harm to a *firm*:

(a) claims on *tied agents* or *appointed representatives* that result in the *firm* being liable as principal;

(b) the failure of significant *clients* or counterparties upon which the *firm* relies to generate a significant proportion of its revenue;

(c) significant operational events, such as the failure of key systems or internal fraud; and

(d) obligations of the *firm* relating to liabilities under a defined benefit pension scheme.

Assessing the harm that may result from insufficient liquidity

1.5 G When assessing potential harms that may occur in connection with its business, a *firm* should consider any potential impact on its *liquid assets*. Where a *firm* has insufficient *liquid assets* to cover the relevant harm, it may find itself unable to pay its debts as they fall due. In turn, this could trigger an unexpected insolvent wind-down, which has the potential to cause harm to *clients*, counterparties and the wider markets.

1.6 G (1) The systems that the *firm* uses to identify and monitor liquidity risk should be tailored to its business lines, the currencies in which it operates and its structure (taking into account, for example, whether it operates *branches* or supports *subsidiaries* or other *group* entities). In addition, those systems should consider liquidity costs, benefits and risks, including intra-day *liquidity risk*.

(2) The systems that a *firm* uses to identify and monitor *liquidity risk* should be proportionate to the complexity, size, structure and risk profile of the *firm* and the scope of its operations.

1.7 G When a *firm* is assessing the quality and amount of *liquid assets* that it has available, the following is a non-exhaustive list of factors that may be relevant:

(1) the extent to which assets held by the *firm* can be converted into cash within a reasonable time period;

(2) any legal or operational restrictions that may apply to the *firm* or to particular assets, which may affect the *firm's* ability to realise assets or to access cash in a timely manner;

(3) the extent to which *liquid assets* may be held, or the proceeds of the *firm's* assets may be received, in currencies other than the expected currency of the *firm's* liabilities and the ease with which those currencies can be converted (including in stressed market conditions); and

(4) any legal or practical restrictions on the transferability of funds between the *firm* and other members of its *group*, including in stressed market conditions.

1.8 G When a *firm* is assessing the amount of *liquid assets* it may need to address potential harms, the following is a non-exhaustive list of factors that may be relevant:

(1) any concentration of the *firm's* funding arrangements, including in relation to:

(a) counterparties (or groups of connected counterparties) providing funding;

(b) products or facilities used to provide funding; and

(c) currencies;

(2) the extent to which the *firm* may be exposed to mismatches between the maturity of its assets and its liabilities;

(3) whether stressed market conditions could lead to accelerated cash outflows from the *firm* or longer-term reductions in the availability of *liquid assets*;

(4) whether intra-day obligations could affect the *firm's* ability to meet its payment and settlement obligations in a timely manner (including potential margin calls in relation to the *firm's* own positions, or positions of the *firm's clients* in respect of which the *firm* has an obligation to meet the relevant margin call);

(5) any requirements on the *firm* (whether or not they are legally binding) arising from any off-balance sheet arrangements, including:

(a) commitments under any credit or liquidity facilities (including those which may be cancelled at any time) or guarantees;

(b) obligations under any liquidity facilities supporting securitisation programmes; or

(c) obligations in relation to *client money*;

(6) payments that the *firm* may make to maintain its franchise, reputation or brand or to ensure the continued viability of its business, even though the *firm* may be under no legal obligation to make the payments; and

(7) the possibility of other unexpected payment obligations, such as:

(a) direct or indirect costs arising from litigation;

(b) redress payments; or

(c) fines or penalties.

1.9 G (1) When considering *liquidity risk* and potential harms, a *firm* should consider whether it has sufficient diversification in funding sources.

(2) A *firm* should consider whether there may be a correlation between different market conditions and the *firm's* ability to access funding from different sources.

(3) When analysing what level of funding diversification is appropriate for its business, a *firm* should consider the following:

(a) the maturity date of any funding arrangements;

(b) the nature of the counterparty providing the funding;

(c) whether the funding arrangement is secured or unsecured;

(d) if the funding arrangement is in the form of a *financial instrument*, the relevant type of instrument;

(e) the currency of the funding arrangement; and

(f) the geographical market of the funding arrangement.

(4) A *firm* should regularly assess whether its ability to raise short, medium and long-term liquidity is sufficient for its ongoing requirements.

1.10 G (1) A *firm* should consider whether it has appropriately addressed potential harms arising from *liquidity risk* in relation to the following aspects of the *firm's* significant business activities:

(a) product pricing;

(b) performance measurement and incentives; and

(c) the approval process for new products.

(2) A *firm* should take into account the *liquidity risk* arising from any significant business activities and product lines, whether or not they are accounted for on the *firm's* balance sheet.

(3) A *firm* should clearly identify the liquidity costs and benefits attributable to particular significant business and product lines and relevant *individuals* within business line management for those areas should have an appropriate understanding of such costs and benefits.

(4) A *firm* should address all significant business activities, including those that involve the creation of contingent exposures which may not have an immediate balance sheet impact.

(5) Incorporating liquidity pricing into a *firm's* processes may assist in aligning the risk-taking incentives of individual business lines within a *firm* with the *liquidity risk* and potential harms that may result from the activities of those business lines.

1.11 G (1) *Firms* should consider intra-day liquidity positions when considering the *liquidity risk* and potential harms that may result from their operations.

(2) As part of their *ICARA process*, a *firm* should identify:

(a) any significant time-critical payment or settlement obligations and any arrangements that are in place to prioritise the payments;

(b) any significant payment or settlement obligations that the *firm* may have as a result of acting as a custodian or a settlement agent;

(c) any potential net funding shortfalls that the *firm* may have at different points during the *day*;

(d) potential significant disruptions to its intra-day liquidity flows and any arrangements in place to deal with these; and

(e) any arrangements necessary to ensure the proper management of collateral.

1.12 G When identifying *liquidity risk* and potential material harms that may result in relation to a *firm's* use and management of collateral, the following considerations are relevant:

(1) the *firm's* ability to distinguish clearly at any time between encumbered assets and assets that are unencumbered and available to meet the *firm's* liquidity needs, particularly in an emergency situation;

(2) the jurisdiction in which the assets are based or registered and any legal or regulatory restrictions that may apply to the availability or use of the assets as a result;

(3) any operational restrictions that may apply in relation to the assets;

(4) the extent to which collateral deposited by the *firm* with a counterparty or third party may have been rehypothecated;

(5) the extent to which the assets available to the *firm* to use as collateral are likely to be acceptable to the *firm's* major counterparties and liquidity providers;

(6) the impact of any existing financing or security arrangements entered into by the *firm* (which may contain financial covenants, warranties, events of default or negative pledge clauses) on the *firm's* ability to provide collateral; and

(7) the potential impact of severe but plausible stressed scenarios on the *firm's* ability to provide collateral where necessary and on any collateral received by the *firm*.

1.13 G A *firm* that has significant positions in foreign currencies should consider the *liquidity risk* and potential harms that may arise as a result of the positions.

1.14 G As part of its assessment under *MIFIDPRU* 7.9.2R, a *firm* that forms part of a *group* should consider the extent to which membership of that *group* may have an impact on the *firm's* own liquidity position.

In-depth stress testing and reverse stress testing

1.15 G The *guidance* in *MIFIDPRU* 7 Annex 1.16G to *MIFIDPRU* 7 Annex 1.20G is relevant to *firms* with more complex businesses or operating models.

1.16 G Stress testing carried out by a *firm* should involve the following:

(1) identifying severe but plausible adverse scenarios which are relevant to the *firm* and the market in which it operates;

(2) stating clear assumptions, when compared to the *firm's* business-as-usual projections, which are consistent with the scenarios identified in (1);

(3) considering the impact of the scenarios identified in (1) against the *firm's* own risk appetite, by reference to:

(a) individual business lines or portfolios; and

(b) the overall position of the *firm* as a whole;

(4) assessing the impact of the scenarios in (1) on the *firm's*:

(a) available *own funds* and *liquid assets*; and

(b) *own funds requirement* and *basic liquid assets requirement*;

(5) estimating the effects of scenarios identified in (1) on each of the following as they relate to the *firm*, both before and after taking into account any realistic management actions:

(a) profits and losses;

(b) cash flows;

(c) the liquidity position; and

(d) the overall financial position; and

(6) the *firm's governing body* regularly reviewing the scenarios identified in (1) to ensure that their nature and severity remain appropriate and relevant to the *firm*.

1.17 G When considering the impact of the scenarios in *MIFIDPRU* 7 Annex 1.16G(1) on a *firm's* available *liquid assets*, the *FCA* considers that the following factors are relevant:

(1) correlations between funding markets;

(2) the effectiveness of diversification across the *firm's* chosen sources of funding;

(3) any potential additional margin calls or collateral requirements;

(4) contingent claims, including potential draws on committed lines extended to third parties or other entities within the *firm's group*;

(5) *liquid assets* absorbed by off-balance sheet vehicles and activities (including conduit financing);

(6) the transferability of *liquid assets*;

(7) access to central bank market operations and liquidity facilities;

(8) estimates of future balance sheet growth;

(9) the continued availability of market liquidity in a number of currently highly liquid markets;

(10) the ability to access secured and unsecured funding;

(11) currency convertibility; and

(12) access to payment or settlement systems on which the *firm* relies.

1.18 G Reverse stress testing carried out by a *firm* should involve the following:

(1) identifying a range of adverse circumstances which would cause the *firm's* business model to become unviable;

(2) assessing the likelihood that the adverse circumstances in (1) will occur;

(3) determining whether the risk of the *firm's* business model becoming unviable is unacceptably high when compared with the *firm's* risk appetite or tolerance; and

(4) where the *firm* determines under (3) that the risk is unacceptably high, adopting effective arrangements, processes, systems or other measures to prevent or mitigate that risk. This may include making appropriate changes to the *firm's* business model or operating model.

1.19 G For the purposes of reverse stress testing, the following are non-exhaustive examples of when a *firm's* business model may become unviable:

(1) all or a substantial portion of the *firm's* counterparties are unwilling to continue transacting with the *firm* or seeking to terminate their contracts with it. In some circumstances, the failure of a single major counterparty or *client* may cause a

firm's business to become unviable, particularly if this could result in wider market disruption;

(2) another member of the *firm's group* is unable or unwilling to provide the support which is necessary for the *firm* to continue its business (for example, by withdrawing access to shared services or funding arrangements);

(3) the *firm's* existing shareholders or owners are unwilling to provide new capital when required; or

(4) a sustained and continued reliance on income or revenue generated from a peripheral activity (for example, interest income derived from *client money*).

1.20 G The following table is a simple example of how a *firm* might analyse and record the outcome of stress testing using the *guidance* in *MIFIDPRU* 7 Annex 1.18G.

Example scenario	**Likelihood**	**Mitigants**
Failure of a significant counterparty leads to a liquidity shortfall that causes the *firm* to default on its own obligations	Medium – above *firm's* risk appetite	Contingency funding plan
30% drop in revenue over a 6-*month* period leads to sustained losses and management actions have little impact	Low – in line with *firm's* risk appetite	
Management actions after a stress event fail to rebuild capital and the *firm's group* and shareholders are unwilling to inject further capital	Low – in line with *firm's* risk appetite	
Large numbers of staff and outsourced providers are absent due to illness during a pandemic and the *firm* is not able to operate revenue-	High – above *firm's* risk appetite	Identify back up outsourcing providers and enable staff to work from home

generating activities for a *month*		
Cyber-attack results in the *firm* being unable to access systems and provide services for 3 weeks. This results in loss of revenue, a liquidity shortfall and fines from regulators	Medium – above *firm's* risk appetite	Improvements to cyber resilience

1.21 G A *firm's* business model may become unviable long before the *firm's* financial resources have been exhausted. The *FCA* recognises that not every business failure is the result of a lack of financial resources and individual *firms* may vary in their assessment of when they would be unwilling or unable to continue carrying on their activities. Examples of where a *firm's* business model may become unviable before its financial resources are exhausted include:

(1) the *firm* has a sustained and continued reliance on income or revenue generated from a peripheral or ancillary activity, such as interest income derived from *client money*; or

(2) the *firm* is reliant on *title transfer collateral arrangements* to meet its *basic liquid assets requirement* on a sustained basis.

7 Annex 2 Additional guidance on assessing potential harms that is relevant for firms dealing on own account or firms with significant investments on their balance sheet

Purpose

2.1 G (1) This annex contains *guidance* on how a *MIFIDPRU investment firm* should assess the potential harms arising from its business as part of its *ICARA process*. This *guidance* is primarily intended to be relevant to *firms* that *deal on own account* or hold significant investments on their balance sheets. It should be interpreted in light of the *firm's* individual business model.

(2) *Firms* are reminded that their *ICARA process* must be proportionate to the nature, scale and complexity of their activities. This *guidance* should be interpreted by reference to what is proportionate for a particular *firm*.

2.2 G A *firm* that *deals on own account* or holds significant investments on its balance sheets may be at increased risk of events that result in significant losses or other harm to the *firm*. In turn, this may increase the risk of a *firm* defaulting on its obligations to counterparties or becoming insolvent and entering a disorderly wind-down.

Examples of situations that may result in material harm to the firm

2.3 G The following are examples of situations that may result in harm to the *firm*:

(1) material adverse changes in the book value of the *firm's* assets;

(2) the failure of the *firm's clients* or counterparties; and

(3) losses incurred or payments due in connection with positions taken by the *firm* in *financial instruments*, foreign currencies and commodities (irrespective of whether those positions form part of the *firm's trading book* or not).

2.4 G When a *firm* is assessing potential harms connected with material changes in the book value of the *firm's* assets, the following non-exhaustive list of factors may be relevant:

(1) changes in the creditworthiness or the default of a *client* or counterparty, where that change or default may result in the *firm* realising assets below their book value or recording impairments, revaluations or write-downs;

(2) changes in market conditions which may affect relevant prices, indices or rates, including changes in equity, debt or foreign exchange markets or interest rates;

(3) operational events or natural disasters that may affect the value of the *firm's* assets;

(4) any concentration of the *firm's* assets in relation to a specific:

(a) *client* or counterparty (or group of connected *clients* or counterparties);

(b) economic sector or sub-sector; or

(c) geographical market.

This concentration assessment should not be limited to the particular risks covered by the requirements in *MIFIDPRU* 5, but should involve a broader assessment of the risks that may arise in relation to the concentration;

(5) whether any of the *firm's* assets are, or have a value which depends on, complex products, such as interests in securitisations or structured products which are complex or opaque;

(6) the extent to which the *firm* has used leverage (including contingent leverage); and

(7) whether the *firm* has any exposures under off-balance sheet items, such as commitments or guarantees.

2.5 G When a *firm* is assessing potential harms arising from the failure of its *clients* or counterparties, the following non-exhaustive list of factors may be relevant:

(1) changes in the creditworthiness or the default of a *client* or counterparty, which may result in direct losses for the *firm* or the need to revalue or replace transactions;

(2) changes in market conditions which may result in the *firm* incurring greater costs to replace a transaction that the *client* or counterparty has failed to settle;

(3) the risk that collateral received from the *client* or counterparty may not be as effective as expected at covering the losses arising from that *client* or counterparty's failure or default; and

(4) any concentration of the *firm's* exposures in relation to the *client* or counterparty or the economic sector or geographical market in which that *client* or counterparty is active.

2.6 G Where a *firm* is subject to the *K-TCD requirement* or the *K-CON requirement*, the *FCA* would generally expect the *firm* to consider whether those requirements are sufficient to cover the harms that may result from the failure of its *clients* or counterparties to fulfil their obligations. In some cases, those requirements may not apply in relation to the *client*, counterparty or position in question, or may not adequately address the relevant risks. Where this is the case, the *firm* should consider other measures to address the potential harm.

2.7 G Where a *firm* is assessing potential harms arising from the *firm's* positions in *financial instruments*, foreign currencies and commodities, the following non-exhaustive list of factors may be relevant:

(1) the extent to which the relevant position may involve risks that are not adequately captured by the *firm's K-NPR requirement*, *K-CMG requirement* or *K-CON requirement*, such as:

(a) basis risk between certain products;

(b) risks arising from approximate valuations applied to non-linear products;

(c) the risk that large movements in pegged currencies may be underestimated; or

(d) risks arising from inadequate proxy market data;

(2) whether a position is illiquid or distressed, or whether it may become so under severe but plausible market conditions, and how this may affect the expected holding period for that position;

(3) the extent to which it is possible to hedge a position under both normal, and severe but plausible, market conditions;

(4) whether a position is difficult to value because of a lack of recent observable market data;

(5) whether the intra-day exposure associated with a position differs significantly from the end-of-day exposure;

(6) any known weaknesses in any model used by the *firm* to assess the risks arising from the position; and

(7) the concentration of the portfolio in which the position is held, including by reference to:

(a) issuers or counterparties;

(b) economic sectors or sub-sectors; and

(c) geographical markets.

7 Annex 3 **Notification under MIFIDPRU 7.6.11R in relation to level of own funds**

R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 7 Annex 3R

Notification under MIFIDPRU 7.1.9R and SYSC 19G.1.8R that a firm meets the conditions for exemption from requirements to establish certain committees and for exemption from additional remuneration requirements

Notification under MIFIDPRU 7.1.12R and SYSC 19G.1.11R that a firm no longer meets the conditions for exemption from requirements to establish certain committees and for exemption from additional remuneration requirements

1. Please confirm which notification applies:

a. The firm meets the conditions for exemption in MIFIDPRU 7.1.4R(1)(a) or (b) and SYSC 19G.1.1R(2)(a) or (b) ☐

b. The firm no longer meets the conditions for exemption in MIFIDPRU 7.1.4R(1)(a) or (b) and SYSC 19G.1.1R(2)(a) or (b) ☐

2. Please confirm the applicability of the following threshold(s) to the firm:

a.	The value of the firm's on-balance sheet assets and off-balance sheet items over the last four-year period was an average of:	
	i. £100m or less	*Yes/No*
	ii. More than £100m but less than £300m	*Yes/No*
	iii. More than £300m	*Yes/No*
b.	The exposure value of the firm's on- and off-balance sheet trading book business is £150m or less	*Yes/No/Not applicable*
c.	The exposure value of the firm's on- and off-balance sheet derivatives business is £100m or less	*Yes/No/Not applicable*

7 Annex 4 **Notification under MIFIDPRU 7.6.11R in relation to level of own funds**

R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 7 Annex 4R

Notification under MIFIDPRU 7.6.11R of own funds falling below certain level

1. Please confirm which notification applies:

   a. Early warning indicator notification ☐

   b. Threshold requirement notification ☐

   c. Wind-down trigger notification ☐

2. Please confirm the current level of the firm's own funds in comparison to its own funds threshold requirement and, for a wind-down trigger notification, own funds wind-down trigger:

a. Own funds amount	*£*
b. Own funds threshold requirement amount	*£*
c. Own funds wind-down trigger amount (for a wind-down trigger notification)	*£*
d. As at date	*DD/MM/YYYY*

3. Please explain why the firm's own funds have reached the current level:

4. Early warning indicator notification

   a. Does the firm expect that in the foreseeable future its own funds could fall below its own funds threshold requirement?

Yes/No

   Note: The firm will be required to make a separate notification when its own funds fall below its own funds threshold requirement.

i. Please explain why the firm has this expectation:

ii. If you have responded "No", does the firm expect that its own funds could fall below the level specified as part of the firm's ICARA process in accordance with MIFIDPRU 7.5.1R(1), which, if reached, may indicate that it is likely to breach its threshold requirement?

Yes/No

b. If applicable, please explain what recovery actions the firm intends to take, as identified under MIFIDPRU 7.5.5R(2)(a) and 7.5.6G:

5. Threshold requirement notification

Please explain what recovery actions specified for the purposes of MIFIDPRU 7.5.5R(2)(b) and 7.5.6G the firm has already taken or will take to restore compliance with its own funds threshold requirement:

6. Wind-down trigger notifications

Please explain the firm's intentions in relation to activating its wind-down plan:

7 Annex 5 **Notification under MIFIDPRU 7.7.14R in relation to level of liquid assets**

R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 7 Annex 5R

Notification under MIFIDPRU 7.7.14R of liquid assets falling below certain level

1. Please confirm which notification applies:

   a. Threshold requirement notification ☐

   b. Wind-down trigger notification ☐

2. Please confirm the current level of the firm's liquid assets in comparison to the liquid assets threshold requirement and, for a wind-down trigger notification, liquid assets wind-down trigger:

a. Liquid assets amount	*£*
b. Liquid assets threshold requirement amount	*£*
c. Liquid assets wind-down trigger amount (for a wind-down trigger notification)	*£*
d. As at date	*DD/MM/YYYY*

3. Please explain why the firm's liquid assets have reached the current level:

4. Threshold requirement notifications

Please explain what recovery actions specified for the purposes of MIFIDPRU 7.5.5R(2)(b) and 7.5.6G the firm has already taken or will take to restore compliance with its liquid assets threshold requirement:

5. Wind-down trigger notifications

Please explain the firm’s intentions in relation to activating its wind-down plan:

7 Annex 6 **Notification under MIFIDPRU 7.8.4R in relation to revised ICARA assessment questionnaire (data item MIF007) submission date**

R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU 7 Annex 6R

Notification under MIFIDPRU 7.8.4R of a revised ICARA assessment questionnaire (data item MIF007) submission date

1. Please confirm the basis on which you undertake the ICARA:

   ☐ Individual basis
   ☐ Group/consolidated basis

2. If you undertake the ICARA on group or consolidated basis, please list all group entities:

FRN (if applicable)	FCA investment firm name

3. Please confirm the current and revised submission date for data item MIF007.

Current MIF007 submission date	**Revised MIF007 submission date**
DD/MM/YYYY	*DD/MM/YYYY*

7 Annex 7 **Map of rules and guidance relating to the ICARA process**

7.1 G (1) The table in this annex identifies the *rules* in *MIFIDPRU* 7 that impose obligations relating to the *ICARA process* and the *guidance* provisions corresponding to those *rules*.

(2) *MIFIDPRU investment firms* may find this annex helpful when designing and reviewing their *ICARA processes* to ensure that all mandatory requirements have been met.

(3) *Firms* should not use this table as a substitute for reading and applying the detailed *rules* and *guidance* in *MIFIDPRU* 7.

MIFIDPRU rule	Basic obligation	Associated guidance	Content of guidance
***MIFIDPRU* 7.4: baseline ICARA obligations**			
MIFIDPRU 7.4.7R	The *overall financial adequacy rule*	*MIFIDPRU* 7.4.8G	Explanation of the link between the *overall financial adequacy rule* and the *ICARA process*
MIFIDPRU 7.4.9R	The requirement to operate an *ICARA process* to identify, monitor and, if proportionate, reduce all material potential harms relevant to the *firm*	*MIFIDPRU* 7.4.16G	*Guidance* on how *firms* should seek to mitigate the risk of potential harms
MIFIDPRU 7.4.10R	The requirement for the *ICARA process* to be proportionate to the nature, scale and complexity of the *firm's* business		
MIFIDPRU 7.4.11R	The requirement for the *ICARA process* to be	*MIFIDPRU* 7.4.12G	Explanation of the *FCA's* expectations in relation to

	internally consistent		consistency and coherency of the *ICARA process*
MIFIDPRU 7.4.13R	The requirement to identify all material harms that may result from the *firm's* business	*MIFIDPRU* 7.4.14G	Explanation of the basic factors that will be relevant when identifying potential harms
		MIFIDPRU 7.4.15G	Cross-reference to additional *guidance* in *MIFIDPRU* 7 Annex 1R and *MIFIDPRU* 7 Annex 2R
		MIFIDPRU 7 Annex 1G	*Guidance* on assessing potential harms that is potentially relevant to all *firms*
		MIFIDPRU 7 Annex 2G	Additional *guidance* on assessing potential harms that is relevant for a *firm* that is *dealing on own account* or that has significant investments on its balance sheet
***MIFIDPRU* 7.5: Capital and liquidity planning, stress testing, wind-down planning and recovery planning**			
MIFIDPRU 7.5.2R	Business model assessment and capital and liquidity planning requirements, including stress testing	*MIFIPRU* 7.5.3G	*Guidance* referring to Finalised Guidance FG20/1
		MIFIDPRU 7.5.4G	*Guidance* on stress testing obligations and reverse stress testing for *firms* with more complex businesses or operating models
		MIFIDPRU 7 Annex 1.15G to 7 Annex 1.20G	Additional *guidance* on more in-depth

			stress testing and reverse stress testing
MIFIDPRU 7.5.5R	Recovery planning requirements	*MIFIDPRU* 7.5.6G	*Guidance* on issues that may be relevant when assessing potential recovery actions
MIFIDPRU 7.5.7R	Wind-down planning requirements	*MIFIDPRU* 7.5.8G	*Guidance* referring to the Wind-Down Planning Guide and Finalised Guidance FG20/1
MIFIDPRU 7.5.9R	Requirement to use wind-down analysis to assess levels of *own funds* and *liquid assets* required under *overall financial adequacy rule*	*MIFIDPRU* 7.5.10G	Explanation of the interaction between the *overall financial adequacy rule* and the *wind-down triggers*
***MIFIDPRU* 7.6: Assessing and monitoring the adequacy of own funds**			
MIFIDPRU 7.6.2R	Requirement to produce a reasonable estimate of impact of potential harms on *own funds*	*MIFIDPRU* 7.6.4G	*Guidance* on how the assessment of potential harms interacts with the *own funds threshold requirement* and the *overall financial adequacy rule* and how the *firm* should conduct its assessment
MIFIDPRU 7.6.3R	Requirement to use assessment under *MIFIDPRU* 7.6.2R to assess if additional *own funds* required to meet *overall financial adequacy rule*		
		MIFIDPRU 7.6.6G	*Guidance* explaining the circumstances in which the *guidance* in *MIFIDPRU* 7.6.7G to *MIFIDPRU* 7.6.10G is relevant
		MIFIDPRU 7.6.7G	*Guidance* on how a *non-SNI MIFIDPRU investment firm* should assess whether harms may be

			covered by its *own funds requirement*
		MIFIDPRU 7.6.8G	*Guidance* on circumstances in which harms may not be covered by a *non-SNI MIFIDPRU investment firm's own funds requirement*
		MIFIDPRU 7.6.9G	*Guidance* on how an *SNI MIFIDPRU investment* should assess whether harms may be covered by its *own funds requirement*
		MIFIDPRU 7.6.10G	*Guidance* on how a *firm's* assessment of potential harms contributes to determining its *own funds threshold requirement*
MIFIDPRU 7.6.5R	Requirement to meet *own funds threshold requirement* with specified types of *own funds*		
MIFIDPRU 7.6.11R	Notification requirements when a *firm's own funds* reach certain levels	*MIFIDPRU* 7.6.12G	*Guidance* on the *FCA's* ability to set an alternative *early warning indicator*
		MIFIDPRU 7.6.13G	*Guidance* explaining how notifications under *MIFIDPRU* 7.6.11R interact with general notification obligations under *Principle* 11 or *SUP* 15.3
		MIFIDPRU 7.6.14G and	Explanation of *FCA's* approach to intervention when

		MIFIDPRU 7.6.15G	*firm's own funds* reach certain levels
MIFIDPRU* 7.7: Assessing and monitoring the adequacy of *liquid assets			
MIFIDPRU 7.7.2R	Requirement to produce reasonable estimate of *liquid assets* required by the *firm*	*MIFIDPRU* 7.7.3G	*Guidance* on the interaction between the *overall financial adequacy rule* and the *liquid assets* that a *firm* must hold
		MIFIDPRU 7.7.4G	*Guidance* on how a *firm* should assess the *liquid assets* required for the ongoing operation of its business
		MIFIDPRU 7.7.5G	*Guidance* on the *basic liquid assets requirement* and how to determine the *firm's liquid assets threshold requirement*
MIFIDPRU 7.7.6R	Requirement to meet *liquid assets threshold requirement* with *core liquid assets* and *non-core liquid assets*	*MIFIDPRU* 7.7.7G	General principles applicable to *non-core liquid assets*
MIFIDPRU 7.7.8R	Basic definition of *non-core liquid assets*	*MIFIDPRU* 7.7.9G	*Guidance* on exclusions for *non-core liquid assets*
MIFIDPRU 7.7.10R	Requirement to apply appropriate haircut to *non-core liquid assets*	*MIFIDPRU* 7.7.11G and 7.7.12G	*Guidance* on minimum haircuts for *non-core liquid assets*
		MIFIDPRU 7.7.13G	*Guidance* on approach to applying haircuts to shares or units in collective investment undertakings

MIFIDPRU 7.7.14R	Notification requirements when a *firm's liquid assets* reach certain levels	*MFIIDPRU* 7.7.15G	*Guidance* explaining how notifications under *MIFIDPRU* 7.6.14R interact with general notification obligations under *Principle* 11 or *SUP* 15.3
		MIFIDPRU 7.7.16G and 7.7.17G	Explanation of *FCA's* approach to intervention when *firm's liquid assets* reach certain levels
MIFIDPRU* 7.8: Reviewing and documenting the *ICARA process			
MIFIDPRU 7.8.2R	Requirement to review the *ICARA process* at least annually	*MIFIDPRU* 7.8.3G	*Guidance* on reviewing the *ICARA process* following a material change in the *firm's* business
MIFIDPRU 7.8.4R	Requirement for *firm* to notify the *FCA* of the submission date of the *firm's* MIF007 (ICARA assessment questionnaire) return	*MIFIDPRU* 7.8.5G	*Guidance* on interaction between the *firm's ICARA review* and its submission date for its MIF007 return
MIFIDPRU 7.8.6R	Requirement to submit MIF007 return following review of *ICARA process* due to a material change in the *firm's* business		
MIFIDPRU 7.8.7R	Requirement to document review of the *ICARA process* and minimum		

	contents of review document		
MIFIDPRU 7.8.8R	Requirement for *firm's governing body* to review and approve the *ICARA document*	*MIFIDPRU* 7.8.9G	*Guidance* on the interaction between the obligations in *COCON* and the *ICARA process*
MIFIDPRU 7.8.10R	Record keeping requirements in relation to the *ICARA process*		
MIFIDPRU* 7.9: Firms forming part of a *group			
MIFIDPRU 7.9.2R	Requirement for any *firm* that forms part of a *group* to assess risks arising from that *group* or its other members	*MIFIDPRU* 7.9.3G	*Guidance* on the entities included within a *firm's* assessment of *group* risk
MIFIDPRU 7.9.5R	Ability of *investment firm group* to operate the *ICARA process* on a *group*-level basis	*MIFIDPRU* 7.9.4G	*Guidance* that an *investment firm group* is not required to operate an *ICARA process* on a *consolidated basis*
MIFIDPRU 7.9.6R	Disapplication of individual *ICARA process* requirement in relation to *MIFIDPRU investment firm* included in a *group ICARA process*		
MIFIDPRU 7.9.7R	Circumstances in which a *group ICARA process* cannot be used	*MIFIDPRU* 7.9.9G	*Guidance* on when the *FCA* may prohibit the use of a *group*-level *ICARA process* in relation to one or more *firms*

MIFIDPRU 7.9.8R	Application of requirements in *MIFIDPRU* 7.4 to *MIFIDPRU* 7.8 to an *investment firm group* operating a *group ICARA process*		
MIFIDPRU 7.9.10R	Ability to include multiple *firms* within one *ICARA document*	*MIFIDPRU* 7.9.11G	*Guidance* on when a single *ICARA document* can be used

8 Disclosure

8.1 [Deliberately left blank]

8.1.1 R [Deliberately left blank]

9 Reporting

9.1 Application

9.1.1 R This chapter applies to:

(1) a *MIFIDPRU investment firm*;

(2) a *UK parent entity* that is required under *MIFIDPRU* 2.5.7R to comply with *MIFIDPRU* 9 on the basis of its *consolidated situation*; and

(3) a *GCT parent undertaking* that is required to submit reports on its compliance with the *group capital test* in accordance with *MIFIDPRU* 2.6.10R.

9.1.2 R (1) The provisions of *SUP* 16.3 (General provisions on reporting) listed in (2) apply to reports submitted under this chapter as if the reports had been submitted under *SUP* 16.

(2) The provisions are:

(a) *SUP* 16.3.6R to *SUP* 16.3.10G (How to submit reports);

(b) *SUP* 16.3.11R to *SUP* 16.3.12G (Complete reporting); and

(c) *SUP* 16.3.14R to *SUP* 16.3.16G (Failure to submit reports).

9.1.3 G Under *SUP* 16.3.14R (as applied to reports under this chapter by *MIFIDPRU* 9.1.2R), a £250 administrative fee applies where a *firm* does not submit a complete report by the date on which that report is due under the applicable requirements and submission procedures. *SUP* 16.3.14AG explains that the *FCA* may also take disciplinary action in appropriate cases.

9.2 Periodic reporting requirements

9.2.1 R A *non-SNI MIFIDPRU investment firm* must:

(1) submit the *data items* specified in column (A) of the table in *MIFIDPRU* 9.2.2R to the *FCA* with the frequency specified in column (C) of that table;

(2) complete the *data items* in (1) with data that show the position on the relevant reporting reference date in column (D) of the table in *MIFIDPRU* 9.2.2R; and

(3) submit the *data items* in (1) before the submission deadline in column (E) of the table in *MIFIDPRU* 9.2.2R.

9.2.2 R The following table belongs to *MIFIDPRU* 9.2.1R:

(A) ***Data item***	**(B)** ***Data item* description**	**(C)** **Reporting frequency**	**(D)** **Reporting reference dates**	**(E)** **Submission deadline**
MIF001	Capital	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date
MIF002	Liquidity	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date

MIF003	Metrics monitoring	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date
MIF004	Non-K-CON concentration risk reporting	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date
MIF005	K-CON concentration risk reporting	Quarterly	(1) The *firm's accounting reference date*; (2) The *firm's accounting reference date* plus 3 *months*; (3) The *firm's accounting reference date* plus 6 *months*; (4) The *firm's accounting reference date* plus 9 *months*;	20 *business days* after the reporting reference date
MIF007 (note 1)	ICARA assessment questionnaire	Annually (note 2)	The reference date according to which the *firm* reviews the adequacy of its *ICARA process* under *MIFIDPRU* 7.8.2R	The date notified to the *FCA* by the *firm* under *MIFIDPRU* 7.8.4R (or such other date as directed by the *FCA*)

Note 1	Where a *firm* is included in a *group ICARA process* in accordance with *MIFIDPRU* 7.9.5R, the *firm* must still submit *data item* MIF007 on an individual basis, containing information about the *firm* that has been derived from that *group ICARA process*. *Data item* MIF007 does not apply on a *consolidated basis*.
Note 2	Under *MIFIDPRU* 7.8.2R, in certain circumstances, a *firm* may carry out a review of its *ICARA* process more frequently than the minimum required annual frequency. If so, the *firm* must submit *data item* MIF007 separately after each review.

9.2.3 R An *SNI MIFIDPRU investment firm* must:

(1) submit the *data items* specified in column (A) of the table in *MIFIDPRU* 9.2.4R to the *FCA* with the frequency specified in column (C) of that table;

(2) complete the *data items* in (1) with data that show the position on the relevant reporting reference date specified in column (D) of the table in *MIFIDPRU* 9.2.4R; and

(3) submit the *data items* in (1) before the submission deadline in column (E) of the table in *MIFIDPRU* 9.2.4R.

9.2.4 R The following table belongs to *MIFIDPRU* 9.2.3R:

(A) ***Data item***	**(B)** ***Data item* description**	**(C)** **Reporting frequency**	**(D)** **Reporting reference dates**	**(E)** **Submission deadline**
MIF001	Capital	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date
MIF002 (Note 1)	Liquidity	Quarterly	Last *business day* in: (1) March; (2) June; (3) September;	20 *business days* after the reporting reference date

			(4) December	
MIF003	Metrics monitoring	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date
MIF007 (note 2)	ICARA assessment questionnaire	Annually (note 3)	The reference date according to which the *firm* reviews the adequacy of its *ICARA process* under *MIFIDPRU* 7.8.2R	The date notified to the *FCA* by the *firm* under *MIFIDPRU* 7.8.4R (or such other date as directed by the *FCA*)
Note 1	If, exceptionally, the *FCA* has exempted an *SNI MIFIDPRU investment firm* from the liquidity requirements in *MIFIDPRU* 6, the *firm* is not required to submit MIF002.			
Note 2	Where a *firm* is included in a *group ICARA process* in accordance with *MIFIDPRU* 7.9.5R, the *firm* must still submit *data item* MIF007 on an individual basis, containing information about the *firm* that has been derived from that *group ICARA process*. *Data item* MIF007 does not apply on a *consolidated basis*.			
Note 3	Under *MIFIDPRU* 7.8.2R, in certain circumstances, a *firm* may carry out a review of its *ICARA* process more frequently than the minimum required annual frequency. If so, the *firm* must submit *data item* MIF007 separately after each review.			

9.2.5 R Where a *firm* is required to submit any of the *data items* MIF001 to MIF005 under *MIFIDPRU* 9.2.1R or 9.2.3R, it must submit the *data items*:

(1) in the format specified in *MIFIDPRU* 9 Annex 1R; and

(2) in accordance with the instructions in *MIFIDPRU* 9 Annex 2G.

9.2.6 R Where an *investment firm group* contains multiple *MIFIDPRU investment firms*, the *firms* may designate a single *MIFIDPRU investment firm* or the *UK parent entity* to submit all necessary *data items* under this section on their behalf.

9.2.7 G Where a *MIFIDPRU investment firm* ("A") designates another *MIFIDPRU investment firm* or a *UK parent entity* ("B") to submit *data items* under *MIFIDPRU* 9.2.6R, A remains responsible for the timely submission and accuracy of any *data items* submitted by B on A's behalf.

9.3 Reporting on a consolidated basis

9.3.1 R (1) A *UK parent entity* that is required by *MIFIDPRU* 2.5.7R to comply with this chapter on a *consolidated basis* must:

(a) submit *data items* in accordance with *MIFIDPRU* 9.2.1R on the basis of its *consolidated situation* if it is treated as a *non-SNI MIFIDPRU investment firm* under *MIFIDPRU* 2.5.21R; or

(b) submit *data items* in accordance with *MIFIDPRU* 9.2.3R on the basis of its *consolidated situation* if it is treated as an *SNI MIFIDPRU investment firm* under *MIFIDPRU* 2.5.21R.

(2) For the purposes of (1), *MIFIDPRU* 9.2 applies with the following modifications:

(a) a reference to a "*firm*" is a reference to the hypothetical single *MIFIDPRU investment firm* created under the *consolidated situation*; and

(b) the submission deadline for consolidated *data items* under column (E) of the tables in *MIFIDPRU* 9.2.2R and *MIFIDPRU* 9.2.4R is 30 *business days* after the reporting reference date.

9.3.2 G *MIFIDPRU* 2.5 sets out guidance on how to apply the requirements in *MIFIDPRU* on the basis of the *consolidated situation* of a *UK parent entity*. The guidance may assist a *UK parent entity* in completing the *data items* required under this section.

9.4 Group capital test reporting

9.4.1 R A *GCT parent undertaking* that is required to report on the *group capital test* under *MIFIDPRU* 2.6.10R must:

(1) submit the *data item* specified in column (A) of the table in *MIFIDPRU* 9.4.2R to the *FCA* with the frequency specified in column (C) of that table;

(2) complete the *data item* in (1) with data that show the position on the relevant reporting reference date specified in column (D) of the table in *MIFIDPRU* 9.4.2R; and

(3) submit the *data item* in (1) before the submission deadline in column (E) of the table in *MIFIDPRU* 9.4.2R.

9.4.2 R The following table belongs to *MIFIDPRU* 9.4.1R:

(A) ***Data item***	(B) ***Data item* description**	(C) **Reporting frequency**	(D) **Reporting reference dates**	(E) **Submission deadline**
MIF006	Group capital test reporting	Quarterly	Last *business day* in: (1) March; (2) June; (3) September; (4) December	20 *business days* after the reporting reference date

9.4.3 R (1) This *rule* applies where:

(a) a *GCT parent undertaking* is a *responsible UK parent*; and

(b) *MIFIDPRU* 2.6.10R(2)(b)(i) applies in relation to a *subsidiary* of that *responsible UK parent*.

(2) Where this *rule* applies, the *responsible UK parent* must submit an additional *data item* under *MIFIDPRU* 9.4.1R that shows the position of the *subsidiary* in (1)(b).

9.4.4 R Where a *GCT parent undertaking* is required to submit *data item* MIF006 under *MIFIDPRU* 9.4.1R or 9.4.3R, it must submit that *data item*:

(1) in the format specified in *MIFIDPRU* 9 Annex 1R; and

(2) in accordance with the instructions in *MIFIDPRU* 9 Annex 2G.

9.4.5 G Under *MIFIDPRU* 2.6.11R, a *GCT parent undertaking* may designate a single *parent undertaking* in the *UK* to submit *data items* to the *FCA* on behalf of all *GCT parent undertakings* within the same *investment firm group*. However, each *GCT parent undertaking* remains responsible for ensuring the timely submission and accuracy of any *data items* submitted on its behalf.

Data items for MIFIDPRU 9

9 Annex 1R	This annex consists of forms which can be found through the following link: [*Editor's note*: insert link to document containing data items for MIFIDPRU 9 reporting]

Data items for MIFIDPRU 9 Annex 1R

MIF001 – Own funds

		A
	Basis of completion	Yes/No
1	Is this report on behalf of a consolidation group?	
		FRN
2	If yes, please list the firm reference numbers (FRN) of all FCA regulated entities in the consolidated situation and the group reference number, if applicable.	
	Own funds held	
3	CET1 own funds held (net of deductions - see MIFIDPRU 3.3)	
4	AT1 own funds held (net of deductions - see MIFIDPRU 3.4)	
5	T2 own funds held (net of deductions - see MIFIDPRU 3.5)	
	Fixed overheads requirement	
6	Total annual eligible expenditure	
7	Indicate if varied due to material change in business model.	
	Permanent minimum requirement	
8	Permanent minimum requirement	
	K-factors requirement – non-SNI firms only	
9	Total K-factor requirement	
10	K-AUM	
11	K-CMH (segregated)	
12	K-CMH (non-segregated)	
13	K-ASA	
14	K-COH (cash trades)	
15	K-COH (derivative trades)	
16	K-DTF (cash trades)	
17	[Not used]	
18	K-DTF (derivatives)	

19	[Not used]	
20	K-NPR	
21	K-CMG	
22	K-TCD	
23	K-CON	
	Transitional requirement	
24	Transitional own funds requirement (if used)	
25	Please indicate which transitional provisions are being relied upon	
	Own funds threshold requirement/wind-down trigger	
26	Own funds threshold requirement	
27	Own funds wind-down trigger	

MIF002 – Liquid Assets

		A
	Basis of completion	
1	Is this report on behalf of a consolidation group?	*Yes/No*
2	If yes, please list the firm reference numbers of all FCA regulated entities in the consolidated situation.	*number*
	Basic liquid asset requirement	
3	Basic liquid asset requirement based on fixed overheads	*number*
4	Basic liquid asset requirement based on client guarantees	*number*
	Core liquid assets held	
5	Core liquid assets held, excluding receivables from trade debtors	*number*
6	Value of qualifying trade receivables	*number*
	Liquid assets threshold requirement/wind-down trigger	
7	Liquid asset threshold requirement	*number*
8	Liquid asset wind-down trigger	*number*
	Non-core liquid assets held	
9	Value of non-core liquid assets post-haircut	*number*

MIF003 – Monitoring metrics

		A
	Basis of completion	Yes/No
1	Is this report on behalf of a consolidation group?	
		FRN
2	If yes, please list the firm reference numbers of all FCA regulated entities in the consolidated situation and the group reference number, if applicable.	
	Metrics	
3	AUM	
4	AUM at T	
5	AUM at T - 1 month	
6	AUM at T - 2 months	
7	CMH (segregated)	
8	CMH (segregated) at T	
9	CMH (segregated) at T - 1 month	
10	CMH (segregated) at T - 2 months	
11	CMH (non-segregated)	
12	CMH (non-segregated) at T	
13	CMH (non-segregated) at T - 1 month	
14	CMH (non-segregated) at T - 2 months	
15	ASA	
16	ASA at T	
17	ASA at T - 1 month	
18	ASA at T - 2 months	
19	COH (cash)	
20	COH (derivatives)	
21	Average DTF (cash)	

22	Average DTF (derivatives)	
23	DTFexcl (cash)	
24	DTFexcl (derivatives)	
25	On- and off-balance sheet total	
26	Annual gross revenue from MiFID services and activities	
		Yes/No
27	Permission to deal on own account	

MIF004 – Non-K-CON concentration

	Basis of completion	A Yes/No
1	Is this report on behalf of a consolidation group?	

		FRN
2	If yes, please list the firm reference numbers (FRN) of all FCA regulated entities in the consolidated situation and the group reference number, if applicable.	

All positions or exposures (not including intragroup exposures)

		A LEI No	B Value of exposures/ positions with that counterparty
3	Counterparty 1		
4	Counterparty 2		
5	Counterparty 3		
6	Counterparty 4		
7	Counterparty 5		

	Intragroup exposures only	A LEI No	B Value of exposures/ positions with that counterparty
8	Counterparty 1		
9	Counterparty 2		
10	Counterparty 3		
11	Counterparty 4		
12	Counterparty 5		

	Location of client money	A LEI No	B % of client money held at that institution	C MMF (Yes/No)
13	Entity 1			
14	Entity 2			
15	Entity 3			
16	Entity 4			

17	Entity 5			

	Location of client securities	A LEI No	B % of client securities held at that institution
18	Entity 1		
19	Entity 2		
20	Entity 3		
21	Entity 4		
22	Entity 5		

	Location of firm's own cash	A LEI No	B % of firm's own cash/MMF holdings at that institution	C MMF (Yes/No)
23	Entity 1			
24	Entity 2			
25	Entity 3			
26	Entity 4			
27	Entity 5			

	Earnings	A LEI No or code	B % of total revenue earned from that client	C Income type
28	Client 1			
29	Client 2			
30	Client 3			
31	Client 4			
32	Client 5			

MIF005 – K-CON Concentration risk reporting where the 'soft' limit has been exceeded

		A
	Basis of completion	Yes/No
1	Is this report on behalf of a consolidation group?	

		FRN
2	If yes, please list the firm reference numbers (FRN) of all FCA regulated entities in the consolidated situation.	

		A	B	C	D	E
			Applicable Amount:			
		LEI	Exposure Value	Exposure Value Excess	Own Funds Requirement for the Excess	£150m/100% limit for MIFIDPRU-eligible institutions used (Yes/No)
3	Counterparty or group of connected counterparties to whom the exposure relates					

MIF006 – GCT reporting

Holding company identifier

		A
1	Holding company name	*alphanumeric*
2	Holding company FRN	*number*

Capital of holding company

3	CET1 own funds held	*number*
4	AT1 own funds held	*number*
5	T2 own funds held	*number*

6. Book value and type of investments

	Subsidiary company identifier			Book value and type of investments in subsidiary:			
	FRN	LEI	Indirect subsidiary	CET1 investment	AT1 investment	T2 investment	Contingent liabilities
	A	**B**	**C**	**D**	**E**	**F**	**G**
1	*number*	*number*	*Y/N*	*number*	*number*	*number*	*number*
2	*number*	*number*	*Y/N*	*number*	*number*	*number*	*number*
3	*number*	*number*	*Y/N*	*number*	*number*	*number*	*number*
+							

MIF007 – ICARA questionnaire

		A
Part A: Basis of completion of the ICARA process		
1	Is this report on behalf of a consolidation group?	*Yes/No*
2	If yes, please list the firm reference numbers of all FCA regulated entities in the consolidated situation.	*number*
3	Has the ICARA process review been completed through a group-level arrangement?	*Yes/No*
4	What is the ICARA process reference date of this ICARA questionnaire?	*Date*
5	Has the ICARA process/document been reviewed and approved by the firm's governing body?	*Yes/No*
6	On what date was the ICARA process/document signed off by the firm's governing body?	*Date*
Part B: Assessing and monitoring the adequacy of own funds		
Own funds held as at ICARA process reference date		
7	CET1 own funds held (net of deductions - see MIFIDPRU 3.3)	*number*
8	AT1 own funds held (net of deductions - see MIFIDPRU 3.4)	*number*
9	T2 own funds held (net of deductions - see MIFIDPRU 3.5)	*number*
Own funds threshold requirement - identified through the ICARA process		
10	Own funds threshold requirement	*number*
11	Own funds to address risks from ongoing activities	*number*
12	Own funds necessary for orderly wind-down	*number*
Additional own funds requirement specified by the FCA		
13	Has the FCA specified an own funds requirement for the firm?	*Yes/No*
	If yes, what is the basis for the FCA specified requirement?	
14	Own funds threshold requirement	*Yes/No*
15	Own funds wind-down trigger	*Yes/No*
16	Own funds threshold requirement set by the FCA	*number*
17	Own funds wind-down trigger set by the FCA	*number*
Part B1: Breakdown of additional own funds requirement to address risks from ongoing activities (Non-SNI firms only)		
18	Additional own funds for asset management activity	*number*
19	Additional own funds for holding client money	*number*
20	Additional own funds for safeguarding assets	*number*
21	Additional own funds for reception and transmission of orders, or executing client orders	*number*
22	Additional own funds for market risk	*number*
23	Additional own funds for positions associated with clearing risk	*number*
24	Additional own funds for trading activity on the firm's own account	*number*

25	Additional own funds for trading activity in clients' names	*number*
26	Additional own funds for trading counterparty risk	*number*
27	Additional own funds for concentration risk	*number*
28	Additional own funds for risks from ongoing activities not captured in rows A16 - A24	*number*
29	Description of risks	*Alpha*

Part B2: Breakdown of additional own funds necessary for orderly wind-down (Non-SNI firms only)

30	Description of risks	*Alpha*

Part C: Assessing and monitoring the adequacy of liquid assets held

Liquid assets held as at ICARA process reference date

31	Core liquid assets (see MIFIDPRU 6.3)	*number*
32	Non-core liquid assets - post-haircut (see MIFIDPRU 7.7)	*number*

Liquid assets required as identified through the ICARA process

33	Liquid assets threshold requirement	*number*
34	Additional liquid assets required to fund ongoing business operations at any given point in time (MIFIDPRU 7.7)	
35	Quarter 1	*number*
36	Quarter 2	*number*
37	Quarter 3	*number*
38	Quarter 4	*number*
39	Additional liquid assets required to start wind-down (MIFIDPRU 7.7)	*number*

Meeting debts as they fall due

40	Has the firm at any point not been able to meet its debts as they fall due?	*Yes/No*
41	Please provide details	*Alpha*

Additional liquid assets requirement specified by the FCA

42	Has the FCA specified a liquid asset requirement for the firm?	*Yes/No*
	If yes, basis for the FCA specified requirement	
43	Liquid assets threshold requirement	*Yes/No*
44	Liquid assets wind-down trigger	*Yes/No*
45	Liquid assets threshold requirement specified by the FCA	*number*
46	Liquid assets wind-down trigger specified by the FCA	*number*

Part D: MiFID investment services and activities and business model information

MiFID investment services and activities
Indicate the MiFID investment services and activities the firm provides

47	Reception and transmission of orders in relation to one or more financial instruments [A1]	*Yes/No*
48	Execution of orders on behalf of clients [A2]	*Yes/No*

49	Dealing on own account [A3]	*Yes/No*
50	Portfolio management [A4]	*Yes/No*
51	Investment advice [A5]	*Yes/No*
52	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis [A6]	*Yes/No*
53	Placing of financial instruments without a firm commitment basis [A7]	*Yes/No*
54	Operation of an MTF [A8]	*Yes/No*
55	Operation of an OTF [A9]	*Yes/No*

Other business activities

56	Indicate the other business services and activities the firm provides	
57	Holding client assets or client money for non-MiFID business	*Yes/No*
58	Receive money or assets from clients under title transfer collateral agreements	*Yes/No*
59	Operating 'name give-up' as an inter-dealer broker	*Yes/No*
60	Clearing activities	*Yes/No*
61	Corporate finance business	*Yes/No*
62	Venture capital business	*Yes/No*
63	Are you part of a financial conglomerate	*Yes/No*
64	Delegation of discretionary portfolio management to other firms	*Yes/No*
65	If yes, what is the current value delegated to other firms	*number*
66	Discretionary portfolio management delegated from other firms	*Yes/No*
67	If yes, what is the current value delegated from other firms	*number*
68	Provide advice of an ongoing nature	*Yes/No*
69	If yes, what is the current value of assets included within the K-AUM calculation	*number*
70	Calculation of AUM at ICARA process reference date excluding offsetting - when calculating AUM has the firm applied any offsetting of negative values or liabilities attributed to positions within the relevant portfolios?	*Yes/No*
71	If yes, what is the AUM value without any offsetting	*number*

Guidance notes on data items in MIFIDPRU 9 Annex 1R

9 Annex 2G	This annex consists of guidance which can be found through the following link: [*Editor's note*: insert link to document containing guidance on completing data items in MIFIDPRU 9 Annex 1R]

Guidance notes for MIFIDPRU 9 Annex 2G

MIF001 – Adequate financial resources (Own funds)

Introduction

This data item provides the FCA with information on the solvency of an FCA investment firm. It is intended to reflect the underlying adequate financial resources requirements contained in MIFIDPRU and allows monitoring against the requirements set out there, and also against those individual requirements placed on firms. We have provided references to the underlying rules to assist completion of this data item.

This data item applies to all FCA investment firms. In the text below we have identified where particular data elements do not apply to all firms.

Consolidated reports

This form applies to both individual FCA investment firms and to consolidation groups. If completed on behalf of a consolidation group, it should be completed on the basis of the consolidated situation and references to an FCA investment firm should be taken to refer to the situation that would result if the consolidation group were treated as a single large FCA investment firm. Firms should refer to MIFIDPRU 2.5 for further information on how MIFIDPRU applies on a consolidated basis.

Currency

All figures should be reported in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology, including, where appropriate, the FCA investment firm's accounting framework, without departing from their full meaning or effect.

The terms used in this guidance note have the same meaning as the terms used in MIFIDPRU. Defined terms are not italicised in this note.

Data elements

These are referred to by row first, then column.

Basis of completion

1A – Basis of completion

Is the MIF001 report on behalf of a consolidation group? Enter 'Yes' in this cell if the report is being completed by a prudential consolidation group.

2A – Details of other firms within the group

If the answer to cell 1A is yes, please list the firm reference numbers (FRN) of all FCA regulated entities in the consolidated situation, and the group reference number, if applicable.

Own funds held

This section applies to all FCA investment firms.

FCA investment firms are required to hold own funds in excess of their own funds threshold requirement. Own funds held to meet the own funds threshold requirement must be made up of Common Equity Tier 1 (CET1), Additional Tier 1 (AT1) and Tier 2 (T2) capital.

3A – Common Equity Tier 1 capital

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU – Common equity tier 1 capital. This cell must always be completed with a positive number.

4A – Additional Tier 1 capital

FCA investment firms should enter the amount of AT1 capital they hold for their own funds. AT1 capital should be calculated in accordance with Article 61 of the UK CRR as applied and modified by Section 3.4 of MIFIDPRU – Additional tier 1 capital.

FCA investment firms are not required to hold/issue AT1 capital. If no AT1 has been issued or is held, enter a zero in this cell.

5A – Tier 2 capital

FCA investment firms should enter the amount of T2 capital they hold for their own funds. T2 capital should be calculated in accordance with Article 71 of the UK CRR as applied and modified by Section 3.5 of MIFIDPRU – Tier 2 capital.

FCA investment firms are not required to hold/issue T2 capital. If no T2 has been issued or is held, enter a zero in this cell.

6A – total annual fixed overheads

The fixed overheads requirement is one quarter of the FCA investment firm's previous financial year's annual relevant expenditure after the distribution of profits. The annual relevant expenditure should be calculated in accordance with MIFIDPRU 4.5. The number entered should be the total annual relevant expenditure, not the fixed overheads requirement.

If there has been a material increase to the FCA investment firm's relevant expenditure during the year (as specified in MIFIDPRU 4.5), the revised projected relevant expenditure should be included here.

If there has been a material decrease in the FCA investment firm's relevant expenditure during the year (as specified in MIFIDPRU 4.5), the revised projected relevant expenditure should only be included here if the firm has obtained permission from the FCA to substitute a reduced fixed overheads requirement based on that relevant expenditure.

7A – variation in fixed overheads

FCA investment firms should select 'Yes' if its FOR has changed due to a material change in its business model (as defined in MIFIDPRU 4.5). If this is the case, the number entered into cell A6 should be the equivalent annual relevant expenditure for the FCA investment firm's amended FOR.

8A – Permanent minimum requirement (PMR)

If completed on an individual basis, FCA investment firms should enter one of the following numbers:

- 75 if the firm has a PMR of £75,000
- 150 if the firm has a PMR of £150,000
- 750 if the firm has a PMR of £750,000

Where a transitional provision allows an FCA investment firm to substitute an alternative PMR, this figure should reflect its standard requirement (and not the alternative lower figure under the transitional provision).

If completed on a consolidated basis, FCA investment firms should enter the consolidated PMR, calculated in accordance with MIFIDPRU 2.5.27R.

K-factor requirements

This section does not apply to SNI firms and these firms should leave it blank. Where a non-SNI firm does not have permission to carry out the relevant activity, the cell should be left blank.

In this section, non-SNI firms should provide the relevant K-factor requirement. Values should be provided in thousands, rather than units.

For example, if the firm has calculated its average AUM to be £1 million, its K-AUM requirement is £200. The number to be entered in cell 10A is 0.2.

9A – Total K-factor requirement

FCA investment firms should enter the total amount of their K-factor requirement. This figure should be the sum of cells 10A to 23A.

10A – K-AUM

FCA investment firms should input their K-AUM requirement calculated in accordance with MIFIDPRU 4.7.

11A –K-CMH (segregated)

FCA investment firms should enter their K-CMH requirement for segregated accounts, calculated in accordance with MIFIDPRU 4.8.

A segregated account is defined in the Handbook Glossary.

12A –K-CMH (non-segregated)

FCA investment firms should enter their K-CMH requirement for non-segregated accounts, calculated in accordance with MIFIDPRU 4.8.

A non-segregated account is an account that does not satisfy the conditions to be a segregated account.

13A – K-ASA

FCA investment firms should enter their K-ASA requirement calculated in accordance with MIFIDPRU 4.9.

Client orders handled

14A – K-COH (cash trades)

FCA investment firms should enter their K-COH requirement for cash trades calculated in accordance with MIFIDPRU 4.10.

15A – K-COH (derivative trades)

FCA investment firms should enter their K-COH requirement for derivatives trades calculated in accordance with MIFIDPRU 4.10.

Daily Trading Flow

16A – K-DTF (cash trades)

FCA investment firms should enter the value of their K-DTF requirement for cash trades calculated in accordance with MIFIDPRU 4.15.

17A – this cell has been deliberately left blank

18A – K-DTF (derivative trades)

FCA investment firms should enter the value of their K-DTF requirement for derivative trades calculated in accordance with MIFIDPRU 4.15.

19A – this cell has been deliberately left blank

20A – K-NPR (K-factor requirement)

FCA investment firms should enter the capital requirement calculated for net position risk in accordance with MIFIDPRU 4.12.

21A – K-CMG

FCA investment firms should enter the total capital requirement calculated for K-CMG in accordance with MIFIDPRU 4.13. The value given shall be the sum of the individual K-CMG requirements for each portfolio for which the firm has obtained a K-CMG permission from the FCA.

22A – K-TCD

FCA investment firms should enter their total capital requirement calculated for K-TCD in accordance with MIFIDPRU 4.14.

23A – K-CON

FCA investment firms should enter their total own funds requirement calculated for K-CON in accordance with MIFIDPRU 5.7.

Transitional requirements

This section applies to all FCA investment firms if they are relying on transitional provisions to limit their own funds requirement. Firms that are not relying on transitional provisions should leave these fields blank.

24A – Transitional requirement

FCA investment firms should enter the current amount of any transitional own funds requirement.

Note, that where an FCA investment firm changes its permissions during this period in a manner that would result in an increase in its permanent minimum requirement under MIFIDPRU, it will no longer be able to take advantage of any transitional provisions that limit its permanent minimum own funds requirement. Before the FCA will grant any change in permission, it will assess whether the investment firm is able to meet the full permanent minimum own funds requirement and any other additional requirements that may apply as a result of the change.

25A – Basis of transitional

FCA investment firms should identify by reference to the relevant provision in MIFIDPRU the transitional provision or provisions they are relying on for their own funds requirement entered in cell 24A.

Own funds threshold requirement/wind-down trigger

This section applies to all FCA investment firms.

26A – Own funds threshold requirement

An FCA investment firm should enter the higher of:

- its own assessment of its own funds threshold requirement as determined through the ICARA process (MIFIDPRU 7.6) or
- the amount specified by the FCA to be its own funds threshold requirement

It is possible that both the FCA investment firm and the FCA have determined that no additional own funds are required to that set by the MIFIDPRU 4 requirements. In this case, the FCA investment firm should enter the higher of its PMR, its FOR and its KFR (where this applies).

27A – Own funds wind-down trigger

An FCA investment firm should enter its Fixed Overhead Requirement unless the FCA has specified an alternative own funds wind-down trigger.

MIF002 – Adequate financial resources (Liquid assets)

Introduction

This data item provides the FCA with information on the liquidity position of the FCA investment firm. This data item is intended to reflect the underlying adequate financial resources requirements in MIFIDPRU 6 and MIFIDPRU 7. It allows monitoring against these MIFIDPRU requirements and any individual requirements placed on a firm. We have provided references to the underlying rules to assist in its completion.

This data item applies to all FCA investment firms. In the text below we have identified where elements do not apply to all firms.

Additional information on liquid assets held may be required as part of the MIF007 – ICARA reporting form. We would also expect to see additional details in the FCA investment firm's report on its ICARA process, which must be provided to the FCA if requested.

MIFIDPRU 6 provides further information on the basic liquid assets requirement and core liquid assets. MIFIDPRU 7.7 provides further information on the liquid assets threshold requirement and non-core liquid assets.

Consolidated reports

This form applies to both individual FCA investment firms and to consolidation groups. If completed on behalf of a consolidation group, it should be completed on the basis of the consolidated situation and references to FCA investment firm should be taken to refer to the consolidation group.

Currency

All figures should be reported in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

Data elements

These are referred to by row first, then column.

Basis of completion

1A asks FCA investment firms to specify the basis on which this report is being completed.

2A asks for the FRNs of all the FCA investment firms that form part of the consolidation group.

Basic liquid asset requirement

3A – Basic liquid asset requirement based on fixed overheads

Enter the value of the basic liquid asset requirement that is based on the requirement to hold liquid assets equivalent to one third of the FCA investment firm's fixed overheads requirement. Where the firm is making use of an FOR transitional provision, the basic liquid asset requirement is one third of its transitional FOR.

4A – Basic liquid asset requirement based on client guarantees

Enter the basic liquid asset requirement that is based on the requirement to hold core liquid assets equivalent to 1.6% of the value of guarantees that have been provided to clients.

Core liquid assets held

5A – Core liquid assets held (excluding receivables from trade debtors)

Enter the total core liquid assets held. Trade receivables should not be included in this figure.

6A – Value of qualifying trade receivables

Enter the value of receivables from trade debtors that would qualify as core liquid assets. The value reported should be before applying any haircuts.

To be counted as core liquid assets, the relevant conditions in MIFIDPRU 6.3.3R must be met.

Liquid assets threshold requirement/wind-down trigger

8A – Liquid assets threshold requirement

An FCA investment firm should enter the higher of:

- its own assessment of its liquid assets threshold requirement as determined through the ICARA process as set out in MIFIDPRU 7.7 or
- the amount specified by the FCA to be its liquid assets threshold requirement

9A – Liquid assets wind-down trigger

An FCA investment firm should enter its basic liquid assets requirement unless the FCA has specified to the firm an amount that should be its liquid assets wind-down trigger.

Non-core liquid assets held

Information on what can be counted as a non-core liquid asset and the relevant haircuts is provided in MIFIDPRU 7.7.

10A – Value of non-core liquid assets post-haircut

Enter the total value of any non-core liquid assets that the firm has and is using, to satisfy its liquid assets threshold requirement.

The value reported should be after applying any haircuts. See MIFIDPRU 7.7 for details on assets that are eligible as non-core liquid assets and MIFIDPRU 7.7.11G for more information on haircuts.

MIF003 – Monitoring metrics

Introduction

This data item provides the FCA with information on the size and complexity of an FCA investment firm. The data item is intended to reflect the SNI thresholds in MIFIDPRU and allows monitoring against those thresholds. It also allows the FCA to see any trends in the FCA investment firm's data. We have provided references to the underlying rules to assist in its completion.

This data item applies to all FCA investment firms. In the text below we have identified where particular data elements do not apply to all firms.

This data item should be completed on the basis of an FCA investment firm's MiFID business activities. If an FCA investment firm cannot determine the split between its MiFID activities and any other business activities it undertakes, it should count everything as being a MiFID activity for these purposes.

Consolidated reports

This form applies to both individual FCA investment firms and to consolidation groups. If completed on behalf of a consolidation group, it should be completed on the basis of the consolidated situation and references to an FCA investment firm should be taken to refer to the situation that would result if the consolidation group were treated as a single large FCA investment firm. Firms should refer to MIFIDPRU 2.5 for further information on how MIFIDPRU applies on a consolidated basis.

Currency

All figures should be reported in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology, including, where appropriate, the FCA investment firm's accounting framework, without departing from their full meaning or effect.

The terms used in this guidance note have the same meaning as the terms used in MIFIDPRU. Defined terms are not italicised in this note.

Data elements

These are referred to by row first, then column.

Basis of completion

1A – Basis of completion

The FCA investment firm should indicate whether MIF003 is being completed on an individual or on a consolidated basis.

2A – details of other firms within the group

Enter the firm reference numbers of all the FCA regulated entities in the consolidated situation, and the group reference number, where applicable.

Metrics

FCA investment firms should only submit information for the activities they undertake at the time at which the report is submitted (or that they have undertaken in the past, where the historical activities continue to be reflected in the calculation of one or more K-factor metrics).

Where the FCA investment firm does not undertake an activity and there is no historical activity that continues to be reflected in the calculation of the relevant K-factor metric, it should leave the field blank. For example, an FCA investment firm may have ceased discretionary portfolio management on 1 March. As the calculation of average AUM is based on a 15-month period, the firm would report a positive number for its average AUM in cell 3A until 1 June in the following year on the basis of its historical activities.

Unless specified, we are not asking for the K-factor requirement but the value of the underlying activity that is used to calculate the K-factor requirement.

3A – Average AUM

Enter the average AUM as calculated in accordance with MIFIDPRU 4.7. This will be the value used to calculate K-AUM.

The next three fields ask for the AUM at a point in time, rather than an average over a specific time period. FCA investment firms should use the value of AUM as at the last business day of each calendar month.

Where an FCA investment firm cannot determine the split of AUM for MiFID and non-MiFID activities, it must report its total AUM here.

4A – AUM at T

Enter the assets under management on the reporting date.

5A – AUM at T-1 month

Enter the total assets under management on the last working day of the month before the reporting date.

6A – AUM at T-2 months

Enter the total assets under management on the last working day of the second month before the reporting date.

7A – CMH (segregated)

Enter the average CMH held in segregated accounts as calculated in accordance with MIFIDPRU 4.8. This is the amount of MiFID client money (as defined in the Handbook Glossary) that the firm holds in segregated accounts. This will be the value used to calculate K-CMH (segregated).

A segregated account is defined in in the Handbook Glossary.

The next three fields ask for the CMH (segregated) at a point in time, rather than an average over a specific time period. FCA investment firms should use the value of CMH on the last business day of each calendar month. Over time this will provide us with a time series of the actual CMH of the FCA investment firm.

Where an FCA investment firm cannot determine the split of CMH (segregated) for MiFID and non-MiFID activities, it must report its total CMH (segregated) here.

8A – CMH (segregated) at T

Enter the amount of MiFID client money in segregated accounts on the reporting date.

9A – CMH (segregated) at T – 1 month

Enter the amount of MiFID client money in segregated accounts on the last working day of the month before the reporting date.

10A – CMH (segregated) at T – 2 months

Enter the amount of MiFID client money in segregated accounts on the last working day of the second month before the reporting date.

11A – CMH (non-segregated)

Enter the average CMH held in non-segregated accounts as calculated in accordance with MIFIDPRU 4.8. This is the amount of MiFID client money (as defined in the Handbook Glossary) that the firm holds in non-segregated accounts. This will be the value used to calculate K-CMH (non-segregated).

A non-segregated account is an account that does not satisfy the conditions to be a segregated account.

The next three fields ask for the CMH (non-segregated) at a point in time, rather than an average over a specific time period. FCA investment firms should use the value of CMH on the last business day of each calendar month. Over time this will provide us with a time series of the actual CMH of the FCA investment firm.

Where an FCA investment firm cannot determine the split of CMH (non-segregated) for MiFID and non-MiFID activities, it must report its total CMH (non-segregated) here.

12A – CMH (non-segregated) at T

Enter the amount of MiFID client money in non-segregated accounts on the reporting date.

13A – CMH (non-segregated) at T – 1 month

Enter the amount of MiFID client money in non-segregated accounts on the last working day of the month before the reporting date.

14A – CMH (non-segregated) at T – 2 months

Enter the amount of MiFID client money in non-segregated accounts on the last working day of the second month before the reporting date.

15A – Average ASA

Enter the average ASA, calculated in accordance with MIFIDPRU 4.9. ASA is the amount of client assets safeguarded and administered by the firm, where such assets are held in connection with MiFID business. This includes where such assets have been deposited by the firm into accounts opened with third parties.

The next three fields ask for the ASA at a point in time, rather than an average over a specific time period. FCA investment firms should use the value of ASA on the last business day of each calendar month. Over time this will provide us with a time series of the actual ASA of the FCA investment firm.

Where an FCA investment firm cannot determine the split of ASA for MiFID and non-MiFID activities, it must report its total ASA here.

16A – ASA at T

Enter the total amount of assets safeguarded and administered in connection with the FCA investment firm's MiFID business on the reporting date.

17A – ASA at T – 1 month

Enter the total amount of assets safeguarded and administered in connection with MiFID business on the last working day of the month before the reporting date.

18A – ASA at T – 2 months

Enter the total amount of assets safeguarded and administered in connection with MiFID business on the last working day of the second month before the reporting date.

The next two fields ask for average COH, both cash and derivatives, that the firm will then use to calculate its K-COH requirement. The K-COH requirement should not be input here.

19A – Average COH (cash)

Enter the average COH for cash trades, calculated in accordance with MIFIDPRU 4.10 on the reporting date.

20A – Average COH (derivatives)

Enter the average COH for derivatives trades, calculated in accordance with MIFIDPRU 4.10 on the reporting date.

21A – Average DTF (cash)

Enter the average DTF for cash trades, calculated in accordance with MIFIDPRU 4.15 on the reporting date.

22A – Average DTF (derivatives)

Enter the average DTF or derivatives trades, calculated in accordance with MIFIDPRU 4.15 on the reporting date.

DTF in stressed market conditions

This applies where a proportion of the DTF occurred on a trading segment of a trading venue to which stressed market conditions apply. Stressed market conditions are as defined in Article 6 of the Market Making RTS.

Cells 23A and 24A can be left blank where the firm has not experienced stressed market conditions since they previously submitted this form.

23A – DTFexcl (cash)

Enter DTFexcl (cash) calculated in accordance with MIFIDPRU 4.15.10R 3(c).

24A – DTFexcl (derivatives)

Enter DTFexcl (derivatives) calculated in accordance with MIFIDPRU 4.15.10R 4(c).

25A - On- and off-balance sheet total

Enter the sum of the on- and off-balance sheet assets using figures from the last financial year for which accounts have been finalised and approved by the management body.

Where the accounts have not been finalised and approved after 6 months from the end of the previous financial year, provisional figures may be used.

26A – Annual gross revenue from MiFID services and activities

Enter the sum of the annual gross revenues from MiFID services and activities using figures from the last financial year for which accounts have been finalised and approved by the management body.

Where the accounts have not been finalised and approved after 6 months from the end of the previous financial year, provisional figures may be used.

Where an FCA investment firm cannot determine the split of revenue between MiFID and non-MiFID activities, it must report its total revenue here (i.e. effectively, it should assume that all revenue results from MiFID services and activities).

27A – Permission to deal on own account

Indicate if the FCA investment firm has permission to deal on own account.

If the report is being completed on behalf of a consolidation group, enter a 'Yes' in this cell where any FCA regulated entity within the group has permission to deal on own account for MiFID business.

MIF004 – Non-K-CON Concentration risk monitoring

Introduction

This data item provides the FCA with information on where the FCA investment firm may have various types of concentration risk. We have provided references to the underlying rules to assist in its completion.

This data item only applies to a non-SNI FCA investment firm. We have specified where particular data items do not apply to all non-SNIs. Firms should only complete the sections where they undertake the activity. Where a section does not apply to a particular firm, it should enter 'N/A' into the first field in that section. For example, a firm that does not hold client money will put 'N/A' in cell 13A.

Information provided in the section on earnings (Rows 28 to 31) can be taken from quarters based on their most recent accounting reference date.

Consolidated reports

This form applies to both individual FCA investment firms and to consolidation groups. If completed on behalf of a consolidation group, it should be completed on the basis of the consolidated situation and references to an FCA investment firm should be taken to refer to the situation that would result if the consolidation group were treated as a single large FCA investment firm. Firms should refer to MIFIDPRU 2.5 for further information on how MIFIDPRU applies on a consolidated basis.

Currency, figures and percentages

Unless specified as a percentage, all figures should be reporting in Sterling. Figures should be reported in 000s. Percentages should be rounded to the nearest whole number.

Defined Terms

The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology, including, where appropriate, the FCA investment firm's accounting framework, without departing from their full meaning or effect.

The terms used in this guidance have the same meaning as the terms used in MIFIDPRU. Defined terms are not italicised in this note.

Data elements

These are referred to by row first, then column.

In this report, we are asking for the location of the FCA investment firm's client money and client securities, where these relate to its MiFID investment business, and the FCA investment firm's own cash. By location we mean the entities the investment firm uses for these purposes. We are also asking for information about the source of an FCA investment firm's earnings.

This is a broader concept than would generally be considered a concentration risk and that previously used in the CRR for large exposures. However, the potential risk from these areas is something that we require investment firms to monitor.

Basis of completion

1A – Basis of completion

Is the MIF004 report on behalf of a consolidation group? Enter 'Yes' in this cell if the report is being completed by a prudential consolidation group.

2A – details of other firms within the group

If the answer to cell 1A is yes, enter the firm reference numbers (FRN) of all the FCA regulated entities in the consolidated situation, and the group reference number, where applicable.

All positions or exposures (not including intragroup exposures)

This section only applies to FCA investment firms who deal on own account. These firms should report the total value of all exposures or positions to a counterparty, including exposures in and outside of its trading book, such as bilateral loans.

Firms should include positions or exposures to central governments, public sector entities, or other exposures that are excluded from K-CON under MIFIDPRU 5.10.1R, except that they should not include intragroup exposures. Intragroup exposures are captured in a separate data item.

Row 3 will indicate where the largest exposure/position with a counterparty is, followed by rows 3 to 7 in decreasing amounts. If a firm has less than 5 exposures, it should leave subsequent rows blank.

Where firms have exposures to multiple counterparties who constitute a single group of connected clients under MIFIDPRU 5 (Concentration risk), they should report separately on each counterparty for the purposes of this data item. However, firms are reminded that MIFIDPRU 5.2 requires them to account for groups of connected clients when monitoring and controlling concentration risk.

Cells 3A to 7A, inclusive – LEI number

Enter the Legal Entity Identifier (LEI) number of up to 5 counterparties that the FCA investment firm has the largest exposures/positions with. The LEI number must be used if available. If the counterparty does not have an LEI number, the FCA investment firm should use its internal reference number for that counterparty. This internal reference number should be consistent over time and across regulatory returns.

Cells 3B to 7B, inclusive – value of exposures/positions with that counterparty

Enter the total amount of the exposures/positions held with each counterparty, starting with the largest.

Intragroup exposures

This section only applies to FCA investment firms who deal on own account. By intragroup we mean exposures to other entities within the same group. Group for these purposes is as defined in s.421 of the Financial Services and Markets Act 2000 (FSMA). It is not limited to other entities within the FCA investment firm's consolidated situation.

Where this section is being completed on the basis of the consolidated situation, there may still be intragroup exposures from inside the consolidated situation to entities that are part of the same group, as defined in s.421 FSMA, but are outside of the consolidated situation.

FCA investment firms that are completing the form on a consolidated basis should not include intragroup exposures between firms that are part of the consolidated situation.

Firms should report the total value of all exposures or positions to a counterparty, including exposures in and outside of its trading book, such as bilateral loans.

Firms should provide details of the largest 5 intragroup exposures only. These could be to another group FCA investment firm, or to any other entity within the group. This section can be left blank where there are no intragroup exposures.

Row 8 will indicate where the largest exposure/position with a counterparty is, followed by rows 9 to 12 in decreasing amounts. If a firm has less than 5 exposures, it should leave subsequent rows blank.

Cells 8A to 12A, inclusive – LEI number

Enter the LEI number of up to 5 group entities that the FCA investment firm has the largest exposures/positions with. The LEI number must be used if available. If the counterparty does not have an LEI number, the FCA investment firm should use its FRN, if available. If the counterparty has neither an LEI nor an FRN it should use its internal reference number for that counterparty. This internal reference number should be consistent over time and across regulatory returns.

Cells 8B to 12B, inclusive – value of exposures/positions with that counterparty

Enter the total amount of the exposures/positions held with each counterparty, starting with the largest.

Location of client money

This section only applies to FCA investment firms that have permission to hold client money. It only relates to MiFID client money (as defined in the Glossary). If a firm is unable to determine whether an amount of client money is MiFID client money, it must treat it as being MiFID client money for these purposes.

Row 13 will indicate where the largest percentage of the FCA investment firm's MiFID client money is held, followed by rows 14 to 17 in decreasing amounts. If an FCA investment firm uses less than five entities to hold its MiFID client money, it should leave subsequent rows blank. In that case, the sum of percentages should be 100%.

Cells 13A – 17A, inclusive – LEI number

Enter the LEI number of up to five entities where MiFID client money is placed, beginning with the largest percentage. The LEI must be used if available. Where cash has been placed with a money market fund (MMF), the LEI of the MMF itself must be reported. If an LEI is not available, the FRN must be used where available. If the entity does not have an LEI number or an FRN, the FCA investment firm should use its internal reference number for that counterparty. This internal reference number should be consistent over time and across regulatory returns.

Cells 13B – 17B, inclusive – percentage of client money held at that institution

Enter the percentage of MiFID client money held at each institution, starting with the largest. Percentages should be rounded to the nearest whole number.

Cells 13C to 17C, inclusive – MMF (Yes/No)

Specify "Yes" or "No" to indicate if the cash has been placed with a money market fund (MMF) rather than deposited with a credit institution or central bank.

Location of client securities

This section only applies to FCA investment firms that have permission to hold client securities/assets. It relates to client securities/assets held in connection with the FCA investment firm's MiFID business.

Row 18 will indicate where the largest percentage of the FCA investment firm's client securities are held, followed by rows 19 to 22 in decreasing amounts. If an FCA investment firm uses less than five entities to hold its client securities, it should leave subsequent rows blank. In that case, the sum of percentages should be 100%.

Cells 18A to 22A, inclusive – LEI number

Enter the LEI number of up to five institutions where its client securities are held, beginning with the largest percentage. The LEI must be used if available. If not, the FRN must be used if available. If the entity does not have an LEI number or an FRN, the FCA investment firm should use its internal reference number for that counterparty. This internal reference number should be consistent over time and across regulatory returns.

Cells 18B to 22B, inclusive – percentage of client securities held at that institution

Enter the percentage of client securities held at each institution, starting with the largest. Percentages should be rounded to the nearest whole number.

Location of the investment firm's own cash and holdings in MMFs

Row 23 will indicate where the largest percentage of the FCA investment firm's own cash is held, followed by rows 24 to 27 in decreasing amounts. If an FCA investment firm uses less than five entities to hold its own cash, it should leave subsequent rows blank. In that case, the sum of percentages should be 100%.

For these purposes, FCA investment firms should report their holdings in money market funds (MMFs) alongside their holdings in cash (e.g. on deposit at a credit institution).

Cells 23A to 27A, inclusive – LEI number

FCA investment firms should enter the LEI number of up to five institutions where its own cash is held or MMFs it has holdings in, beginning with the largest percentage. The LEI must be used if available. For holdings in a money market fund (MMF), the LEI of the MMF itself must be reported. If an LEI is not available, the FRN must be used. If the entity does not have an LEI number or an FRN, the FCA investment firm should use its internal reference number for that institution. This internal reference number should be consistent over time and across regulatory returns.

Cells 23B to 27B, inclusive – percentage of FCA investment firm's own cash/MMF holdings at that institution

FCA investment firms should enter the percentage of its own cash/MMF holdings at each institution, calculated as a proportion of the value of its total combined cash and MMF holdings, and starting with the largest. Percentages should be rounded to the nearest whole number.

Cells 23C to 27C, inclusive – MMF (Yes/No)

Indicate if the cash has been placed with an MMF rather than e.g. deposited with a credit institution.

Earnings

Information provided in this section can be taken from quarters based on the most recent accounting reference date.

Row 23 will indicate where the largest percentage of the FCA investment firm's earnings are from, followed by rows 24 to 27 in decreasing amounts. If an FCA investment firm's earnings are from less than five sources, it should leave subsequent rows blank. In that case, the sum of percentages should be 100%.

Earnings includes all earnings from regulated or unregulated activities, not just earnings from MiFID business. This should include any earnings from group members, e.g. in exchange for the provision of intragroup services.

Cells 28A to 32A, inclusive – LEI number

FCA investment firms should enter the LEI number of up to five clients from which it generates its earnings, beginning with the largest percentage. The LEI must be used if available. If not, the FRN must be used. If the client does not have an LEI number or an FRN, the FCA investment firm should use its internal reference number for that client. This internal reference number should be consistent over time and across regulatory returns.

A client may be an institution or a natural person. Where the client is a natural person, the FCA investment firm should use its own internal reference number for that client. This internal reference number should be consistent over time and across regulatory returns.

Cells 28B to 32B, inclusive – percentage of total revenue earned from the client

FCA investment firms should enter the percentage of its earnings from each client, starting with the largest. Percentages should be rounded to the nearest whole number.

Cells 28C to 32C, inclusive – type of earning

FCA investment firms should indicate the type of earning that they are reporting. It may include more than one type of income stream. Where this is the case, FCA investment firms should list the main income type for that client. Options include:

- Interest and dividend income from trading book positions
- Interest and dividend income from non-trading book positions
- Fee and commission income
- Provision of intragroup services
- Other sources of income

MIF005 – K-CON – concentration risk reporting where the 'soft limit' has been exceeded

Introduction

This data item only applies to non-SNI FCA investment firms who deal on own account. It provides the FCA with information about the FCA investment firm's balance sheet concentration risk and any additional own funds that the firm is required to hold as a result. We have provided references to the underlying rules to assist in its completion.

Consolidated reports

This form applies to both individual FCA investment firms and to consolidation groups. If completed on behalf of a consolidation group, it should be completed on the basis of the consolidated situation and references to an FCA investment firm should be taken to refer to the situation that would result if the consolidation group were treated as a single large FCA investment firm. Firms should refer to MIFIDPRU 2.5 for further information on how MIFIDPRU applies on a consolidated basis.

Currency and figures

All figures should be reporting in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology, including, where appropriate, the FCA investment firm's accounting framework, without departing from their full meaning or effect.

The terms used in this guidance have the same meaning as the terms used in MIFIDPRU. Defined terms are not italicised in this note.

Groups of connected counterparties

MIFIDPRU 5 (Concentration risk) requires FCA investment firms to treat exposures to a group of connected counterparties (referred to in the rules as a "group of connected clients") as a concentrated exposure to a single counterparty for the purpose of calculating K-CON. Where an FCA investment firm has a concentrated exposure to a group of connected counterparties, it should report this as a single item, rather than reporting separately on the connected counterparties in the group.

Data elements

These are referred to by row first, then column.

Instructions

This section asks FCA investment firms to provide additional information relating to their trading book exposures that exceed the 'soft limit', which is generally 25% of their own funds but may be the lower of £150 million or 100% of own funds if a client is a MIFIDPRU-eligible institution. Trading book exposures above this limit require K-CON to be calculated and additional own funds to be held.

Cell 1A – Basis of completion

Is the MIF005 report on behalf of a consolidation group? Enter 'Yes' in this cell if the report is being completed by a prudential consolidation group.

Cell 2A – Details of other firms within the group

If the answer to cell 1A is yes, enter the firm reference numbers (FRN) of all the FCA regulated entities in the consolidated situation, and the group reference number, where applicable.

Cell 3A – LEI number

Enter the LEI number of the counterparty, where the 'soft limit', as outlined in MIFIDPRU 5.5, has been exceeded. If the counterparty does not have an LEI number, the FCA investment firm should use its internal reference number for that counterparty. This internal reference number should be consistent over time and across regulatory returns.

For a group of connected counterparties, the FCA investment firm should use an LEI number for one member of the group, but this number should be used consistently over time and across regulatory returns to refer to the relevant group of connected counterparties. If none of the connected counterparties has an LEI number, the FCA investment firm should use its internal reference number for that group of connected counterparties, or if it does not have one for that group, then its internal reference number for an individual counterparty within that group. This internal reference number should be consistent over time and across regulatory returns.

Cell 3B – Exposure Value

Enter the exposure value for that counterparty/group of connected counterparties as calculated in accordance with MIFIDPRU 5.4.

Cell 3C – Exposure Value Excess

Enter the exposure value excess for that counterparty/group of connected counterparties as calculated in accordance with MIFIDPRU 5.5.

Cell 3D – Own funds requirement for that excess

Enter the own funds requirement for the excess for that counterparty/group of connected counterparties as calculated in accordance with MIFIDPRU 5.7.

Cell 3E - £150m/100% limit for MIFIDPRU-eligible institutions used (Yes/No)

Indicate if the counterparty/group of connected counterparties includes a credit institution or an FCA investment firm, and the £150m/100% limit in MIFIDPRU 5.5.1R is being used, where this is higher than 25% of its own funds.

MIF006 – GCT reporting – instructions for completion

The aim of this data item is to ensure that any parent undertaking that has investments in relevant financial undertakings (as defined in the Glossary) in the same investment firm group is holding appropriate amounts and quality of capital to cover the value of those investments.

The quality of capital held by the parent undertaking should be at least equivalent to the quality of capital that has been invested by the parent undertaking in the relevant financial undertakings forming part of the same investment firm group. The template must be completed by the parent undertaking that has to meet the GCT requirement in MIFIDPRU 2.6.5R. The exception is a responsible UK parent which, in accordance with MIFIDPRU 2.6.10R (2)(b)(i), is reporting on the position of one of its subsidiaries that is a parent undertaking of another relevant financial undertaking. In that case, the responsible UK parent must submit two MIF006 reports: one containing data relating to that subsidiary that is a parent undertaking; the other containing data relating to the responsible UK parent itself.

However, if the responsible UK parent has chosen to hold own funds instruments to cover the group capital test requirements in relation to both itself and a subsidiary in accordance with MIFIDPRU 2.6.10R (2)(b)(ii), the responsible UK parent will submit only one MIF006 report. In that case, the responsible UK parent should complete MIF006 by including information relating to its own direct investments in relevant financial undertakings and the relevant investments of its subsidiary.

Currency

All figures should be reporting in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology, including, where appropriate, the FCA investment firm's accounting framework, without departing from their full meaning or effect.

The terms used in this guidance have the same meaning as the terms used in MIFIDPRU. Defined terms are not italicised in this note.

Cell 1A

The parent undertaking should enter its name – free text.

Cell 2A

The parent undertaking should enter its FCA firm reference number (FRN). If the parent undertaking does not have an FRN, it may be a third country parent or an unregulated UK parent, and it should enter its LEI number.

Identifying the relevant subsidiaries

The relevant subsidiaries for the purposes of the group capital test are:

- FCA investment firms
- Collective portfolio management investment firms
- Financial institutions (including authorised payment institutions, electronic money issuers and AIFMD and UCITS collective portfolio management firms)

- Ancillary services undertakings
- Tied agents – including appointed representatives that meet the definition of tied agent

Capital of the parent undertaking

Cell 3A – CET1

The parent undertaking should input the amount of its own CET1 own funds.

Cell 4A – AT1

The parent undertaking should input the amount of its own AT1 own funds.

Cell 5A – T2

The parent undertaking should input the amount of its own T2 own funds.

Row 6.1

This row will contain the information needed to be able to identify the subsidiary and the types of capital the parent entity has invested in that subsidiary.

Subsidiary company identifier

Cell 6.1A

Enter the firm reference number (FRN) of the subsidiary if this is an authorised firm in the UK.

Cell 6.1B

Enter the LEI of the subsidiary if the subsidiary is not authorised in the UK.

Firms may complete both the FRN and the LEI. At least one of them must be completed.

Cell 6.1C

A parent undertaking may choose to hold own funds instruments to cover the GCT requirements of a third country undertaking for this subsidiary. In this case, it will indicate in this cell that the firm identified in this row is an indirect subsidiary.

Book value and type of investments/contingent liabilities in subsidiaries

Cell 6.1D

The parent undertaking enters its total CET1 investment in this subsidiary.

Cell 6.1E

The parent undertaking enters its total AT1 investment in this subsidiary.

Cell 6.1F

The parent undertaking enters its total T2 investment in this subsidiary.

Cell 6.1G

The parent undertaking enters its total contingent liabilities to this subsidiary. Note: The parent undertaking must hold CET1 capital against any contingent liabilities it has in respect of this subsidiary.

Where there is more than one subsidiary, please continue with Rows 6.2, 6.3 etc until all subsidiaries have been captured.

MIF007 – ICARA Questionnaire

Introduction

This data item provides the FCA with information on the overall financial position of the FCA investment firm. This data item is intended to reflect the overall financial adequacy rule (OFAR) requirements contained in MIFIDPRU and allows monitoring against the MIFIDPRU requirements, and also any individual requirements placed on a firm. We have provided references to the underlying rules to assist in its completion.

This data item applies to all FCA investment firms. In the text below we have identified where elements do not apply to all firms.

Further information about the ICARA process is in MIFIDPRU 7.

Group ICARA processes

Under MIFIDPRU 7.9.5R, an investment firm group may operate a group ICARA process if certain conditions are met. In this situation, each individual MIFIDPRU investment firm that is included within the group ICARA process must submit this data item separately, using the conclusions arising from the group process.

Currency

All figures should be reported in Sterling. Figures should be reported in 000s.

Defined Terms

The descriptions indicated in these notes are designed simply to repeat, summarise or amplify the relevant statutory or other definitions and terminology without departing from their full meaning or effect.

Part A: Basis of completion of the ICARA process

1A asks FCA investment firms to specify the basis on which the ICARA process is being completed.

2A asks for the FRNs of all the FCA investment firms that form part of the consolidation group, where the answer to 1A is 'Yes'.

3A asks if the ICARA process review has been completed through a group-level arrangement.

4A asks for the ICARA process reference date of the information included in the questionnaire. This is the date at which the information used to complete the ICARA process was prepared. See MIFIDPRU 7.8.6G (1)(a).

5A asks whether the ICARA process and resulting document have been reviewed and signed off by the FCA investment firm's governing body.

6A asks for the date that the ICARA process and resulting document were signed off by the FCA investment firm's governing body.

Part B: Assessing and monitoring the adequacy of own funds

Part B should be completed by all FCA investment firms. It should be completed with information as at the accounting reference date.

Own funds held as at the ICARA accounting reference date

7A – Common Equity Tier 1 capital

FCA investment firms should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with Article 50 of the UK CRR as applied and modified by Section 3.3 of MIFIDPRU – Common equity tier 1 capital. This cell must always be completed with a positive number.

8A – Additional Tier 1 capital

FCA investment firms should enter the amount of AT1 capital they hold for their own funds. AT1 capital should be calculated in accordance with Article 61 of the UK CRR as applied and modified by Section 3.4 of MIFIDPRU – Additional tier 1 capital.

FCA investment firms are not required to hold/issue AT1 capital. If no AT1 has been issued, or is held, a zero should be entered in this cell.

9A – Tier 2 capital

FCA investment firms should enter the amount of T2 capital they hold for their own funds. T2 capital should be calculated in accordance with Article 71 of the UK CRR as applied and modified by Section 3.5 of MIFIDPRU – Tier 2 capital.

FCA investment firms are not required to hold/issue T2 capital. If no T2 has been issued, or is held, a zero should be entered in this cell.

Own funds threshold requirement

10A – Own funds threshold requirement identified through the ICARA process

FCA investment firms should enter their own funds threshold requirement as determined through the ICARA process set out in MIFIDPRU 7.6. This amount should <u>not</u> include any additional own funds amount specified by the FCA.

If the FCA investment firm has determined that no additional own funds are required to that set by the MIFIDPRU 4 requirements, it should enter the higher of its PMR, its FOR and its KFR (where this applies).

11A – Own funds to address risks from ongoing activities

FCA investment firms should enter their assessment of the own funds needed to address risks from ongoing activities, as identified through the ICARA process (MIFIDPRU 7.6). For non-SNI firms this amount cannot be lower than the K-Factor requirement.

Where this amount is higher than the own funds necessary for an orderly wind-down it should be equal to the amount entered in cell 10A.

12A – Own funds necessary for an orderly wind-down

FCA investment firms should enter their assessment of the own funds necessary for orderly wind-down, as identified through the ICARA process (MIFIDPRU 7.6). For all firms this amount cannot be lower than the Fixed Overhead Requirement.

Where this amount is higher than the own funds necessary to address risks from ongoing activities it should be equal to the amount entered in cell 10A.

Additional own funds requirement specified by the FCA

This asks FCA investment firms to confirm whether the following have been set by the FCA.

- own funds threshold requirement
- own funds wind-down trigger

13A – Has the FCA specified an own funds requirement for the firm?

FCA investment firms should indicate whether the FCA has specified an own funds requirement amount. This could be as the result of a SREP or through other means.

If the answer is 'Yes', FCA investment firms should put a 'Yes' in at least one of 14A and 15A. Both can be completed if appropriate.

The basis for the FCA specified own funds requirement can be as either an own funds thresholds requirement or an own funds wind-down trigger, or both.

14A – Own funds threshold requirement

FCA investment firms should indicate whether the FCA has specified an own funds threshold requirement. If 'Yes', 16A must be completed.

15A – Own funds wind-down trigger

FCA investment firms should indicate whether the FCA has specified an own funds wind-down trigger. If 'Yes', 17A must be completed.

16A – Own funds threshold requirement set by the FCA

FCA investment firms should state their own funds threshold requirement where this has been set by the FCA.

17A – Own funds wind-down trigger set by the FCA

FCA investment firms should state their own funds wind-down trigger where this has been set by the FCA.

Part B1: Breakdown of additional own funds requirement to address risks from ongoing activities

This section only applies to non-SNI firms. SNI firms should leave this section blank.

This section asks for a breakdown of how the value in cell 11A has been reached.

Where a non-SNI firm does not calculate a particular K-factor because it does not carry on the relevant activity, it should leave that entry blank.

The sum of rows 18A to 27A should be equal to the amount put in 11A.

18A – Additional own funds for asset management activity

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm due to their asset management activity, that is not covered by K-AUM.

19A – Additional own funds for holding client money

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm due to holding client money, that is not covered by K-CMH.

20A – Additional own funds for safeguarding assets

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm due to safeguarding assets, that is not covered by K-ASA.

21A – Additional own funds for reception and transmission of orders, or executing client orders

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm due to reception and transmission of orders, or executing client orders, that is not covered by K-COH.

22A – Additional own funds for market risk

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from its market risk, that is not covered by K-NPR.

23A – Additional own funds for positions associated with clearing risk

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from its market risk, that is not covered by K-CMG.

24A – Additional own funds for trading activity on the firm's own account

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from its trading activity in the market, that is not covered by K-DTF.

25A – Additional own funds for trading activity in clients' names

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from its trading activity in the market that is not covered by K-DTF.

26A – Additional own funds for trading counterparty risk

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from its activity in the market that is not covered by K-TCD.

27A – Additional own funds for concentration risk

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm to the firm from any concentration risk that is not covered by K-CON.

28A – Additional own funds for other risks from ongoing activities

FCA investment firms should enter the amount of the additional own funds that they have identified as a result of the ICARA process as being required to cover material harm from ongoing activities, that are not covered by the own funds amounts in rows A18 to A26.

29A – Description of the risks captured in 28A

FCA investment firms should enter a description of the risks that have led to the additional own funds requirement stated in 28A. This only needs to be at a very high level. We expect full details to be provided in the ICARA document.

Part B2: Breakdown of additional own funds requirement necessary for orderly wind-down

This section only applies to non-SNI firms if the amount entered in 12A is higher than the FOR. SNI firms should leave this section blank.

30A – Description of risks

FCA investment firms should enter a description of the risks that have led to the additional own funds identified as necessary. This only needs to be at a very high level. We expect full details to be provided in the ICARA document.

Part C: Assessing and monitoring the adequacy of liquid assets held

Part C must be completed by all FCA investment firms.

Liquid assets held as at the ICARA accounting reference date

FCA investment firms are reminded that:

- their basic liquid asset requirement must be met from core liquid assets
- they are not obliged to hold any non-core liquid assets and they can meet their base and additional liquid asset requirements using core liquid assets
- non-core liquid assets can only be counted towards any additional liquid asset requirement an FCA investment firm has identified and a haircut must be applied

31A – Core liquid assets held

FCA investment firms should enter the total value of the core liquid assets they hold. The definition of core liquid assets is in MIFIDPRU 6.3.

33A – Non-core liquid assets – post-haircut

FCA investment firms should enter the total post-haircut value of any non-core liquid assets that they are using to satisfy any additional liquid assets requirement.
See MIFIDPRU 7.7 for details on assets that are eligible as non-core liquid assets and MIFIDPRU 7.7.11G for more information on haircuts.

Liquid assets required as identified through the ICARA process

33A – Liquid assets threshold requirement

FCA investment firms should enter their liquid assets threshold requirement from their ICARA assessment here.

This will be the sum of the firm's basic liquid asset requirement; and the higher of

- the amount of liquid assets the firm requires at any given point in time to fund its ongoing business operations (cell 34A)
- the additional amount of liquid assets the firm requires to start its wind-down (cell 39A)

This amount should not include any additional liquid assets amount specified by the FCA.

34A – Liquid assets required to fund ongoing business operations

FCA investment firms should enter the amount of liquid assets they need to fund ongoing business operations at any given point in time, taking into account periods of stress in the economic cycle. More information on this assessment is in MIFIDPRU 7.7.

35A to 38A – Breakdown of liquid assets estimate to fund ongoing business operations by quarter

As part of the ICARA process to estimate funding needs for ongoing business operations, FCA investment firms must produce a reasonable estimate of the amount of liquid assets they would require to fund their ongoing business during each quarter over the next 12 months from the ICARA assessment date. FCA investment firms should enter those quarterly values into cells A35 to A38. See MIFIDPRU 7.7 and particularly MIFIDPRU 7.7.4G, for more information and guidance on this assessment.

35A – Quarter 1

Enter the maximum amount of liquid assets required at any point during the first quarter after the ICARA assessment.

36A – Quarter 2

Enter the maximum amount of liquid assets required at any point during the second quarter after the ICARA assessment.

37A – Quarter 3

Enter the maximum amount of liquid assets required at any point during the third quarter after the ICARA assessment.

38A – Quarter 4

Enter the maximum amount of liquid assets required at any point during the fourth quarter after the ICARA assessment.

39A – Liquid assets required to begin an orderly wind-down

FCA investment firms should enter their assessment of the liquid assets they need to hold to begin an orderly wind-down, as determined through the ICARA process (MIFIDPRU 7.7).

Meeting debts as they fall due

40A – Has the firm at any point not been able to meet its debts as they fall due?

FCA investment firms should indicate if at any point during the previous accounting period they have been unable to meet their debts as they fall due.

41A – Please provide details

FCA investment firms should provide full details of issue(s) referred to in 40A, including:

- reasons they were unable to meet their debts as they fell due
- what action they took to remedy the situation
- what changes have been made to systems and controls to prevent this from re-occurring

Additional liquid assets requirement set by the FCA

This section asks the FCA investment firm to indicate whether the FCA has set a liquid assets requirement for it. This could be the liquid assets threshold requirement or the liquid assets wind-down trigger.

42A– Has the FCA specified a liquid asset requirement for the firm?

FCA investment firms should indicate whether the FCA has specified a liquid asset requirement amount. This could be as the result of a SREP or through other means.
If the answer is 'Yes', FCA investment firms must also answer 'Yes' to at least one of 43A and 44A. Both can be completed if appropriate.

43A –Liquid assets threshold requirement

FCA investment firms should indicate whether the FCA has specified a liquid assets threshold requirement. If 'Yes', 45A must be completed.

44A – Liquid assets wind-down trigger

FCA investment firms should indicate whether the FCA has specified liquid assets wind-down trigger. If 'Yes', 46A must be completed.

45A – Liquid assets threshold requirement set by the FCA

FCA investment firms should state their liquid assets threshold requirement where this has been set by the FCA.

46A – Liquid assets wind-down trigger set by the FCA

FCA investment firms should state their liquid assets wind-down trigger where this has been set by the FCA.

<u>Part D: MiFID investment services and activities and business model information</u>

Part D should be completed by all FCA investment firms.

47A to 55A – MiFID investment services and activities

FCA investment firms should put a 'Yes' for each MiFID service they provide. Where a service is not provided, please put a 'No'.

NB. FCA investment firms must have the relevant FSMA permissions for the services they provide.

Other business activities

56A – 62A

FCA investment firms should put a 'Yes' for each business activity they carry on. Where a service is not provided, please put a 'No'.

63A – Financial conglomerate

The FCA investment firm should put a 'Yes' where it is part of a financial conglomerate. They should put a 'No' where they are not.

Firms should refer to the financial conglomerate decision tree in GENPRU 3 Annex 4R.

All firms are reminded that they should inform us where their group structure changes.

64A – delegation of discretionary portfolio management to other firms

FCA investment firms should put a 'Yes' if they delegate the discretionary portfolio management of assets to another firm. They should put a 'No' where they do not.

65A should only be completed where 64A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount **delegated to** other firms.

66A – delegation of discretionary portfolio management from other firms

FCA investment firms should put a 'Yes' if they undertake the discretionary portfolio management of assets on a delegated basis on behalf of other firms. They should put a 'No' where they do not.

67A should only be completed where 66A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount of assets **delegated from** other firms.

68A – provision of advice on an ongoing nature

FCA investment firms should put a 'Yes' if they provide advice of an ongoing nature. They should put a 'No' where they do not.

69A should only be completed where 64A has been answered 'Yes'. It should be left blank otherwise. Firms should enter the amount of assets under ongoing advice they have included within their K-AUM calculation.

70A - Calculation of AUM at ICARA accounting reference date excluding offsetting

FCA investment firms should enter 'Yes' if at the ICARA accounting reference date they have calculated their AUM and applied any offsetting of negative values or liabilities attributed to positions (see MIFIDPRU 4.7.5R to 4.7.7R). They should enter a 'No' where they have not.

67A should only be completed where 66A has been answered 'Yes'. It should be left blank otherwise.

FCA investment firms should enter the value of AUM according to MIFIDPRU 4.7.5R at the ICARA accounting reference date **without** applying any offsetting according to MIFIDPRU 4.7.7(2)R.

NB. FCA investment firms must have the relevant FSMA permissions for the services they provide.

10 Firms acting as clearing members and indirect clearing firms

10.1 Application

10.1.1 R This chapter applies to a *MIFIDPRU investment firm* that is:

(1) a *clearing member*; or

(2) an *indirect clearing firm*.

10.1.2 R This chapter also applies to the *UK parent entity* of an *investment firm group* that contains a *clearing member* or an *indirect clearing firm*.

10.2 Categorisation of clearing firms as non-SNI MIFIDPRU investment firms

10.2.1 R (1) A *MIFIDPRU investment firm* that is a *clearing member* or an *indirect clearing firm* is a *non-SNI MIFIDPRU investment firm*.

(2) The classification in (1) applies irrespective of whether the *firm* satisfies the conditions in *MIFIDPRU* 1.2 (SNI MIFIDPRU investment firms) or not.

10.2.2 R (1) This *rule* applies where:

(a) an *investment firm group* contains a *clearing member* or an *indirect clearing firm*; and

(b) the *UK parent entity* of the *investment firm group* in (a) is subject to prudential consolidation in accordance with *MIFIDPRU* 2.5.

(2) Where this *rule* applies, the *UK parent entity* in (1) must comply with the relevant obligations in *MIFIDPRU* on a *consolidated basis* as if it were a *non-SNI MIFIDPRU investment firm*.

(3) The requirement in (2) applies irrespective of whether the *UK parent entity* satisfies the conditions in *MIFIDPRU* 2.5.21R or not.

10.2.3 G (1) The effect of *MIFIDPRU* 10.2.1R is that a *firm* that acts as a *clearing member* or *indirect clearing firm* will always be a *non-SNI MIFIDPRU investment firm*. This is the case even where the *firm* may otherwise satisfy all the other criteria in *MIFIDPRU* 1.2 to be classified as an *SNI MIFIDPRU investment firm*.

(2) The effect of *MIFIDPRU* 10.2.2R is that where the *consolidated situation* of a *UK parent entity* includes a *clearing member* or *indirect clearing firm*, the *UK parent entity* will always be a *non-SNI MIFIDPRU investment firm* on a *consolidated basis*.

(3) *MIFIDPRU* 10.2.1R applies equally to a *firm* that is a self-clearing *firm*.

10.3 Application of K-DTF requirement to clearing activities

10.3.1 R (1) This *rule* applies to transactions in *financial instruments* in relation to which a *MIFIDPRU investment firm* provides clearing services in its capacity as a *clearing member* or an *indirect clearing firm*.

(2) Except where *MIFIDPRU* 10.3.2R applies, a *firm* must include the transactions in (1) in its calculation of *DTF* for the purposes of the *K-DTF requirement* in accordance with the remainder of this *rule*.

(3) The transactions in (1) must be included in a *firm's DTF* on the following basis:

(a) where the order that gave rise to the clearing transaction was a *cash trade*, the clearing transaction must also be treated as if it were a *cash trade* (irrespective of whether it would otherwise meet that definition); and

(b) where the order that gave rise to the clearing transaction was a *derivatives trade*, the clearing transaction must also be treated as if it were a *derivatives trade* (irrespective of whether it would otherwise meet that definition).

10.3.2 R (1) This *rule* applies where a *firm*:

(a) executes an order:

(i) in its own name (whether for its own account or on behalf of a *client*); or

(ii) in the name of a *client*; and

(b) also provides clearing services in its capacity as a *clearing member* or *indirect clearing firm* in relation to a transaction that results from the order in (a).

(2) Where this *rule* applies, the value of the relevant order in (1)(a) is not included in the *firm's* measurement of *DTF* attributable to clearing services under *MIFIDPRU* 10.3.1R, provided that the value of the order has already been included in one of the following in relation to the *firm's* execution services:

(a) the calculation of the *firm's COH* under *MIFIDPRU* 4.10 (K-COH requirement); or

(b) the calculation of the *firm's DTF* under *MIFIDPRU* 4.15 (K-DTF requirement).

10.3.3 G (1) *MIFIDPRU* 10.3.1R requires a *MIFIDPRU investment firm* to calculate an additional *K-DTF requirement* for any clearing transactions it undertakes in relation to *financial instruments*.

(2) *MIFIDPRU* 10.3.2R applies to a *MIFIDPRU investment firm* that both executes an order and subsequently provides clearing services in relation to the resulting transaction (including where the *firm* is acting as a self-clearing *firm*). In this case, the *firm* is not required to include the clearing transaction in its calculation of *DTF*, provided that the value of the original executed order has already been included in either the *firm's* measurement of its *DTF* or *COH*.

(3) The intention of *MIFIDPRU* 10.3.2R is that a *firm* is not required to "double-count" the value of the original order and the resulting clearing transaction where the *firm* is involved in both executing and clearing the same trade.

10.3.4 R Where prudential consolidation applies to a *UK parent entity* under *MIFIDPRU* 2.5.7R, the *UK parent entity* must include within the calculation of its consolidated *K-DTF requirement* any transactions that are cleared by *clearing members* or *indirect clearing firms* that are included within its *consolidated situation*.

10.4 Own funds requirement for CCP default fund exposures

10.4.1 R This section applies to:

(1) a *MIFIDPRU investment firm* that is a *clearing member*; and

(2) a *UK parent entity* to which consolidation under *MIFIDPRU* 2.5.7R applies, where the relevant *investment firm group* includes one or more *clearing members*.

10.4.2 R (1) A *MIFIDPRU investment firm* must include its pre-funded contributions to the default fund of a *CCP* in the calculation of its *K-TCD requirement* in accordance with the remainder of this *rule*.

(2) The *firm* must apply the *rules* and *guidance* in *MIFIDPRU* 4.14 (K-TCD requirement) in relation to the relevant default contribution with the following modifications:

(a) the transactions specified in *MIFIDPRU* 4.14.3R are deemed to include pre-funded contributions made by the *firm* to the default fund of a *CCP*;

(b) for the purposes of *MIFIDPRU* 4.14.7R, the value of α shall be 1;

(c) for the purposes of *MIFIDPRU* 4.14.9R, the replacement cost (RC) of the default fund contribution is the book value of that asset in accordance with the applicable accounting framework;

(d) for the purposes of *MIFIDPRU* 4.14.29R, the applicable risk factor is:

(i) the value of a C-factor calculated in accordance with the methodology in *MIFIDPRU* 10.4.3R where that C-factor has been published by an *authorised central counterparty* in relation to the default fund of the *CCP*;

(ii) in the case of an *authorised central counterparty* that has not published a C-factor relating to its default fund, 1.6%; and

(iii) where the *CCP* is not an *authorised central counterparty*, 8%; and

(e) for the purposes of *MIFIDPRU* 4.14.30R, the credit valuation adjustment (CVA) is 1.

10.4.3 R (1) For the purposes of *MIFIDPRU* 10.4.2R(2)(d), a C-factor is:

(a) in the case of an *authorised central counterparty* that is subject to national rules implementing the requirements in BCBS 282 (Capital requirements for bank exposures to central counterparties) published by the Basel Committee on Banking Supervision in April 2014, a value determined in accordance with the formula in (2); or

(b) in the case of any other *authorised central counterparty*, a value determined in accordance with the formula in (3).

(2) The relevant formula under (1)(a) is:

$$\text{C-factor} = \max\left(\frac{K_{CCP}}{DF_{CCP} + DF_{CM^{pref}}}; 8\% \cdot 2\%\right)$$

where, in each case, the values of K_{CCP}, DF_{CCP} and DF_{CM}^{pref} are calculated in accordance with the methodology in BCBS 282.

(3) The relevant formula under (1)(b) is:

$$\text{C-factor} = \left(1 + \beta \cdot \frac{N}{N-2}\right) \cdot \frac{K_{CM}}{DF_{CM}}$$

where, in each case, the values of β, N, K_{CM} and DF_{CM} are calculated in accordance with the methodology in BCBS 227

(Capital requirements for bank exposures to central counterparties) published by the Basel Committee on Banking Supervision in July 2012.

10.4.4 G An *authorised central counterparty* may publish C-factors for the purposes of national rules implementing both BCBS 227 and BCBS 282. In this case, the effect of *MIFIDPRU* 10.4.3R(1)(a) is that the C-factor published for the purpose of BCBS 282 must be used. Where the default fund relates to derivatives, the C-factor published for the purposes of the Standardised Approach to Counterparty Credit Risk (SA-CCR) will normally be the relevant C-factor.

10.4.5 G (1) Where a *MIFIDPRU investment firm* that is a *clearing member* or an *indirect clearing firm* has trade exposures to a *CCP*, it should consider whether the exposures arise from a transaction listed in *MIFIDPRU* 4.14.3R as being within scope of the *K-TCD requirement*. *MIFIDPRU* 4.14.3R(1)(a) and *MIFIDPRU* 4.14.4R exclude from the scope of the *K-TCD requirement* derivatives contracts that are directly or indirectly cleared through an *authorised central counterparty*.

(2) However, the exclusion in (1) does not apply to a pre-funded contribution of a *clearing member* to the default fund of a *CCP*, as this exposure is not a contract cleared through the *authorised central counterparty*. *MIFIDPRU* 10.4.2R explains how a *firm* should calculate the *K-TCD requirement* for the contribution.

10.4.6 R Where this section applies to a *UK parent entity* in accordance with *MIFIDPRU* 10.4.1R(2), the requirement in *MIFIDPRU* 10.4.2R and the modifications it makes to the *rules* and *guidance* in *MIFIDPRU* 4.14 apply to the *UK parent entity* in relation to any pre-funded contributions to the default fund of a *CCP* made by any entities included within the *consolidated situation*.

TP 1 Own funds transitional provisions

Application

1.1 R *MIFIDPRU* TP 1 applies to:

(1) a *MIFIDPRU investment firm*;

(2) a *UK parent entity* that is required by *MIFIDPRU* 2.5.7R to comply with *MIFIDPRU* 3 on the basis of its *consolidated situation;* and

(3) a *parent undertaking* to which the *group capital test* applies.

Purpose

1.2	G	*MIFIDPRU* TP 1 contains transitional provisions relating to certain permissions granted by the *FCA* before 1 January 2022 for the purposes of the *own funds* provisions of the *UK CRR*. These provisions set out where a *firm* with such a permission may continue to rely on it under the *MIFIDPRU* regime.
1.3	G	*MIFIDPRU* TP 1 also contains transitional provisions relating to the continued eligibility of *additional tier 1 instruments* issued before 1 January 2022 under the *UK CRR* (in the form in which the *UK CRR* stood prior to that date).
		Continuing application of certain UK CRR permissions
1.4	R	*MIFIDPRU* TP 1.5 applies for the duration of a permission to which it relates, except to the extent that the *FCA* revokes, varies or replaces the permission.
1.5	R	(1) This *rule* applies to any permission listed in column (A) of the table in *MIFIDPRU* TP 1.6R where that permission was granted to a *firm* by the *FCA* for the purposes of the *UK CRR* before 1 January 2022. (2) Where this *rule* applies, a permission in column (A) of the table in *MIFIDPRU* TP 1.6R is deemed to have been granted for its remaining duration on equivalent terms by the *FCA* under the corresponding provision in column (B) of that table.
1.6	R	This table belongs to *MIFIDPRU* TP 1.5R.

(A) ***UK CRR* permission granted before 1 January 2022**	**(B)** **Deemed basis for permission on or after 1 January 2022**
Article 26(2) *UK CRR*: inclusion of interim or year-end profits in *common equity tier 1 capital* before the *firm* has taken a formal decision confirming the final profit or loss for the year	*MIFIDPRU* 3.3.2R
Article 26(3) *UK CRR*: classification of an issuance of capital instruments as *common equity tier 1 capital*	*MIFIDPRU* 3.3.3R

1.7	G	The effect of *MIFIDPRU* TP 1.5 and *MIFIDPRU* TP 1.6 is that a permission that was initially granted under article 26(2) or 26(3) of the

UK CRR will continue to produce an equivalent effect under the corresponding provisions in *MIFIDPRU* 3.3. The duration of the original permission is not affected. For example, a permission granted on 1 June 2021 for a one-year duration will be treated from 1 January 2022 as if it had been granted under *MIFIDPRU* 3.3, but will still expire on 1 June 2022.

Additional tier 1 capital instruments issued before 1 January 2022

1.8 R (1) This *rule* applies where:

(a) a *firm* which became a *MIFIDPRU investment firm* on 1 January 2022 issued instruments before that date which satisfied the conditions to be classified as *additional tier 1 instruments* under the *UK CRR* in the form in which it stood immediately before 1 January 2022; and

(b) the instruments in (1) remain in issue on 1 January 2022.

(2) Where this *rule* applies, by no later than 1 February 2022, a *MIFIDPRU investment firm* must:

(a) notify the *FCA* using the form in *MIFIDPRU* TP 1 Annex 1R, submitted via the *online notification and application* system, to confirm whether:

(i) the relevant instruments satisfy the conditions in *MIFIDPRU* 3.4 to be classified as *additional tier 1 instruments*; or

(ii) the relevant instruments do not satisfy the relevant conditions in *MIFIDPRU* 3.4 and the *firm* has therefore ceased to recognise them as part of its *additional tier 1 capital* or has otherwise redeemed or replaced them; or

(b) apply to the *FCA* under section 138A of the *Act* for a modification of the relevant provisions in *MIFIDPRU* 3.4 to continue to allow the *firm* to classify the instruments as *additional tier 1 instruments* for the purposes of *MIFIDPRU*.

1.9 G (1) A *MIFIDPRU investment firm* may have issued instruments that, immediately before 1 January 2022, met the conditions in the *UK CRR* (in the form in which it then stood) to be classified as *additional tier 1 instruments* and which remain in issue on 1 January 2022.

(2) Although *MIFIDPRU* 3.4 contains provisions for the classification of instruments under *MIFIDPRU* as *additional*

tier 1 instruments which are broadly equivalent to those in the *UK CRR*, the trigger event under article 54(1)(a) of the *UK CRR* does not apply under *MIFIDPRU*. This is because the *own funds requirement* under *MIFIDPRU* is calculated on a different basis and therefore the trigger event for conversion of *additional tier 1 instruments* under *MIFIDPRU* is defined by reference to different criteria.

1.10 G An *additional tier 1 instrument* issued before 1 January 2022 under the *UK CRR* may satisfy the conditions in *MIFIDPRU* 3.4 so that it can be classified as an *additional tier 1 instrument* for the purposes of *MIFIDPRU*. This may depend upon how the trigger events were defined in the terms of the relevant instrument and whether additional trigger events (i.e. over and above the mandatory *UK CRR* trigger event that was applicable at the time of issuance) were also included.

1.11 G (1) A *firm* may apply to the *FCA* under section 138A of the *Act* to modify the provisions of *MIFIDPRU* 3.4 for existing *additional tier 1 instruments* issued under the *UK CRR* before 1 January 2022, to allow those instruments to be recognised as *additional tier 1 instruments* under *MIFIDPRU*.

(2) In the application, the *FCA* would expect a *firm* to demonstrate how the conversion or write-down of the *additional tier 1 instruments* would function to enable the *firm* to continue to satisfy its *own funds requirement* under *MIFIDPRU* in times of financial stress.

(3) If the *FCA* grants a modification under section 138A of the *Act* in such circumstances, it may grant it on a temporary basis to facilitate the *firm's* orderly transition to the *MIFIDPRU* regime.

Continuing validity of IFPRU own funds notifications

1.12 R (1) This *rule* applies to any notification listed in column (A) of the table in *MIFIDPRU* TP 1.13R, where the notification was validly submitted by a *firm* or *parent undertaking* to the *FCA* for the purposes of the relevant *rule* in the *IFPRU* sourcebook before 1 January 2022.

(2) Where this *rule* applies, a notification in column (A) of the table in *MIFIDPRU* TP 1.13R is deemed to have been a valid notification for the purposes of the corresponding provision in column (B) in the same row of that table.

1.13 R The table belongs to *MIFIDPRU* TP 1.12R.

(A)	**(B)**

IFPRU notification submitted before 1 January 2022	Deemed notification for the purposes of MIFIDPRU on or after 1 January 2022
IFPRU 3.2.10R: notification of issuance of own funds instruments	*MIFIDPRU* 3.6.5R(1) (for a *MIFIDPRU investment firm*) *MIFIDPRU* 3.6.8R(1)(b) (for a *UK parent entity* to which consolidation under *MIFIDPRU* 2.5.7R applies) *MIFIDPRU* 3.7.4R(1)(b) (for a *parent undertaking* to which the *group capital test* applies)
IFPRU 3.2.13R: notification of issuance of ordinary *shares* or debt instruments under a debt securities programme	*MIFIDPRU* 3.6.5R(1) (for a *MIFIDPRU investment firm*) *MIFIDPRU* 3.6.8R(1)(b) (for a *UK parent entity* to which consolidation under *MIFIDPRU* 2.5.7R applies) *MIFIDPRU* 3.7.4R(1)(b) (for a *parent undertaking* to which the *group capital test* applies)

1.14 G The effect of *MIFIDPRU* TP 1.12R and 1.13R is that a notification that was validly submitted for the purposes of the *rules* relating to the issuance of own funds in *IFPRU* is valid for the purposes of the notification requirements relating to the issuance of *own funds* in *MIFIDPRU* 3.6 or 3.7. This means that:

(1) a *MIFIDPRU investment firm* or *parent undertaking* to which *IFPRU* applied is not required to submit another notification to the *FCA* in relation to pre-existing instruments to treat those instruments as *additional tier 1 instruments* or *tier 2 instruments* under *MIFIDPRU*; and

(2) where the *MIFIDPRU investment firm* or *parent undertaking* issues the same class of instruments on or after 1 January 2022, it can rely on the exemption from the notification requirement in *MIFIDPRU* 3.6.5R(2), provided that the instruments are identical in all material respects to the previous issuance notified to the *FCA* under *IFPRU*.

1.15 G *MIFIDPRU* TP 1.12R and 1.13R do not affect the underlying criteria in *MIFIDPRU* 3 for classifying an instrument as *own funds*. Instead, the provisions deem existing notifications to be notifications for equivalent purposes under *MIFIDPRU*. This means that if the instruments that are the subject of the notifications do not meet the criteria in *MIFIDPRU* 3 to be classified as *own funds*, a *firm* or *parent undertaking* must not treat those instruments as such. It is the responsibility of the *firm* or *parent undertaking* relying on the transitional provisions in this annex to assess whether the relevant criteria are met in relation to any particular instrument.

Notification under MIFIDPRU TP 1.8R – treatment of instruments formerly classified as AT1 under UK CRR

TP 1 Annex 1R	[*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU TP 1 Annex 1R

Notification under MIFIDPRU TP 1.8R of the intended treatment of instruments which were issued and met the conditions to be classified as *additional tier 1 instruments* in accordance with the UK CRR before 1 January 2022

1. Please confirm which of the following the notifying firm will be under MIFIDPRU:

   a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking ☐

   b. MIFIDPRU investment firm that is a consolidating UK parent entity ☐

   c. MIFIDPRU investment firm that is a GCT parent undertaking ☐

   d. Consolidating UK parent entity (other than a MIFIDPRU investment firm) ☐

   e. GCT parent undertaking (other than a MIFIDPRU investment firm) ☐

2. This notification is made in respect of the following classes/issuances of AT1 instruments issued before 1 January 2022 which:

   - met the conditions to be classified as additional tier 1 (AT1) instruments in accordance with the UK CRR in the form in which it stood immediately before 1 January 2022; and

   - remain in issue on 1 January 2022:

Class / issuance of AT1 instruments	Outstanding nominal value of class / issuance

3. Please confirm which of the following the notification relates to:

a. The relevant instruments satisfy the conditions in MIFIDPRU 3.4 to be classified as AT1 instruments for the purposes of MIFIDPRU ☐

b. The relevant instruments <u>do not</u> satisfy the conditions in MIFIDPRU 3.4 and the firm has therefore ceased to recognise them as forming part of its AT1 capital for the purposes of MIFIDPRU or has otherwise redeemed or replaced them ☐

Note: Where the relevant instruments <u>do not</u> satisfy the conditions in MIFIDPRU 3.4, a firm may apply under section 138A of FSMA for a modification of the relevant provisions to continue to allow it to classify the instruments as AT1 instruments for the purposes of MIFIDPRU. A firm does not have to submit this notification if it has applied by 1 February 2022 for a modification that allows it to classify all its CRR AT1 instruments as MIFIDPRU AT1 instruments.

4. Where the notification relates to 2b, please explain how the firm ensures compliance with own funds requirements following the declassification:

TP 2 Own funds requirements: transitional provisions

Application

2.1 R *MIFIDPRU* TP 2 applies to a *MIFIDPRU investment firm* on an individual basis.

2.2 R *MIFIDPRU* TP 2.23R applies to a *UK parent entity* when it is applying *MIFIDPRU 4* on the basis of its *consolidated situation* in accordance with *MIFIDPRU* 2.5.

Purpose

2.3 G *MIFIDPRU* TP 2 contains temporary transitional provisions that permit certain *MIFIDPRU investment firms* to apply a lower *own funds requirement* than would otherwise apply under *MIFIDPRU* 4.3. These provisions are designed to provide a smooth transition for *firms* from their regulatory capital requirements under previous prudential regimes to the requirements under *MIFIDPRU*.

2.4 G (1) *MIFIDPRU* TP 2 permits a *firm* (or, in the case of *MIFIDPRU* TP 2.23R, a *UK parent entity*) to substitute an alternative requirement for one or more of its standard *permanent minimum capital requirement*, its *fixed overheads requirement* or its *K-factor requirement*. Where a *firm* does so, the alternative requirement also replaces the standard requirement for the purposes of calculating the *firm's own funds requirement* under *MIFIDPRU* 4.3.

(2) For example, under *MIFIDPRU* TP 2.21R, a former *exempt BIPRU commodities firm* may substitute alternative requirements for its *fixed overheads requirement* and its *K-factor requirement*. During the transitional period, the *own funds requirement* of the *firm* under *MIFIDPRU* 4.3.2R would be the highest of:

(a) its *permanent minimum capital requirement*;

(b) the alternative requirement substituted for its standard *fixed overheads requirement*; and

(c) the alternative requirement substituted for its standard *K-factor requirement*.

References to "UK CRR"

2.5 R Any reference in *MIFIDPRU* TP 2 to the "*UK CRR*" is as a reference to the *UK CRR* in the form in which it stood on 31 December 2021.

Duration of transitional arrangements

2.6 R *MIFIDPRU* TP 2 applies until 1 January 2027, except in the circumstances set out in *MIFIDPRU* TP 2.19R or *MIFIDPRU* TP 2.20R(4).

Transitional provisions for fixed overheads requirement and K-factor requirement for former IFPRU investment firms and BIPRU firms

2.7 R (1) This *rule* applies to a *MIFIDPRU investment firm* that, under the *rules* in force on 31 December 2021, was classified as:

(a) an *IFPRU investment firm* (other than an *exempt IFPRU commodities firm*); or

(b) a *BIPRU firm* (other than an *exempt BIPRU commodities firm*).

(2) A *firm* may substitute the alternative requirement in (3) for each of:

(a) its *fixed overheads requirement* under *MIFIDPRU* 4.5; and

(b) to the extent applicable, its *K-factor requirement* under *MIFIDPRU* 4.6.

(3) Subject to (4), the alternative requirement is an amount equal to twice the following, if it had continued to apply to the *firm*:

(a) for a former *IFPRU investment firm*, the own funds requirement in Chapter 1 of Title I of Part Three of the *UK CRR*; or

(b) for a former *BIPRU firm*, the variable capital requirement in *GENPRU* 2.1.40R and 2.1.45R.

(4) The alternative requirement in (3) is subject to:

(a) for a former *IFPRU investment firm* (other than a *collective portfolio management investment firm*), article 93(1) of the *UK CRR*, with the reference to the initial capital requirement in that provision being read as a reference to the base own funds requirement that would have applied under *IFPRU* 3.1 if it had continued to apply to the *firm*;

(b) for a former *BIPRU firm* (other than a *collective portfolio management investment firm*), the base capital requirement that would have applied under *GENPRU* 2.1.47R and 2.1.48R; or

(c) for a *collective portfolio management investment firm*, the *base own funds requirement* that applies under *IPRU(INV)* 11.3.1R(1).

2.8 G (1) The effect of *MIFIDPRU* TP 2.7R(2) is that even where *MIFIDPRU* TP 2.7R applies, it does not affect the calculation of a *MIFIDPRU investment firm's permanent minimum capital requirement* under *MIFIDPRU* 4.4. *MIFIDPRU* TP 2.13R to *MIFIDPRU* 2.18R set out the circumstances in which separate transitional arrangements may also apply to the *permanent minimum capital requirement* of a former *IFPRU investment firm* or *BIPRU firm*.

(2) Therefore, where the *permanent minimum capital requirement* (where applicable, as limited by *MIFIDPRU* TP 2.13R to 2.18R) is higher than the alternative requirement in *MIFIDPRU* TP 2.7R(3), the *firm* must still ensure that it has sufficient *own funds* to meet that higher *permanent minimum capital requirement* in accordance with *MIFIDPRU* 4.3.

2.9 G Where a *MIFIDPRU investment firm* applies the transitional arrangements in *MIFIDPRU* TP 2.7, the alternative requirement under *MIFIDPRU* TP 2.7R(3) reflects how the previous requirements under the *UK CRR* or *GENPRU* would have applied to the *firm* on an ongoing basis. The *firm* should therefore recalculate the alternative requirement under the *UK CRR* or *GENPRU* regularly. The *FCA* considers that it would be appropriate for the *firm* to carry out such calculations at least as frequently as it reports information on its *own funds requirement* to the *FCA* under *MIFIDPRU* 9.

Transitional provisions for fixed overheads requirement and K-factor requirement for former exempt CAD firms

2.10 R (1) This *rule* applies to a *MIFIDPRU investment firm* that under the rules in force on 31 December 2021 was classified as an *exempt CAD firm*.

(2) A *firm* may substitute the alternative requirement in (3) for each of:

(a) its *fixed overheads requirement* under *MIFIDPRU* 4.5; and

(b) to the extent applicable, its *K-factor requirement* under *MIFIDPRU* 4.6.

(3) The alternative requirement is:

(a) from 1 January 2022 to 31 December 2022, an amount equal to the *firm's permanent minimum capital requirement* after any transitional relief that may apply under *MIFIDPRU* TP 2.12R has been taken into account; and

(b) from 1 January 2023 to 31 December 2026:

(i) in relation to the *firm's fixed overheads requirement*, the relevant percentage specified in (4) of the *firm's fixed overheads requirement* (as that requirement would be determined if the substitution in (2)(a) did not apply); and

(ii) in relation to the *firm's K-factor requirement*, the relevant percentage specified in (4) of the *firm's K-factor requirement* (as that requirement would be determined if the substitution in (2)(b) did not apply).

(4) The relevant percentage is:

(a) from 1 January 2023 to 31 December 2023: 10%;

(b) from 1 January 2024 to 31 December 2024: 25%;

(c) from 1 January 2025 to 31 December 2025: 45%; and

(d) from 1 January 2026 to 31 December 2026: 70%.

Transitional provisions for K-factor requirement for firms not in existence before 1 January 2022

2.11 R (1) This *rule* applies to a *MIFIDPRU investment firm* that immediately before 1 January 2022:

(a) was not in existence; or

(b) did not have a *Part 4A permission* that permitted the *firm* to carry on any *investment services and/or activities*.

(2) A *firm* may substitute the alternative requirement in (3) for its *K-factor requirement* under *MIFIDPRU* 4.6 (to the extent that such a requirement applies).

(3) The alternative requirement is an amount equal to twice the *fixed overheads requirement* of the *firm* calculated in accordance with *MIFIDPRU* 4.5 from time to time.

Transitional provisions for permanent minimum capital requirement: former exempt CAD firms

2.12 R (1) This *rule* applies to a *MIFIDPRU investment firm* that under the *rules* in force on 31 December 2021 was classified as an *exempt CAD firm*.

(2) A *firm* may substitute the alternative requirement in (3) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(3) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £50,000;

(b) from 1 January 2023 to 31 December 2023: £55,000;

(c) from 1 January 2024 to 31 December 2024: £60,000;

(d) from 1 January 2025 to 31 December 2025: £65,000; and

(e) from 1 January 2026 to 31 December 2026: £70,000.

(4) This *rule* is subject to *MIFIDPRU* TP 2.19R.

Transitional provisions for permanent minimum capital requirement: former IFPRU investment firms

2.13 R (1) Subject to (2), this *rule* applies to a *MIFIDPRU investment firm* that under the *rules* in force on 31 December 2021 was classified as an *IFPRU 50K firm*.

(2) This *rule* does not apply to a *firm* to which *MIFIDPRU* TP 2.18R applies.

(3) A *firm* may substitute the alternative requirement in (4) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(4) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £50,000;

(b) from 1 January 2023 to 31 December 2023: £55,000;

(c) from 1 January 2024 to 31 December 2024: £60,000;

(d) from 1 January 2025 to 31 December 2025: £65,000; and

(e) from 1 January 2026 to 31 December 2026: £70,000.

(5) This *rule* is subject to *MIFIDPRU* TP 2.19R.

2.14 R (1) Subject to (2), this *rule* applies to a *MIFIDPRU investment firm* that:

(a) under the *rules* in force on 31 December 2021 was classified as an *IFPRU 125K firm*; or

(b) is a *collective portfolio management investment firm* that would be subject to a *permanent minimum capital requirement* of £150,000 under *MIFIDPRU* 4.4.3R if this *rule* did not apply.

(2) This *rule* does not apply to a *firm* to which *MIFIDPRU* TP 2.18R applies.

(3) A *firm* may substitute the alternative requirement in (4) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(4) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £125,000;

(b) from 1 January 2023 to 31 December 2023: £130,000;

(c) from 1 January 2024 to 31 December 2024: £135,000;

(d) from 1 January 2025 to 31 December 2025: £140,000; and

(e) from 1 January 2026 to 31 December 2026: £145,000.

(5) This *rule* is subject to *MIFIDPRU* TP 2.19R.

2.15 R (1) This *rule* applies to a *MIFIDPRU investment firm* that under the *rules* in force on 31 December 2021 was classified as an *IFPRU 730K firm*.

(2) A *firm* may substitute the alternative requirement in (3) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(3) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £730,000;

(b) from 1 January 2023 to 31 December 2023: £735,000;

(c) from 1 January 2024 to 31 December 2024: £740,000;

(d) from 1 January 2025 to 31 December 2025: £745,000; and

(e) from 1 January 2026 to 31 December 2026: £750,000.

(4) This *rule* is subject to *MIFIDPRU* TP 2.19R.

Transitional provisions for permanent minimum capital requirement: former BIPRU firms

2.16 R (1) This *rule* applies to a *MIFIDPRU investment firm* that under the *rules* in force on 31 December 2021 was classified as a *BIPRU firm* (other than an *exempt BIPRU commodities firm* or a *collective portfolio management investment firm*).

(2) This *rule* does not apply to a *firm* to which *MIFIDPRU* TP 2.18R applies.

(3) A *firm* may substitute the alternative requirement in (4) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(4) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £50,000;

(b) from 1 January 2023 to 31 December 2023: £55,000;

(c) from 1 January 2024 to 31 December 2024: £60,000;

(d) from 1 January 2025 to 31 December 2025: £65,000; and

(e) from 1 January 2026 to 31 December 2026: £70,000.

(5) This *rule* is subject to *MIFIDPRU* TP 2.19R.

2.17 G (1) The transitional arrangements in *MIFIDPRU* TP 2.13R to 2.16R permit the relevant *MIFIDPRU investment firms* to substitute an alternative requirement for their *permanent minimum capital requirement*. Those provisions do not affect the *fixed overheads requirement* or, where applicable, the *K-factor requirement* for such *firms*.

(2) The effect of (1) is that where the *fixed overheads requirement* or the *K-factor requirement* of the relevant *MIFIDPRU investment firm* (in each case, as modified by any other relevant transitional arrangements in this section) is higher than the alternative requirement substituted for the *firm's permanent minimum capital requirement*, the *firm's own funds requirement* under *MIFIDPRU* 4.3 will still be the higher of those other two requirements.

Transitional provisions for permanent minimum capital requirement: former IFPRU and BIPRU firms that relied on IFPRU 1.1.12R or BIPRU 1.1.23R (former "matched principal" firms)

2.18 R (1) This *rule* applies to a *firm* that, under the *rules* in force on 31 December 2021, was classified as one of the following:

(a) an *IFPRU 50K firm*, due to the application of *IFPRU* 1.1.12R (Meaning of dealing on own account);

(b) an *IFPRU 125K firm*, due to the application of *IFPRU* 1.1.12R (Meaning of dealing on own account); or

(c) a *BIPRU firm*, due to the application of *BIPRU* 1.1.23R (Meaning of dealing on own account).

(2) A *firm* may substitute the alternative requirement in (3) for its *permanent minimum capital requirement* under *MIFIDPRU* 4.4.

(3) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022:

(i) for a former *BIPRU firm* or a former *IFPRU 50K firm*: £50,000; or

(ii) for a former *IFPRU 125K firm*: £125,000;

(b) from 1 January 2023 to 31 December 2023: £190,000;

(c) from 1 January 2024 to 31 December 2024: £330,000;

(d) from 1 January 2025 to 31 December 2025: £470,000; and

(e) from 1 January 2026 to 31 December 2026: £610,000.

Disapplication of permanent minimum capital requirement transitional provisions because of changes to a firm's permissions

2.19 R The transitional arrangements in *MIFIDPRU* TP 2.12R to 2.16R cease to apply if there is a change to the *permissions* of the relevant *MIFIDPRU investment firm*, or any *limitation* or *requirement* that applies to the *firm*, on or after 1 January 2022 that increases the *permanent minimum capital requirement* that would apply to the *firm* under *MIFIDPRU* 4.4.

Transitional provisions for own funds requirement: former local firms

2.20 R (1) Subject to (4), this *rule* applies to a *MIFIDPRU investment firm* that:

(a) was in existence before 25 December 2019; and

(b) under the *rules* in force on 31 December 2021, was classified as a *local firm*.

(2) A *firm* may substitute the alternative requirement in (3) for its *own funds requirement* under *MIFIDPRU* 4.3.

(3) The alternative requirement is as follows:

(a) from 1 January 2022 to 31 December 2022: £250,000;

(b) from 1 January 2023 to 31 December 2023: £350,000;

(c) from 1 January 2024 to 31 December 2024: £450,000;

(d) from 1 January 2025 to 31 December 2025: £550,000; and

(e) from 1 January 2026 to 31 December 2026: £650,000.

(4) This *rule* ceases to apply to a *firm* where:

(a) there is a change to the *permissions* of the *firm*, or any *limitation* or *requirement* that applies to the *firm*, on or after 1 January 2022; and

(b) if the change in (a) had occurred immediately before 1 January 2022, the *firm* would have ceased to meet the definition of a *local firm*.

Transitional provisions for fixed overheads and K-factor requirements: exempt commodities firms

2.21 R (1) This *rule* applies to a *MIFIDPRU investment firm* that, under the *rules* in force on 31 December 2021, was classified as:

(a) an *exempt IFPRU commodities firm*; or

(b) an *exempt BIPRU commodities firm*.

(2) A *firm* may substitute the alternative requirement in (3) for each of:

(a) its *fixed overheads requirement* under *MIFIDPRU* 4.5; and

(b) to the extent applicable, its *K-factor requirement* under *MIFIDPRU* 4.6.

(3) Subject to (5), the alternative requirement is:

(a) from 1 January 2022 to 31 December 2022: an amount equal to the *firm's permanent minimum capital requirement*;

(b) from 1 January 2023 to 31 December 2026:

(i) in relation to the *firm's fixed overheads requirement*, the relevant percentage specified in (4) of the *firm's fixed overhead requirement* (as that requirement would be determined if the substitution in (2)(a) did not apply); and

(ii) in relation to the *firm's K-factor requirement*, the relevant percentage specified in (4) of the *firm's K-factor requirement* (as that requirement would be determined if the substitution in (2)(b) did not apply).

(4) The relevant percentage is:

(a) from 1 January 2023 to 31 December 2023: 10%;

(b) from 1 January 2024 to 31 December 2024: 25%;

(c) from 1 January 2025 to 31 December 2025: 45%; and

(d) from 1 January 2026 to 31 December 2026: 70%.

(5) Subject to (6), if the *firm* was subject to *IPRU(INV)* 3 on 31 December 2021, the alternative requirement can never be lower than the amount of the financial resources requirement that would have applied to the *firm* if it had continued to be subject to *IPRU(INV)* 3 in the form in which that chapter stood on that date.

(6) When determining the amount of the financial resources requirement under *IPRU(INV)* 3 for the purposes of (5), a *firm* may determine the delta of an option as follows:

(a) if an option is traded on an exchange, the *firm* must use the delta provided by that exchange; or

(b) if the delta is not available from the exchange, or if the option is an over-the-counter option, the *firm* may use its own estimates of delta where the conditions in *MIFIDPRU* 4.12.10R are met.

2.22 G *MIFIDPRU* TP 2.21R(5) means that the alternative *fixed overheads requirement* and alternative *K-factor requirement* of an *exempt IFPRU commodities firm* or an *exempt BIPRU commodities firm* under the transitional arrangements are subject to a floor if the *firm* was previously subject to *IPRU(INV)* 3. The base requirement under *IPRU(INV)* 3-71R (in the form in which it stood on 31 December 2021) is calculated by reference to the highest of an absolute minimum requirement, an expenditure requirement and a volume of business requirement. The *firm* should therefore recalculate the alternative requirement under *IPRU(INV)* 3 regularly. The *FCA* considers that it would be appropriate for the *firm* to carry out such calculations at least as frequently as it reports information on its *own funds requirement* to the *FCA* under *MIFIDPRU* 9.

Transitional provisions for consolidated own funds requirement

2.23 R (1) This *rule* applies to a *UK parent entity* that is required to apply prudential consolidation to an *investment firm group* in accordance with *MIFIDPRU* 2.5.

(2) A *UK parent entity* may substitute the alternative requirements in (3) for the following, as they result from applying *MIFIDPRU* 4 to its *consolidated situation*:

(a) the consolidated *fixed overheads requirement*; and

(b) the consolidated *K-factor requirement.*

(3) Subject to (8), the alternative requirement is:

(a) in relation to the *fixed overheads requirement*, an amount calculated in accordance with the formula in (4); and

(b) in relation to the *K-factor requirement*, an amount calculated in accordance with the formula in (6).

(4) The formula for calculating the alternative requirement for the consolidated *fixed overheads requirement* is:

A = B - C

where:

A = the alternative requirement for the consolidated *fixed overheads requirement*.

B = the consolidated *fixed overheads requirement* that results from applying *MIFIDPRU* 4 to the *consolidated situation* in accordance with *MIFIDPRU* 2.5 without applying *MIFIDPRU* TP 2.

C = the transitional credit, determined in accordance with (5).

(5) For the purposes of (4), the transitional credit (C) is the sum of the output of the following formula as applied to each *MIFIDPRU investment firm* in the *investment firm group*:

C = D - E

where:

D = the individual *fixed overheads requirement* that would apply to the *MIFIDPRU investment firm* under *MIFIDPRU* 4, ignoring any transitional relief under *MIFIDPRU* TP 2.

E = the alternative requirement that applies to the *MIFIDPRU investment firm* under *MIFIDPRU* TP 2 in place of the individual *fixed overheads requirement*. If no alternative requirement applies to the *firm* in place of its individual *fixed overheads requirement*, the value of E is equal to D.

(6) The formula for calculating the alternative requirement for the consolidated *K-factor requirement* is:

F = G - H

where:

F = the alternative requirement for the consolidated *K-factor requirement*.

G = the consolidated *K-factor requirement* that results from applying *MIFIDPRU* 4 to the *consolidated situation* in accordance with *MIFIDPRU* 2.5 without applying *MIFIDPRU* TP 2.

H = the transitional credit, determined in accordance with (7).

(7) For the purposes of (6), the transitional credit (H) is the sum of the output of the following formula as applied to each *MIFIDPRU investment firm* in the *investment firm group*:

H = J - K

where:

J = the *K-factor requirement* that would apply to the individual *MIFIDPRU investment firm* under *MIFIDPRU* 4, ignoring any transitional relief under *MIFIDPRU* TP 2.

K = the alternative requirement that applies to the *MIFIDPRU investment firm* under *MIFIDPRU* TP 2 in place of the individual *K-factor requirement*. If no alternative requirement applies to the *firm* in place of its individual *K-factor requirement*, the value of K is equal to J.

(8) The alternative requirement can never be lower than the following:

(a) in relation to the consolidated *fixed overheads requirement*, the sum of the following in relation to the *investment firm group*:

(i) for each *MIFIDPRU investment firm* that is subject to an alternative requirement under *MIFIDPRU* TP 2 in place of its individual *fixed overheads requirement*, that alternative requirement; and

(ii) for every other *MIFIDPRU investment firm*, the *firm's* individual *fixed overheads requirement*;

(b) in relation to the consolidated *K-factor requirement*, the sum of the following in relation to the *MIFIDPRU investment firms* in the *investment firm group*:

(i) for each *MIFIDPRU investment firm* that is subject to an alternative requirement under *MIFIDPRU* TP

2 in place of its individual *K-factor requirement*, that alternative requirement; and

(ii) for other *MIFIDPRU investment firms*, the individual *K-factor requirement*.

Interaction between alternative fixed overheads requirement and basic liquid assets requirement

2.24 R (1) This *rule* applies where:

(a) a *firm* is applying an alternative requirement for its *fixed overheads requirement* under any of the following:

(i) *MIFIDPRU* TP 2.7R(2)(a);

(ii) *MIFIDPRU* TP 2.10R(2)(a);

(iii) *MIFIDPRU* TP 2.21R(2)(a); or

(b) a *UK parent entity* is applying an alternative requirement for its consolidated *fixed overheads requirement* under *MIFIDPRU* TP 2.23R(2)(a).

(2) Where this *rule* applies to a *firm* in (1)(a), the requirement in *MIFIDPRU* 6.2.1R(1) applies as if the reference to the *fixed overheads requirement* is a reference to the alternative requirement.

(3) Where this *rule* applies to a *UK parent entity* in (1)(b), the requirement in *MIFIDPRU* 6.2.1R(1), as it applies on a *consolidated basis*, applies as if the reference to the *fixed overheads requirement* is a reference to the alternative requirement.

2.25 G (1) The effect of *MIFIDPRU* TP 2.24R is that where a *firm* is applying an alternative requirement for its *fixed overheads requirement* under a transitional provision in this annex, the amount of *core liquid assets* that it must hold under *MIFIDPRU* 6.2.1R(1) is calculated by reference to the alternative requirement. This does not affect any amount of *core liquid assets* that the *firm* must hold under *MIFIDPRU* 6.2.1R(2) in relation to guarantees provided to *clients*.

(2) *MIFIDPRU* TP 2.24R also applies on an equivalent basis to a *UK parent entity* that is applying an alternative requirement for its consolidated *fixed overheads requirement*.

(3) The following is an example of how *MIFIDPRU* TP 2.24R applies in practice:

(a) A former *exempt CAD firm* is calculating its *basic liquid assets requirement* under *MIFIDPRU* 6.2.1R after *MIFIDPRU* has been in force for 18 *months*. The *firm's fixed overheads requirement* (calculated without any transitional relief) is 900. The *firm* has provided total guarantees to clients of 100.

(b) Under *MIFIDPRU* TP 2.10R(2)(a), the *firm* can apply an alternative requirement of 10% of its standard *fixed overheads requirement* in accordance with *MIFIDPRU* TP 2.10R(4)(a). The alternative requirement is therefore 90 (i.e. 10% of 900).

(c) Under *MIFIDPRU* TP 2.24R, the *firm* calculates the amount of *core liquid assets* that it requires under *MIFIDPRU* 6.2.1R(1) by reference to the alternative requirement. This means that the *firm* must hold *core liquid assets* of 30 for these purposes (i.e. one third of 90).

(d) Under *MIFIDPRU* 6.2.1R(2), the *firm* must also hold *core liquid assets* of 1.6% of the total amount of the guarantees it has provided to clients. In this case, that means that the *firm* must hold a further 1.6 in *core liquid assets* (i.e. 1.6% of 100). This amount is not affected by the transitional relief in *MIFIDPRU* TP 2.24R.

(e) The *firm* would therefore need to hold *core liquid assets* of 31.6 to satisfy its *basic liquid assets requirement*.

Continuing validity of UK CRR market risk permissions

2.26 R (1) This *rule* applies to any permission listed in column (A) of the table in *MIFIDPRU* TP 2.27R, where that permission was granted to a *firm* by the *FCA* for the purposes of the *UK CRR* before 1 January 2022.

(2) Where this *rule* applies, a permission in column (A) of the table in *MIFIDPRU* TP 2.27R is deemed to have the effect described in column (B) in the same row of that table.

2.27 R This table belongs to *MIFIDPRU* TP 2.26R.

(A) **UK CRR permission granted before 1 January 2022**	**(B)** **Effect of permission under MIFIDPRU on or after 1 January 2022**
Articles 329, 352(1) or 358 *UK CRR*: permission to use own estimates for	The permission in column (A) is deemed to be a valid notification

delta for the purposes of the standardised approach for the market risk of options	under *MIFIDPRU* 4.12.10R for equivalent purposes
Article 331 *UK CRR*: permission to use sensitivity models to calculate interest rate risk	The permission in column (A) is deemed to have been granted on equivalent terms for its remaining duration under *MIFIDPRU* 4.12.66R

2.28 G (1) *MIFIDPRU* 4.12.10R requires a *MIFIDPRU investment firm* that wishes to use its own estimates of delta for the purposes of the standardised approach for the market risk of options to notify the *FCA* that it meets certain minimum standards before doing so. Previously, *firms* that were subject to the *UK CRR* were required to seek the *FCA's* permission before using their own estimates of delta for these purposes. The effect of *MIFIDPRU* TP 2.25R and 2.26R is that any permission granted for these purposes to a former *CRR firm* that has subsequently become a *MIFIDPRU investment firm* will be treated as a valid notification for the purposes of *MIFIDPRU* 4.12.10R. This means that the *firm* does not need to submit a new notification under *MIFIDPRU* 4.12.10R to use its own estimates of delta under that *rule* for which the *firm* previously had permission.

(2) The effect of *MIFIDPRU* TP 2.26R and 2.27R is that a former *CRR firm* that was granted a permission to use interest rate sensitivity models under article 331 *UK CRR* and that has subsequently become a *MIFIDPRU investment firm* can treat that permission as having been granted on equivalent terms for the purposes of the corresponding requirement under *MIFIDPRU*. The duration of the original permission is not affected. For example, if a *firm* was granted permission to use an interest rate sensitivity model on 1 June 2021 for a one-year duration, that permission will be treated from 1 January 2022 as if it had been granted under *MIFIDPRU*, but will still expire on 1 June 2022.

TP 3 Group capital test: transitional arrangements

Application

3.1 R *MIFIDPRU* TP 3 applies to:

(1) a *MIFIDPRU investment firm*;

(2) a *UK parent entity*; and

(3) a *GCT parent undertaking* in an *investment firm group*.

Purpose

3.2 G *MIFIDPRU* TP 3 contains transitional provisions which allow an *investment firm group* to apply the *group capital test* on a temporary basis before the *FCA* has determined an application under *MIFIDPRU* 2.4.17R, provided that certain conditions are met.

Temporary application of the group capital test

3.3 R (1) This *rule* applies to an *investment firm group* where:

(a) the *UK parent entity* or a *MIFIDPRU investment* within that *investment firm group* has submitted an application to the *FCA* under *MIFIDPRU* 2.4.17R by no later than 1 February 2022; and

(b) the *management body* of the *UK parent entity* or *MIFIDPRU investment firm* has determined that there is a reasonable basis to conclude that the *investment firm group* satisfies the requirements in *MIFIDPRU* 2.4.17R(2)(a) and (b).

(2) This *rule* applies from 1 January 2022 until the earlier of the following:

(a) 1 January 2024; or

(b) the date specified in the notification to the *UK parent entity* or *MIFIDPRU investment firm* of the *FCA's* decision in relation to the application in (1)(a).

(3) Where this *rule* applies, the *undertakings* in *MIFIDPRU* TP 3.1 may apply the *group capital test* in accordance with *MIFIDPRU* 2.6, even though the *FCA* has not granted permission to use the *group capital test* under *MIFIDPRU* 2.4.17R.

3.4 G Under *MIFIDPRU* 2.4.18R(2)(g), an application submitted under *MIFIDPRU* 2.4.17R must demonstrate how the *investment firm group* would comply with the consolidated requirements under *MIFIDPRU* 2.5 if the *FCA* did not grant permission to apply the *group capital test*. The application must also explain the timeframe in which the *investment firm group* would expect to comply with the consolidated requirements. If the *FCA* does not grant the application, it will use this information to determine an appropriate date under *MIFIDPRU* TP 3.3R(2)(b) on which the transitional arrangements will end.

TP 4 K-factor metric calculations: transitional

Application

4.1 R *MIFIDPRU* TP 4 applies to a *MIFIDPRU investment firm* where:

(1) immediately before 1 January 2022, the *firm* was carrying on *investment services and/or activities*; and

(2) the *investment services and/or activities* in (1) result in *K-factor metrics* that are relevant to the calculation of the following on or after 1 January 2022:

(i) the *firm's K-factor requirement*; or

(ii) an alternative requirement in *MIFIDPRU* TP 2 that is calculated by reference to the *K-factor requirement*.

4.2 R *MIFIDPRU* TP 4.11 applies to a *UK parent entity* where the following conditions are met:

(1) the *UK parent entity* is required to apply *MIFIDPRU* 4 on a *consolidated basis* in accordance with *MIFIDPRU* 2.5.7R; and

(2) the *consolidated situation* of the *UK parent entity* includes one or more of the following:

(a) a *MIFIDPRU investment firm* to which *MIFIDPRU* TP 4.1R applies; or

(b) a *third country* entity to which *MIFIDPRU* TP 4.1R would apply if it were established in the *UK*.

Purpose

4.3 G (1) The standard *rules* in *MIFIDPRU* 4 require a *MIFIDPRU investment firm* to collect data on the *K-factor metrics* that are relevant to the *investment services and/or activities* that the *firm* carries on. Certain *K-factor average metric* calculations are based on average values and require a minimum level of historical data.

(2) *MIFIDPRU* TP 4 contains transitional rules for the calculation of a *firm's K-factor requirement* where a *firm* was carrying on *investment services and/or activities* immediately before *MIFIDPRU* began to apply, but does not have the historical data necessary to calculate the relevant *K-factor average metric*.

(3) *MIFIDPRU* TP 4 is not relevant to the calculation of the following elements of the *K-factor requirement* because they do not use historical data:

(1) the *K-NPR requirement*;

(2) the *K-TCD requirement*; and

(3) the *K-CON requirement*.

Duration

4.4 G The duration of the transitional arrangements in *MIFIDPRU* TP 4 depends on the relevant *K-factor average metric*. Under *MIFIDPRU* TP 4.5.R(3), the transitional arrangements cease to apply when a *firm* has (or should have) collected sufficient historical information to perform the necessary calculations in accordance with the standard calculation *rules* for the relevant *K-factor average metric* in *MIFIDPRU* 4.

Missing historical data for K-factor calculations: transitional provisions for individual MIFIDPRU firms

4.5 R (1) This *rule* applies to the extent that a *MIFIDPRU investment firm* does not have the necessary historical data to calculate the *K-factor average metric* required for any of the following in accordance with the relevant *rules* in *MIFIDPRU* 4:

(a) its *K-AUM requirement*;

(b) its *K-CMH requirement*;

(c) its *K-ASA requirement*;

(d) its *K-COH requirement*;

(e) its *K-DTF requirement*; or

(f) its *K-CMG requirement*.

(2) Subject to *MIFIDPRU* TP 4.13R(2)(a), a *firm* may either:

(a) use reasonable estimates to fill any missing historical data points in the calculation of the relevant *K-factor average metric*; or

(b) as an exception to the standard calculation *rules* in *MIFIDPRU 4*, use the modified calculation in *MIFIDPRU* TP 4.11R to calculate the relevant *K-factor average metric*.

(3) This *rule* ceases to apply in relation to a *K-factor metric* on the earlier of the following:

(a) the date on which the *firm* has collected sufficient historical information to calculate the *K-factor average metric* in accordance with the *rules* in *MIFIDPRU* 4; or

(b) the date that falls *n months* after the date on which *MIFIDPRU* first began to apply, where *n* is the number of *months'* worth of data points required to calculate that *K-factor average metric* in accordance with the standard calculation *rules* in *MIFIDPRU* 4.

4.6 G (1) *MIFIDPRU* TP 4.5R(3) specifies the date on which the transitional arrangements for calculating a *K-factor average metric* will cease to apply and the *firm* must therefore use the standard calculation *rules* in *MIFIDPRU* 4 for that *K-factor average metric*. This date may vary depending on the position of the individual *firm*.

(2) Under *MIFIDPRU* TP 4.5R(3)(a), once a *firm* has sufficient historical information to perform the calculation in the standard way, it is no longer permitted to use either reasonable estimates for missing data points or to use the modified calculation in *MIFIDPRU* 4.11R. For example, on the date on which *MIFIDPRU* begins to apply, Firm A already has historical data on its *AUM* covering the previous 10 *months*. The standard calculation of *average AUM* in *MIFIDPRU* 4 requires 15 *months* of historical data. Since the *firm* must begin collecting *AUM* data no later than the date that *MIFIDPRU* begins to apply, the *firm* will have sufficient data to perform the standard calculation 5 *months* later. At that point, the transitional arrangements under *MIFIDPRU* TP 4 will no longer apply to the *firm's* calculation of *average AUM*.

(3) *MIFIDPRU* TP 4.5R(3)(b) acts as a "long-stop" date for the transitional arrangements under *MIFIDPRU* TP 4. A *firm* must begin collecting data on its *K-factor metrics* no later than the date that *MIFIDPRU* begins to apply. Therefore, a *MIFIDPRU investment firm* should have sufficient historical data to perform the standard calculation of a *K-factor metric* once sufficient *months* have elapsed to cover at least the standard calculation period for that *K-factor metric*. For example, the standard calculation for *average CMH* requires 9 *months* of historical data. For the purposes of *MIFIDPRU* TP 4.5.R(3)(b), the value of *n* is therefore 9, and the transitional arrangements under *MIFIDPRU* TP 4 will cease to apply to the calculation of *average CMH* 9 *months* after *MIFIDPRU* first begins to apply.

4.7 R (1) A *firm* must apply its chosen approach under *MIFIDPRU* TP 4.5R(2) consistently for a specific *K-factor average metric*.

(2) A *firm* may apply different approaches under *MIFIDPRU* TP 4.5R(2) for different *K-factor average metrics*.

4.8 G *MIFIDPRU* TP 4.7R prevents a *firm* from changing its approach to missing historical data points for a particular *K-factor average metric*. For example, if a *firm* is missing the necessary historical data points and chooses to apply the modified calculation in *MIFIDPRU* TP 4.11R to determine *average AUM*, it cannot subsequently decide to estimate the missing values for *average AUM* instead. However, a *firm* may choose, for example, to use reasonable estimates for missing values for *average AUM*, but to apply the modified calculation in *MIFIDPRU* TP 4.11R for the purposes of missing values for *average COH*. In the example, this could reflect the fact that the *firm* has a reasonable basis on which to estimate *AUM*, but is unable to produce reasonable estimates for *COH*.

4.9 R If the *FCA* requests it, a *firm* that uses reasonable estimates in accordance with *MIFIDPRU* TP 4.5R(2)(a) must explain how it has determined the relevant estimates.

4.10 G If a *firm* does not have a reasonable basis on which to estimate missing historical data points for a *K-factor average metric*, it should apply the modified calculation in *MIFIDPRU* TP 4.11R.

4.11 R (1) A *firm* that is using the modified calculation for determining a *K-factor average metric*, other than for the *K-CMG requirement*, must apply the following requirements:

(a) the *firm* must calculate the arithmetic mean of the daily values (or in the case of *AUM*, monthly values) for the *K-factor metric* over the previous *n months*, excluding the most recent *y months*;

(b) *n* is the number of *months* that have elapsed since *MIFIDPRU* began to apply (with the *month* during which *MIFIDPRU* begins to apply being counted as month 1);

(c) *y* is the greater of:

(i) zero; or

(ii) *n* minus *x*; and

(d) *x* is a fixed value, being:

(i) 12 for *average AUM*;

(ii) 6 for *average CMH*, *average ASA* or *average DTF*; and

(iii) 3 for *average COH*.

(2) A *firm* that uses the modified calculation for determining the level of margin for the purposes of the *K-CMG requirement* must apply the following requirements:

(a) the *firm* must calculate the third highest amount of total margin as calculated under *MIFIDPRU* 4.13.5R required from the *firm* on a daily basis over the preceding *n months*; and

(b) *n* is the number of *months* that have elapsed since *MIFIDPRU* began to apply (with the *month* during which *MIFIDPRU* begins to apply being counted as month 1).

4.12 G (1) The following are worked examples of the modified calculation in *MIFIDPRU* TP 4.11R.

(2) Firm A has chosen to apply the modified calculation for *average AUM*. *MIFIDPRU* has been in force for 6 *months*. Firm A would calculate its *average AUM* as follows:

(a) the value of *n* is 6, being the length of time that *MIFIDPRU* has been in force;

(b) the value of *y* is zero, as zero is greater than *n* minus *x* (i.e. 6 minus 12). This means that Firm A must not exclude any of the most recent *months* of daily figures; and

(c) when calculating *average AUM* for present purposes, Firm A must therefore calculate the arithmetic mean of the previous 6 *months* of daily values for *AUM*.

(3) Firm B applies the modified calculation for *COH*, as it is unable to generate reasonable estimates for missing data points for *COH*. *MIFIDPRU* has been in force for 4 *months*. Firm B would calculate its *COH* as follows:

(a) the value of *n* is 4, being the length of time that *MIFIDPRU* has been in force;

(b) the value of *y* is 1, as *n* minus *x* (i.e. 4 minus 3) is greater than zero; and

(c) when calculating *average COH* for present purposes, Firm B must therefore calculate the arithmetic mean of the previous 4 *months* of daily values for *COH*, excluding the values for the most recent *month*.

(4) *MIFIDPRU* has been in force for 10 *months*. Although Firm C would like to apply the modified calculation for *average CMH*, under *MIFIDPRU* TP 4.5R(3)(b), this is not permitted. This is

because the standard calculation of *average CMH* under *MIFIDPRU* 4 requires only 9 *months* of daily values. Firm C should therefore have collected sufficient data by that time to be able to apply the standard calculation.

Missing historical data for K-factor calculations: transitional provisions for investment firm groups to which consolidation applies

4.13 R (1) If the conditions in (2) are met, a *UK parent entity* may apply the transitional arrangements in *MIFIDPRU* TP 4.5R to *MIFIDPRU* TP 4.11R, as modified by *MIFIDPRU* TP 4.14R, when calculating *K-factor average metrics* on a *consolidated basis*.

(2) The conditions are as follows:

(a) to the extent that it is relying on the transitional arrangements in *MIFIDPRU* TP 4, each *MIFIDPRU investment firm* in the *investment firm group* must apply the same approach under *MIFIDPRU* TP 4.5R(2) to calculate a specific *K-factor average metric* on an individual basis; and

(b) the *UK parent entity* must apply the same approach under *MIFIDPRU* TP 4.5R(2) to calculate a specific *K-factor average metric* on a *consolidated basis* as the *firms* in (a) have applied on an individual basis.

4.14 R Where a *UK parent entity* is applying *MIFIDPRU* TP 4.5R to 4.11R in accordance with *MIFIDPRU* TP 4.13R, the following modifications apply:

(1) a reference to a "*K-factor metric*" or a "*K-factor average metric*" is a reference to that *K-factor metric* or *K-factor average metric* as it applies on a *consolidated basis*;

(2) a reference to the "*K-AUM requirement*", "*K-COH requirement*", "*K-ASA requirement*", "*K-CMH requirement*", "*K-DTF requirement*" or *"K-CMG requirement*" is a reference to those requirements as they apply on a *consolidated basis*;

(3) a reference to *MIFIDPRU* 4 is a reference to that chapter as it applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5; and

(4) a reference to a "*firm*" is a reference to the *UK parent entity*.

4.15 G (1) Under *MIFIDPRU* 2.5, a *third country* entity that would be a *MIFIDPRU investment firm* if it were established in the *UK* may contribute towards a consolidated *K-factor metric*. A *UK parent entity* may rely on the transitional arrangements in *MIFIDPRU*

TP 4 in relation to missing data points relating to such entities that the *UK parent entity* requires to calculate the consolidated *K-factor requirement*.

(2) However, under *MIFIDPRU* 2.5.9R, a *UK parent entity* must ensure that any *subsidiaries* that are not subject to *MIFIDPRU* (including *third country* entities) implement the necessary arrangements to ensure that the *UK parent entity* can comply with consolidated requirements. As a result, the guidance in *MIFIDPRU* TP 4.6G(2) is equally applicable to *third country* entities within the *investment firm group*, which must ensure that they begin to collect the necessary data once *MIFIDPRU* begins to apply.

TP 6 Application of criteria to be classified as an SNI MIFIDPRU investment firm: transitional

Application

6.1 R *MIFIDPRU* TP 6 applies to the following:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity*, in accordance with *MIFIDPRU* TP 6.9R.

Purpose

6.2 G (1) *MIFIDPRU* TP 6 explains how a *MIFIDPRU investment firm*, or a *UK parent entity* which is applying *MIFIDPRU* 1.2 on a *consolidated basis*, should determine whether it meets the conditions to be classified as an *SNI MIFIDPRU investment firm* on the date on which *MIFIDPRU* begins to apply.

(2) Under *MIFIDPRU* TP 6.4R, a *MIFIDPRU investment firm* or a *UK parent entity* may use either the reasonable estimates approach or the alternative calculation in *MIFIDPRU* TP 4.5R(2) to determine missing historical data points for the purposes of applying the *average AUM* or *average COH* conditions under *MIFIDPRU* 1.2.1R(1) and (2).

(3) Under *MIFIDPRU* TP 6.7R, a *MIFIDPRU investment firm* or a *UK parent entity* must use its best efforts to estimate any missing historical data points for the purposes of applying the condition relating to total annual gross revenue from *investment services and/or activities* in *MIFIDPRU* 1.2.1R(7).

(4) The transitional arrangements in *MIFIDPRU* TP 6 apply only to the extent that the firm has missing historical data points. If a *firm* has observed historical data covering any part of the

relevant period, the *firm* should use those data points when applying the relevant calculations.

Duration

6.3 G The duration of the transitional arrangements in *MIFIDPRU* TP 6 depends on the relevant condition for classification as an *SNI MIFIDPRU investment firm* under *MIFIDPRU* 1.2. Under *MIFIDPRU* TP 6.4R(5) and *MIFIDPRU* TP 6.7R(3), the transitional arrangements cease to apply once a *firm* or *UK parent entity* has (or should have) collected sufficient historical information to apply the relevant condition in accordance with the applicable methodology in *MIFIDPRU* 1.2.

Missing historical data for application of SNI classification criteria: transitional for individual MIFIDPRU investment firms

6.4 R (1) This *rule* applies to the extent that a *MIFIDPRU investment firm* does not have the necessary historical data to determine whether the following conditions are met:

(a) the *average AUM* condition in *MIFIDPRU* 1.2.1R(1); or

(b) the *average COH* condition in *MIFIDPRU* 1.2.1R(2).

(2) If a *firm* decides to apply the alternative approach in *MIFIDPRU* 1.2.4R for the purposes of assessing whether a condition in (1) is met, this *rule* applies to the extent that the *firm* does not have the necessary historical data to apply that alternative approach to the relevant condition.

(3) Where this *rule* applies, a *firm* may (subject to (4) and *MIFIDPRU* TP 6.5R) use either of the approaches set out in *MIFIDPRU* TP 4.5R(2) to assess whether the relevant condition in (1) is met.

(4) A *firm's* choice of approach under (3) must be consistent with any choice that the *firm* has made under *MIFIDPRU* TP 4.5R(2) in relation to the same *K-factor average metric* for the purposes of applying the transitional arrangements in *MIFIDPRU* TP 4.

(5) This *rule* ceases to apply in relation to a condition in (1) on the earlier of the following:

(a) the date on which the *firm* has collected sufficient historical information necessary to apply the condition in accordance with the applicable methodology under *MIFIDPRU* 1.2; or

			(b) the date that falls *n months* after the date on which *MIFIDPRU* began to apply, where *n* is the number of *months'* worth of data points required to apply that condition in accordance with the applicable methodology under *MIFIDPRU* 1.2.
6.5	R	(1)	This *rule* applies where a *firm* has chosen to apply both of the approaches below to determine whether the *average AUM* condition in *MIFIDPRU* 1.2.1R(1) or the *average COH* conditions in *MIFIDPRU* 1.2.1R(2) is met: (a) the alternative approach in *MIFIDPRU* 1.2.4R; and (b) the modified calculation under *MIFIDPRU* TP 4.5R(2)(b).
		(2)	Where this *rule* applies, the modified calculation applies as if: (a) in *MIFIDPRU* TP 4.11R(1)(a), the words "excluding the most recent *y months*" were deleted; and (b) *MIFIDPRU* TP 4.11R(1)(c) and (d) were omitted.
6.6	R	(1)	A *firm* must apply its chosen approach under *MIFIDPRU* TP 6.4R(2) consistently in relation to a specific condition in *MIFIDPRU* TP 6.4R(1).
		(2)	A *firm* may apply different approaches under *MIFIDPRU* TP 6.4R(2) in relation to different conditions in *MIFIDPRU* TP 6.4R(1).
6.7	R	(1)	This *rule* applies to the extent that a *MIFIDPRU investment firm* does not have the necessary historical data to determine if the condition relating to the total annual gross revenue from *investment services and/or activities* in *MIFIDPRU* 1.2.1R(7) is met.
		(2)	Where this *rule* applies, a *firm* must use its best efforts to estimate any missing historical data points for the calculation of the condition in (1).
		(3)	This *rule* ceases to apply in relation to a condition in (1) on the earlier of the following: (a) the date on which the *firm* has collected sufficient historical information necessary to apply the condition in accordance with the standard methodology under *MIFIDPRU* 1.2; or

(b) the date on which two complete financial years for the *firm* have elapsed after the date that *MIFIDPRU* began to apply.

6.8 R If the *FCA* requests, a *firm* must provide a reasonable explanation of how the *firm* has determined any estimate under *MIFIDPRU* TP 6.4R(3) or *MIFIDPRU* TP 6.7R(2).

6.9 G (1) It is unnecessary to provide transitional arrangements for the following conditions:

(a) the *average ASA* condition in *MIFIDPRU* 1.2.1R(3);

(b) the *average CMH* condition in *MIFIDPRU* 1.2.1R(4);

(c) whether the *firm* has *permission* to *deal on own account* in *MIFIDPRU* 1.2.1R(5);

(d) the condition relating to the balance sheet total of the *firm* in *MIFIDPRU* 1.2.1R(6); and

(e) the *average DTF* condition in *MIFIDPRU* 1.2.1R(9).

(2) The *average ASA* and *average CMH* conditions require that the *firm* has not held any *MiFID client money*, or any *client* assets in the course of *MiFID business*, during the preceding 9 *months*, excluding the most recent 3 *months*. A *firm* should already have information on whether it has held *client money* or *client* assets in the past. If the *firm* is unable to determine whether any amounts of *client money* or *client* assets were held in connection with *MiFID business*, it should apply *MIFIDPRU* 4.8.6R or *MIFIDPRU* 4.9.6R and treat the amounts as if they were held in connection with *MiFID business* for these purposes.

(3) The conditions in (1)(c) and (1)(d) do not rely on historical information and therefore can be assessed by the *firm* at the point at which *MIFIDPRU* first begins to apply without any need for transitional arrangements.

(4) The *average DTF* condition requires that the *firm* must not have entered into any transactions by *dealing on own account* or through the *execution of orders on behalf of clients* in the *firm's* own name during the preceding 9 *months*, excluding the most recent 3 *months*. The *FCA* considers that a *firm* should already know whether it executed any transactions in that capacity during the relevant period.

6.10 G (1) *MIFIDPRU* TP 6.4R(5) and *MIFIDPRU* TP 6.7R(3) specify the date on which the transitional arrangements for applying certain conditions under *MIFIDPRU* 1.2.1R will cease to apply. From that date onwards, the *firm* will need to apply the standard methodology for determining whether it meets the relevant condition. This date may vary depending on the position of the individual *firm* and the relevant condition.

(2) Under *MIFIDPRU* TP 6.4R(5)(a), if a *firm* has sufficient historical information to apply a condition in *MIFIDPRU* TP 6.4R(1), it is no longer permitted to rely on the transitional arrangements. The following are examples of how this requirement applies:

(a) Example 1: On the date on which *MIFIDPRU* begins to apply, Firm A already has historical data on its *AUM* covering the previous 10 *months*. Assuming that the *firm* is applying the standard criteria under *MIFIDPRU* 1.2.1R (and not the alternative approach in *MIFIDPRU* 1.2.4R), the *average AUM* condition under *MIFIDPRU* 1.2.1R(1) requires 15 *months* of historical data. Since the *firm* must be collecting *AUM* data once *MIFIDPRU* begins to apply, Firm A will have sufficient data to apply the standard calculation for the *average AUM* condition 5 *months* later. At that point, the *firm* will no longer be able to rely on the transitional arrangements under *MIFIDPRU* TP 6, but instead must use the observed historical data to determine whether the condition in *MIFIDPRU* 1.2.1R(1) is met.

(b) Example 2: Firm B has notified the *FCA* under *MIFIDPRU* 1.2.4R that it is using the alternative approach to applying the *average AUM* condition in *MIFIDPRU* 1.2.1R. Firm B has 13 *months* of historical data on its *AUM*. Under *MIFIDPRU* TP 6.4R(5)(a), Firm B may not rely on the transitional arrangements in *MIFIDPRU* TP 6. Although the standard calculation for the *AUM* condition in *MIFIDPRU* 1.2.1R(1) would require 15 *months* of historical data, the alternative approach under *MIFIDPRU* 1.2.4R(2) requires only 12 *months* of data. As Firm B has sufficient observed historical data to apply its chosen methodology, the transitional arrangements do not apply.

6.11 G (1) *MIFIDPRU* 6.4R(4) and 6.6R are designed to ensure consistency in a *firm's* approach to applying the transitional arrangements in *MIFIDPRU* TP 4 and *MIFIDPRU* TP 6.

(2) *MIFIDPRU* TP 6.4R(4) requires a *firm* to be consistent in its choice of approaches for the purposes of *MIFIDPRU* TP 4 and *MIFIDPRU* TP 6. For example, Firm A does not have

sufficient information to calculate its *average AUM* for the purposes of the condition in *MIFIDPRU* 1.2.1R(1) and the *K-AUM requirement* under *MIFIDPRU* 4.7. If Firm A chooses to use the reasonable estimates approach under *MIFIDPRU* TP 4.5R(2) to calculate its *K-AUM requirement*, the *firm* must also use the reasonable estimates approach under *MIFIDPRU* TP 6.4R(3) to apply the *average AUM* condition in *MIFIDPRU* 1.2.1R(1). The estimates that Firm A uses for both purposes must be consistent.

(3) *MIFIDPRU* TP 6.6R prevents a *firm* from alternating between approaches for the purposes of *MIFIDPRU* TP 6. For example, Firm B chooses under *MIFIDPRU* TP 6.4R(3) to apply the alternative calculation in *MIFIDPRU* TP 4.11R for the purposes of the determining whether the *average COH* condition in *MIFIDPRU* TP 6.4R(1) is met. Firm B may not later decide to switch to applying the reasonable estimates approach to determine whether that condition is met.

6.12 G Under *MIFIDPRU* TP 5, a *MIFIDPRU investment firm* is required to collect at least 1 *month* of *K-factor metrics* that are relevant to any *investment services and/or activities* it carries on before *MIFIDPRU* begins to apply in full. When determining any estimate for the purposes of *MIFIDPRU* TP 6.4R(3) or *MIFIDPRU* 6.7R(2), a *firm* should consider any observed historical data that is available. Where the observed historical data covers a short period, a *firm* should take into account possible seasonal variations in figures or other factors which may be relevant to the accuracy of the estimate.

Missing historical data for application of SNI classification criteria: transitional for investment firm groups to which consolidation applies

6.13 R (1) A *UK parent entity* to which consolidation under *MIFIDPRU* 2.5 applies may apply the transitional arrangements in *MIFIDPRU* TP 6.4R to 6.12G to its *consolidated situation* in accordance with this *rule*.

(2) Where a *UK parent entity* is applying *MIFIDPRU* TP 6.4R to 6.12G in accordance with (1), the following modifications apply:

(a) a reference to a condition in *MIFIDPRU* 1.2.1R is a reference to that condition as it applies on a *consolidated basis*; and

(b) a reference to a "*MIFIDPRU investment firm*" or a "*firm*" is a reference to the *UK parent entity*.

(3) Any estimate produced by the *UK parent entity* of an *investment firm group* under *MIFIDPRU* TP 6.4R(3) or *MIFIDPRU* TP 6.7R(2) for the purposes of its *consolidated*

situation must be consistent with any estimates produced on an individual basis by any *MIFIDPRU investment firms* forming part of that *investment firm group*.

TP 7 Former non-CRR firms and parent undertakings: transitional for own funds instruments

Application

7.1 R *MIFIDPRU* TP 7 applies to a *MIFIDPRU investment firm* that, immediately before 1 January 2022:

(1) was an *authorised person*; and

(2) was not classified as a *CRR firm* in accordance with the *rules* then in force.

7.2 R (1) *MIFIDPRU* TP 7 also applies to the following if the conditions in (2) are met:

(a) a *UK parent entity* to which *MIFIDPRU* 3 applies on a *consolidated basis* in accordance with *MIFIDPRU* 2.5.7R; and

(b) a *parent undertaking* to which the *group capital test* applies.

(2) The conditions are that immediately before 1 January 2022 the *UK parent entity* or *parent undertaking*:

(a) formed part of the same *investment firm group* as a *firm*, which, on 1 January 2022 became a *MIFIDPRU investment firm*; and

(b) was not required to hold *own funds* on either an individual or a consolidated basis in accordance with the *UK CRR*.

Purpose

7.3 G (1) Before *MIFIDPRU* applied, certain *firms* that subsequently became *MIFIDPRU investment firms* determined their available capital resources according to various provisions in *GENPRU* or *IPRU-INV*. In addition, certain other *firms* were not subject to a dedicated prudential sourcebook in the *FCA Handbook* that contained a detailed regime for recognising the eligibility of capital resources.

(2) The *rules* on *own funds* in *MIFIDPRU* 3 broadly replicate the approach to recognising capital resources under the *UK CRR*.

The purpose of *MIFIDPRU* TP 7 is to permit *firms* that were not *CRR firms* immediately before *MIFIDPRU* began to apply to recognise instruments as *own funds* under *MIFIDPRU* without requiring separate permission from, or notification to, the *FCA* if those instruments:

(a) were issued before *MIFIDPRU* began to apply; and

(b) meet the conditions to be classified as *own funds* under *MIFIDPRU* 3 (other than the conditions relating to the requirements to seek prior *FCA* consent or to notify the *FCA*).

(3) Under *MIFIDPRU* TP 1, a permission recognising the issuance of capital instruments as *common equity tier 1 capital* under the *UK CRR* is deemed to be an equivalent permission under *MIFIDPRU*. Therefore, a notification made before *MIFIDPRU* began to apply by a former *CRR firm* in relation to the issuance of *additional tier 1 instruments* and *tier 2 instruments* will continue to be valid.

(4) *MIFIDPRU* TP 7 also applies to *UK parent entities* to which *MIFIDPRU* 3 applies on a *consolidated basis* and *parent undertakings* to which the *group capital test* applies, where those entities were not required to hold *own funds* on an individual or consolidated basis under the *UK CRR* immediately before *MIFIDPRU* began to apply. This means that provided that the existing instruments issued by these entities meet the relevant conditions in *MIFIDPRU* 3, they can be treated as *own funds* for the purposes of the application of *MIFIDPRU* 3 on a *consolidated basis* or the *group capital test* as long as the entity complies with *MIFIDPRU* TP 7.

Eligibility of pre-MIFIDPRU capital resources meeting requirements in MIFIDPRU 3 to qualify as own funds under MIFIDPRU without a separate permission or notification

7.4 R (1) This *rule* applies to any capital instrument that:

(a) was issued by a *firm*, *UK parent entity* or *parent undertaking* before 1 January 2022; and

(b) was still in issue on 1 January 2022.

(2) The *firm*, *UK parent entity* or *parent undertaking* in (1)(a) is deemed to have been granted the permission, or to have complied with the notification obligation, in column (A) of the table in *MIFIDPRU* 7.5R in relation to a capital instrument where the following conditions are met:

(a) the conditions in column (B) of the same row of the table in *MIFIDPRU* 7.5R are met in relation to that instrument; and

(b) the *firm* has submitted the notification in *MIFIDPRU* TP 7 Annex 1R using the *online notification and application system* by no later than 1 January 2022.

(3) A deemed permission or notification under (2) ceases to apply in relation to a capital instrument if the terms of the instrument are varied on or after 1 January 2022 and the instrument ceases to meet:

(a) in relation to an instrument being treated as *common equity tier 1 capital*, the conditions in *MIFIDPRU* 3.3 (other than the condition for prior *FCA* permission to classify the instrument as *common equity tier 1 capital*);

(b) in relation to an instrument being treated as *additional tier 1 capital*, the conditions in *MIFIDPRU* 3.4; and

(c) in relation to an instrument being treated as *tier 2 capital*, the conditions in *MIFIDPRU* 3.5.

7.5 R This table belongs to *MIFIDPRU* TP 7.4R.

(A) **Requirement for permission or notification with which the *firm*, *UK parent entity* or *parent undertaking* is deemed to have complied**	**(B)** **Conditions for deemed compliance to apply**
Individual *MIFIDPRU investment firms*	
Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R: Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *firm* as *common equity tier 1 capital*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3, except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R
MIFIDPRU 3.6.5R(1)(a): Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *additional tier 1 capital in MIFIDPRU* 3.4

MIFIDPRU 3.6.5R(1)(b): Requirement to notify the *FCA* of the intention to issue *tier 2 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5
UK parent entities to which consolidation under *MIFIDPRU* 2.5.7R applies	
Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R, as they apply on a *consolidated basis* under *MIFIDPRU* 2.5.7R(1): Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *UK parent entity* as *common equity tier 1 capital*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3 (as it applies on a *consolidated basis*), except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R
MIFIDPRU 3.6.5R(1)(a), as modified by *MIFIDPRU* 3.6.8R: Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *additional tier 1 capital* in *MIFIDPRU* 3.4 (as it applies on a *consolidated basis*)
MIFIDPRU 3.6.5R(1)(b), as modified by *MIFIDPRU* 3.6.8R: Requirement to notify the *FCA* of the intention to issue *tier 2 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5 (as it applies on a *consolidated basis*)
Parent undertakings to which the *group capital test* applies	
Article 26(3) *UK CRR* (as applied and modified by *MIFIDPRU* 3.3.1R) and *MIFIDPRU* 3.3.3R, as they apply to a *parent undertaking* under *MIFIDPRU* 3.7.4R(1)(a): Requirement for prior *FCA* permission to classify an issuance of capital instruments by a *parent undertaking* as *common equity tier 1 capital*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *common equity tier 1 capital* in *MIFIDPRU* 3.3, except for the requirement for prior *FCA* permission under article 26(3) of the *UK CRR* and *MIFIDPRU* 3.3.3R
MIFIDPRU 3.6.5R(1)(a), as modified by *MIFIDPRU* 3.7.4R(1)(b): Requirement to notify the *FCA* of the intention to issue *additional tier 1 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *additional tier 1 capital* in *MIFIDPRU* 3.4

MIFIDPRU 3.6.5R(1)(b), as modified by *MIFIDPRU* 3.7.4R(1)(b): Requirement to notify the *FCA* of the intention to issue *tier 2 instruments*	Immediately before *MIFIDPRU* began to apply, the capital instruments met the conditions to be classified as *tier 2 capital* in *MIFIDPRU* 3.5

7.6 G Where a *firm*, *UK parent entity* or *parent undertaking* is deemed under *MIFIDPRU* TP 7.3R and 7.4R to have notified the *FCA* of its intention to issue *additional tier 1 instruments* or *tier 2 instruments*, *MIFIDPRU* 3.6.5R(2)(a) will apply to a subsequent issuance of the same class of instruments. In practice, this means that provided that the subsequent issuance of the same class is on terms that are identical in all material respects to the existing class of those instruments, a notification to the *FCA* under *MIFIDPRU* 3.6.5R(1) is not required.

TP 7 Annex 1 — Notification under MIFIDPRU TP 7.4R(2)(b) on treating pre-MIFIDPRU capital instruments as own funds under MIFIDPRU 3

R [*Editor's note*: The form can be found at this address: https://www.fca.org.uk/publication/forms/[xxx]]

MIFIDPRU TP7 Annex 1R

Notification under MIFIDPRU TP 7.4R(2)(b) on treating pre-MIFIDPRU capital instruments as own funds under MIFIDPRU 3

1. Please confirm which of the following the notifying firm will be under MIFIDPRU:

a. MIFIDPRU investment firm that is not a consolidating UK parent entity or a GCT parent undertaking	☐
b. MIFIDPRU investment firm that is a consolidating UK parent entity	☐
c. MIFIDPRU investment firm that is a GCT parent undertaking	☐
d. Consolidating UK parent entity (other than a MIFIDPRU investment firm)	☐
e. GCT parent undertaking (other than a MIFIDPRU investment firm)	☐

2. This notification is made in respect of the following capital instruments issued by the entity before 1 January 2022 and which will still be in issue on that date:

Type of instruments	Nominal value of instruments	Treatment under MIFIDPRU
		Select one of the following for each type of instrument: • *CET1* • *AT1* • *T2*

3. By submitting this notification, you confirm that the instruments above meet the relevant conditions for classification as own funds under MIFIDPRU, aside from any requirement to notify or seek permission from the FCA.

TP 8 **Commodity and emission allowance dealers**

8.1 R

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	*MIFIDPRU* 6	R	The *rules* and *guidance* in *MIFIDPRU* 6 do not apply to a *commodity and emission allowance dealer*.	Until 1 January 2027	1 January 2022

TP 9 **IFPRU waivers: transitional**

Application

9.1 R *MIFIDPRU* TP 9 applies to a *non-SNI MIFIDPRU investment firm*.

9.2 R *MIFIDPRU* TP 9 applies where, immediately before 1 January 2022, a *waiver* given in relation to a *rule* listed in column A of the table in *MIFIDPRU* TP 9.5R has effect.

Duration of transition

9.3 R This section applies to each *waiver* in *MIFIDPRU* TP 9.2R, until the direction given in respect of that *waiver* ceases to have effect on its terms, or is revoked, whichever is the earlier.

Transitional

9.4 R Each *waiver* given in relation to a *rule* listed in column A of the table in *MIFIDPRU* TP 9.5R is treated as a *waiver* given to the *firm* in relation to the *rule* listed in the same row in column B of the table.

Table

9.5 R Table of FCA rules

Column A	**Column B**
SYSC 4.3A.8R	*MIFIDPRU* 7.3.5R
SYSC 7.1.18R	*MIFIDPRU* 7.3.1R
SYSC 19A.3.12R	*MIFIDPRU* 7.3.3R

TP 10 Transitional capital and liquidity requirements for former IFPRU investment firms, BIPRU firms or their groups with ICG or ILG issued before 1 January 2022

Purpose

10.1 G (1) *MIFIDPRU TP* 10 contains transitional *rules* that explain how a *firm* or a *group* that was subject to *individual capital guidance* or *individual liquidity guidance* immediately before 1 January 2022 should take that guidance into account when first determining the *own funds threshold requirement* under *MIFIDPRU*.

(2) The general purpose of *MIFIDPRU* TP 10 is to ensure that a *firm* does not apply an inappropriately low *own funds threshold requirement* at the outset of the *MIFIDPRU* regime, before the *firm* has properly considered the outcome of its *ICARA process*. *MIFIDPRU* TP 10 is also designed to ensure that the *FCA* has sufficient opportunity to review a *firm's* conclusions from its *ICARA process*, if the *FCA* considers it necessary, before any pre-*MIFIDPRU individual capital guidance* or *individual liquidity guidance* ceases to be relevant to the *firm*.

(3) *MIFIDPRU* TP 10 also requires a *firm* for which pre-*MIFIDPRU individual capital guidance* or *individual liquidity guidance* is relevant to submit *data item* MIF007 (ICARA assessment questionnaire) for the first time by no later than 31 March 2023. This will ensure that the *FCA* can begin considering the *firm's* approach to the *firm's own funds threshold requirement* and any pre-*MIFIDPRU* guidance by no later than that date.

Application

10.2 R (1) *MIFIDPRU* TP 10 applies to an *undertaking* in (2) or (3) where the condition in (4) is met.

(2) This *rule* applies to a *MIFIDPRU investment firm* that, under the *rules* in force on 31 December 2021, was classified as:

(a) an *IFPRU investment firm*; or

(b) a *BIPRU firm*.

(3) This *rule* also applies to the following where they form part of an *investment firm group* containing a *MIFIDPRU investment firm* to which (2) applies:

(a) a *UK parent entity*; and

(b) an *authorised person*.

(4) The relevant condition is that on 31 December 2021, the *firm* in (2), or any *investment firm group* (or any larger *group* that included the *investment firm group*) of which it formed a part, was subject to either or both of the following:

(a) *individual capital guidance*; or

(b) *individual liquidity guidance*.

(5) For the purposes of *MIFIDPRU* TP 10:

(a) "pre-MIFIDPRU ICG" means the *individual capital guidance* in (4); and

(b) "pre-MIFIDPRU ILG" means the *individual liquidity guidance* in (4).

Requirement to submit an ICARA assessment questionnaire by 31 March 2023

10.3 R (1) A *MIFIDPRU investment firm* to which *MIFIDPRU* TP 10 applies must submit *data item* MIF007 for the first time by no later than the end of 31 March 2023.

(2) This *rule* applies notwithstanding any provision in *MIFIDPRU* 7.8 or in *MIFIDPRU* 9.2 that would otherwise permit the *firm* to submit *data item* MIF007 for the first time on a later date.

10.4 G (1) The effect of *MIFIDPRU* TP 10.3R is that where, on 31 December 2021, a *MIFIDPRU investment firm* was classified as an *IFPRU investment firm* or a *BIPRU firm* and the *firm* was subject to *individual capital guidance* or *individual liquidity guidance* (or both), the *firm* must submit *data item* MIF007 for the first time by no later than 31 March 2023. This requirement also applies where the *firm* forms part of an *investment firm group* and that *group* (or a larger *group* of which it forms part) was, on 31 December 2021, subject to *individual capital guidance* or *individual liquidity guidance* (or both) issued on a *consolidated basis*.

(2) Under *MIFIDPRU* 7.8, in order to submit *data item* MIF007, a *firm* must have carried out a review of its *ICARA process* and

documented that review in an *ICARA document*. Therefore, a *firm* to which *MIFIDPRU* TP 10.3R applies must ensure that it has taken these steps to allow sufficient time to submit *data item* MIF007 by no later than 31 March 2023. When reviewing its *ICARA process*, the *firm* should consider the potential relevance of any pre-MIFIDPRU ICG or pre-MIFIDPRU ILG to which it is subject (including where it forms part of a *group* that is subject to such guidance on a *consolidated basis*).

(3) A *firm* may choose to submit *data item* MIF007 for the first time on an earlier date. *Firms* are reminded that under *MIFIDPRU* 7.8.2R, they must review the adequacy of their *ICARA process* at least once every 12 *months*. A *firm* may therefore wish to choose a review date during 2022 that aligns with the *firm's* preferred date for an annual review in subsequent years. The *FCA* has specified a deadline of 31 March 2023 for the submission of *data item* MIF007 by *firms* subject to *MIFIDPRU* TP 10.3R to allow *firms* flexibility about their choice of review date, while also allowing a sufficient period of time to complete and submit *data item* MIF007 if their chosen review date falls near the end of 2022.

Individual capital guidance

10.5 R (1) This *rule* applies to a *firm* that on 31 December 2021 was subject to pre-MIFIDPRU ICG that was issued to the *firm* on an individual basis.

(2) This *rule* applies from 1 January 2022 until the earliest of:

(a) 6 *months* after the date on which the *firm* submits *data item* MIF007 in accordance with *MIFIDPRU* TP 10.3R;

(b) the date on which the *FCA* first communicates to the *firm* the outcome of a *SREP* carried out on the *firm*; or

(c) the date on which the *FCA* first issues individual guidance to, or imposes a *requirement* on, the *firm* for the purposes of specifying the amount of *own funds* that the *firm* must hold to comply with the *overall financial adequacy rule*.

(3) During the period in (2), the *firm's own funds threshold requirement* must be at least equal to the transitional requirement in (4).

(4) A *firm* must calculate the transitional requirement by:

(a) determining the absolute amount of *own funds* that the *firm* was required to hold to comply with the pre-MIFIDPRU ICG on:

(i) in the case of an *IFPRU investment firm*, the following dates: 31 December 2020, 31 March 2021, 30 June 2021 and 30 September 2021; and

(ii) in the case of a *BIPRU firm*, the reporting reference dates of the two most recent FSA003 *data items* submitted on or before 31 December 2021; and

(b) calculating the arithmetic mean of the absolute values in (a).

10.6 G (1) As part of its *ICARA process*, a *firm* to which *MIFIDPRU* TP 10 applies must assess its *own funds threshold requirement* (i.e. the amount of *own funds* that the *firm* must hold to comply with the *overall financial adequacy rule*). The transitional requirement in *MIFIDPRU* TP 10.5R(4) is a "floor" to the amount of a *firm's own funds threshold requirement*, not a maximum amount and applies only during the transitional period specified in *MIFIDPRU* TP 10.5R(2).

(2) The transitional requirement is therefore relevant only to extent that the *firm* would otherwise have sought to apply an *own funds threshold requirement* during the transitional period that is lower than the transitional requirement.

(3) The transitional requirement is intended to ensure that a *firm* that is subject to pre-MIFIDPRU ICG does not apply an inappropriately low *own funds threshold requirement* as a result of its *ICARA process* before the *FCA* has been able to consider the *firm's* assessment. The transitional period will therefore allow the *FCA* sufficient time to understand the *firm's* approach to assessing its *own funds threshold requirement* under *MIFIDPRU*, during which the *firm* must ensure that it maintains *own funds* at least equal to the transitional requirement.

(4) Once the transitional period in *MIFIDPRU* TP 10.5R(2) has expired, the transitional requirement no longer applies. In its *ICARA document*, the *firm* should therefore explain what it considers its *own funds threshold requirement* will be when the "floor" under the transitional requirement is no longer applicable. The *FCA* can then review the *firm's* assessment during the transitional period to determine if the *firm* has formed a reasonable judgement about its *own funds threshold requirement*.

10.7 G (1) The reference dates in *MIFIDPRU* TP 10.5R(4)(a)(i) for an *IFPRU investment firm* are designed to be aligned to the reference dates of the *firm's* COREP – Own Funds reports.

(2) Under *MIFIDPRU* TP 10.5R(4)(a)(ii), the reference dates for a *BIPRU firm* are determined in accordance with the reference dates of its FSA003 (Capital adequacy) reports.

(3) In each case, this means that the *firm* can use its previous regulatory capital returns to assist in the calculation of its transitional requirement under *MIFIDPRU* TP 10.

10.8 G (1) The following is a worked example of the effect of *MIFIDPRU* TP 10.5R.

(2) An *IFPRU investment firm* has been issued with pre-MIFIDPRU ICG specifying that the *firm* should hold *own funds* of 200% of its Pillar 1 requirement under the *UK CRR*, plus a £50 million fixed add-on. The pre-MIFIDPRU ICG applies to the *firm* on 31 December 2021. From 1 January 2022, the *firm* will be a *MIFIDPRU investment firm*.

(3) Under *MIFIDPRU* TP 10.3R, the *firm* must submit *data item* MIF007 by no later than 31 March 2023. The *firm* chooses to review its *ICARA process* on 1 December 2022 and submits *data item* MIF007 for the first time on 15 January 2023.

(4) As part of its *ICARA process*, the *firm* assesses its *own funds threshold requirement* – i.e. the amount of *own funds* that the *firm* considers it will need to hold to comply with the *overall financial adequacy rule*. The *firm* will then need to compare the *firm's* assessment with the transitional requirement under *MIFIDPRU* TP 10.5R and apply the higher of the two amounts. This is because under *MIFIDPRU* TP 10.5R(3), the *firm's own funds threshold requirement* must be at least equal to the transitional requirement in *MIFIDPRU* TP 10.5R(4). However, the *own funds threshold requirement* can still be higher than the transitional requirement if:

(a) the *firm's own funds requirement* under *MIFIDPRU* 4.3 (as limited by any applicable transitional provision) exceeds the transitional requirement under *MIFIDPRU* TP 10.5R; or

(b) the *firm* determines that it should hold a higher level of *own funds* to comply with the *overall financial adequacy rule*.

(5) The *firm's* Pillar 1 requirement on each of the reference dates in *MIFIDPRU* TP 10.5R(4)(a)(i) was as follows:

(a) 31 December 2020: £70 million

(b) 31 March 2021: £115 million

(c) 30 June 2021: £125 million

(d) 30 September 2021: £90 million

(6) The *firm* would calculate the absolute amounts required by its pre-MIFIDPRU ICG as follows:

(a) 31 December 2020:

£70m x 200% = £140m

£140m + £50m = £190m

(b) 31 March 2021:

£115m x 200% = £230m

£230m + £50m = £280m

(c) 30 June 2021:

£125m x 200% = £250m

£250m + £50m = £300m

(d) 30 September 2021:

£90m x 200% = £180m

£180m + £50m = £230m

(7) The *firm* would calculate the arithmetic mean of those absolute values as:

£190m + £280m + £300m + £230m = £1,000m

£1,000m / 4 = £250m

(8) Under *MIFIDPRU* TP 10.5R(3), the *firm's own funds threshold requirement* can therefore be no lower than £250m from 1 January 2022 until the earliest of:

(a) 15 July 2023 (i.e. 6 *months* after 15 January 2023, which was the date on which the *firm* first submitted *data item* MIF007);

(b) the date on which the *FCA* informs the *firm* of the outcome of a *SREP* carried out on the *firm*; or

(c) the date on which the *FCA* otherwise issues *individual guidance* to, or imposes a *requirement* on, the *firm* for the purposes of specifying the amount of *own funds* that the *firm* needs to hold to comply with the *overall financial adequacy rule*.

(9) However, the transitional requirement under *MIFIDPRU* TP 10.5R does not limit the *firm's own funds threshold requirement* during the period in (8). If the *firm's* own assessment of its *own funds threshold requirement* under its *ICARA process* results in a number that is higher £250m, the *firm* must therefore hold *own funds* that are at least equal to the higher amount. If the *firm's* assessment results in a number than is lower than £250m, then the *firm* must hold *own funds* of at least £250m until the period in (8) has elapsed.

10.9 G The worked example in *MIFIDPRU* TP 10.8G is based on a simple example of pre-MIFIDPRU ICG that is based on a fixed percentage of the *firm's* Pillar 1 requirement and a simple fixed add-on. Many *firms* may have pre-MIFIDPRU ICG that is set by reference to a more complicated calculation. This may include the use of scalars, other add-ons and percentages of particular components of the Pillar 1 calculation. When determining the absolute amounts for the purpose of *MIFIDPRU* TP 10.5R(4)(a), the *firm* must follow whatever methodology was specified in the applicable pre-MIFIDPRU ICG.

10.10 R (1) This *rule* applies to the *UK parent entity* of, and *firms* forming part of, an *investment firm group* that on 31 December 2021 was subject to pre-MIFIDPRU ICG issued on a *consolidated basis*.

(2) This *rule* applies from 1 January 2022 until the earliest of:

(a) 6 *months* after the date on which all *firms* in the *investment firm group* have first submitted *data item* MIF007 in accordance with *MIFIDPRU* TP 10.3R;

(b) the date on which the *FCA* has first communicated to each *MIFIDPRU investment firm* in the *investment firm group* the outcome of a *SREP* carried out on the *firm*; or

(c) the date on which the *FCA* had first issued individual guidance to, or imposed a *requirement* on, each *MIFIDPRU investment firm* in the *investment firm group* for the purposes of specifying the amount of *own funds* that the *firm* must hold to comply with the *overall financial adequacy rule*.

(3) Where this *rule* applies, the *UK parent entity* of the *investment firm group* must:

(a) determine the absolute amount of *own funds* that was required on a *consolidated basis* to comply with the pre-MIFIDPRU ICG on:

(i) in the case of *individual capital guidance* set under *IFPRU*, the following dates: 31 December 2020, 31 March 2021, 30 June 2021 and 30

September 2021; and

(ii) in the case *individual capital guidance* set under *BIPRU*, the reporting reference dates of the two most recent consolidated FSA003 *data items* submitted on or before 31 December 2021;

(b) calculate the arithmetic mean of the absolute values in (a); and

(c) allocate the amount in (b) between the entities in the *investment firm group* on an equivalent basis to that used by the *group* to comply with the consolidated pre-MIFIDPRU ICG immediately before 1 January 2022.

(4) During the period in (2):

(a) the *own funds threshold requirement* of each *MIFIDPRU investment firm* included in the pre-MIFIDPRU ICG must be at least equal to the amount allocated to that *firm* under (3)(c); and

(b) any other *authorised person* included in the pre-MIFIDPRU ICG must hold financial resources that cover at least the amount allocated to that *authorised person* under (3)(c).

(5) The *UK parent entity* must record the basis for any allocation under (3)(c).

Individual liquidity guidance

10.11 R (1) This *rule* applies to a *firm* that on 31 December 2021 was subject to pre-MIFIDPRU ILG issued on an individual basis.

(2) This *rule* applies from 1 January 2022 until the earliest of:

(a) 6 *months* after the date on which the *firm* submits *data item* MIF007 in accordance with *MIFIDPRU* TP 10.3R;

(b) the date on which the *FCA* first communicates to the *firm* the outcome of a *SREP* carried out on the *firm*; or

(c) the date on which the *FCA* first issues individual guidance to, or imposes a *requirement* on, the *firm* for the purposes of specifying the amount of *liquid assets* that the *firm* must hold to comply with the *overall financial adequacy rule*.

(3) During the period in (2), the *firm's liquid assets threshold requirement* must be at least equal to the liquidity resources that the *firm* would need to hold to comply with the pre-MIFIDPRU

ILG if the *firm* had continued to be subject to that *individual liquidity guidance*.

(4) The *ICARA document* that is the subject of *data item* MIF007 referred to in (2)(a) must explain any difference between the *firm's* assessment of its *liquid assets threshold requirement* and the transitional requirement that applies under (3).

10.12 G (1) *MIFIDPRU* TP 10.11R requires a *firm* that is subject to pre-MIFIDPRU ILG to apply a minimum transitional "floor" to its *liquid assets threshold requirement* from 1 January 2022 until the earlier of:

(a) 6 *months* after the *firm* has first submitted *data item* MIF007 to the *FCA* under *MIFIDPRU* TP2; or

(b) the date on which the *FCA* has either communicated to the *firm* the outcome of a *SREP* carried out on the *firm* or the *FCA* has otherwise issued the *firm* with *individual guidance* or imposed a *requirement* on the *firm* in connection with the amount of *liquid assets* that it must hold to satisfy the *overall financial adequacy rule*.

(2) Under *MIFIDPRU* TP 10.11R(4), the "floor" is determined as the amount of *liquid assets* that the *firm* would need to hold to comply with its pre-MIFIDPRU ILG if that guidance had continued to apply to the *firm*. This means that the *firm* should continue to calculate the impact of the pre-MIFIDPRU ILG and where appropriate, update the resulting required amount of liquidity resources during the transitional period in *MIFIDPRU* TP 10.11R(2).

(3) The purpose of *MIFIDPRU* TP 10.11R is to apply an equivalent approach in relation to the *liquid assets threshold requirement* to that described in *MIFIDPRU* TP 10.6G in relation to the *own funds threshold requirement*. This ensures that the *FCA* has sufficient time to understand the *firm's* approach to determining its *liquid assets threshold requirement* before the "floor" of the transitional requirement for liquidity ceases to apply.

(4) The transitional requirement under *MIFIDPRU* TP 10.11R(4) specifies a minimum level for the *liquid assets threshold requirement*. During the transitional period in *MIFIDPRU* TP 10.10R(2), the *firm* may nonetheless determine that its *liquid assets threshold requirement* is higher than the transitional requirement because:

(a) the *firm's basic liquid assets requirement* under *MIFIDPRU* 6 (as limited by any other applicable transitional provision) exceeds the transitional requirement; or

(b) the *firm* determines that it should hold a higher level of *liquid assets* to comply with the *overall financial adequacy rule*.

10.13 R (1) This *rule* applies to the *UK parent entity* of, and *firms* forming part of, an *investment firm group* that on 31 December 2021 was subject to pre-MIFIDPRU ILG issued on a *consolidated basis*.

(2) This *rule* applies from 1 January 2022 until the earliest of:

(a) 6 *months* after the date on which all *firms* in the *investment firm group* have first submitted *data item* MIF007 in accordance with *MIFIDPRU* TP 10.3R;

(b) the date on which the *FCA* has first communicated to each *MIFIDPRU investment firm* in the *investment firm group* the outcome of a *SREP* carried out on the *firm*; or

(c) the date on which the *FCA* has first issued individual guidance to, or imposed a *requirement* on, each *MIFIDPRU investment firm* in the *investment firm group* for the purposes of specifying the amount of *liquid assets* that the *firm* must hold to comply with the *overall financial adequacy rule*.

(3) Where this *rule* applies, the *UK parent entity* of the *investment firm group* must allocate the consolidated liquidity resources that would be required to comply with the pre-MIFIDPRU ILG if it continued to apply on an ongoing basis between the entities in the *investment firm group* in accordance with (4).

(4) The allocation in (3) must be on an equivalent basis to that used by the *group* to comply with the consolidated pre-MIFIDPRU ILG immediately before 1 January 2022.

(5) During the period in (2):

(a) the *liquid assets threshold requirement* of each *MIFIDPRU investment firm* included in the consolidated pre-MIFIDPRU ILG must be at least to the amount allocated to that *firm* by the *UK parent entity* under (3); and

(b) any other *authorised person* included in the consolidated pre-MIFIDPRU ICG must hold liquidity resources that cover at least the amount allocated to that *authorised person* under (3).

(6) The *UK parent entity* must record the basis for any allocation

under (3).

(7) Each *ICARA document* that is the subject of *data item* MIF007 referred to in (2)(a) must explain any difference between the *firm's* assessment of its *liquid assets threshold requirement* and the transitional requirement that applies under (5).

Sch 1 Record keeping requirements

Sch 1.1 G (1) The aim of the *guidance* in the following table is to provide an overview of the relevant record keeping requirements in *MIFIDPRU*.

(2) It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MIFIDPRU 4.7.5R	Currency conversion rate	The market rate chosen to convert *AUM* amounts in foreign currencies into the *firm's* functional currency	At the time of the relevant measurement	Not specified
MIFIDPRU 4.10.19R(3)(b)	Currency conversion rate	The market rate chosen to convert *COH* amounts in foreign currencies into the *firm's* functional currency	At the time of the relevant measurement	Not specified
MIFIDPRU 4.10.23R(4)	Basis on which *firm* has applied the alternative approach in *MIFIDPRU* 4.10.23R to determine the value of an order when measuring *COH*	The basis in *MIFIDPRU* 4.10.23R(3) on which the *firm* is applying the alternative approach in *MIFIDPRU* 4.10.23R to determine the value of an order when measuring *COH*	At the time that the *firm* decides to apply the alternative approach	Not specified

MIFIDPRU 4.15.4R	Currency conversion rate	The market rate chosen to convert *DTF* amounts in foreign currencies into the *firm's* functional currency	At the time of the relevant measurement	Not specified
MIFIDPRU 7.1.7R(4)	Currency conversion rate	The market rate chosen to convert the value of amounts in foreign currencies into pounds sterling for the purposes of determining the application of certain governance requirements under *MIFIDPRU* 7	At the time of the relevant measurement	Not specified
MIFIDPRU 7.8.10R	*ICARA document* approval	The *firm's ICARA document* and records of the *governing body* review and approval under *MIFIDPRU* 7.8.8R	At the time that the *governing body* approves the *ICARA document* under *MIFIDPRU* 7.8.8R	3 years from the date on which the *governing body* gave its approval under *MIFIDPRU* 7.8.8R

Sch 1.2 G *MIFIDPRU investment firms* are also reminded of the general record keeping obligations that apply under *SYSC* 9 (Record keeping).

Sch 2 Notification requirements

Sch 2.1 G (1) The aim of the *guidance* in the following table is to provide an overview of the relevant notification requirements in *MIFIDPRU*.

(2) It is not a complete statement of those requirements and should not be relied on as if it were.

Handbook reference	Subject of notification	Trigger events	Time allowed
MIFIDPRU 1.2.4R(3)	Applying alternative calculation for *AUM* or *COH* for *SNI MIFIDPRU investment firm* criteria	Decision to apply alternative approach	Not applicable

MIFIDPRU 1.2.4R(4)	Ceasing to apply alternative calculation for *AUM* or *COH* for *SNI MIFIDPRU investment firm* criteria	Decision to cease applying alternative approach	Not applicable
MIFIDPRU 1.2.7R(2)	Use of end-of-day value for calculating *average CMH* for *SNI MIFIDPRU investment firm* criteria	Record-keeping or reconciliation error as described in *MIFIDPRU* 1.2.7R(1)	Immediate notification
MIFIDPRU 1.2.13R(2)(b)	*Non-SNI investment firm* meeting criteria to be classified as an *SNI MIFIDPRU investment firm*	Meeting *SNI MIFIDPRU investment firm* criteria for at least 6 *months*	Not applicable
MIFIDPRU 1.2.16R	*Firm* ceasing to meet one of the criteria to be classified as an *SNI MIFIDPRU investment firm*	Ceasing to meet one or more of the *SNI MIFIDPRU investment firm* criteria	Prompt notification
MIFIDPRU 2.5.17R(2)(f)	Application of proportional consolidation to a *participation* meeting the conditions in *MIFIDPRU* 2.5.17R	Decision to apply proportional consolidation	Not applicable
MIFIDPRU 3.3.3R(2)	Notification of subsequent issuance of capital instruments qualifying as *common equity tier 1 capital*	Proposed issuance of capital instruments of an existing class of *common equity tier 1 capital*	No fewer than 20 *business days* before the issuance
MIFIDPRU 3.6.3R	Notification of proposed reduction, repurchase, call or redemption of *own funds instruments* where conditions in *MIFIDPRU* 3.6.4R are met	Proposed redemption of *own funds instruments* where conditions in *MIFIDPRU* 3.6.4R are met	No later than the 20th *business day* before the *day* on which the reduction, repurchase, call or redemption will occur
MIFIDPRU 3.6.5R	Notification of proposed issuance of *additional tier 1*	Proposed issuance of *additional tier 1*	At least 20 *business days*

	instruments or *tier 2 instruments*	*instruments* or *tier 2 instruments*	before the intended issuance date
MIFIDPRU 4.12.7R	Notification of non-material change or non-material extension in use of an internal model for the *K-NPR requirement*	Proposal to implement a non-material change to a model or to extend the use of a model in a non-material manner	Not applicable
MIFIDPRU 4.12.10R	Use of own estimates for delta for standardised approach to market risk of options	Decision to apply own estimates for delta where conditions in *MIFIDPRU* 4.12.10R are met	Not applicable
MIFIDPRU 4.13.10R	Notification that conditions for use of *K-CMG permission* are no longer met	*Portfolio* ceasing to meet conditions in *MIFIDPRU* 4.13.9R for use of a *K-CMG permission*	Immediate notification
MIFIDPRU 4.13.20R	Notification that *firm* will calculate the *K-NPR requirement* for a *portfolio* for which it previously had a *K-CMG permission*	Decision to calculate the *K-NPR requirement* for a *portfolio* where conditions in *MIFIDPRU* 4.13.19R are met	Not applicable
MIFIDPRU 5.6.3R	Notification that *concentration risk soft limit* has been exceeded	Exceeding *concentration risk soft limit* for a *client* or *group of connected clients* as specified in *MIFIDPRU* 5.6.2R	Notification without delay
MIFIDPRU 5.9.3R	Notification that "hard" exposure limits in *MIFIDPRU* 5.9.1R have been exceeded	Exceeding limit in *MIFIDPRU* 5.9.1R	Notification without delay
MIFIDPRU 5.11.2R	Exemption from *MIFIDPRU* 5.2 to *MIFIDPRU* 5.10 for	Decision to apply exemption where conditions in	Not applicable

	commodity and emission allowance dealers	*MIFIDPRU* 5.11.1R are met	
MIFIDPRU 7.1.9R	Notification that *firm* has met necessary conditions to fall within either *MIFIDPRU* 7.1.4R(1)(a) or (b) for a continuous period of at least 6 *months*	Meeting conditions in either *MIFIDPRU* 7.1.4R(1)(a) or (b) for a continuous period of at least 6 *months*	Not applicable
MIFIDPRU 7.1.12R	Notification that *firm* no longer meets the conditions necessary to fall within *MIFIDPRU* 7.1.4R(1)(a) or (b)	No longer meeting conditions in *MIFIDPRU* 7.1.4R(1)(a) or (b) when the *firm* previously did so	Prompt notification
MIFIDPRU 7.6.11R	Notification where *own funds* fall below certain specified levels	*Own funds* falling below levels specified in *MIFIDPRU* 7.6.11R	Immediate notification
MIFIDPRU 7.7.14R	Notification where *liquid assets* fall below certain specified levels	*Liquid assets* falling below levels specified in *MIFIDPRU* 7.7.14R	Immediate notification
MIFIDPRU 7.8.4R	*Firm's* choice of submission date(s) or change of submission date(s) for *data item* MIF007 (ICARA assessment questionnaire)	Initial choice of submission date or change of submission date for *data item* MIF007	Not applicable
MIFIDPRU TP 1.8R	Notification of *firm's* intentions in relation to *additional tier 1 instruments* issued before 1 January 2022	*Firm* has outstanding *additional tier 1 instruments* on 1 January 2022	By no later than 1 January 2022
MIFIDPRU TP 7.4R	Notification to treat capital instruments issued before 1 January 2022 as *own funds* under *MIFIDPRU* 3	*Firm* has issued capital instruments before 1 January 2022 that it wishes to treat as *own funds* under *MIFIDPRU* 3	By no later than 1 January 2022

Sch 3 Fees and other payment requirements

Sch 3.1 G *MIFIDPRU* does not contain any *rules* that directly impose fees or other payments. However, *MIFIDPRU* 9.1.2R(2)(c) applies the administrative fee in *SUP* 16.3.14R for failure to submit reports by their due date to the late submission of any reports that are required under *MIFIDPRU* 9.

Sch 4 Rights of action for damages

Sch 4.1 G (1) The table below sets out the *rules* in *MIFIDPRU*, contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss a result of the contravention.

(2) If "Yes" appears in the column headed "For private person", the *rule* may be actionable by a *private person* under section 138D (or, in certain circumstances, that *person's* fiduciary or representative: see regulation 6(2) and 6(3)(c) of the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256)). If "Yes" appears in the column headed "Removed", this indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which the right of action is removed is also given.

(3) The column headed "For other person" indicates whether the *rule* may be actionable by a *person* other than a *private person* (or that *person's* fiduciary or representative) under article 6(2) and (3) of those Regulations. If so, an indication of the type of *person* by whom the *rule* may be actionable is given.

Chapter/Appendix	**Rights of action under section 138D of the *Act***		
	For private person	**Removed**	**For other person**
All *rules* in *MIFIDPRU*	No	Yes – *MIFIDPRU* 1.3.1R	No

Sch 5 Rules that can be waived or modified

Sch 5.1	G	The *rules* in *MIFIDPRU* may be waived or modified by the *FCA* under section 138A of the *Act* (Modification or waiver of rules) where the conditions in that section are met.

Part 2: Comes into force on 1 December 2021

TP 5 Advance data collection

Application

5.1 R *MIFIDPRU* TP 5 applies to:

(1) a *MIFIDPRU investment firm*; and

(2) a *UK parent entity*.

Duration

5.2 R *MIFIDPRU* TP 5 applies from 1 December 2021 until 1 January 2022 (the "relevant period").

Purpose

5.3 G (1) *MIFIDPRU* TP 5 requires *MIFIDPRU investment firms* and *UK parent entities* to begin collecting data on *K-factor metrics* one *month* before the *MIFIDPRU* sourcebook begins to apply in full.

(2) If *firms* and *parent undertakings* will be using the alternative calculation in *MIFIDPRU* TP 4 after *MIFIDPRU* begins to apply in full, the data covering the relevant period will allow them to calculate their *K-factor requirement* during the first *month*.

(3) If *firms* and *parent undertakings* will be using the reasonable estimates approach in *MIFIDPRU* TP 4 after *MIFIDPRU* begins to apply in full, the data covering the relevant period will provide at least one *month's* observed historical data which must be used in the relevant calculations. The observed data may also be helpful for verifying whether any remaining estimated historical data points are reasonable.

Requirement to collect data on K-factor metrics

5.4 R (1) A *MIFIDPRU investment firm* or *UK parent entity* must collect the required information in (2) throughout the relevant period.

(2) The required information is:

(a) for a *MIFIDPRU investment firm*, data on the *K-factor metrics* that the *firm* would be required to collect to calculate its individual *K-factor requirement* if *MIFIDPRU* applied in full; and

(b) for a *UK parent entity*, data on the *K-factor metrics* that the *investment firm group* would be required to collect to calculate its *K-factor requirement* on a *consolidated basis* if *MIFIDPRU* applied in full.

5.5 G *MIFIDPRU* TP 5.4R only requires a *firm* or *parent undertaking* to collect data on *K-factor metrics* that are relevant to the *investment services/and or activities* that it carries on (or in the case of a *parent undertaking*, that relevant entities within its *investment firm group* carry on).

Annex C

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

In this Annex, underlining indicates new text, unless otherwise stated.

SYSC 19A (IFPRU Remuneration Code) and SYSC 19C (BIPRU Remuneration Code) are deleted in their entirety. The deleted text is not shown but the chapters are marked [deleted] as shown below.

19A IFPRU Remuneration Code <u>[deleted]</u>

19C BIPRU Remuneration Code <u>[deleted]</u>

Insert the following new chapter after SYSC 19F (Remuneration and performance management). The text is not underlined.

19G MIFIDPRU Remuneration Code

19G.1 General application

Application: non-SNI MIFIDPRU investment firms

19G.1.1 R (1) Subject to (2), the *MIFIDPRU Remuneration Code* applies to a *non-SNI MIFIDPRU investment firm*.

(2) The provisions in (4) do not apply to a *non-SNI MIFIDPRU investment firm*:

(a) where the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £100 million or less; or

(b) where:

(i) the value of the *firm's* on-balance sheet assets and *off-balance sheet items* over the preceding 4-year period is a rolling average of £300 million or less; and

(ii) the conditions in (3) are (where they are relevant to a *firm*) satisfied.

(3) The conditions referred to in (2)(b)(ii) are:

(a) that the exposure value of the *firm's* on- and off-balance sheet *trading book* business is equal to or less than £150 million; and

(b) that the exposure value of the *firm's* on- and off-balance sheet derivatives business is equal to or less than £100 million.

(4) The provisions referred to in (2) are:

(a) *SYSC* 19G.6.19R to *SYSC* 19G.6.21G (Shares, instruments and alternative arrangements);

(b) *SYSC* 19G.6.22R and *SYSC* 19G.6.23G (Retention policy);

(c) *SYSC* 19G.6.24R to *SYSC* 19G.6.29R (Deferral); and

(d) *SYSC* 19G.6.35R(2) (Discretionary pension benefits).

(5) For the purposes of paragraph (2), paragraph (6) applies where a *non-SNI MIFIDPRU investment firm* does not have monthly data covering the 4-year period referred to in that paragraph.

(6) Where this paragraph applies, a *non-SNI MIFIDPRU investment firm* must calculate the rolling averages referred to in paragraph (2) using the data points that it does have.

19G.1.2 G (1) For the purposes of *SYSC* 19G.1.1R(5), the *FCA* expects a *non-SNI MIFIDPRU investment firm* to have insufficient data for a period only where it did not carry on any *MiFID business* during that period, or where (for periods prior to the application of the *MIFIDPRU Remuneration Code*) the *firm* did not record the relevant data on a monthly basis.

(2) Where a *firm* doesn't have all the monthly data points, the *firm* should use the data points it has in the way that paints the most representative picture of the period in question. For example, if a *firm* has monthly data for 2 years of the 4-year period, but prior to that only recorded the relevant data on a quarterly basis, the *firm* could sensibly calculate its rolling average by using the quarterly figure for each of the 3 monthly data points in each quarter.

19G.1.3 R (1) The amounts referred to in *SYSC* 19G.1.1R must be calculated on an individual basis, and:

(a) in the case of on-balance sheet assets, in accordance with the applicable accounting framework;

(b) in the case of *off-balance sheet items*, using the full nominal value.

(2) The value of the on-balance sheet assets and *off-balance sheet items* in *SYSC* 19G.1.1R(2)(a) and (b) must be an arithmetic mean of the assets and items over the preceding 4 years, based on monthly data points.

(3) A *firm* may choose the day of the *month* that it uses for the data points in (2), but once that day has been chosen the *firm* may only change it for genuine business reasons.

19G.1.4 R (1) When calculating the amounts referred to in *SYSC* 19G.1.1R(2)(a) and (b), a *firm* must use the total amount of its on-balance sheet assets and *off-balance sheet items*.

(2) A *firm* must calculate the exposure values referred to in *SYSC* 19G.1.1R(3)(a) and (b) by adding together the following items:

(a) the positive excess of the *firm's* long positions over its short positions in all *trading book financial instruments*, using the approach specified for K-NPR in *MIFIDPRU* 4.12.2R to calculate the net position for each instrument; and

(b) the exposure value of contracts and transactions referred to in *MIFIDPRU* 4.14.3R, calculated using the approach specified for K-TCD in *MIFIDPRU* 4.14.8R.

(3) Any amounts in foreign currencies must be converted into pound sterling using the relevant conversion rate.

(4) A *firm* must determine the relevant conversion rate referred to in (3) by reference to an appropriate market rate and must record which rate was chosen.

19G.1.5 G The *FCA* considers that an example of an appropriate market rate for the purposes of *SYSC* 19G.1.4R(4) is the relevant daily spot exchange rate against pound sterling published by the Bank of England.

Application: SNI MIFIDPRU investment firms

19G.1.6 R (1) The provisions in (2) apply to a *SNI MIFIDPRU investment firm*.

(2) The provisions referred to in (1) are:

(a) *SYSC* 19G.2 (Remuneration policies and practices);

(b) *SYSC* 19G.3.1R to *SYSC* 19G.3.3R (Oversight of remuneration policies and practices);

(c) *SYSC* 19G.3.6R to *SYSC* 19G.3.8G (Control functions);

(d) *SYSC* 19G.4.1R to *SYSC* 19G.4.5R and *SYSC* 19G.4.7G(1) and (2) (Fixed and variable components of remuneration);

(e) *SYSC* 19G.6.1R (Remuneration and capital);

(f) *SYSC* 19G.6.2R (Exceptional government intervention); and

(g) *SYSC* 19G.6.5R to *SYSC* 19G.6.6G (Assessment of performance).

Application: summary of application to MIFIDPRU investment firms

19G.1.7 G (1) The effect of the application provisions in *SYSC* 19G.1.1R to 19G.1.6R is summarised in the following table.

Type of firm	Applicable sections
Non-SNI MIFIDPRU investment firm not falling within *SYSC* 19G.1.1R(2)	The *MIFIDPRU Remuneration Code*
Non-SNI MIFIDPRU investment firm falling within *SYSC* 19G.1.1R(2)	The *MIFIDPRU Remuneration Code* except for: *SYSC* 19G.6.19R to *SYSC* 19G.6.21G (Shares, instruments and alternative arrangements); *SYSC* 19G.6.22R and *SYSC* 19G.6.23G (Retention policy); *SYSC* 19G.6.24R to *SYSC* 19G.6.29R (Deferral); and *SYSC* 19G.6.35R(2) (Discretionary pension benefits)
SNI MIFIDPRU investment firm	*SYSC* 19G.2 (Remuneration policies and practices); *SYSC* 19G.3.1R to *SYSC* 19G.3.3R (Oversight of remuneration policies and practices); *SYSC* 19G.3.6R to *SYSC* 19G.3.8G (Control functions); *SYSC* 19G.4.1R to *SYSC* 19G.4.5R and *SYSC* 19G.4.7G(1) and (2) (Fixed and variable components of remuneration); *SYSC* 19G.6.1R (Remuneration and capital); *SYSC* 19G.6.2R (Exceptional government intervention); and *SYSC* 19G.6.5R to *SYSC* 19G.6.6G (Assessment of performance)

(2) *MIFIDPRU* 1.2 contains provisions regarding the classification of a *firm* as a *SNI MIFIDPRU investment firm* and *non-SNI MIFIDPRU investment firm*.

Application: where the application of SYSC 19G.1.1R changes in relation to a firm

19G.1.8 R (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that did not meet either condition in *SYSC* 19G.1.1R(2)(a) or (b) but subsequently does.

(2) The provisions referred to in *SYSC* 19G.1.1R(2) cease to apply to the *firm* in (1) if:

(a) the *firm* has met the conditions in either *SYSC* 19G.1.1R(2)(a) or (b) for a continuous period of at least 6 *months* (or such longer period as may have elapsed before the *firm* submits the notification in (b)); and

(b) it has notified the *FCA* that it has met the conditions in (a).

(3) The notification in (2)(b) must be submitted through the *online notification and application system* using the form in *MIFIDPRU* 1Annex 3R.

19G.1.9 G The effect of *SYSC* 19G.1.8R(2)(a) is that a *firm* may move between meeting the conditions in *SYSC* 19G.1.1R(2)(a) and (b) during the 6-*month* period.

19G.1.10 R Where a *non-SNI MIFIDPRU investment firm* has met the conditions in *SYSC* 19G.1.1R(2)(a) or (b) but then ceases to do so, it must comply with the provisions referred to in *SYSC* 19G.1.1R(2) within 12 *months* from the date on which the *firm* ceased to meet the conditions.

19G.1.11 R (1) Where a *non-SNI MIFIDPRU investment firm* ceases to meet the conditions in *SYSC* 19G.1.1R(2)(a) or (b), it must promptly notify the *FCA*.

(2) The notification in (1) must be submitted through the *online notification and application system* using the form in *MIFIDPRU* 1 Annex 3R.

19G.1.12 G Where a *firm* ceases to meet the conditions in *SYSC* 19G.1.1R(2)(a) or (b), but subsequently meets the conditions again within a period of 6 *months*, the *firm* will still be subject to the provisions referred to in *SYSC* 19G.1.1R(2) for 12 *months* after the date on which it first ceased to meet the conditions. The *firm* only ceases to be subject to the provisions referred to in *SYSC* 19G.1.1R(2) where it meets the conditions in *SYSC* 19G.1.8R(2).

19G.1.13 R The requirements in *SYSC* 19G.1.8R(2)(b) and *SYSC* 19G.1.11R(1) do not apply where a *non-SNI MIFIDPRU investment firm* has notified the *FCA* in accordance with the requirements of *MIFIDPRU* 7.1.9R(2)(b) or *MIFIDPRU* 7.1.12R(1) of the same event.

Application: collective portfolio management investment firms

19G.1.14 G The *MIFIDPRU Remuneration Code* applies to a *collective portfolio management investment firm*.

19G.1.15 G (1) A *collective portfolio management investment firm* must assess the thresholds in *SYSC* 19G.1.1R(2) and (3) on the basis of the total of both its *MiFID business* and *non-MiFID business*.

(2) *SYSC* 19G.1.20R to *SYSC* 19G.1.23G explain the position for *firms* subject to the *MIFIDPRU Remuneration Code* and another *FCA* remuneration code.

Application: levels of application

19G.1.16 G *SYSC* 19G.1.1R to *SYSC* 19G.1.15R and *SYSC* 19G.1.17R explain when the *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis. *SYSC* 19G.1.18R and 19G.1.19R explain when the *MIFIDPRU Remuneration Code* applies on a consolidated basis, and what that means.

19G.1.17 R The *MIFIDPRU Remuneration Code* applies to a *firm* on an individual basis where the *FCA* has granted a *firm* permission under *MIFIDPRU* 2.4.17R and *MIFIDPRU* 2.4.18R to apply the *group capital test*.

19G.1.18 R (1) Subject to (3), where *MIFIDPRU* 2.5 applies to a *UK parent entity*, the *MIFIDPRU Remuneration Code* applies to that *UK parent entity* on a consolidated basis.

(2) A *UK parent entity* that is treated as an *SNI MIFIDPRU investment firm* in accordance with *MIFIDPRU* 2.5.21R is also treated as an *SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.

(3) A *UK parent entity* that is treated as a *non-SNI MIFIDPRU investment firm* in accordance with *MIFIDPRU* 2.5.21R is also treated as a *non-SNI MIFIDPRU investment firm* when applying the *MIFIDPRU Remuneration Code* on a consolidated basis.

(4) The following provisions only apply to a *firm* on an individual basis:

(a) *SYSC* 19G.1.1R(2), (3), (5) and (6);

(b) The provisions listed in *SYSC* 19G.1.1R(4);

(c) *SYSC* 19G.1.2G to19G.1.5G; and

(d) *SYSC* 19G.1.8G to19G.1.13G.

(5) For the purposes of the *MIFIDPRU Remuneration Code*, application on a consolidated basis means on the basis of the situation that results from applying the requirements in the *MIFIDPRU Remuneration*

Code to a *UK parent entity* as if that *undertaking*, together with all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group*, formed a single *MIFIDPRU investment firm*.

(6) For the purposes of (5), the terms *investment firm*, *financial institution*, *ancillary services undertaking* and *tied agent* apply to *undertakings* established in *third countries*, which, if established in the *UK*, would satisfy the definitions of those terms.

(7) Where an *undertaking* in a *third country* is included in the consolidated situation of a *UK parent entity* as a result of (6), the *MIFIDPRU Remuneration Code* only applies in relation to *material risk takers* at that *undertaking* who oversee or are responsible for business activities that take place in the *UK*.

19G.1.19 G (1) Where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the effect of *SYSC* 19G.1.18R(5) is that the *UK parent entity* and all the *investment firms*, *financial institutions*, *ancillary services undertakings* and *tied agents* in the *investment firm group* are treated for these purposes as a single *MIFIDPRU investment firm*. This means, for example, treating a staff member of an *undertaking* within the *investment firm group* as if they were a staff member of the *UK parent entity*.

(2) When considering which rules in the *MIFIDPRU Remuneration Code* apply on a consolidated basis, a *UK parent entity* must consider whether it is treated as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm* under *MIFIDPRU* 2.5.21R (which, as *SYSC* 19G.1.18R(2) and (3) explain, also determines its categorisation under the *MIFIDPRU Remuneration Code*).

(3) The effect of *SYSC* 19G.1.18R(4)(b) is that a *UK parent entity* need not comply with the provisions listed in *SYSC* 19G.1.1R(4) on a consolidated basis. These provisions apply on an individual basis where a *firm* exceeds the thresholds in *SYSC* 19G.1.1R(2)(a) or (b). As these thresholds are not relevant where the *MIFIDPRU Remuneration Code* applies on a consolidated basis, the provisions concerning them are also disapplied.

Application: firms subject to different remuneration requirements

19G.1.20 R (1) Where a *firm* is subject to the *MIFIDPRU Remuneration Code* and, as a result of the application of any of the requirements listed in (2), to provisions imposing different *remuneration* requirements, only one of which can be complied with, it must comply with the most stringent of the relevant provisions.

(2) The requirements referred to in (1) are:

(a) different requirements in the *MIFIDPRU Remuneration Code*;

(b) the *AIFM Remuneration Code*;

(c) the *Dual-regulated firms Remuneration Code*; and

(d) the *UCITS Remuneration Code*.

19G.1.21 G (1) *SYSC* 19G.1.20R states that where different *remuneration* requirements apply to a *firm* it must comply with the most stringent of the relevant provisions. Some non-exhaustive examples follow.

(2) Example 1: A *firm* may be subject to different requirements under the *MIFIDPRU Remuneration Code* on an individual basis and on a consolidated basis. This scenario may arise because a *firm* is an *SNI MIFIDPRU investment firm* on an individual basis but a *non-SNI MIFIDPRU investment firm* on a consolidated basis.

(3) Example 2: Different *remuneration* requirements may apply to a *firm* when an *investment firm group* contains both a *PRA-designated investment firm* and an *FCA investment firm* (but not a *credit institution*). This may lead to a *firm* being subject to both the *MIFIDPRU Remuneration Code* and the *Dual-regulated firms Remuneration Code*.

(4) Example 3: A staff member at a *collective portfolio management investment firm* may be a *material risk taker* and also *AIFM Remuneration Code Staff* or *UCITS Remuneration Code Staff*. In this case the *material risk taker* will be subject to the *MIFIDPRU Remuneration Code* and the requirements of the *AIFM Remuneration Code* or the *UCITS Remuneration Code*.

19G.1.22 G The effect of *SYSC* 19G.1.20R is that a *firm* must consider which requirement is the most stringent on a provision by provision basis.

19G.1.23 G *SYSC* 19G.1.20R is not relevant where a *firm* can comply with both sets of *remuneration* requirements, for example requirements to establish, implement and maintain *remuneration* policies and practices on both an individual basis and a consolidated basis.

Application: staff

19G.1.24 G The term 'staff' should be interpreted broadly in the *MIFIDPRU Remuneration Code* to include, for example, employees of the *firm* itself, *partners* or members (in the case of partnership structures), *employees* of other entities in the *group*, *employees* of joint service companies, and secondees.

Application: performance periods

19G.1.25 G The rules in the *MIFIDPRU Remuneration Code* apply to each performance period, regardless of whether it is annual, quarterly, or another frequency. A *firm* must comply with the rules on performance assessment and risk adjustment in relation to each such performance period.

Application: proportionality

19G.1.26 R A *firm* must comply with the *MIFIDPRU Remuneration Code* in a manner that is appropriate to its size and internal organisation and to the nature, scope and complexity of its activities.

Application: carried interest

19G.1.27 R (1) The *MIFIDPRU Remuneration Code* applies to *remuneration*, including carried interest (which represents a share in the profits of a *fund* managed by the *firm's* staff, as compensation for the management of the *fund*).

(2) Where arrangements concerning carried interest meet the conditions in (3), the following provisions do not apply:

(a) *SYSC* 19G.6.19R to *SYSC* 19G.6.21G (Shares, instruments and alternative arrangements);

(b) *SYSC* 19G.6.22R and *SYSC* 19G.6.23G (Retention policy);

(c) *SYSC* 19G.6.24R to *SYSC* 19G.6.29R (Deferral); and

(d) *SYSC* 19G.6.30R to *SYSC* 19G.6.34G (Performance adjustment).

(3) The conditions referred to in (2) are that:

(a) the value of the carried interest must be determined by the performance of the *fund* in which the carried interest is held;

(b) the period between the award of the carried interest and any payment under it must be at least 4 years; and

(c) there are provisions for the forfeiture or cancellation of carried interest that include at least the circumstances set out in *SYSC* 19G.6.31R(3)(a) and (b).

19G.1.28 R For the purposes of the *MIFIDPRU Remuneration Code*, a carried interest must be valued at the time of its award.

Application: general

19G.1.29 G While the rules in the *MIFIDPRU Remuneration Code* set out the minimum regulatory requirements that a *MIFIDPRU investment firm* must comply with, the *FCA* considers it good practice for a *firm* to assess whether going beyond those regulatory requirements would contribute to sound risk management or a healthy firm culture.

When?

19G.1.30 R A *firm* must apply the *MIFIDPRU Remuneration Code* from the start of its first performance period that begins on or after 1 January 2022.

19G.2 Remuneration policies and practices

General requirements

19G.2.1 R A *MIFIDPRU investment firm* must establish, implement and maintain *remuneration* policies and practices.

19G.2.2 G The *remuneration* policies and practices referred to in *SYSC* 19G.2.1R should cover all aspects of *remuneration* within the scope of the *MIFIDPRU Remuneration Code*, and all staff.

19G.2.3 G In line with the record-keeping requirements in *SYSC* 9, a *firm* should ensure that its *remuneration* policies and practices (including performance assessment processes and decisions) are clear and documented.

Proportionality

19G.2.4 R A *firm's remuneration* policies and practices must be appropriate and proportionate to the nature, scale and complexity of the risks inherent in the business model and the activities of the *firm*.

19G.2.5 G The proportionality principle in *SYSC* 19G.2.4R means that the content and level of detail of a *firm's remuneration* policy may depend on a number of factors. These may include the number of staff it employs, the different types of roles, the activities it carries out, and whether the *firm* is part of a *group* with a *group*-wide *remuneration* policy.

Gender neutral remuneration policies and practices

19G.2.6 R A *firm* must ensure that its *remuneration* policy is a *gender neutral remuneration policy* and the practices referred to in *SYSC* 19G.2.1R are gender neutral.

19G.2.7 G *Firms* are reminded that the Equality Act 2010 prohibits discrimination on the basis of an *individual's* protected characteristics both before and after employment is offered. The Act applies to pay and all other contractual terms, including variable *remuneration*. A *firm* must ensure that its *remuneration* policy complies with the Equality Act 2010.

Risk management, business strategy and avoiding conflicts of interest

19G.2.8 R A *firm* must ensure that its *remuneration* policies and practices are consistent with, and promote sound and effective, risk management.

19G.2.9 R A *firm* must ensure that its *remuneration* policies and practices are in line with the business strategy, objectives and long-term interests of the *firm*.

19G.2.10 G For the purposes of *SYSC* 19G.2.9R, the business strategy, objectives and long-term interests of the *firm* should include consideration of:

(1) the *firm's* risk appetite and strategy, including environmental, social and governance risk factors;

(2) the *firm's* culture and values; and

(3) the long-term effects of the investment decisions taken.

19G.2.11 R A *firm* must ensure that its *remuneration* policy:

(1) contains measures to avoid conflicts of interest;

(2) encourages responsible business conduct; and

(3) promotes risk awareness and prudent risk taking.

19G.2.12 R A *MIFIDPRU investment firm* must not pay variable *remuneration* to members of the *management body* who do not perform any executive function in the *firm*.

19G.3 Governance and oversight

Oversight of remuneration policies and practices

19G.3.1 R A *MIFIDPRU investment firm* must ensure that its *management body in its supervisory function* adopts and periodically reviews the *remuneration* policy and has overall responsibility for overseeing its implementation.

19G.3.2 G (1) Each *firm* should assess the most appropriate frequency for the periodic reviews referred to in *SYSC* 19G.3.1R, taking into account all relevant factors.

(2) The development and review of the *remuneration* policy should be supported by the *control functions*, including (where they exist) risk management, compliance, internal audit and human resources, and by *business units*.

(3) The processes and decision-making around the development, review and amendment of *remuneration* policies and practices are subject to the general record-keeping requirements set out in *SYSC* 9.

19G.3.3 R A *firm's remuneration* committee, where it has one, must oversee the implementation of the *firm's remuneration* policies and practices established under *SYSC* 19G.2.1R.

19G.3.4 R A *non-SNI MIFIDPRU investment firm* must, at least annually, conduct a central and independent internal review of whether the implementation of its *remuneration* policies and practices complies with the *remuneration* policy and practices adopted by the *management body in its supervisory function*.

19G.3.5 G (1) The *FCA* would expect the central and independent internal review to assess whether the implementation of the *remuneration* policies and practices:

(a) results in *remuneration* awards that are in line with the *firm's* business strategy;

(b) reflects the risk profile, long-term objectives and other relevant goals of the *firm*; and

(c) complies with all relevant legal requirements.

(2) A *non-SNI MIFIDPRU investment firm* may outsource part or all of the independent review in *SYSC* 19G.3.4R. The *management body in its supervisory function* remains responsible for ensuring the review is carried out and any necessary follow up actions are taken.

(3) A *non-SNI MIFIDPRU investment firm* should document appropriately the results of the review and the actions taken to remedy any findings.

Control functions

19G.3.6 R A *MIFIDPRU investment firm* must ensure that staff engaged in *control functions*:

(1) are independent from the *business units* they oversee;

(2) have appropriate authority; and

(3) are remunerated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control.

19G.3.7 R A *MIFIDPRU investment firm* must ensure that the *remuneration* of the senior officers in risk management and compliance functions is directly overseen by the *remuneration* committee, or, if such a committee has not been established, by the *management body in its supervisory function*.

19G.3.8 G *SYSC* 19G.3.6R and *SYSC* 19G.3.7R are designed to manage the conflicts of interest which may arise if other business areas had undue influence over the *remuneration* of staff in *control functions*. Conflicts of interest can easily arise when staff members are involved in the determination of *remuneration* for their own business area. Where these could arise, they need to be managed by having in place independent *control functions* (in particular risk management, compliance and human resources functions).

19G.4 Fixed and variable components of remuneration

Categorising fixed and variable remuneration

19G.4.1 R A *MIFIDPRU investment firm* must ensure that the *remuneration* policy makes a clear distinction between criteria for setting fixed and variable *remuneration*.

19G.4.2 G (1) The effect of *SYSC* 19G.4.1R is that all *remuneration* paid to a staff member must be clearly categorised as either fixed or variable *remuneration*.

(2) In allocating individual *remuneration* components to fixed or variable *remuneration*, it is the quality and purpose of the component that is decisive, not the label applied to it.

(3) The *FCA* considers that:

(a) fixed *remuneration*:

(i) should primarily reflect a staff member's professional experience and organisational responsibility as set out in the staff member's job description and terms of employment; and

(ii) should be permanent, pre-determined, non-discretionary, non-revocable and not dependent on performance; and

(b) variable *remuneration*:

(i) should be based on performance or, in exceptional cases, other conditions;

(ii) where based on performance, should reflect the long-term performance of the staff member as well as performance in excess of the staff member's job description and terms of employment; and

(iii) includes *discretionary pension benefits*.

19G.4.3 G Returns made by staff on co-investment arrangements are shares in the profits as a pro rata return on an investment. The *FCA* does not usually consider these returns to be *remuneration* for the purposes of the *MIFIDPRU Remuneration Code*. However, the *FCA* considers these returns will be *remuneration* if the investment was made using a loan provided by the *firm* or by an *undertaking* in the same *group* as the *firm*, and if the loan was either not provided on commercial terms or had not been repaid in full by the date on which the returns on investment were paid.

19G.4.4 G (1) In relation to *remuneration* received by a *partner* or a member in a *limited liability partnership*, the *FCA's* view on how to categorise certain payments received by those *individuals* is as follows:

(a) at the end of each year, the residual profits of a *partnership* or *limited liability partnership* are distributed among the *partners* or members. The level of ownership of each *partner* or member is reflected in the number of ownership shares they have. Residual profits are distributed according to the ownership shares, so are not linked to work or performance. In the *FCA's* view, payments on this basis are not *remuneration*;

(b) a *partner* or member may receive an amount fixed at the beginning of the year and subject only to the *firm* making a profit. These are often called fixed profit shares. A *partner* or member usually takes drawings on it throughout the year, often monthly. If profits at year-end are insufficient, drawings may have to be paid back. The *FCA* considers that drawings on fixed profit shares are usually fixed *remuneration*;

(c) a *partner* or member may receive a discretionary share of the profit at the end of the year. These may be distributed to all *partners* or members but are usually dependent on the performance of the *individual* or their *business unit*. Awards may be at the discretion of the *remuneration* committee. The *FCA* considers that payments made on this basis are usually variable *remuneration*.

(2) A *firm* that is a *partnership* or *limited liability partnership* may use a benchmarking approach instead of, or in addition to, the approach in (1) to categorise payments made to *partners* or members of *limited liability partnerships*. For example, it may take into account:

(a) the *remuneration* structures of other *individuals* performing similar tasks or working in similar businesses as the *partner* or member in question; or

(b) the return expected in a similar investment context where the *partner* or member has invested in a *fund* or *firm*.

(3) Where a *partner* or member of a *limited liability partnership* works full-time for a *firm* the *FCA* would expect a reasonable portion of the *partner's* or member's profit share to be categorised as *remuneration*. Where a *partner* or member works part-time and receives less *remuneration* than a *partner* or member who works full-time, the *FCA* would expect a smaller proportion of the part-time *partner* or member's profit share to be classed as *remuneration*.

Balance of fixed and variable components of total remuneration

19G.4.5 R A *MIFIDPRU investment firm* must ensure that:

(1) the fixed and variable components of the total *remuneration* are appropriately balanced; and

(2) the fixed component represents a sufficiently high proportion of the total *remuneration* to enable the operation of a fully flexible policy on variable *remuneration*, including the possibility of paying no variable *remuneration* component.

19G.4.6 R For the purposes of *SYSC* 19G.4.5R, a *non-SNI MIFIDPRU investment firm* must set an appropriate ratio between the variable component and the fixed component of the total *remuneration* in their *remuneration* policies.

19G.4.7 G (1) When determining what is an appropriate balance and an appropriate ratio for the purposes of *SYSC* 19G.4.5R and *SYSC* 19G.4.6R respectively, a *firm* should consider all relevant factors, including:

(a) the *firm's* business activities and associated prudential and conduct risks; and

(b) the role of the *individual* in the *firm* and, in the case of *material risk takers*, the impact that different categories of staff have on the risk profile of the *non-SNI MIFIDPRU investment firm* or of the assets it manages.

(2) It may be appropriate for some staff to receive only fixed *remuneration*. The *FCA* does not consider it would be an appropriate balance for any *individual* to receive only variable *remuneration*.

19G.4.8 G A *non-SNI MIFIDPRU investment firm* may set different ratios for different categories of staff. For example, the *FCA* considers that it will usually be appropriate to set a lower ratio of variable to fixed *remuneration* for *control functions* than for the *business units* they control.

19G.4.9 G Ratios may differ from one performance period to the next.

19G.4.10 G When setting a ratio, a *firm* should consider all potential scenarios, including that a firm exceeds its financial objectives. The ratio should reflect the highest amount of variable *remuneration* that can be awarded in the most positive scenario. A *firm* should be satisfied that it has considered all relevant factors and should be able to explain its decision to the *FCA* if requested.

19G.4.11 R When a *firm* is assessing whether the award of variable *remuneration* is consistent with the ratio set in accordance with *SYSC* 19G.4.6R, it may exclude from that calculation any amount of severance pay that:

(1) exceeds the maximum amount of severance pay that can be paid under the *firm's remuneration policy* (in accordance with *SYSC* 19G.6.12R(2)); and

(2) the *firm* has become obliged to pay as a result of a legal obligation that has arisen after the date on which the *firm* adopted the relevant version of its *remuneration* policy.

19G.4.12 G As explained in *SYSC* 19.6.12R(2), where severance pay is payable a *firm's remuneration* policy must set out the maximum level of severance pay or the criteria for determining the amount. *Firms* should therefore take these policies into account when establishing the ratio between variable and fixed *remuneration* in accordance with *SYSC* 19G.4.6R. The *FCA* accepts that in rare circumstances, for reasons that wouldn't have been clear to a *firm* when setting its *remuneration* policy, a *firm* may become legally obliged to pay a higher amount of severance pay, for example as a result of legal proceedings. In these situations, *SYSC* 19G.4.11 states that the difference between the maximum severance pay permitted under the *firm's remuneration* policy and the higher amount the *firm* is legally obliged to pay may be excluded from an assessment of whether an award of variable *remuneration* is consistent with the ratio set in accordance with *SYSC* 19G.4.6R.

19G.5 Application of remuneration requirements to material risk takers

Identifying material risk takers

19G.5.1 R A *material risk taker* is a staff member at a *non-SNI MIFIDPRU investment firm* whose professional activities have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages.

19G.5.2 R A *non-SNI MIFIDPRU investment firm* must assess at least once a year which of its staff members are *material risk takers*.

19G.5.3 R For the purposes of *SYSC* 19G.5.1R, a staff member's professional activities are deemed to have a material impact on a *firm's* risk profile or the assets the *firm* manages if one or more of the following criteria are met:

(1) the staff member is a *member of the management body* in its management function;

(2) the staff member is a *member of the management body* in respect of the *management body in its supervisory function*;

(3) the staff member is a member of the *senior management*;

(4) the staff member has *managerial responsibility* for *business units* that are carrying on at least one of the following *regulated activities*:

(a) *arranging (bringing about) deals in investments*;

(b) *dealing in investments as agent*;

(c) *dealing in investments as principal*;

(d) *managing investments*;

(e) *making investments with a view to transactions in investments*;

(f) *advising on investments (except P2P agreements)*; and/or

(g) *operating an organised trading facility*;

(5) the staff member has *managerial responsibilities* for the activities of a *control function*;

(6) the staff member has *managerial responsibilities* for the prevention of *money laundering* and terrorist financing;

(7) the staff member is responsible for managing a material risk within the *firm*;

(8) in a *firm* that has permission for carrying on at least one of the *regulated activities* in (4)(a) to (g), the staff member is responsible for managing one of the following activities:

(a) information technology;

(b) information security; and/or

(c) outsourcing arrangements of critical or important functions as referred to in article 30(1) of the *MiFID Org Regulation*; and

(9) the staff member has authority to take decisions approving or vetoing the introduction of new products.

19G.5.4 G The *FCA* considers the following are key indicators that the professional activities of a staff member (X) have a material impact on the risk profile of the *firm* or of the assets that the *firm* manages for the purposes of *SYSC* 19G.5.1R:

(1) there is no sufficiently senior and experienced *material risk taker* who supervises X on a day-to-day basis or to whom X reports;

(2) X is responsible for key strategic decisions; and

(3) X is responsible for significant revenue, material assets under management or for approving transactions.

19G.5.5 G The *FCA* expects *individuals* in the following roles would usually be categorised as *material risk takers*:

(1) in relation to portfolio management business, heads of key areas including equities, fixed income, alternatives, private equity;

(2) heads of investment research;

(3) *individuals* responsible for a high proportion of revenue;

(4) senior advisors where they can exert key strategic influence;

(5) chief market strategists, where media profile is linked to reputational risk and risk to market integrity;

(6) heads of a trading or broking desk; and

(7) all *individuals* with responsibility for information technology, information security and outsourcing where there is not a single person with responsibility for all three areas. For example, if there is a chief operating officer and a chief information technology officer who are both equally senior and have shared responsibility for these areas, then both should be identified as *material risk takers*.

19G.5.6 G (1) A *firm* should update its assessment under *SYSC* 19G.5.2R as necessary throughout the year.

(2) It is important that *firms* consider all types of roles that may have a material impact on the *firm's* risk profile or on the assets it manages. The categories of staff referred to in *SYSC* 19G.5.3G are intended to be a starting point only. A *firm* should develop its own additional criteria to identify further *individuals* based on the specific types of activities and risks relevant to the *firm*.

(3) In identifying its *material risk takers*, a *firm* should consider all types of risks involved in its professional activities. These may include prudential, operational, market, conduct and reputational risks.

(4) The decisive factor when identifying *material risk takers* is not the name of the function or role, but the authority and responsibility held by the *individual*.

19G.5.7 R (1) If a *non-SNI MIFIDPRU investment firm* is part of an *FCA investment firm group* to which prudential consolidation applies, its *material risk takers* must be identified at both *individual* and consolidated level.

(2) The *UK parent entity* of a *firm* is responsible for the *material risk taker* identification process at a consolidated level and must identify as *material risk takers:*

(a) all staff members whose professional activities have a material impact on the risk profile of the *investment firm group*; and

(b) all staff members of an *undertaking* in the *investment firm group* ('*undertaking* A') whose professional activities have a material impact on:

(i) the risk profile of another *undertaking* within the *investment firm group* to whom the *MIFIDPRU Remuneration Code* applies on an individual basis ('*undertaking* B'); or

(ii) the risk profile of any assets managed by *undertaking* B.

19G.5.8 G It may be helpful for the *UK parent entity* to coordinate the process for identifying *material risk takers* across the *group* entities.

Exemption for individuals

19G.5.9 R (1) The provisions in (2) do not apply in relation to a *material risk taker* (X), where X's annual variable *remuneration*:

(a) does not exceed £167,000; and

(b) does not represent more than one-third of X's total annual *remuneration*.

(2) The provisions referred to in (1) are:

(a) *SYSC* 19G.6.19R to *SYSC* 19G.6.21G (Shares, instruments and alternative arrangements);

(b) *SYSC* 19G.6.22R and *SYSC* 19G.6.23G (Retention policy);

(c) *SYSC* 19G.6.24R to *SYSC* 19G.6.29R (Deferral); and

(d) *SYSC* 19G.6.35R(2) (Discretionary pension benefits).

19G.5.10 G (1) *SYSC* 19G.5.9R applies only to *material risk takers* of *non-SNI MIFIDPRU investment firms* that do not fall within *SYSC* 19G.1.1R(2).

(2) A *non-SNI MIFIDPRU investment firm* not falling within *SYSC* 19G.1.1R(2) should therefore assess whether staff members are *material risk takers* before applying the thresholds in *SYSC* 19G.5.9R.

(3) As the provisions listed in *SYSC* 19G.5.9R(2) don't apply on a consolidated basis (see 19G.1.18R(4)(b)), the exemption for *individuals* in *SYSC* 19G.5.9R(1) will not be relevant on a consolidated basis.

19G.5.11 R When considering whether an *individual* that becomes a *material risk taker* at a point during the *firm's* performance period falls within *SYSC* 19G.5.9R, a *firm* must:

(1) apply the full £167,000 variable *remuneration* threshold;

(2) apply the requirement that the variable *remuneration* must not be more than one-third of the *individual's* total *remuneration* to the relevant portion of the total *remuneration* paid for the part of the performance period that the *individual* is a *material risk taker* at that *firm*; and

(3) include any guaranteed variable *remuneration*, for example a 'sign-on bonus', in the *individual's* variable *remuneration* for the part of the performance period that the *individual* is a *material risk taker* at that *firm*.

19G.5.12 G (1) An *individual* may become a *material risk taker* at any point during the *firm's* performance period, either by changing role within the *firm* or by joining the *firm*.

(2) The effect of *SYSC* 19G.5.11R is illustrated by the following example:

An *individual* ('X'), becomes a *material risk taker* 6 *months* into the *firm's* performance period. X receives annual fixed *remuneration* of £900,000. This means X will receive £450,000 for the 6 *months* of the performance period for which X is a *material risk taker*. X receives variable *remuneration* of £100,000 in respect of the first 6 *months*. X falls below the thresholds in *SYSC* 19G.5.9R because X's variable *remuneration* of £100,000 is:

(a) less than the £167,000 threshold in *SYSC* 19G.5.9R(1), and

(b) less than one-third of the £450,000 fixed *remuneration* received (which would be £150,000) for the purposes of *SYSC* 19G.5.9R(2).

19G.5.13 G The *FCA* considers it good practice for a *firm* to consider whether applying any of the rules applicable to *material risk takers* to other members of *staff* would contribute to sound risk management or a healthy firm culture.

19G.6 Variable remuneration

Remuneration and capital

19G.6.1 R A *MIFIDPRU investment firm* must ensure that variable *remuneration* does not affect the *firm's* ability to ensure a sound capital base.

Exceptional government intervention

19G.6.2 R A *MIFIDPRU investment firm* that benefits from exceptional government intervention must ensure that:

(1) no variable *remuneration* is paid to members of its *management body*, unless it is justified to do so; and

(2) variable *remuneration* is limited to a portion of net revenue when its payment to staff that are not members of its *management body* would be inconsistent with:

(a) the maintenance of the *firm's* sound capital base; and

(b) its timely exit from exceptional government intervention.

19G.6.3 G An example of where it may be justifiable to pay variable *remuneration* to a member of the *management body* of a *MIFIDPRU investment firm* that benefits from exceptional government intervention is where that *person* was not in office at the time the exceptional government intervention was first required.

Assessment of performance

19G.6.4 R A *non-SNI MIFIDPRU investment firm* must ensure that where variable *remuneration* is performance-related:

(1) the total amount of the variable *remuneration* is based on a combination of the assessment of the performance of:

(a) the *individual*;

(b) the *business unit* concerned; and

(c) the overall results of the *firm*;

(2) the assessment of performance is part of a multi-year framework that ensures:

(a) the assessment of performance is based on longer-term performance; and

(b) the payment of perfomance-based *remuneration* is spread over a period that takes account of the business cycle of the *firm* and its business risks.

19G.6.5 R When assessing individual performance to determine the amount of variable *remuneration* to be paid to an *individual*, a *MIFIDPRU investment firm* must take into account financial as well as non-financial criteria.

19G.6.6 G (1) For some *firms* it may be appropriate to give equal weight to financial and non-financial criteria for the purposes of *SYSC* 19G.6.5R. For other *firms* a slightly different split may be appropriate.

(2) Non-financial criteria under *SYSC* 19G.6.5R should:

(a) form a significant part of the performance assessment process;

(b) override financial criteria, where appropriate;

(c) include metrics on conduct, which should make up a substantial portion of the non-financial criteria; and

(d) include how far the *individual* adheres to effective risk management and complies with relevant regulatory requirements.

(3) Examples of non-financial criteria under *SYSC* 19G.6.5R include:

(a) measures relating to building and maintaining positive customer relationships and outcomes, such as positive customer feedback;

(b) performance in line with firm strategy or values, for example by displaying leadership, teamwork or creativity;

(c) adherence to the *firm's* risk management and compliance policies;

(d) achieving targets relating to:

(i) environmental, social and governance factors; and

(ii) diversity and inclusion.

(4) A *firm* should ensure that when it assesses individual performance, the assessment process and any variable *remuneration* awarded in accordance with *SYSC* 19G.6.4R does not discriminate on the basis of the protected characteristics of an *individual* in accordance with the Equality Act 2010.

General requirements for awards of non-standard forms of variable remuneration

19G.6.7 R (1) A *non-SNI MIFIDPRU investment firm* must ensure that all guaranteed variable *remuneration*, retention awards, severance pay and buy-out awards falling under *SYSC* 19G.6.8R to *SYSC* 19G.6.14G are:

(a) subject to malus and clawback;

(b) in the case of *non-SNI MIFIDPRU investment firms* to which those *rules* apply:

(i) subject to the requirements in *SYSC* 19G.6.19R and *SYSC* 19G.6.21G (Shares, instruments and alternative arrangements), *SYSC* 19G.6.22R and *SYSC* 19G.6.23G (Retention policy), and *SYSC* 19G.6.24R to *SYSC* 19G.6.29R (Deferral); and

(ii) included in the variable component of the variable to fixed ratio for the performance period in which the award is made.

(2) A *non-SNI MIFIDPRU investment firm* must ensure that each decision it makes to award variable *remuneration* falling within the scope of (1) is appropriate, taking all relevant circumstances into account.

Guaranteed variable remuneration

19G.6.8 R A *non-SNI MIFIDPRU investment firm* must not award, pay or provide guaranteed variable *remuneration* to a *material risk taker* unless:

(1) it occurs in the context of hiring a new *material risk taker*;

(2) it is limited to the first year of service; and

(3) the *firm* has a strong capital base.

19G.6.9 G (1) Guaranteed variable *remuneration* is sometimes referred to as a 'sign-on bonus' or 'golden handshake'.

(2) Guaranteed variable *remuneration* can be used as a way to compensate new staff members where they have lost the opportunity to receive variable *remuneration* by leaving their previous employment during the performance period. These awards may be called 'lost opportunity bonuses'.

(3) The *FCA* expects *non-SNI MIFIDPRU investment firms* to award guaranteed *remuneration* only rarely and not as common practice.

Retention awards

19G.6.10 R Retention awards must only be paid to *material risk takers*:

(1) after a defined event; or

(2) at a specified point in time.

19G.6.11 G (1) Retention awards are bonuses which are dependent on an *individual* remaining in a role until a defined event or for a set period of time. For example, retention bonuses can be used under restructurings, in wind-down or in the context of specific projects within a *firm*.

(2) The payment of a retention award may be made dependent on the *material risk taker* meeting certain performance criteria that have been defined in advance.

(3) The *FCA* expects *non-SNI MIFIDPRU investment firms* to make retention awards to *material risk takers* only rarely and not as common practice.

Severance pay

19G.6.12 R (1) A *non-SNI MIFIDPRU investment firm* must ensure that payments to *material risk takers* relating to the early termination of an employment contract reflect the *individual's* performance over time and do not reward failure or misconduct.

(2) A *non-SNI MIFIDPRU investment firm* must set out in its *remuneration* policy whether severance payments may be paid, and any maximum amount or criteria for determining the amount.

Buy-out awards

19G.6.13 R A *non-SNI MIFIDPRU investment firm* must ensure that *remuneration* packages relating to compensation for, or buy out from, a *material risk taker's* contracts in previous employment:

(1) align with the long term interests of the *firm*; and

(2) contain provisions on periods of retention, deferral, vesting and ex post risk adjustment that are no shorter than any corresponding periods that applied to unvested variable *remuneration* under the previous contract of employment, and which remained outstanding.

19G.6.14 G Buy-out awards involve a *firm* compensating a new staff member, or 'buying out' their previous contract with another employer, where the deferred variable *remuneration* of the staff member was reduced, revoked or cancelled by the previous employer. This could be because they terminated their contract or because the *individual* has to pay back some money, for example where the employer has paid for a training course or qualification for the *individual* that was attached to a retention clause.

Risk adjustment

19G.6.15 R A *non-SNI MIFIDPRU investment firm* must ensure that any measurement of performance used as a basis to calculate pools of variable *remuneration* takes into account all types of current and future risks and the cost of the capital and liquidity required in accordance with *MIFIDPRU*.

19G.6.16 R A *non-SNI MIFIDPRU investment firm* must ensure that the allocation of variable *remuneration* components within the *firm* takes into account all types of current and future risks.

19G.6.17 R For the purposes of *SYSC* 19G.6.15R and *SYSC* 19G.6.16R, a *non-SNI MIFIDPRU investment firm* must:

(1) determine at what level the adjustments should be applied (for example at *business unit*, trading desk or individual level), which risks are relevant, and which risk adjustment techniques and measures are most appropriate; and

(2) in considering all types of current and future risks, include both financial risks (for example economic profit or economic capital) and

non-financial risks (for example reputation, conduct and customer outcomes, values and strategy).

19G.6.18 R A *non-SNI MIFIDPRU investment firm* must ensure that its total variable *remuneration* is generally considerably contracted, including through malus or clawback arrangements, where the financial performance of the *firm* is subdued or negative.

Shares, instruments and alternative arrangements

19G.6.19 R A *non-SNI MIFIDPRU investment firm* to which this *rule* applies must ensure that at least 50% of the variable *remuneration* paid to a *material risk taker* in relation to a performance period consists of any of the following *eligible instruments*:

(1) *shares*, or subject to the *firm's* legal structure, equivalent ownership interests;

(2) *share*-linked instruments, or subject to the *firm's* legal structure, equivalent non-cash instruments;

(3) instruments that comply with the requirements in *SYSC* 19G Annex 1R; or

(4) non-cash instruments (including those settled in cash) which reflect the instruments of the portfolios managed.

19G.6.20 R Where an *eligible instrument* that falls within the scope of *SYSC* 19G.6.19R(1) or (2) relates to an ownership interest in a *parent undertaking* of the *MIFIDPRU investment firm*, it will only satisfy the requirements of *SYSC* 19G.6.19R where its value moves in line with the value of an equivalent ownership interest in the *MIFIDPRU investment firm*.

19G.6.21 G (1) Where a *MIFIDPRU investment firm* is unable to issue *eligible instruments*, the *firm* may apply to the *FCA* for a modification under section 138A of the *Act* to permit the *firm* to use alternative arrangements. The *firm* will need to provide a detailed explanation in its application of the alternative arrangements it is proposing to operate.

(2) The *FCA* may grant a modification under section 138A of the *Act* for these purposes only where it is satisfied that:

(a) compliance by the *firm* with the requirement to issue variable *remuneration* in *eligible instruments* would be unduly burdensome or would not achieve the purpose for which the *rules* were made; and

(b) granting the modification would not adversely affect the advancement of any of the *FCA's* objectives.

(3) As part of its assessment of whether the modification would adversely affect the advancement of its objectives, the *FCA* will consider whether the proposed alternative arrangements for variable *remuneration* achieve similar outcomes to the standard requirements applicable to *eligible instruments*. In particular, the *FCA* will normally consider the following non-exhaustive list of factors:

(a) whether the proposed alternative arrangement ensures suitable alignment between the interests of the staff member and the long-term interests of the *firm*, its *clients* and creditors;

(b) whether the proposed alternative arrangement is subject to a retention policy that is of sufficient length to align the incentives of the staff member with the long-term interests of the *firm*, its *clients* and creditors;

(c) whether the proposed alternative arrangement is clear and transparent to the staff member and contains sufficient detail on the applicable conditions;

(d) whether the *firm* will ensure that any amounts that are subject to deferral and retention arrangements cannot be accessed, transferred or redeemed by the staff member during the deferral and retention periods;

(e) whether the proposed alternative arrangement would facilitate the appropriate application of malus and clawback requirements;

(f) whether the proposed alternative arrangements adequately ensure that the value of the variable *remuneration* received does not increase during the deferral period through distributions or other payments on the instrument; and

(g) where the proposed alternative arrangements allow for predetermined changes of the value received as variable *remuneration* during deferral and retention periods, based on the performance of the *firm* or the managed assets, whether the following conditions would be met:

(i) the change of the value is based on predefined performance indicators that are based on the credit quality of the *firm* or the performance of the managed assets;

(ii) where deferral and retention must be applied, value changes are calculated at least annually and at the end of the retention period;

(iii) the rate of possible positive and negative value changes is equally based on the level of positive or negative credit quality changes or performance measured;

(iv) where the value change under (i) is based on the performance of assets managed, the percentage of value change should be limited to the percentage of value change of the managed assets;

(v) where the value change under (i) is based on the credit quality of the *firm*, the percentage of value change should be limited to the percentage of the annual total gross revenue in relation to the *firm's* total *own funds*.

(4) If a *firm* cannot issue *eligible instruments* because of its legal structure, that is likely to be a reason for the *FCA* to conclude that requiring the *firm* to comply with *SYSC* 19G.6.19R would not achieve the purpose for which that *rule* was made.

Retention policy

19G.6.22 R A *non-SNI MIFIDPRU investment firm* to which this *rule* applies must establish an appropriate retention policy for *eligible instruments* that is designed to align the interests of the staff member with the longer-term interests of the *firm*, its creditors and clients.

19G.6.23 G (1) In considering what is an appropriate retention policy for the purposes of *SYSC* 19G.6.22R, a *firm* should consider at least the following:

(a) the length of the deferral period referred to in *SYSC* 19G.6.24R(1);

(b) the length of the *firm's* business cycle;

(c) the types of risks relevant to the role of the staff member; and

(d) how long it could take for the risks underlying the staff member's performance to crystallise.

(2) The greater the impact of the *material risk taker* on the risk profile of the *firm* and of the assets managed, the longer the retention period should be. Different retention periods for different *material risk takers* may be appropriate, particularly where the applicable deferral periods differ.

Deferral

19G.6.24 R (1) A *non-SNI MIFIDPRU investment firm* to which this *rule* applies must not award, pay or provide a variable *remuneration* component unless at least 40% is deferred over a period which is at least 3 years.

(2) Where the variable *remuneration* is a particularly high amount, and in all cases where the variable *remuneration* is £500,000 or more, at least 60% of the amount must be deferred.

(3) Deferred variable *remuneration* must vest no faster than on a pro-rata basis.

(4) The first deferred portion of the variable *remuneration* must not vest sooner than a year after the start of the deferral period.

19G.6.25 R (1) A *non-SNI MIFIDPRU investment firm* must take into account the factors in (2) when determining:

(a) the amount of variable *remuneration* to be deferred under *SYSC* 19G.6.24R(1) and (2);

(b) the length of the deferral period under *SYSC* 19G.6.24R(1); and

(c) the speed of vesting of the variable *remuneration* for the purposes of *SYSC* 19G.6.24R(3).

(2) The factors referred to in (1) are:

(a) the *firm's* business cycle, the nature of its business and its risk profile;

(b) the activities and responsibilities of the staff member in question and how these may impact the risk profile of the *firm* or the assets the *firm* manages;

(c) whether the deferred variable *remuneration* is paid out in instruments or cash;

(d) the amount of the variable *remuneration*; and

(e) the ratio of variable to fixed *remuneration*.

19G.6.26 G (1) Where appropriate, a *firm* should tailor the proportion of deferred variable *remuneration*, the deferral period and the speed of vesting in different ways for different categories of *material risk taker*.

(2) The *FCA* considers that it may be appropriate for the most senior *material risk takers* at a *firm* (for example members of the *management body*), to be subject to a deferral period longer than the 3-year minimum.

(3) It may be appropriate for *firms* to apply different proportions of deferred variable *remuneration*, deferral periods or vesting arrangements to the portion of variable *remuneration* paid out in cash and the portion paid out in instruments.

(4) In the *FCA's* view, the higher the amount of the variable *remuneration*, and the higher the ratio of variable to fixed *remuneration*, the more appropriate it is likely to be to defer a greater proportion of the variable *remuneration*.

(5) In certain circumstances variable *remuneration* below £500,000 may still be considered 'particularly high' and so subject to 60% deferral. A *firm* should take into account the average *remuneration* at the *firm*, the ratio of the variable to fixed *remuneration* of the *material risk taker*, and the amount of variable *remuneration* compared to that of other staff at the *firm*.

(6) After the first deferred portion of the variable *remuneration* vests in accordance with *SYSC* 19G.6.24R(4), the *FCA* does not expect vesting to take place more often than once a year.

19G.6.27 R A *non-SNI MIFIDPRU investment firm* must pay out at least 50% of the variable *remuneration* deferred under *SYSC* 19G.6.24R in instruments falling within *SYSC* 19G.6.19R.

19G.6.28 G The *FCA* considers it good practice for the deferred portion to contain a higher proportion of instruments than the non-deferred portion.

19G.6.29 R A *non-SNI MIFIDPRU investment firm* may only pay to a *material risk taker* interest or dividends on an instrument which is subject to deferral under *SYSC* 19G.24R where:

(1) the rate of interest or level of dividends paid on that instrument is no higher than would have been paid to an ordinary holder of such an instrument; and

(2) payment is not made before the date on which the instrument vests.

Performance adjustment

19G.6.30 R A *non-SNI MIFIDPRU investment firm* must ensure that any variable *remuneration*, including a deferred portion, is paid or vests only if it is sustainable according to the financial situation of the *firm* as a whole, and justified on the basis of the performance of the *firm*, the *business unit* and the *individual* concerned.

19G.6.31 R A *non-SNI MIFIDPRU investment firm* must:

(1) ensure that all of the total variable *remuneration* is subject to in-year adjustments, malus or clawback arrangements;

(2) set specific criteria for the application of malus and clawback; and

(3) ensure that the criteria for the application of malus and clawback in particular cover situations where the *material risk taker*:

(a) participated in or was responsible for conduct which resulted in significant losses to the *firm*; and/or

(b) failed to meet appropriate standards of fitness and propriety.

19G.6.32 R A *non-SNI MIFIDPRU investment firm* must:

(1) set minimum malus and clawback periods as part of its *remuneration* policies;

(2) ensure that malus can be applied until the award has vested in its entirety; and

(3) ensure that the clawback period spans at least the combined length of any deferral and retention periods.

19G.6.33 G (1) The effect of *SYSC* 19G.6.31R(1) is that (save in the circumstances explained in (2)) a *non-SNI MIFIDPRU investment firm* must include in its *remuneration* policy the possibility of applying in-year adjustments, malus and clawback to the variable *remuneration* of its *material risk takers*. Where performance adjustment is required, the appropriate tool or tools (in-year adjustments, malus or clawback) should then be applied.

(2) A *non-SNI MIFIDPRU investment firm* that is not required by *SYSC* 19G.6.24R to apply deferral will not be able to apply malus, so should foresee the use of in-year adjustments and clawback arrangements only. Alternatively, the *firm* may choose to use deferral, which would enable the use of malus arrangements in addition to in-year adjustments and clawback.

(3) A *non-SNI MIFIDPRU investment firm* should ensure that the malus and clawback periods it sets and applies allow sufficient time for any potential risks to crystallise. This may mean that different periods are set for different categories of *material risk takers*.

(4) In setting appropriate malus and clawback periods, a *non-SNI MIFIDPRU investment firm* should take into account all relevant factors, including:

(a) the nature of the *material risk taker's* activities;

(b) the *material risk taker's* impact on the risk profile of the *firm* or of the assets it manages; and

(c) the length of the business cycle that is relevant for the *material risk taker's* role.

(5) For a *non-SNI MIFIDPRU investment firm* that satisfies the conditions in *SYSC* 19G.1.1R(2)(a) or (b), the *FCA* considers that 3

years will generally be an appropriate starting point for the *firm's* consideration of the appropriate clawback period.

(6) The *FCA's* 'General guidance on the application of ex-post risk adjustment to variable remuneration' provides further detail of the *FCA's* expectations on *firms'* use of malus and clawback arrangements.

19G.6.34 G (1) In the *FCA's* view, malus should be applied when, as a minimum:

(a) there is reasonable evidence of staff member misbehaviour or material error;

(b) the *firm* or the relevant *business unit* suffers a material downturn in its financial performance; or

(c) the *firm* or the relevant *business unit* suffers a material failure of risk management.

(2) In the *FCA's* view, clawback should, in particular, be applied in cases of fraud or other conduct with intent or severe negligence which led to significant losses.

Discretionary pension benefits

19G.6.35 R (1) A *non-SNI MIFIDPRU investment firm* must ensure that:

(a) any *discretionary pension benefits* it awards or pays to *material risk takers* are:

(i) in line with its business strategy, objectives, values and long-term interests; and

(ii) paid only in *eligible instruments*;

(b) it applies malus and clawback arrangements to *discretionary pension benefits* in the same way as to other elements of variable *remuneration*.

(2) A *non-SNI MIFIDPRU investment firm* to which this paragraph applies must ensure that:

(a) where a *material risk taker* leaves the *firm* before retirement age, any *discretionary pension benefits* are held by the *firm* for a period of 5 years; and

(b) where a *material risk taker* reaches retirement age, any *discretionary pension benefits* are subject to a 5-year retention period by that *individual*.

Personal investment strategies

19G.6.36 R A *non-SNI MIFIDPRU investment firm* must take all reasonable steps to ensure that *material risk takers* do not use personal hedging strategies or *remuneration*- and liability-related *contracts of insurance* to undermine the *remuneration rules* in the *MIFIDPRU Remuneration Code*.

19G.6.37 G Actions a *firm* may take under *SYSC* 19G.6.36R include requesting an undertaking or declaration from its *material risk takers* and implementing policies regarding dealing in *financial instruments*.

Avoidance of the MIFIDPRU Remuneration Code

19G.6.38 R A *non-SNI MIFIDPRU investment firm* must not pay variable *remuneration* through financial vehicles or methods that facilitate non-compliance with the *MIFIDPRU Remuneration Code* or *MIFIDPRU*.

19G.7 Remuneration committee

19G.7.1 G (1) *MIFIDPRU* 7.3.3R(1) requires a *non-SNI MIFIDPRU investment firm* to establish a *remuneration* committee, unless *MIFIDPRU* 7.3.3R(2) applies.

(2) The *FCA* encourages *non-SNI MIFIDPRU investment firms* that are not required to establish a *remuneration* committee under *MIFIDPRU* 7.3.3R(1) to consider whether establishing and maintaining a *remuneration* committee would contribute to the better alignment of risk and individual reward across the *firm*.

19G Annex 1 Other instruments for use in variable remuneration

Purpose

1.1 G *SYSC* 19G.6.19R requires that at least 50% of variable *remuneration* must be paid in *eligible instruments*. Under *SYSC* 19G.6.19R(3), *eligible instruments* include instruments that meet the requirements set out in this Annex. The instruments within the scope of this Annex include *additional tier 1 instruments*, *tier 2 instruments* and other instruments which can be fully converted to *common equity tier 1 instruments*, or written down, and that adequately reflect the *firm's* credit quality.

Requirements for instruments

1.2 R An instrument under *SYSC* 19G.6.19R(3) must satisfy the following requirements:

(1) the instrument must be issued by the *firm*;

(2) the instrument must not be secured or subject to a guarantee or any other arrangement that enhances the seniority of the claims of its holder in insolvency;

(3) the terms of the instrument must provide that any distributions on the instrument will be paid on at least an annual basis and will be paid to the holder;

(4) the instrument must be priced at its value at the time of issuance under the accounting framework applicable to the *firm*;

(5) the valuation of the instrument in (4) must be subject to independent review;

(6) if the instrument is part of an issuance which has the sole purpose of being used for variable *remuneration*, the price at which the instrument is redeemed, called, repurchased or converted must be subject to an independent valuation in accordance with the accounting framework applicable to the *firm*;

(7) if the instrument is not perpetual, at the time at which it is awarded as variable *remuneration*, the remaining period before the maturity of the instrument must be at least equal to the sum of any deferral and retention periods that would apply to the staff member to whom the instrument is awarded;

(8) the instrument must not be subject to redemption, call or repurchase during any deferral and retention periods that would apply to the *material risk taker* to whom the instrument is awarded;

(9) any right to redeem, call or repurchase the instrument must be exercisable only at the sole discretion of the *firm*;

(10) the holder of the instrument must have no rights to accelerate the future scheduled payment of interest or principal, except in the insolvency or liquidation of the *firm*;

(11) the terms of the instrument must provide that the claim on the principal amount of the instrument is wholly subordinated to the claim of all non-subordinated creditors;

(12) one of the requirements in *SYSC* 19G Annex 1.3R must be satisfied; and

(13) the instrument must be either:

(a) a *convertible instrument*, in which case the requirements in *SYSC* 19 Annex 1.4R and *SYSC* 19 Annex 1.5R must be satisfied; or

(b) a *write-down instrument*, in which case the requirements in *SYSC* 19 Annex 1.6R must be satisfied.

1.3 R (1) An instrument under *SYSC* 19G.6.19R(3) must meet either the conditions in (2) or the conditions in (4).

(2) The first set of conditions is as follows:

(a) the instrument must be part of an issuance which has the sole purpose of being used as variable *remuneration*; and

(b) the terms of the instrument must ensure that any distributions payable on the instrument are paid at a rate which is:

(i) consistent with market rates for similar issuances issued by other *firms* with comparable credit quality; and

(ii) subject to (3), no higher than 8% above the Consumer Price Index 12-month rate as published by the UK Office of National Statistics from time to time.

(3) If the instrument has been awarded to a member of staff whose professional duties are predominantly performed outside the *UK* and the instruments are denominated in a currency other than pound sterling, a *firm* may substitute another similar independently-calculated consumer price index for a relevant *third country* in place of the rate specified in (2)(b)(ii).

(4) The second set of conditions is that, at the time at which the instrument was awarded as variable *remuneration*, at least 60% of that class of instrument in issuance was:

(1) issued other than for use as variable *remuneration*; and

(2) not held by any *person* who has close links to:

(i) the *firm*;

(ii) the *firm's group*; or

(iii) a *connected undertaking* included within the *firm's investment firm group*.

Additional requirements for convertible instruments

1.4 R A *firm* must satisfy the following requirements in relation to an instrument referred to *SYSC* 19G.6.19R(3) that is a *convertible instrument*:

(1) the instrument must contain a trigger event which, if it occurs, results in the full principal amount of the instrument being converted into *common equity tier 1 capital* of the *firm*;

(2) the trigger event in (1) must occur where the *common equity tier 1 capital* of the *firm* falls below a specified level that is no lower than 64% of the *firm's own funds requirement*;

(3) the *firm* issuing the instrument must ensure the following to the extent necessary to give full effect to the required conversion following the trigger event in (1):

(a) where applicable, the *firm* has sufficient authorised share capital;

(b) the *firm* has all necessary permissions, authorisations and corporate authorities; and

(c) there are no other restrictions in the *firm's* constitutional documents, contractual arrangements or applicable national law that would prevent the *firm* from issuing the required *common equity tier 1 capital* instruments.

1.5 R The rate of conversion of the principal amount into *common equity tier capital* of the *firm* specified in the terms governing an instrument under *SYSC* 19G.6.19R(3) that is a *convertible instrument* must be set at a level that ensures that the value of the *common equity tier 1 capital* received by the holder upon conversion:

(1) would not be higher than the value of the instrument at the time that it was originally awarded as variable *remuneration*; and

(2) if the *convertible instrument* is part of an issuance which has the sole purpose of being used as variable *remuneration*, would not be higher than the value of the instrument at the time of conversion.

Additional requirements for write-down instruments

1.6 R A *firm* must satisfy the following requirements in relation to an instrument under *SYSC* 19G.6.19R(3) that is a *write-down instrument*:

(1) the instrument must contain a trigger event which, if it occurs, results in the principal amount of the instrument being written down;

(2) the trigger event in (1) must occur where the *common equity tier 1 capital* of the *firm* falls below a specified level that is no lower than 64% of the *firm's own funds requirement*;

(3) the aggregate principal amount of *write-down instruments* that must be written down following the trigger event in (1) must be at least equal to the lower of the following:

(a) the amount required to ensure that the *common equity tier 1 capital* of the *firm* referenced in the trigger event is restored to a level that is higher than the specified trigger; or

(b) the full principal amount of the instrument;

(4) any write-down in the principal amount of the instrument following the trigger event in (1) must:

(a) apply on a pro rata basis across all *write-down instruments* that contain the same trigger event;

(b) generate items that, under the accounting framework applicable to the *firm*, qualify as *common equity tier 1 capital*;

(c) result in a proportional reduction in the holder's entitlement to receive:

(i) distributions paid in connection with the instrument;

(ii) payment if the instrument is called or redeemed; and

(iii) repayment in the insolvency or liquidation of the *firm*;

(5) any write-down in the principal amount of the instrument following the trigger event in (1) may be permanent or temporary, but if it is temporary, any subsequent write-up must comply with the following requirements:

(a) it cannot increase the principal amount of the instrument beyond its level before the write-down occurred;

(b) it must be at the absolute discretion of the *firm*;

(c) the *firm* must have a reasonable basis to conclude that the write-up is appropriate, having regard to the following factors, among others:

(i) the importance of effectively aligning the interests of the recipient with the longer-term interests of the *firm*, its clients and its creditors;

(ii) the financial position of the *firm* and the effect of the write-up on the *firm's own funds*; and

(iii) if the *firm* or any member of its *group* has been subject to exceptional government intervention, whether the write-up is consistent with the objective of ensuring the timely exit from that support;

(d) it must be applied on a pro rata basis between all recipients of instruments falling under *SYSC* 19G.6.19R(3) that are *write-down instruments* where those instruments have previously been subject to a write-down.

…

SYSC TP 11 **MIFIDPRU Remuneration Code transitional provision**

Application

11.1 R *SYSC* TP 11 applies to an *undertaking* to whom the *MIFIDPRU Remuneration Code* will apply for the first time in the performance period beginning on or after 1 January 2022.

Duration of transitional

11.2 R *SYSC* TP 11 applies to *remuneration* awarded for performance or services provided in the performance period before the performance period to which the *MIFIDPRU Remuneration Code* first applies.

11.3 G While the *MIFIDPRU Remuneration Code* comes into force on 1 January 2022, it only applies to performance periods that begin on or after that date (see *SYSC* 19G.1.30R). This transitional provision therefore addresses the position for remuneration for performance or services provided in any performance period prior to the performance period to which the *MIFIDPRU Remuneration Code* first applies.

Transitional

11.4 R (1) Where an *undertaking* was subject to any of the remuneration codes listed in (2) immediately before the *MIFIDPRU Remuneration Code* came into force, that remuneration code (and any related reporting requirements) continues to apply in accordance with *SYSC* TP 11.2.

(2) The remuneration codes referred to in (1) are:

(a) *SYSC* 19A (IFPRU Remuneration Code); and

			(b) *SYSC* 19C (BIPRU Remuneration Code).
11.5	G	(1)	The effect of the transitional provision in *SYSC* TP 11.4 is to preserve the application of the IFPRU and BIPRU remuneration codes to performance or services provided in any performance period prior to the performance period to which the *MIFIDPRU Remuneration Code* first applies.
		(2)	This means, for example, that *remuneration* paid to a member of the *Remuneration Code staff* of an *IFPRU investment firm* for performance in a performance period from 2019 to 2020 would continue to be subject to the *remuneration* rules in *SYSC* 19A (the IFPRU Remuneration Code).
		(3)	As the application of the transitional provision is determined by the date of the performance period in which the performance or services were provided (not when the *remuneration* was awarded or paid out) this would remain the case even if the member of the *Remuneration Code staff* was paid the *remuneration* after the *MIFIDPRU Remuneration Code* applied to a *firm*.
11.6	R		The reference in *SYSC* TP 11.4R(1) to an *undertaking* being subject to a remuneration code includes the situation in which those *rules* include an obligation for a *firm* to ensure a *parent undertaking* complies with certain requirements.
11.7	G		Under previous remuneration codes, certain obligations were not applied directly to unregulated *parent undertakings* but were applied indirectly through the imposition of an obligation on a *firm* within the *group* to ensure compliance by the *parent undertaking*. *SYSC* TP 11.6R makes clear that the transitional provision in *SYSC* TP 11.4R also applies to those indirect obligations on the *parent undertaking*. This means that where provisions in *SYSC* 19A or *SYSC* 19C applied on an indirect basis to a *parent undertaking* before the *MIFIDPRU Remuneration Code* began to apply, those remain the relevant obligations for performance or services provided during the performance period in which the *MIFIDPRU Remuneration Code* began to apply.

Annex D

Amendments to the Supervision manual (SUP)

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

16 Reporting requirements

16.1 Application

…

16.1.3 R Application of different sections of SUP 16 (excluding SUP 16.13, SUP 16.15, SUP 16.16, SUP 16.17, SUP 16.22 and SUP 16.26)

(1) Section(s)	(2) Categories of firm to which section applies	(3) Applicable rules and guidance
…		
SUP 16.18	A *full-scope UK AIFM* and a *small authorised UK AIFM*	*SUP* 16.8.3R
SUP 16.20	~~An *IFPRU 730k firm*~~ A *firm* to which *MIFIDPRU* 4.4.1R applies and a *qualifying parent undertaking* that is required to send a *recovery plan*, a *group recovery plan* or information for a resolution plan to the *FCA*	Entire Section
…		

…

16.3 General provisions on reporting

…

~~Notifications regarding financial information reporting under the UK CRR~~

~~Underwriting agents: submission to the Society of Lloyd's~~

Service of Notices Regulations

16.3.22 G The *Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001* (SI 2001/1420) contain provisions relating to the service of documents on the *FCA*. They do not apply to reports required under *SUP* 16, because of the specific *rules* in this section.

…

16.3.26 G Examples of reports covering a *group* are:

(1) the compliance reports required from *banks* under *SUP* 16.6.4R;

(2) annual controllers reports required under *SUP* 16.4.5R;

(3) annual close links reports required under *SUP* 16.5.4R;

(4) consolidated financial reports required from *banks* under *SUP* 16.12.5R;

(5) consolidated reporting statements required from *securities and futures firms* under *SUP* 16.12.11R~~;~~.

~~(6) reporting in relation to *defined liquidity groups* under *SUP* 16.12.~~

…

16.7A Annual report and accounts

…

Requirement to submit annual report and accounts

16.7A.3 R A *firm* in the *RAG* in column (1) and which is a type of *firm* in column (2) must submit its *annual report and accounts* to the *FCA* annually on a single entity basis.

(1)	(2)
RAG	Firm type
1	*UK bank*
	Dormant account operator
	A *non-UK bank*
2.2	The *Society*

3	~~*IFPRU investment firms*~~ <u>*MIFIDPRU investment firms*</u>	
	~~*BIPRU firms*~~	
	~~*Exempt CAD firms* subject to *IPRU (INV)* Chapter 13~~	
	All other *firms* subject to the following chapters in *IPRU(INV)*:	
	(1)	Chapter 3
	(2)	Chapter 5
	(3)	Chapter 9
4	~~*IFPRU investment firms*~~ <u>*MIFIDPRU investment firms*</u>	
	~~*BIPRU firms*~~	
	~~*Exempt CAD firms* subject to *IPRU (INV)* Chapter 13~~	
	Collective portfolio management firm	
	All other *firms* subject to the following chapters in *IPRU(INV)*:	
	(1)	Chapter 3
	(2)	Chapter 5
	(3)	Chapter 9
	~~(5)~~<u>(4)</u>	Chapter 12
5	All *firms*	
6	All *firms* other than *firms* subject to *IPRU (INV)* Chapter 13 ~~that are not *exempt CAD firms*~~	
7	~~*IFPRU investment firms*~~ <u>*MIFIDPRU investment firms*</u>	
	~~*BIPRU firms*~~	
	~~*Exempt CAD firms* subject to *IPRU (INV)* Chapter 13~~	
8	All *firms* other than *firms* subject to *IPRU (INV)* Chapter 13 ~~that are not *exempt CAD firms*~~	

…

Requirement to submit annual report and accounts for mixed-activity holding companies

16.7A.5 R A *firm* in the *RAG* group in column (1), which is a type of firm in column (2) and whose ultimate parent is a *mixed-activity holding company* must:

(1) submit the *annual report and accounts* of the *mixed-activity holding company* to the *FCA* annually; and

(2) notify the *FCA* that it is covered by this reporting requirement by email using the email address specified in *SUP* 16.3.10G(3), by its *accounting reference date*.

(1)	(2)
RAG	Firm type
1	*UK bank*
3	~~*IFPRU investment firm*~~ <u>*MIFIDPRU investment firm*</u>
	~~*BIPRU firm*~~
4	~~*IFPRU investment firm*~~ <u>*MIFIDPRU investment firm*</u>
	~~*BIPRU firm*~~
7	~~*IFPRU investment firm*~~ <u>*MIFIDPRU investment firm*</u>
	~~*BIPRU firm*~~

…

Time period for firms submitting annual report and accounts for mixed-activity holding companies

16.7A.9 R *Firms* must submit the *annual report and accounts* of a *mixed-activity holding company* in accordance with *SUP* 16.7A.5R within 7 months of their *accounting reference date*.

…

16.12 Integrated Regulatory Reporting

…

Purpose

16.12.2 G (1) *Principle* 4 requires *firms* to maintain adequate financial resources. ~~The Interim Prudential sourcebooks, *BIPRU*, *GENPRU* and *IFPRU*~~ The prudential sourcebooks, which are contained in the Prudential Standards block in the *Handbook*, set out the *FCA's* detailed capital adequacy requirements. By submitting regular data, *firms* enable the *FCA* to monitor their compliance with *Principle* 4 and their prudential requirements.

…

16.12.3-A G ~~(1)~~ ~~*Investment firms* subject to the *UK CRR* should refer to any relevant technical standards to determine their specific reporting obligations, as those obligations may extend beyond those specified in this chapter.~~

~~(2)~~ ~~Where a *firm* submits a *data item* pursuant any applicable provision of the *UK CRR* any *data item* with the same name and purpose does not have to be submitted again regardless of *RAG*.~~ [deleted]

16.12.3-B G ~~In relation to an *investment firm* subject to the *UK CRR*, where an expression appearing in italics in this chapter is also used in the *UK CRR*, the italicised expression:~~

~~(1)~~ ~~has the same meaning as the corresponding expression used in the *UK CRR*; or~~

~~(2)~~ ~~is interpreted in the context of the risk or requirement in the *UK CRR* that corresponds to the risk or requirement referred to in the italicised expression.~~ [deleted]

16.12.3B G *Firms'* attention is drawn to *SUP* 16.3.25G regarding a single submission for all *firms* in the group.

16.12.4 R Table of applicable ~~rules~~ *rules* containing *data items*, frequency and submission periods

(1)		(2)	(3)	(4)
***RAG* number**	***Regulated Activities***	**Provisions containing:**		
		applicable *data items*	**reporting frequency / period**	**due date**

RAG 1	• accepting deposits • *meeting of repayment claims* • *managing dormant account funds (including the investment of such funds)*	*RAG* 1 *firms* should complete their prudential reporting requirements as set out in the *PRA Rulebook*.		
…	…			
RAG 3	• dealing in investment as principal • dealing in investments as agent • advising on investments (except P2P agreements) (excluding retail investment activities) • arranging (bringing about) deals in investments (excluding retail investment activities) • advising on P2P agreements (when carried on exclusively with or for professional clients)	*SUP* 16.12.10R *SUP* 16.12.11R ~~except FSA001 and FSA002 on *consolidated basis* for *FINREP firms*~~	*SUP* 16.12.10R *SUP* 16.12.12R	*SUP* 16.12.10R *SUP* 16.12.13R

RAG 4	• managing investments • establishing, operating or winding up a collective investment scheme • establishing, operating or winding up a stakeholder pension scheme • establishing, operating or winding up a personal pension scheme • managing an *AIF* • *managing a UK UCITS* • *operating an electronic system in relation to lending* (*FCA-authorised persons* only)	*SUP* 16.12.14R *SUP* 16.12.15R~~,~~ ~~except FSA001 and FSA002 on *consolidated basis* for *FINREP firms*~~	*SUP* 16.12.14R *SUP* 16.12.16R	*SUP* 16.12.14R *SUP* 16.12.17R
…	…	…	…	…
RAG 7	• retail investment activities • advising on P2P agreements (except when carried on exclusively with or for professional clients) • advising on pensions transfers & opt-outs	*SUP* 16.12.22AR ~~except FSA001 and FSA002 on *consolidated basis* for *FINREP firms*~~	*SUP* 16.12.23AR	*SUP* 16.12.24AR

	• arranging (bringing about deals) in retail investments			
RAG 8	• making arrangements with a view to transactions in investments • operating a multilateral trading facility • operating an organised trading facility	*SUP* 16.12.25AR ~~or *SUP* 16.12.25CR for *UK designated investment firms* except FSA001 and FSA002 on *consolidated basis for FINREP firms*~~	*SUP* 16.12.26R	*SUP* 16.12.27R
…	…	…	…	…

~~Group liquidity reporting~~

16.12.4B G ~~Reporting at group level for liquidity purposes by *firms* falling within BIPRU 12 (Liquidity) is by reference to *defined liquidity groups*. *Guidance* about the different types of *defined liquidity groups* and related material is set out in *SUP* 16 Annex 26 (Guidance on designated liquidity groups in *SUP* 16.12).~~ [deleted]

Investment firm group reporting

16.12.4C G *MIFIDPRU* 9 contains reporting requirements for:

(1) *UK parent entities* of *investment firm groups* that are subject to consolidation under *MIFIDPRU* 2.5; and

(2) *parent undertakings* that are subject to the *group capital test*.

The reporting requirements apply even if the *UK parent entity* or *parent undertaking* is not an *authorised person*.

~~Regulated Activity Group 1~~

Regulated Activity Group 2.2

16.12.9 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below.

The applicable reporting frequencies for submission of *data items* and periods referred to in *SUP* 16.12.4R are set out in the table below and are calculated from a *firm's accounting reference date*, unless indicated otherwise.

The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

	Member's adviser		the *Society* (note 1)		
Description of *data item*	Frequency	Submission deadline	Description of *data item*	Frequency	Submission deadline
…	…	…	…	…	…
Balance Sheet					
FSA001 (~~notes 15,~~ note 20) or	Quarterly or half yearly	(note 14)			
…	…	…			
Large Exposures					
FSA008 (~~Notes~~ note 20~~, 21~~)	Quarterly	20 *business days* (note 19)			
…	…	…			
Note 1	The *Society* must prepare its reports in the format specified in *IPRU(INS)* Appendix 9.11, unless Note 2 applies.				
…	…				

Note 14	~~*BIPRU firms* report half yearly on 30 *business days* submission.~~ All UK *consolidation group* reports report half yearly on 45 *business days* submission. All other *firms* report monthly on 20 *business days* submission.
Note 15	~~This *data item* only applies to *BIPRU firms*.~~ [deleted]
…	…
Note 21	~~This will not be applicable to *BIPRU firms*.~~ [deleted]

16.12.9A G A *member's adviser* that is also ~~an *IFPRU investment firm*~~ a *MIFIDPRU investment firm* will also fall under one of the higher number *RAGs* that apply to ~~*IFPRU investment firms*~~ *MIFIDPRU investment firms*. That means it will have to report *data items* in addition to those that it has to supply under *RAG* 2.2.

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:

[*Editor's note*: The existing table in SUP 16.12.11R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Description of *data item*	*Firms'* prudential category and applicable *data items* (note 1)				
	MIFIDPRU investment firms	Firms other than *MIFIDPRU investment firms*			
		IPRU(INV) Chapter 3	*IPRU(INV)* Chapter 5	*IPRU(INV)* Chapter 9	*IPRU(INV)* Chapter 13
Solvency statement	No standard format (note 4)	No standard	No standard		

		format (note 6)	format (note 4)		
Balance sheet	FSA029 (note 2)	FSA029 (note 5)	FSA029	FSA029	Section A RMAR
Income statement	FSA030 (note 2)	FSA030 (note 5)	FSA030	FSA030	Section B RMAR
Capital adequacy	MIF001 (notes 2 and 3)	FSA033 (note 5)	FSA034 or FSA035 or FIN071 (note 7)	FSA031	Section D1 RMAR
Supplementary capital data for *collective portfolio management investment firms*	FIN067 (note 13)				
ICARA assessment questionnaire	MIF007 (note 3)				
Threshold conditions					Section F RMAR
Client money and client assets	FSA039	FSA039	FSA039	FSA039	Section C RMAR
CFTC	FSA040 (note 8)	FSA040 (note 8)	FSA040 (note 8)	FSA040 (note 8)	FSA040 (note 8)
Liquidity	MIF002 (notes 2, 3 and 10)				

Metrics reporting	MIF003 (notes 2 and 3)				
Concentration risk (non-*K-CON*)	MIF004 (notes 2, 3 and 11)				
Concentration risk (*K-CON*)	MIF005 (notes 2, 3 and 11)				
Group capital test	MIF006 (notes 3 and 12)				
Liquidity Questionnaire	MLA-M (note 9)	MLA-M (note 9)	MLA-M (note 9)	MLA-M (note 9)	MLA-M (note 9)
Note 1	All *firms* (except *MIFIDPRU investment firms* in relation to items reported under *MIFIDPRU* 9) must, when submitting the completed *data item* required, use the format of the *data item* set out in *SUP* 16 Annex 24R. Guidance notes for completion of the *data items* are contained in *SUP* 16 Annex 25G.				
Note 2	A *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5 must also submit this report on the basis of the *consolidated situation*.				
Note 3	Data items MIF001 – MIF007 must be reported in accordance with the *rules* in *MIFIDPRU* 9.				
Note 4	Only applicable to a *firm* that is a *sole trader* or *partnership*. Where the *firm* is a *partnership*, this report must be submitted by each *partner*.				
Note 5	Except if the *firm* is an *adviser* (as referred to in *IPRU(INV)* 3-60(4)R).				

Note 6	Only required in the case of an *adviser* (as referred to in *IPRU(INV)* 3-60(4)R) that is a *sole trader*.
Note 7	FSA034 must be completed by a *firm* not subject to the exemption in *IPRU(INV)* 5.4.2R, unless it is a *firm* whose permitted business includes *establishing, operating or winding up a personal pension scheme*, in which case FIN071 must be completed. FSA035 must be completed by a *firm* subject to the exemption in *IPRU(INV)* 5.4.2R.
Note 8	Only applicable to *firms* granted a *Part 30 exemption order* and operating an arrangement to cover forward profits on the London Metals Exchange.
Note 9	Only applicable to RAG 3 *firms* carrying on *home financing* or *home finance administration* connected to *regulated mortgage contracts*, unless as at 26 April 2014 the *firm's Part 4A permission* was and remains subject to a restriction preventing it from undertaking new *home financing* or *home finance administration* connected to *regulated mortgage contracts*.
Note 10	Does not apply to an *SNI MIFIDPRU investment firm* which has been granted an exemption from the liquidity requirements in *MIFIDPRU* 6.
Note 11	Only applicable to a *non-SNI MIFIDPRU investment firm*.
Note 12	Only applicable to a *parent undertaking* to which the *group capital test* applies.
Note 13	Only applicable to *firms* that are *collective portfolio management investment firms*.

~~16.12.11A~~ ~~G~~ ~~The column in the table in *SUP* 16.12.11R that deals with *IFPRU firms* covers some liquidity items that only have to be reported by an *ILAS BIPRU firm* (please see notes 28 and 33).~~

16.12.12 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.4R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.12R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	*Non-SNI MIFIDPRU investment firm*	*SNI MIFIDPRU investment firm*	*Investment firm group*	*Firm* other than a *MIFIDPRU investment firm*
Solvency statement	Annually	Annually		Annually
FSA029	Quarterly	Quarterly	Quarterly	Quarterly
FSA030	Quarterly	Quarterly	Quarterly	Quarterly
FSA031				Quarterly
FSA033				Quarterly
FSA034				Quarterly
FSA035				Quarterly
FSA039	Half yearly	Half yearly		Half yearly
FSA040	Quarterly	Quarterly		Quarterly

FIN067	Quarterly (note 3)	Quarterly (note 3)		
FIN071				Quarterly
MIF001	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF002	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF003	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF004	Quarterly (note 3)		Quarterly (note 3)	
MIF005	Quarterly		Quarterly	
MIF006	Quarterly (note 3)	Quarterly (note 3)		
MIF007	Annually (note 4)	Annually (note 4)		
Section A RMAR				Half yearly (note 1) Quarterly (note 2)
Section B RMAR				Half yearly (note 1)

				Quarterly (note 2)
Section C RMAR				Half yearly (note 1) Quarterly (note 2)
Section D1 RMAR				Half yearly (note 1) Quarterly (note 2)
Section F RMAR				Half yearly
MLA-M	Quarterly	Quarterly	Quarterly	Quarterly
Note 1	Annual regulated business revenue up to and including £5 million.			
Note 2	Annual regulated business revenue over £5 million.			
Note 3	Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not by reference to the *firm's accounting reference date*. The relevant quarters end on the last *business day* of March, June, September and December.			
Note 4	The reporting period for MIF007 is determined by the date on which the *firm* reviews its *ICARA process* under *MIFIDPRU* 7.8.2R and the submission date that applies under *MIFIDPRU* 7.8.4R.			

16.12.13 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.12R, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.13R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	Quarterly	Half yearly	Annual
Solvency statement			3 *months*
FSA029	20 *business days* (note 1) 30 *business days* (note 2)		
FSA030	20 *business days* (note 1) 30 *business days* (note 2)		
FSA031	20 *business days*		
FSA033	20 *business days*		
FSA034	20 *business days*		
FSA035	20 *business days*		
FSA039		30 *business days*	
FSA040	15 *business days*		
FIN067	20 *business days*		
FIN071	20 *business days*		
MIF001	20 *business days* (note 1) 30 *business days* (note 2)		

MIF002	20 *business days* (note 1) 30 *business days* (note 2)		
MIF003	20 *business days* (note 1) 30 *business days* (note 2)		
MIF004	20 *business days* (note 1) 30 *business days* (note 2)		
MIF005	20 *business days* (note 1) 30 *business days* (note 2)		
MIF006	20 *business days*		
MIF007	The submission date that applies under *MIFIDPRU* 7.8.4R		
Section A RMAR	30 *business days*	30 *business days*	
Section B RMAR	30 *business days*	30 *business days*	
Section C RMAR	30 *business days*	30 *business days*	
Section D1 RMAR	30 *business days*	30 *business days*	
Section F RMAR		30 *business days*	
MLA-M	20 *business days*		

Note 1	For reports relating to the position of an individual *firm*.
Note 2	For reports relating to the *consolidated situation* of an *investment firm group*.

Regulated Activity Group 4

…

16.12.15 R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to *firm* type in the table below:

[*Editor's note*: The existing table in SUP 16.12.15R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Description of *data item*	*Firms'* prudential category and applicable *data items* (note 1)						
	MIFIDPRU investment firms	*Firms* other than *MIFIDPRU investment firms*					
		IPRU(INV) Chapter 3	*IPRU(INV)* Chapter 5	*IPRU(INV)* Chapter 9	*IPRU(INV)* Chapter 11 (*collective portfolio management firms* only)	*IPRU(INV)* Chapter 12	*IPRU(INV)* Chapter 13
Solvency statement (note 2)	No standard format		No standard format		No standard format		

Balance sheet	FSA029 (note 3)	FSA029	FSA029	FSA029	FSA029	FSA029	Section A RMAR
Income statement	FSA030 (note 3)	FSA030	FSA030	FSA030	FSA030	FSA030	Section B RMAR
Capital adequacy	MIF001 (note 3 and 4)	FSA033	FSA034 or FSA035 or FIN071 (note 5)	FSA031	FIN066	FIN069	Section D1 RMAR
ICARA assessment questionnaire	MIF007 (note 4)						
Supplementary capital data for *collective portfolio management investment firms*	FIN067 (note 9)						
Threshold conditions							Section F RMAR
Volumes and types of business		FSA038	FSA038	FSA038	FSA038		FSA038
Client money and client assets	FSA039	FSA039	FSA039	FSA039	FSA039	FSA039	Section C RMAR

Liquidity	MIF002 (notes 3, 4 and 6)						
Metrics monitoring	MIF003 (notes 3 and 4)						
Concentration risk (non-*K-CON*)	MIF004 (notes 3, 4 and 7)						
Concentration risk (*K-CON*)	MIF005 (notes 3, 4 and 7)						
Group capital test	MIF006 (notes 4 and 8)						
Information on *P2P agreements*						FIN070	
Note 1	All *firms*, except *MIFIDPRU investment firms* in relation to items reported under *MIFIDPRU* 9, must, when submitting the completed *data item* required, use the format of the *data item* set out in *SUP* 16 Annex 24. Guidance notes for completion of the *data items* are contained in *SUP* 16 Annex 25.						
Note 2	Only applicable to a *firm* that is a *sole trader* or *partnership*. Where the *firm* is a *partnership*, this report must be submitted by each *partner*.						

Note 3	A *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5 must also submit this report on the basis of the *consolidated situation*.
Note 4	Data items MIF001 – MIF007 must be reported in accordance with the *rules* in *MIFIDPRU* 9.
Note 5	FSA034 must be completed by a *firm* not subject to the exemption in *IPRU(INV)* 5.4.2R, unless it is a *firm* whose permitted business includes *establishing, operating or winding up a personal pension scheme*, in which case FIN071 must be completed. FSA035 must be completed by a *firm* subject to the exemption in *IPRU(INV)* 5.4.2R.
Note 6	Does not apply to an *SNI MIFIDPRU investment firm* which has been granted an exemption from the liquidity requirements in *MIFIDPRU* [6].
Note 7	Only applicable to a *non-SNI MIFIDPRU investment firm*.
Note 8	Only applicable to a *parent undertaking* to which the *group capital test* applies.
Note 9	Only applicable to *firms* that are *collective portfolio management investment firms*.

16.12.15A G ~~The column in the table in *SUP* 16.12.15R that deals with *IFPRU firms* covers some liquidity items that only have to be reported by an *ILAS BIPRU firm* (please see notes 25 and 30).~~ [deleted]

16.12.16 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.15R are set out in the table below according to *firm* type. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.16R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	*Non-SNI MIFIDPRU investment firm*	*SNI MIFIDPRU investment firm*	*Investment firm group*	*Firm* other than a *MIFIDPRU investment firm*
Solvency statement	Annually	Annually		Annually
FSA029	Quarterly	Quarterly	Quarterly	Quarterly
FSA030	Quarterly	Quarterly	Quarterly	Quarterly
FSA031				Quarterly
FSA033				Quarterly
FSA034				Quarterly
FSA035				Quarterly
FSA039	Half yearly	Half yearly		Half yearly
FIN067	Quarterly (note 3)	Quarterly (note 3)		
FIN071				Quarterly
MIF001	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF002	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	

MIF003	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF004	Quarterly (note 3)		Quarterly (note 3)	
MIF005	Quarterly		Quarterly	
MIF006	Quarterly (note 3)	Quarterly (note 3)		
MIF007	Annually (note 4)	Annually (note 4)		
Section A RMAR				Half yearly (note 1) Quarterly (note 2)
Section B RMAR				Half yearly (note 1) Quarterly (note 2)
Section C RMAR				Half yearly (note 1) Quarterly (note 2)
Section D1 RMAR				Half yearly (note 1)

				Quarterly (note 2)
Section F RMAR				Half yearly (note 1) Quarterly (note 2)
Note 1	Annual regulated business revenue up to and including £5 million.			
Note 2	Annual regulated business revenue over £5 million.			
Note 3	Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not by reference to the *firm's accounting reference date*. The relevant quarters end on the last *business day* of March, June, September and December.			
Note 4	The reporting period for MIF007 is determined by the date on which the *firm* reviews its *ICARA process* under *MIFIDPRU* 7.8.2R and the submission date that applies under *MIFIDPRU* 7.8.4R.			

16.12.17 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.16R, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.17R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	Quarterly	Half yearly	Annual
Solvency statement			3 *months*
FSA029	20 *business days*		

	(note 1) 30 *business days* (note 2)		
FSA030	20 *business days*		
FSA031	20 *business days*		
FSA033	20 *business days*		
FSA034	20 *business days*		
FSA035	20 *business days*		
FSA039		30 *business days*	
FIN067	20 *business days*		
FIN071	20 *business days*		
MIF001	20 *business days* (note 1) 30 *business days* (note 2)		
MIF002	20 *business days* (note 1) 30 *business days* (note 2)		
MIF003	20 *business days* (note 1) 30 *business days* (note 2)		
MIF004	20 *business days* (note 1) 30 *business days* (note 2)		

MIF005	20 *business days* (note 1) 30 *business days* (note 2)		
MIF006	20 *business days*		
MIF007	The submission date that applies under *MIFIDPRU* 7.8.4R		
Section A RMAR	30 *business days*	30 *business days*	
Section B RMAR	30 *business days*	30 *business days*	
Section C RMAR	30 *business days*	30 *business days*	
Section D1 RMAR	30 *business days*	30 *business days*	
Section F RMAR		30 *business days*	
MLA-M	20 *business days*		
Note 1	For reports relating to the position of an individual *firm*.		
Note 2	For reports relating to the *consolidated situation* of an *investment firm group*.		

…

Regulated Activity Group 6

…

16.12.19A R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

	Firms' prudential category and applicable *data items* (note 1)

Description of *data item*				
	IPRU(INV) Chapter 3	*IPRU(INV)* Chapter 5	*IPRU(INV)* Chapter 9	*IPRU(INV)* Chapter 13
Solvency statement (note 6)		No standard format		
Balance sheet	FSA029	FSA029	FSA029	~~FSA029 or~~ Section A RMAR ~~(note 7)~~
Income statement	FSA030	FSA030	FSA030	~~FSA030 or~~ Section B RMAR ~~(note 7)~~
Capital adequacy	FSA033	FSA034 or FSA035 or FIN071 or FIN072 (note 4)	FSA031	~~FSA032 or~~ Section D1 RMAR ~~(notes 5 and 7)~~
Threshold conditions				Section F RMAR ~~(Note 7)~~
Client money and client assets	FSA039	FSA039	FSA039	Section C RMAR ~~(note 7) or FSA039~~
Pillar 2 questionnaire		FSA019 (note 8)		
Note 1	When submitting the completed *data item* required, a *firm* must use the format of the *data item* set out in *SUP* 16 Annex 24. Guidance notes for completion of the data items are contained in *SUP* 16 Annex 25.			
Note 2	[deleted]			
Note 3	[deleted]			

Note 4	FSA034 must be completed by a *firm* not subject to the exemption in *IPRU(INV)* 5.4.2R, unless it is a *firm* whose permitted business includes *establishing, operating or winding up a personal pension scheme*, in which case FIN071 must be completed. FSA035 must be completed by a *firm* subject to the exemption in *IPRU(INV)* 5.4.2R, unless the *firm* is the depositary of a *UCITS scheme* in which case, FIN072 must be completed.
Note 5	~~FSA032 must be completed by a *firm* subject to *IPRU(INV)* Chapter 13 which is an *exempt CAD firm*.~~ [deleted]
Note 6	Only applicable to a firm that is a *partnership*, when the report must be submitted by each *partner*.
Note 7	~~FSA029, FSA030, FSA032 and FSA039 only apply to a *firm* subject to *IPRU(INV)* Chapter 13 which is an *exempt CAD firm*. Sections A, B, C, D1, and F RMAR only apply to a *firm* subject to *IPRU(INV)* Chapter 13 which is not an *exempt CAD firm*.~~ [deleted]
Note 8	Only applicable to a *firm* that is the *depositary* of a *UCITS scheme*.

…

Regulated Activity Group 7

…

16.12.22A R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

[*Editor's note*: The existing table in SUP 16.12.22AR is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

	Firms' prudential category and applicable *data item* (note 1)

Description of *data item*			
	MIFIDPRU investment firms	*Firms* subject to *IPRU(INV)* Chapter 13	*Firms* that are also in one or more of *RAGs* 2 to 6 and not subject to *IPRU(INV)* Chapter 13
Solvency statement	No standard format (note 2)		
Balance sheet	FSA029 (note 3)	Section A RMAR	
Income statement	FSA030 (note 3)	Section B RMAR	
Capital adequacy	MIF001 (notes 3 and 6)	Section D1 RMAR (note 9)	
Liquidity	MIF002 (notes 3, 4 and 6)		
Metrics monitoring	MIF003 (notes 3 and 6)		
Concentration risk (non-K-CON)	MIF004 (notes 3, 5 and 6)		
Concentration risk (K-CON)	MIF005 (notes 3, 5 and 6)		
Group capital test	MIF006 (notes 6 and 8)		

ICARA assessment questionnaire	MIF007 (note 6)		
Supplementary capital data for *collective portfolio management investment firms*	FIN067 (note 10)		
Professional indemnity insurance (note 15)	Section E RMAR	Section E RMAR	Section E RMAR
Threshold conditions		Section F RMAR	
Training and competence	Section G RMAR	Section G RMAR	Section G RMAR
COBS data	Section H RMAR	Section H RMAR	Section H RMAR
Client money and client assets	Section C RMAR	Section C RMAR	
Fees and levies	Section J RMAR	Section J RMAR	
Adviser charges	Section K RMAR (note 7)	Section K RMAR (note 7)	Section K RMAR (note 7)
Note 1	When submitting the completed *data item* required, a *firm* (except a *MIFIDPRU investment firm* in relation to an item reported under *MIFIDPRU* 9) must use the format of the data item set out in *SUP* 16 Annex 24R, or *SUP* 16 Annex 18AR in the case of the *RMAR*. Guidance notes for completion of the *data items* are contained in *SUP* 16 Annex 25, or *SUP* 16 Annex 18BG in the case of the *RMAR*.		

Note 2	Only applicable to a *firm* that is a *sole trader* or *partnership*. Where the *firm* is a *partnership*, this report must be submitted by each *partner*.
Note 3	A *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5 must also submit this report on the basis of the *consolidated situation*.
Note 4	Does not apply to an *SNI MIFIDPRU investment firm* which has been granted an exemption from the liquidity requirements in *MIFIDPRU* 6.
Note 5	Only applicable to a *non-SNI MIFIDPRU investment firm*.
Note 6	Data items MIF001 – MIF007 must be reported in accordance with the *rules* in *MIFIDPRU* 9.
Note 7	This item only applies to *firms* that provide advice on *retail investment products* and *P2P agreements*.
Note 8	Only applicable to a *parent undertaking* to which the *group capital test* applies.
Note 9	Where a *firm* submits *data items* for both RAG 7 and RAG 9, the *firm* must complete Section D1.
Note 10	Only applicable to *firms* that are *collective portfolio management investment firms*.

16.12.22B G ~~The column in the table in *SUP* 16.12.22AR that deals with *IFPRU firms* covers some liquidity items that only have to be reported by an *ILAS BIPRU firm* (see notes 18 and 24).~~ [deleted]

16.12.23A R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.22AR are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.23AR is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	Frequency				
	Non-SNI MIFIDPRU investment firm	*SNI MIFIDPRU investment firm*	*Investment firm group*	Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million
Solvency statement	Annually	Annually			
FSA029	Quarterly	Quarterly	Quarterly		
FSA030	Quarterly	Quarterly	Quarterly		
FIN067	Quarterly	Quarterly			
MIF001	Quarterly (note 1)	Quarterly (note 1)	Quarterly (note 1)		
MIF002	Quarterly (note 1)	Quarterly (note 1)	Quarterly (note 1)		
MIF003	Quarterly (note 1)	Quarterly (note 1)	Quarterly (note 1)		
MIF004	Quarterly (note 1)		Quarterly (note 1)		

MIF005	Quarterly		Quarterly		
MIF006	Quarterly (note 1)	Quarterly (note 1)			
MIF007	Annually (note 2)	Annually (note 2)			
Section A RMAR				Half yearly	Quarterly
Section B RMAR				Half yearly	Quarterly
Section C RMAR				Half yearly	Quarterly
Section D1 RMAR				Half yearly	Quarterly
Section E RMAR	Half yearly	Half yearly	Half yearly	Half yearly	Quarterly
Section F RMAR	Half yearly	Half yearly	Half yearly	Half yearly	Half yearly
Section G RMAR	Half yearly	Half yearly	Half yearly	Half yearly	Half yearly
Section H RMAR	Half yearly	Half yearly	Half yearly	Half yearly	Half yearly
Section J RMAR	Annually	Annually	Annually	Annually	Annually

Section K RMAR	Annually	Annually	Annually	Annually	Annually
Note 1	Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not by reference to the *firm's accounting reference date*. The relevant quarters end on the last *business day* of March, June, September and December.				
Note 2	The reporting period for MIF007 is determined by the date on which the *firm* reviews its *ICARA process* under *MIFIDPRU* 7.8.2R and the submission date that applies under *MIFIDPRU* 7.8.4R.				

16.12.24A R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.23AR, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.24AR is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	Quarterly	Half yearly	Annual
Solvency statement			3 *months*
FSA029	20 *business days* (note 1) 30 *business days* (note 2)		
FSA030	20 *business days* (note 1) 30 *business days* (note 2)		

FIN067	20 *business days*		
MIF001	20 *business days* (note 1) 30 *business days* (note 2)		
MIF002	20 *business days* (note 1) 30 *business days* (note 2)		
MIF003	20 *business days* (note 1) 30 *business days* (note 2)		
MIF004	20 *business days* (note 1) 30 *business days* (note 2)		
MIF005	20 *business days* (note 1) 30 *business days* (note 2)		
MIF006	20 *business days*		
MIF007	The submission date that applies under *MIFIDPRU* 7.8.4R		
Section A RMAR	30 *business days*	30 *business days*	
Section B RMAR	30 *business days*	30 *business days*	

Section C RMAR	30 *business days*	30 *business days*	
Section D1 RMAR	30 *business days*	30 *business days*	
Section E RMAR	30 *business days*	30 *business days*	
Section F RMAR		30 *business days*	
Section G RMAR		30 *business days*	
Section H RMAR		30 *business days*	
Section J RMAR			30 *business days*
Section K RMAR		30 *business days*	
Note 1	For reports relating to the position of an individual *firm*.		
Note 2	For reports relating to the *consolidated situation* of an *investment firm group*.		

Regulated Activity Group 8

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16.12.25A R The applicable *data items* referred to in *SUP* 16.12.4R are set out according to type of *firm* in the table below:

[*Editor's note*: The existing table in SUP 16.12.25AR is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Description of *data item*	*Firms'* prudential category and applicable *data items* (note 1)				
	MIFIDPRU investment firms	Firms other than *MIFIDPRU investment firms*			
		IPRU(INV) Chapter 3	*IPRU(INV)* Chapter 5	*IPRU(INV)* Chapter 9	*IPRU(INV)* Chapter 13

Solvency statement (note 2)	No standard format				
Balance sheet	FSA029 (note 3)	FSA029	FSA029	FSA029	Section A RMAR
Income statement	FSA030 (note 3)	FSA030	FSA030	FSA030	Section B RMAR
Capital adequacy	MIF001 (notes 3 and 5)	FSA033	FSA034 or FSA035 or FIN071 (note 4)	FSA031	Section D1 RMAR
Liquidity	MIF002 (notes 3 and 5)				
Metrics monitoring	MIF003 (notes 3 and 5)				
Concentration risk (non-K-CON)	MIF004 (notes 3, 5 and 7)				
Concentration risk (K-CON)	MIF005 (notes 3, 5 and 7)				
Group capital test	MIF006 (notes 5 and 6)				
ICARA assessment questionnaire	MIF007 (note 5)				

Threshold conditions					Section F RMAR (note 17)
Client money and client assets	FSA039	FSA039	FSA039	FSA039	Section C RMAR (note 13) or FSA039
Note 1	All *firms* (except *MIFIDPRU investment firms* in relation to items reported under *MIFIDPRU* 9) when submitting the completed *data item* required, must use the format of the *data item* set out in *SUP* 16 Annex 24. Guidance notes for completion of the *data items* are contained in *SUP* 16 Annex 25.				
Note 2	Only applicable to a *firm* that is a *sole trader* or *partnership*. Where the *firm* is a *partnership*, this report must be submitted by each *partner*.				
Note 3	A *UK parent entity* of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5 must also submit this report on the basis of the *consolidated situation*.				
Note 4	FSA034 must be completed by a *firm* not subject to the exemption in *IPRU(INV)* 5.4.2R, unless it is a *firm* whose permitted business includes *establishing, operating or winding up a personal pension scheme*, in which case FIN071 must be completed. FSA035 must be completed by a *firm* subject to the exemption in *IPRU(INV)* 5.4.2R.				
Note 5	Data items MIF001 – MIF007 must be reported in accordance with the *rules* in *MIFIDPRU* 9.				
Note 6	Only applicable to a *parent undertaking* to which the *group capital test* applies.				

Note 7	Only applicable to a *non-SNI MIFIDPRU investment firm*.

16.12.25B G ~~The column in the table in *SUP* 16.12.25AR that deals with *IFPRU firms* cover some liquidity items that only have to be reported by an *ILAS BIPRU firm* (see notes 23 and 28).~~ [deleted]

16.12.26 R The applicable reporting frequencies for *data items* referred to in *SUP* 16.12.25AR are set out according to the type of *firm* in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.26R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	*Non-SNI MIFIDPRU investment firm*	*SNI MIFIDPRU investment firm*	*Investment firm group*	*Firm* other than a *MIFIDPRU investment firm*
Solvency statement	Annually	Annually		Annually
FSA029	Quarterly	Quarterly	Quarterly	Quarterly
FSA030	Quarterly	Quarterly	Quarterly	Quarterly
FSA031				Quarterly
FSA033				Quarterly
FSA034				Quarterly
FSA035				Quarterly

FSA039	Half yearly	Half yearly		Half yearly
FIN071				Quarterly
MIF001	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF002	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF003	Quarterly (note 3)	Quarterly (note 3)	Quarterly (note 3)	
MIF004	Quarterly (note 3)		Quarterly (note 3)	
MIF005	Quarterly		Quarterly	
MIF006	Quarterly	Quarterly		
MIF007	Annually (note 4)	Annually (note 4)		
Section A RMAR				Half yearly (note 1) Quarterly (note 2)
Section B RMAR				Half yearly (note 1) Quarterly (note 2)

Section C RMAR				Half yearly (note 1) Quarterly (note 2)
Section D1 RMAR				Half yearly (note 1) Quarterly (note 2)
Section F RMAR				Half yearly
Note 1	Annual regulated business revenue up to and including £5 million.			
Note 2	Annual regulated business revenue over £5 million.			
Note 3	Reporting frequencies and reporting periods for this *data item* are calculated on a calendar year basis and not by reference to the *firm's accounting reference date*. The relevant quarters end on the last *business day* of March, June, September and December.			
Note 4	The reporting period for MIF007 is determined by the date on which the *firm* reviews its *ICARA process* under *MIFIDPRU* 7.8.2R and the submission date that applies under *MIFIDPRU* 7.8.4R.			

16.12.27 R The applicable due dates for submission referred to in *SUP* 16.12.4R are set out in the table below. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period set out in *SUP* 16.12.26R, unless indicated otherwise.

[*Editor's note*: The existing table in SUP 16.12.27R is deleted in its entirety. The deleted text is not shown. The following table is inserted to replace the deleted text.]

Data item	Quarterly	Half yearly	Annual
Solvency statement			3 *months*
FSA029	20 *business days* (note 1) 30 *business days* (note 2)		
FSA030	20 *business days* (note 1) 30 *business days* (note 2)		
FSA031	20 *business days*		
FSA033	20 *business days*		
FSA034	20 *business days*		
FSA035	20 *business days*		
FSA039		30 *business days*	
FIN071	20 *business days*		
MIF001	20 *business days* (note 1) 30 *business days* (note 2)		
MIF002	20 *business days* (note 1) 30 *business days* (note 2)		
MIF003	20 *business days* (note 1)		

	30 *business days* (note 2)		
MIF004	20 *business days* (note 1) 30 *business days* (note 2)		
MIF005	20 *business days* (note 1) 30 *business days* (note 2)		
MIF006	20 *business days*		
MIF007	The submission date that applies under *MIFIDPRU* 7.8.4R		
Section A RMAR	30 *business days*	30 *business days*	
Section B RMAR	30 *business days*	30 *business days*	
Section C RMAR	30 *business days*	30 *business days*	
Section D1 RMAR	30 *business days*	30 *business days*	
Section F RMAR	30 *business days*	30 *business days*	
Note 1	For reports relating to the position of an individual *firm*.		
Note 2	For reports relating to the *consolidated situation* of an *investment firm group*.		

Regulated Activity Group 9

…

16.12.28A R The applicable *data items*, reporting frequencies and submission deadlines referred to in *SUP* 16.12.4R are set out in the table below. Reporting frequencies are calculated from a *firm's accounting reference date*, unless indicated otherwise. The due dates are the last day of the periods given in the table below following the relevant reporting frequency period.

Description of *data item*	*Data item* (note 1)	Frequency		Submission deadline
		Annual regulated business revenue up to and including £5 million	Annual regulated business revenue over £5 million	
…	…	…	…	…
Professional indemnity insurance (note 2)	Section E RMAR	Half yearly	Quarterly	30 *business days*
…	…	…	…	…
Note 1	…			
Note 2	This item only applies to *firms* that may be subject to an *FCA* requirement to hold professional indemnity insurance and are not ~~*exempt CAD firms*~~ <u>*MIFIDPRU investment firms*</u>.			

… …

SUP 16.17 (Remuneration reporting) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

16.17 Remuneration reporting <u>[deleted]</u>

Insert the following new section after SUP 16.26 (Reporting of information about Directory persons). The text is not underlined.

16.27 MIFIDPRU Remuneration Report

Application

16.27.1 R This section applies to a *MIFIDPRU investment firm*, except where:

(1) the *MIFIDPRU investment firm* is part of a *group* to which prudential consolidation applies in accordance with provisions of the *UK CRR* and the *PRA Rulebook*; and

(2) the reports in (3) have been submitted to the *PRA* on behalf of the consolidation group and each covers the *MIFIDPRU investment firm*.

(3) the reports referred to in (2) are:

(a) the Remuneration Benchmarking Information Report; and

(b) the Higher Earners Report.

Purpose

16.27.2 G The purpose of this section is to ensure that the *FCA* receives regular information in a standard format to assist it in assessing the effectiveness of a *MIFIDPRU investment firm's remuneration* and incentive arrangements.

Reporting requirement

16.27.3 R A *firm* to which this section applies must submit the MIFIDPRU Remuneration Report:

(1) in the format set out in *SUP* 16 Annex 51R;

(2) in accordance with the instructions in *SUP* 16 Annex 51G; and

(3) online through the appropriate systems accessible from the *FCA's* website.

16.27.4 R The information in the MIFIDPRU Remuneration Report must be denominated in pound sterling.

16.27.5 R Where a *MIFIDPRU investment firm* does not form part of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5, it must complete the report on a solo basis in respect of *remuneration* awarded in the last completed financial year to all relevant staff of the *firm* who mainly carried on their professional activities within the *UK*.

16.27.6 R Where a *MIFIDPRU investment firm* forms part of an *investment firm group* to which consolidation applies under *MIFIDPRU* 2.5, it must not complete the report on a solo basis. The *MIFIDPRU investment firm* must complete the report on a consolidated basis in respect of *remuneration* awarded in the last completed financial year to all relevant staff of the *firm* who mainly undertook their professional activities within the *UK*.

16.27.7 G *SUP* 16.3.25G permits a single report to be submitted to meet the reporting requirements of all *firms* in a *group*.

Frequency and timing of report

16.27.8 R (1) A *firm* to which this section applies must submit a MIFIDPRU Remuneration Report to the *FCA* annually.

(2) The *firm* must submit that report to the *FCA* within 4 months of the end of the *firm's accounting reference date*.

In SUP 16 Annex 24 (Data items for SUP 16.12), replace existing data item FIN067 with the data item below and delete data item FIN068. The deleted data item is not shown.

FIN067 – CPMI – additional information

		A
	Capital held as own funds	
1	CET1 own funds held	*number*
2	AT1 own funds held	*number*
3	T2 own funds held	*number*
	IPRU-INV Funds under management requirement	
4	Total funds under management	*number*
5	Funds under management requirement	*number*
	IPRU-INV Fixed overheads requirement	
6	Total annual relevant expenses	*number*
7	Indicate if varied due to material change in business model.	*Yes/No*
	Professional negligence	
8	Capital requirement, or PII	*alphanumeric*
9	Additional own funds held (IPRU-INV 11.3.14EU)	*number*
10	PII capital requirement (IPRU-INV 11.3.15EU AND 11.13.16R)	*number*
	Liquid asset requirement	
11	Liquid asset requirement	*number*
12	Liquid assets held	*number*

In SUP 16 Annex 25 (Guidance notes for data items in SUP 16 Annex 24R), replace the existing guidance for data item FIN067 with the guidance below and delete the guidance for data item FIN068. The deleted guidance is not shown.

FIN067 – Additional reporting for Collective Portfolio Management Investment firms (CPMIs)

This form only applies to Collective Portfolio Management Investment firms

Capital held as own funds

Collective Portfolio Management Investment firms (CPMIs) should note that the definition of capital given in IPRU-INV uses the definitions in UK CRR as onshored, and not as amended by MIFIDPRU.

1A – Common Equity Tier 1 capital

CPMIs should enter the amount of CET1 capital they hold for their own funds. CET1 capital should be calculated in accordance with Article 50 of the UK CRR. This cell must always be completed with a positive number.

2A – Additional Tier 1 capital

CPMIs should enter the amount of AT1 capital they hold for their own funds. AT1 capital should be calculated in accordance with Article 61 of the UK CRR. CPMIs are not required to hold/issue AT1 capital. If no AT1 has been issued, or is held, a zero should be entered in this cell.

3A – Tier 2 capital

CPMIs should enter the amount of T2 capital they hold for their own funds. T2 capital should be calculated in accordance with Article 71 of the UK CRR.
CPMIs are not required to hold/issue T2 capital. If no T2 has been issued/is held, a zero should be entered in this cell.

Capital requirements

IPRU-INV Funds under management requirement

4A – Total funds under management

This should be reported by all firms with permission to manage investments. It should be the total non-MiFID funds under management of the firm even if this exceeds the amount that affects the funds under management capital requirement.

5A – Funds under management requirement

This is the base capital resources requirement plus 0.02% of the amount by which the firm’s funds under management exceeds €250,000,000.

The appropriate definition of funds under management to be used in this calculation is that set out in the FCA Handbook Glossary of definitions.

6A – Total annual relevant expenditure

The fixed overheads requirement is one quarter of the CPMIs previous financial year's relevant expenditure. The annual relevant expenditure should be calculated in accordance with MIFIDPRU 4.5.3R. The number entered should be the total annual relevant expenditure, not the fixed overheads requirement. If we have varied a CPMI's annual relevant expenditure due to a material change in its business model, that is the figure that should be included here. This should be the same number that has been entered in 6A in MIF001.

7A – variation in fixed overheads

A firm should select 'Yes' if we have amended its FOR due to a material change in its business model. An example of a material change is adding or removing permissions during the reporting year. If this is the case, the number entered into Cell A4 should be the equivalent annual relevant expenditure for their amended FOR.

Professional negligence

8A – Capital requirement or PII

The firm should report either "Own funds" or "PII". Where a firm has PII but also holds own funds to cover any excesses and/or exclusions on the policy, the firm should report "PII".

CPMIs should then only complete A9 or A10.

9A – Additional funds under management (IPRU-INV 11.3.14UK)

The amount of additional own funds used to cover potential liability risks arising from professional negligence for AIFM activities instead of professional indemnity insurance. When calculating this amount, firms should include the amount of any assets under management that are delegated to the firm by mandate. Note that this treatment is different from that prescribed for the funds under management requirement.

10A – PII capital requirement (IPRU-INV 11.3.15UK AND 11.13.16R)

The amount of any additional own funds required to cover any defined excess and exclusions in the insurance policy.

Liquid asset requirement

11A – Liquid asset requirement

The amount of own funds required by IPRU-INV 11.2.1R3.

12A – Amount of liquid assets held

The amount of liquid assets held at the reporting date. Assets are regarded as liquid if they are readily convertible to cash within one month. This figure must not include speculative positions.

Insert the following new annexes SUP 16 Annex 51R and SUP 16 Annex 52G after SUP 16 Annex 50G (Funeral Plan). The text is not underlined.

	MIF008 remuneration report
16 Annex 51R	This annex consists of forms which can be found through the following link: [*Editor's note*: insert link to document containing data item MIF008]

MIF008 – Remuneration

		A	B	C
	Basis of completion			
1	Is this report on behalf of a consolidation group?	*Yes/No*		
2	If yes, please list the firm reference numbers of all FCA regulated entities in the consolidated situation.	*number*		
	Part A: Remuneration	**Non-MRTs**	**MRTs**	
3	Number of staff	*number*	*number*	
4	Total fixed remuneration	*number*	*number*	
5	Total variable remuneration	*number*	*number*	
6	- of which, awarded in cash	*number*	*number*	
7	- of which, awarded in non-cash	*number*	*number*	
8	Proportion of total variable remuneration deferred	*number*	*number*	
	Part B: Adjustments	**Non-MRTs**	**MRTs**	
9	Number of individual awards of variable remuneration that have been downwardly adjusted in-year	*number*	*number*	
10	Total of all in-year adjustments to variable remuneration	*number*	*number*	
11	Number of individual awards of variable remuneration from previous years that have been downwardly adjusted (malus)	*number*	*number*	
12	Total of adjustments to previous years' awards of variable remuneration	*number*	*number*	
13	Number of individual awards of variable remuneration to which clawback has been applied	*number*	*number*	
14	Total amount of clawback applied.	*number*	*number*	
	Part C: Highest earning individuals	**Highest earner 1**	**Highest earner 2**	**Highest earner 3**

15	Is the individual a material risk taker?	*Yes/No*	*Yes/No*	*Yes/No*
16	Does the individual work in the front, middle or back office?	*front/ middle/back*	*front/ middle/back*	*front/ middle/back*
17	Fixed remuneration	*number*	*number*	*number*
18	Variable remuneration	*number*	*number*	*number*
19	- of which, awarded in cash	*number*	*number*	*number*
20	- of which, awarded in non-cash	*number*	*number*	*number*
21	Proportion of variable remuneration deferred	*number*	*number*	*number*

Guidance notes for the MIF008 remuneration report in SUP 16 Annex 51R

16 Annex 52G	This annex consists of forms which can be found through the following link: [*Editor's note*: insert link to document containing guidance notes to data item MIF008]

MIF008 – Remuneration

Introduction

The purpose of the MIFIDPRU Remuneration Report is to ensure that the FCA receives regular information in a standard format to assist it in assessing the effectiveness of MIFIDPRU investment firms' remuneration and incentive arrangements.

Consolidated reports

This form should be completed by all FCA investment firms in scope of the MIFIDPRU Remuneration Code.

Where a firm is not part of an FCA investment firm group or is part of an FCA investment firm group to which the group capital test applies, the firm should complete the form on a solo basis.

Where a firm forms part of an FCA investment firm group to which consolidation applies, it should complete the report on a consolidated basis. References to FCA investment firms should be taken to refer to the consolidation group. Accordingly, the consolidation group should be treated as a single entity. A consolidation group may choose to submit a single report to satisfy the reporting requirements of all FCA investment firms in the group.

Currency

All monetary values should be provided in Sterling.

Data elements

These are referred to by row first and then by column, so data element 2B will be in row 2 and column B. All data should be entered in full figures, not in 000s.

Basis of completion

1A asks FCA investment firms to specify whether they are submitting the report on behalf of a prudential consolidation group.

2A should only be completed by firms responding 'Yes' to 1A. It asks for the FRNs of all the FCA investment firms that form part of the consolidation group on behalf of which the report is being submitted.

Part A: Remuneration

This part of the form must be completed by all FCA investment firms.

Columns A and B

FCA investment firms that are small and non-interconnected firms (SNI firms) should complete only column A of Part A. They should enter the data in relation to all their staff. Column B should be left blank.

FCA investment firms that are not small and non-interconnected firms (non-SNI firms) should complete columns A and B of Part A. They should split the data according to which staff were and were not identified as material risk takers in the performance year concerned (see the rules and guidance in Chapter 5 of SYSC 19G for the definition of a material risk taker). Data relating to individuals who were identified as material risk takers for only part of the performance year should be included in column B.

3A - Number of staff (non-material risk takers)

The number of staff should be reported as a headcount figure (not as full-time equivalent), so based on the number of natural persons and independent of the individual's working hours. The headcount figure on the accounting reference date should be used.

3B – Number of staff (material risk takers)

The number of staff should be reported as a headcount figure (not as full-time equivalent), so based on the number of natural persons and independent of the individual's working hours. The figure should include all individuals who were identified as material risk takers for any part of the performance year.

4A and 4B - Total fixed remuneration

This is the total of all fixed remuneration paid by the firm for work and services in the performance year in question. Fixed remuneration includes salary payments; regular and non-discretionary pension contributions, for example under the terms of an employee pension scheme; and any other benefits that are not linked to performance criteria. See also our guidance in sections 4.2G to 4.4G of SYSC on categorising fixed and variable remuneration.

5A and 5A - Total variable remuneration

This is the total of all variable remuneration awarded by the firm (but not necessarily paid out) in respect of the performance year in question.

Amounts reported should include bonus awards (whether in cash, shares or other non-cash instruments), executive reward schemes (e.g. long term incentive schemes), carried interest plans, and discretionary pension benefits. The latter are enhanced pension benefits granted on a discretionary basis as part of an employee's variable remuneration package. See also our guidance in sections 4.2G to 4.4G of SYSC 19G on categorising fixed and variable remuneration.

Variable remuneration awarded based on a multi-year accrual period that does not revolve on an annual basis (where the firm does not start a new multi-year period every year), should be fully allocated to the performance year in which it was awarded, regardless when it is paid out.

Guaranteed variable remuneration (such as 'sign-on bonuses'), retention bonuses, buy-out awards, and severance pay should also be included. They should be reported for the year in which they are awarded, which may not always be the year in which they are also paid out.

Both upfront and, where applicable, deferred awards of variable remuneration in respect of the performance year in question should be included.

6A and 6B - Variable remuneration awarded in cash

Both upfront and, where applicable, deferred awards of variable remuneration in respect of the performance year in question, in cash should be included.

7A and 7B - Variable remuneration awarded in non-cash

Non-cash refers here to variable remuneration that is awarded in any of the eligible instruments listed in section 6.19R of SYSC 19G (shares, share-linked instruments, other instruments that comply with the requirements in Annex 1R of SYSC 19G or non-cash instruments which reflect the instruments of the portfolios managed by the firm), or by means of alternative arrangements approved for use by the FCA (see section 6.21G of SYSC 19G).

Both upfront and, where applicable, deferred awards of variable remuneration in respect of the performance year in question should be included.

8A and 8B - Proportion of total variable remuneration deferred

Firms should enter the percentage of the total variable remuneration in row 6 which has been deferred. Only the relevant proportion of variable remuneration awarded in respect of the performance year in question should be reported (not deferred variable remuneration from previous performance years).

Part B: Adjustments

This part of the form must be completed by all non-SNI firms. Columns A (non-material risk takers) and B (material risk takers) must be completed.

9A and 9B - Number of individual awards of variable remuneration that have been downwardly adjusted in-year

The number of instances in which the value of an award of variable remuneration has been reduced in-year, so during the performance year in question and before it was awarded.

10A and 10B - Total of all in-year adjustments to variable remuneration

The total value of the in-year downward adjustments reported in 9A and 9B.

11A and 11B - Number of individual awards of variable remuneration from previous years that have been downwardly adjusted (malus)

The number of instances in which the value of variable remuneration awarded in a previous performance year has been reduced (or cancelled) after it has been awarded but before it has vested. Only the new instances in which malus has been applied should be reported (earlier applications of malus will have been reported previously).

12A and 12B - Total of adjustments to previous years' awards of variable remuneration

The total value of the malus adjustments reported in 11A and 11B.

13A and 13B - Number of individual awards of variable remuneration to which clawback has been applied

The number of instances in which the value of variable remuneration awarded in a previous performance year has been reduced (or cancelled) after it has vested. Only the new instances in which clawback has been applied should be reported (earlier applications of clawback will have been reported previously).

14A and 14B - Total amount of clawback applied

The total value of the instances of clawback reported in 13A and 13B.

Part C: Highest earning individuals

This part of the form must be completed by non-SNI firms which do not meet the conditions in SYSC 19G.1.1R(2), so are subject to the rules on deferral, retention and pay-out in instruments.

Columns A, B and C must be completed in relation to the three individuals who were awarded the highest total remuneration (fixed plus variable remuneration) in respect of the performance year in question. The data on the highest earner should be put in column A, on the second highest earner in column B, and on the third highest earner in column C.

15A, 15B and 15C - Is the individual a material risk taker?

Firms should enter 'Yes' or 'No' to indicate whether the individual was identified as a material risk taker for any part of the performance year concerned.

16A, 16B and 16C - Does the individual work in the front, middle or back office?

Firms should enter 'front', 'middle' or 'back' to indicate in which kind of role the individual spent most of the performance year concerned. The following should serve as a guide:

Front office: Usually client-facing staff that generate revenue for the firm. They may work in sales, trading, broking, wealth/asset management, private equity or capital markets. Research analysts, for example on the buy-side, sell-side or in corporate finance, are usually also considered front office staff.

Middle office: Staff that work in risk management, financial control, compliance and legal. It may also include strategic management and some IT functions, such as creating and maintaining software for use by traders and brokers.

Back office: Staff providing administrative and operational support, including payment services. Areas will usually include human resources, accounting, settlement, clearing, records maintenance and IT services.

17A, 17B and 17C - Fixed remuneration

This is the fixed remuneration paid to the individual for work and services in the performance year in question. See notes on 4A and 4B for information on what should be included in fixed remuneration.

18A, 18B and 18C - Variable remuneration

This is the variable remuneration awarded (but not necessarily paid out) to the individual in respect of the performance year in question. See notes on 5A and 5B for information on what should be included in variable remuneration.

19A, 19B and 19C - Variable remuneration awarded in cash

See notes on 6A and 6B for information on what should be reported.

20A, 20B and 20C - Variable remuneration awarded in non-cash

See notes on 7A and 7B for information on what should be reported.

21A, 21B and 21C - Proportion of variable remuneration deferred

Firms should enter the percentage of the individual's variable remuneration in row 18 which has been deferred. Only the relevant proportion of variable remuneration awarded in respect of the performance year in question should be reported (not deferred variable remuneration from previous performance years).

INVESTMENT FIRMS PRUDENTIAL REGIME (CONSEQUENTIAL AMENDMENTS TO OTHER PRUDENTIAL SOURCEBOOKS) INSTRUMENT 2021

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the following powers and related provisions:

(1) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 137A (The FCA's general rules);
(b) section 137T (General supplementary powers);
(c) section 138D (Actions for damages);
(d) section 139A (Power of the FCA to give guidance);
(e) section 247 (Trust scheme rules);
(f) section 261I (Contractual scheme rules); and

(2) regulation 6(1) of the Open-Ended Investment Companies Regulations 2001 (SI 2001/1228).

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

Commencement

C. This instrument comes into force on [*date*].

Revocation of the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

D. The Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU) is revoked.

Amendments to the Handbook

E. 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).

(1)	(2)
Glossary of definitions	Annex A
General Prudential sourcebook (GENPRU)	Annex B
Prudential sourcebook for Investment Firms (IFPRU)	Annex C
Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)	Annex D
Interim Prudential sourcebook for Investment Businesses (IPRU-INV)	Annex E

F. The FCA confirms and remakes in the Glossary of definitions any defined expressions used in the modules of the FCA's Handbook of rules and guidance referred to in paragraph E where such defined expressions relate to any UK legislation that has been amended since those defined expressions were last made.

Notes

G. In the annexes to this instrument, the "notes" (indicated by "**Note:**" or "*Editor's note*:") are included for the convenience of readers, but do not form part of the legislative text.

Citation

H. This instrument may be cited as the Investment Firms Prudential Regime (Consequential Amendments to Other Prudential Sourcebooks) Instrument 2021.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

[*Editor's note*: This Annex makes the changes to Glossary terms that are necessary to explain how the relevant FCA prudential sourcebooks will apply alongside MIFIDPRU. The FCA intends to consult on the remaining consequential changes to the Glossary in a subsequent consultation paper.]

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

Amend the following definitions as shown.

capital resources	(1)	in relation to a ~~*BIPRU firm*~~ <u>*dormant account fund operator*</u>, the *firm's* capital resources as calculated in accordance with the ~~*capital resources table*~~ <u>relevant regulatory requirements</u>; or
	(2)	[deleted]
	(3)	~~(for the purposes of *GENPRU* and *BIPRU* (except *BIPRU 12*), in relation to an undertaking not falling within (1) and subject to (4)), capital resources calculated in accordance with (1) on the assumption that:~~
		~~(a)~~ ~~it is a *BIPRU firm* with a *Part 4A permission*; and~~
		~~(b)~~ ~~it carries on all its business in the *United Kingdom* and has obtained whatever *permissions* for doing so are required under the *Act*; or~~ <u>[deleted]</u>
	(4)	~~(for the purposes of *GENPRU* and *BIPRU* (except in *BIPRU 12*) and in relation to any *undertaking* not falling in (1) for which the methodology in (3) does not give an answer whose *capital resources* a *BIPRU firm* (the "relevant firm") is required to calculate under a *Handbook rule*) capital resources calculated under (1) on the assumption that it is a *BIPRU firm* of the same category as the relevant firm; or~~ <u>[deleted]</u>
	…	
capital resources requirements	an amount of *capital resources* that:	
	(1)	~~a *BIPRU firm* must hold as set out in the *main BIPRU firm Pillar 1 rules*; or~~ <u>a *dormant account fund operator*</u>

must hold in accordance with the relevant regulatory requirements; or

…

category B1 firm	a ~~*category B firm*~~ *personal investment firm* whose *permission* includes *dealing in investments as principal*.
category B2 firm	a ~~*category B firm*~~ *personal investment firm* whose *permission* does not include *dealing* as *principal*; and is not subject to a *requirement* preventing the holding or controlling of *client money* or *custody assets*.
category B3 firm	a ~~*category B firm*~~ *personal investment firm*: (a) whose *permission* includes only *insurance distribution activity* in relation to *non-investment insurance contracts*, *home finance mediation activity*, *assisting in the administration and performance of contracts of insurances*, *arranging* transactions in *life policies* and other insurance contracts, *advising on investments (except P2P agreements)* and receiving and transmitting, on behalf of investors, orders in relation to *securities* and *units* in *collective investment schemes*, *advising on P2P agreements*; and (b) which is subject to a *requirement* not to hold or control *client money* or *custody assets*.
investment management firm	a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, ~~*IFPRU investment firm*, *BIPRU firm*,~~ *MIFIDPRU investment firm*, *collective portfolio management firm*, *credit union*, *energy market participant*, *friendly society*, *ICVC*, *insurer*, *media firm*, *oil market participant* or *service company*, whose *permission* does not include a *requirement* that it comply with *IPRU-INV* 3 or *IPRU-INV* 13 (Personal investment firms) and which is within (a), (b) or (c): …
large exposure	(1) ~~(in *BIPRU*) the *exposure* of a *firm* to a *counterparty*, or a *group of connected clients*, whether in the *firm's non-trading book* or *trading book* or both, which in aggregate equals or exceeds 10% of the *firm's capital resources*.~~ [deleted] (2) ~~(except in (1))~~ has the meaning in article 392 of the *UK CRR* (Definition of a large exposure), as it applied on 31 December 2021.

local firm	has the meaning in article 4(1)(4) of the *UK CRR* as it applied on 31 December 2021.
personal investment firm	a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, ~~*IFPRU investment firm*, *BIPRU firm*,~~ *MIFIDPRU investment firm*, *building society*, *collective portfolio management firm*, *credit union*, *energy market participant*, *ICVC*, *insurer*, *media firm*, *oil market participant* or *service company*, whose *permission* does not include a *requirement* that it comply with *IPRU(INV)* 3 (Securities and futures firms) or 5 (Investment management firms), and which is within (a), (b) or (c): …
securities and futures firm	a *firm* whose *permitted activities* include *designated investment business*, which is not an *authorised professional firm*, *bank*, ~~*BIPRU firm* (unless it is an *exempt BIPRU commodities firm*), *IFPRU investment firm* (unless it is an exempt IFPRU investment firm),~~ *MIFIDPRU investment firm*, *building society*, *collective portfolio management firm*, *credit union*, *friendly society*, *ICVC*, *insurer*, *media firm* or *service company*, whose *permission* does not include a *requirement* that it comply with *IPRU(INV)* 5 (Investment management firms) or 13 (Personal investment firms), and which is within (a), (b), (c), (d), (e) , (f), (g) or (ga): … (g) ~~an *exempt BIPRU commodities firm*~~ [deleted] (ga) ~~an *exempt IFPRU investment firm*~~ [deleted] …

Delete the following definitions. The text is not shown struck through.

category B firm	a *personal investment firm*, other than an *exempt CAD firm*.

Annex B

General Prudential sourcebook (GENPRU)

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

1	**Application**	
1.1	**Application**	
1.1.1	G	There is no overall application statement for *GENPRU*. Each chapter or section has its own application statement.
1.1.2	G	~~Broadly speaking however, *GENPRU* applies (except as provided in *GENPRU* 1.1.2-AAG) to:~~ … (4) ~~a *BIPRU firm*; and~~ [deleted] (5) ~~groups containing such *firms*.~~ [deleted]
1.1.2-AA	G	[*Editor's note*: Amendments to this provision will be published in a subsequent consultation paper.]
1.1.2-B	G	~~*GENPRU* applies to a *collective portfolio management investment firm* that is a *BIPRU firm* in parallel with *IPRU-INV* 11 (see *IPRU-INV* 11.6).~~ [deleted]
1.1.2A	G	~~A *firm* should refer to *GEN* 2.2.13AR (cross-references in the Handbook) and *GEN* 2.2.23R to *GEN* 2.2.25G (cutover: application of provisions made by both the *FCA* and the *PRA*) when applying the rules and guidance in *GENPRU*.~~ [deleted]

…

GENPRU 1.2 and 1.3 are deleted in their entirety. The deleted text is not shown but the sections are marked [deleted] as shown below.

1.2	**Adequacy of financial resources [deleted]**
1.3	**Valuation [deleted]**

GENPRU 2 is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

2 Capital [deleted]

Amend the following as shown.

3 Cross sector groups

[*Editor's note*: Amendments to this section will be published in a subsequent consultation paper.]

GENPRU TP 8, TP8A, TP 8B, Sch 1, Sch 2 and Sch 3 are deleted in their entirety. The deleted text is not shown but the chapters are marked [deleted] as shown below.

TP 8 Miscellaneous capital resources definitions for BIPRU firms [deleted]

TP 8A Further miscellaneous capital resources definitions for BIPRU firms [deleted]

TP 8B Miscellaneous capital resources definitions for BIPRU firms: Core tier one capital [deleted]

Sch 1 Record keeping requirements [deleted]

Sch 2 Notification and reporting requirements [deleted]

Sch 3 Fees and other requirement payments [deleted]

Annex C

Prudential sourcebook for Investment Firms (IFPRU)

IFPRU 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 are deleted in their entirety. The deleted text is not shown but the chapters are marked [deleted] as shown below.

1	**Application [deleted]**
2	**Supervisory processes and governance [deleted]**
3	**Own funds [deleted]**
4	**Credit risk [deleted]**
5	**Operational risk [deleted]**
6	**Market risk [deleted]**
7	**Liquidity [deleted]**
8	**Prudential consolidation and large exposures [deleted]**
9	**Public disclosure [deleted]**
10	**Capital buffers [deleted]**

Amend the following as shown.

11 Recovery and resolution

[*Editor's note*: Amendments to this section will be published in a subsequent consultation paper.]

IFPRU TP 1, TP 4, TP 5, TP 8 and TP 9 are deleted in their entirety. The deleted text is not shown but the chapters are marked [deleted] as shown below.

TP 1	**GENPRU and BIPRU waivers: transitional [deleted]**
TP 4	**Deductions from own funds [deleted]**
TP 5	**Own funds: other transitionals [deleted]**
TP 8	**Countercyclical capital buffer: transitional [deleted]**
TP 9	**Large exposures limits [deleted]**

Annex D

Prudential sourcebook for Mortgage and Home Finance Firms, and Insurance Intermediaries (MIPRU)

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

1 Application and general provisions

…

1.3 Remuneration and property valuation requirements for MCD creditors

…

1.3.3 G For the purposes of *MIPRU* 1.3.2R:

(1) reliable standards for the valuation of residential immovable property include internationally recognised valuation standards, in particular those developed by the International Valuation Standards Council (IVSC), the European Group of Valuers' Associations (EGoVA) or the Royal Institution of Chartered Surveyors (RICS), as well as the standards in ~~*BIPRU* 3.4.77R to *BIPRU* 3.4.80R~~ *MIPRU* 1.3.3AG or, where applicable, *MIPRU* 4.2F.27R to *MIPRU* 4.2F.29R.

[**Note:** recital 26 of the *MCD*]

(2) the *MCD creditor* is not limited to on-site inspections where it is possible to demonstrate that any risks posed have been adequately assessed through the overall collateral management process.

1.3.3A G For the purposes of *MIPRU* 1.3.3G(1), reliable standards for the valuation of residential immovable property also include the following standards:

(1) the property must be valued by an independent valuer at or less than the market value. In the *UK* where rigorous criteria for the assessment of the mortgage lending value exist in statutory or regulatory provisions property may instead be valued by an independent valuer at or less than the mortgage lending value;

(2) market value means the estimated amount for which the property should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without

compulsion. The market value must be documented in a transparent and clear manner;

(3) mortgage lending value means the value of the property as determined by a prudent assessment of the future marketability of the property taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements must not be taken into account in the assessment of the mortgage lending value. The mortgage lending value must be documented in a transparent and clear manner; and

(4) the value of the collateral must be the market value or mortgage lending value reduced as appropriate to reflect the results of any required monitoring and to take account of any prior claims on the property.

…

3 Professional indemnity insurance

3.1 Application and purpose

3.1.1 R …

(5) This chapter does not apply to

…

(c) a *firm* to which *IPRU(INV)* 13.1.5R(1) (Financial resource requirements for personal investment firms: requirement to hold professional indemnity insurance) applies.~~; or~~

(d) ~~an *exempt CAD firm* to which *IPRU(INV)* 9.2.5R (Initial capital and professional indemnity insurance requirements - exempt CAD firms that are also IDD insurance intermediaries) applies.~~ [deleted]

…

...

4 Capital resources

4.1 Application and purpose

…

Application: banks, designated investment firms, building societies, insurers and friendly societies

4.1.4 R This chapter does not apply to:

…

(1A) *designated investment firm*; or

…

…

Application: firms carrying on designated investment business only

…

4.1.7 G A *firm* which carries on *designated investment business*, and no other *regulated activity*, may disregard this chapter. For example, a *firm* with *permission* limited to *dealing in investments as agent* in relation to *securities* is only carrying on *designated investment business* and ~~the Interim Prudential sourcebook for investment businesses or the Prudential sourcebook for Banks, Building Societies and Investment Firms, as appropriate, will apply.~~ may be subject to the Prudential sourcebook for MiFID Investment Firms (*MIFIDPRU*) or the Interim Prudential sourcebook for Investment Businesses (*IPRU(INV)*), as appropriate. However, if its *permission* is varied to enable it to arrange motor insurance as well, this activity is not *designated investment business* so the *firm* will be subject to the higher of the requirements in this chapter and those sourcebooks (see *MIPRU* 4.2.5R).

…

4.2 Capital resources requirements

…

Capital resources requirement: firms carrying on regulated activities including designated investment business

4.2.5 R The capital resources requirement for a *firm* (other than a *credit union*) carrying on *regulated activities*, including *designated investment business* and to which *IPRU(INV)* does not apply, is the higher of:

(1) the requirement which is applied by this chapter according to the activity or activities of the *firm* (treating the relevant *rules* as applying to the *firm* by disregarding its *designated investment business*); and

(2) the financial resources requirement which is applied by the ~~Prudential sourcebook for Investment Firms and the *UK CRR* or the General Prudential sourcebook and the Prudential sourcebook for Banks, Building Societies and Investment~~

~~Firms~~ Prudential sourcebook for MiFID Investment Firms (*MIFIDPRU*).

…

4.4 Calculation of capital resources

The calculation of a firm's capital resources

4.4.1 R (1) …

(2) If the *firm* is subject to ~~the Interim Prudential sourcebook for investment businesses, the Prudential sourcebook for Investment Firms and the *UK CRR*, the General Prudential sourcebook, the Prudential sourcebook for Banks, Building Societies and Investment Firms or the Credit Unions sourcebook,~~ the Prudential sourcebook for MiFID Investment Firms (*MIFIDPRU*) or the Interim Prudential sourcebook for investment businesses (*IPRU(INV)*), the capital resources are the higher of:

(a) the amount calculated under (1); and

(b) the financial resources calculated under those sourcebooks ~~and regulations~~.

…

After TP1 'Transitional Provisions' insert the following new transitional provision. The text is not underlined.

TP 2 Transitional Provisions for former exempt CAD firms

2.1 R

	(1)	**(2) Material to which the transitional provision applies**	**(3)**	**(4) Transitional provision**	**(5) Transitional provision: dates in force**	**(6) Handbook provision: coming into force**
	2.1	*MIPRU* 3.2	R	This *rule* applies to a *MIFIDPRU investment firm* that was classified as an *exempt CAD firm* subject to *IPRU-INV* 9 on	Until 31 December 2024	1 January 2022

				31 December 2021. Instead of complying with the requirements relating to professional indemnity insurance in *MIPRU* 3.2, a *firm* may comply with the professional indemnity insurance requirements set out in *IPRU-INV* 9.2.4R(1)(b) (except that the minimum limits of indemnity are at least EUR 1,250,000 for a single claim and EUR 1,850,000 in aggregate), together with *IPRU-INV* 9.2.7R and *IPRU-INV* 9.4.		
	2.2	*MIPRU* 3.2	R	This *rule* applies to a *MIFIDPRU investment firm* that was classified as an *exempt CAD firm* and was subject to *IPRU-INV* 13 on 31 December 2021. Instead of complying with the requirements relating to professional indemnity insurance in *MIPRU* 3.2, a *firm* may comply	Until 31 December 2024	1 January 2022

				with *IPRU-INV* 13.1.5R; *IPRU-INV* 13.1.7R to 13.1.10R; and *IPRU-INV* 13.1.15R to 13.1.29G.		
	2.3	*MIPRU* 3.2	R	References in this transitional provision to *IPRU-INV* are to the version of *IPRU-INV* that applied on 31 December 2021. References to an *exempt CAD firm* in *IPRU-INV* are to the *firm* to which this transitional provision applies.	Until 31 December 2024	1 January 2022
	2.4	*MIPRU* 3.2	G	*Exempt CAD firms* that carried on activities in scope of *MIPRU* 3.2 were exempt from the requirements in *MIPRU* 3.2, on the basis that they were subject to similar professional indemnity insurance requirements in *IPRU-INV* 9 or 13. The category of *exempt CAD firm* ceases to exist on 1 January 2022. These *firms* will no longer be subject to *IPRU-INV*, and instead	Until 31 December 2024	1 January 2022

				will become subject to prudential requirements in *MIFIDPRU*. *MIFIDPRU* does not require the holding of professional indemnity insurance. Former *exempt CAD firms* that carry on activities in scope of *MIPRU* 3.2 will therefore have to comply with the requirements to hold professional indemnity insurance in *MIPRU* 3.2 for the first time, consistent with other *investment firms* that have always had to comply with *MIPRU* 3.2. The purpose of this transitional provision is to give former *exempt CAD firms* time to comply with any new requirements in *MIPRU* 3.2. In particular, former *exempt CAD firms* should note that the minimum *limit of indemnity* for claims in aggregate can be higher under *MIPRU* 3.2.7R(2)(b) than		

				under the relevant provisions in *IPRU-INV*. *MIPRU* 3.2 also contains material relating to excess levels that differs from the material in *IPRU-INV*. *IPRU-INV* 9.4.4R requires that professional indemnity insurance policies must not be subject to unreasonable limits. *IPRU-INV* 13.1.9R requires that policies must incorporate terms which are appropriate. The *FCA* therefore expects former *exempt CAD firms* to have regard to the requirements in *MIPRU* 3.2 when renewing their professional indemnity insurance whilst this transitional applies.		

Annex E

Interim Prudential sourcebook for Investment Businesses (IPRU-INV)

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

1 Application and General Provisions

1.1 PURPOSE

…

1.1.3A ~~R~~ G ~~This sourcebook does not apply to *BIPRU firms* except:~~

~~(1)~~ ~~it does apply to certain *exempt BIPRU commodities firms*; and~~

~~(2)~~ ~~[deleted]~~ This sourcebook does not apply to a *MIFIDPRU investment firm* (unless it is a *collective portfolio management investment firm*).

1.1.3B R ~~This sourcebook does not apply to *IFPRU investment firms* except it does apply to *exempt IFPRU commodities firms*.~~ [deleted]

…

1.2 APPLICATION

…

1.2.2 R (1) *IPRU-INV* applies to:

(a) a *members' adviser*;

(b) an *investment management firm*;

(c) a *personal investment firm*;

(d) an *authorised professional firm*;

(e) a *securities and futures firm*;

(f) a *service company*;

(g) the *Society of Lloyd's* (in relation to *underwriting agents*);

(h) [deleted]

(i) a *credit union* which is a *CTF provider*; ~~and~~

(j) ~~an *exempt CAD firm*; and~~ [deleted]

(k) a *collective portfolio management firm*; and

(l) a *collective portfolio management investment firm*.

(2) *IPRU-INV* does not apply to:

(a) a *lead regulated firm*; or

(b) a *media firm*; or

(c) ~~a *BIPRU firm* (unless it is an *exempt BIPRU commodities firm*); or.~~ a *MIFIDPRU investment firm* (unless it is a *collective portfolio management investment firm*).

(d) ~~an *IFPRU investment firm* (unless it is an *exempt IFPRU commodities firm*).~~ [deleted]

…

…

Obligation to Comply

…

1.2.5 R Table

This table belongs to ~~IPRU (INV) 1.2.4R~~ *IPRU (INV)* 1.2.4R

Authorised professional firm	Chapters 1 and 2
Securities and futures firm (which is not a *MiFID investment firm*)	Chapters 1 and 3
~~*Securities and futures firm* (which is an *exempt BIPRU commodities firm* or an *exempt IFPRU commodities firm*)~~	~~Chapters 1 and 3~~
The *Society of Lloyd's* (in relation to *underwriting agents*) and *members' advisers*	Chapters 1 and 4
Investment management firm	Chapters 1 and 5
~~An *exempt CAD firm* or a *local firm*~~	~~Chapters 1 and 9~~
Service company	Chapters 1 and 6

Collective portfolio management firm	Chapters 1 and 11
Collective portfolio management investment firm	Chapters 1 and 11
Personal investment firm	Chapters 1 and 13
Credit union which is a *CTF provider*	Chapters 1 and 8

…

2 Authorised professional firms

2.1 APPLICATION

…

2.1.2 R (1) An *authorised professional firm* of a kind falling within (2) must comply with such of *IPRU-INV* 3, 5~~, 9~~ or 13 which in accordance with *IPRU-INV* 2.1.4R, most appropriately correlates to the type and scale of the business which it conducts.

(2) The type of *authorised professional firm* to which (1) applies is one:

(a) ~~which is also an *exempt CAD firm*;~~ <u>[deleted]</u>

(b) which acts as a *market maker*;

(c) which acts as a *stabilising manager*;

(da) which acts as a *small authorised UK AIFM* or a *residual CIS operator*;

(db) which acts as a *depositary*;

(e) which acts as a *broker fund adviser* or otherwise participates in a *broker fund* arrangement;

(f) whose main business, having regard to (3), is not the practice of its profession or professions;

(g) whose *permission* includes a requirement that it acts in conformity with the financial resources *rules* applicable to another type of *firm*; or

(h) whose *permission* includes *establishing, operating or winding up a personal pension scheme*.

…

(4) An *authorised professional firm* which, in accordance with (1), is required to comply with *IPRU-INV* 3, 5~~, 9~~ or 13 must immediately give notification of that fact to the *FCA* in accordance with *SUP* 15.7 (Forms and method of notification).

…

2.1.4 R This table belongs to *IPRU-INV* 2.1.1R

TYPE OF BUSINESS ACTIVITY	CHAPTER OF SOURCEBOOK
(i) *managing investments* other than for *retail clients*; or	*Investment management firm* - *IPRU-INV* 5
(ii) *OPS activity*; or	~~*Investment management firm* (which is an exempt CAD firm) - *IPRU-INV* 5 and 9~~
…	
(i) a *regulated activity* carried on as a member of an exchange; or	~~*Securities and futures firm* (which is an *exempt CAD firm*) - *IPRU-INV* 9~~
…	

…

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.-1 R This chapter applies to a *securities and futures firm* which~~:~~

~~(a)~~ is not a *MiFID investment firm*~~;~~

~~(b) is an *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business*; or~~

~~(c) an *exempt BIPRU commodities firm*; or~~

~~(d) is an *exempt IFPRU commodities firm*~~.

3.-1 G ~~An *exempt BIPRU commodities firm* is subject to the non-capital requirements of *GENPRU* and *BIPRU* as indicated in *BIPRU* TP 15. An~~

~~*exempt IFPRU commodities firm* is subject to the non-capital requirements of *IFPRU* and the *EU CRR*.~~ [deleted]

…

3.-1B R ~~The provisions on concentrated risk in this chapter:~~

~~(a)~~ ~~apply to an *exempt BIPRU commodities firm* if it satisfies the conditions in *BIPRU* TP 16 (Commodities firm transitionals: large exposures) in the version as at 31 December 2013; and~~

~~(b)~~ ~~do not apply to an *exempt IFPRU commodities firm* which applies the large exposure requirements Part Four (articles 387 to 403) of the *EU CRR*.~~ [deleted]

3.-1B G ~~Part Four (articles 387 to 403) of the *EU CRR* applies to an *exempt IFPRU commodities firm*, unless it qualifies for exemption under article 493(1) of the *EU CRR*.~~ [deleted]

3.-1C G ~~The table in *IPRU(INV)* 3-1DG sets out the parts of the *Handbook* and the *EU CRR* containing provisions on *large exposure* or concentrated risk which apply to a *securities and futures firm*.~~ [deleted]

3.-1D G ~~Table~~

~~Applicability of the provisions to securities and futures firms~~

~~This table belongs to *IPRU(INV)* 3-1CG~~ [deleted]

~~(1)~~ [deleted]	~~(2)~~	~~(3)~~
~~Type of *securities and futures firm*~~	~~Whether conditions in article 493(1) of the *EU CRR* are satisfied~~	~~Part of *Handbook* and *EU CRR* applicable for *large exposure* or concentrated risk requirements~~
~~*Energy market participant* (which is an *exempt IFPRU commodities firm*) with a *waiver* from *IPRU(INV)* 3~~	~~Yes~~	~~Not applicable~~
	~~No~~	~~Part Four (articles 387 to 403) of the *EU CRR* applies~~
~~*Energy market participant* (which is *exempt IFPRU commodities firm*) to which *IPRU(INV)* 3 applies~~	~~Yes~~	~~*IPRU(INV)* 3 applies~~
	~~No~~	~~Part Four (articles 387 to 403) of the *EU CRR* applies~~
	~~Yes~~	~~*IPRU(INV)* 3 applies~~

~~*Oil market participant* (which is an *exempt IFPRU commodities firm*) if it is a member of a *recognised investment exchange* or a *designated investment exchange* which is, under the rules of that exchange, entitled to trade with other members to which *IPRU(INV)* 3 applies~~	~~No~~	~~Part Four (articles 387 to 403) of the *EU CRR* applies~~
~~Other *oil market participant* (which is an *exempt IFPRU commodities* firm) to which *IPRU(INV)* 3 does not apply~~	~~Yes~~	~~Not applicable~~
	~~No~~	~~Part Four (articles 387 to 403) of the *EU CRR* applies~~
~~*Exempt IFPRU commodities firm* which is not an *energy market participant* or *oil market participant*~~	~~Yes~~	~~*IPRU(INV)* 3 applies~~
	~~No~~	~~Part Four (articles 387 to 403) of the *EU CRR* applies~~
~~*Securities and futures firm* (which is not a *MiFID investment firm*)~~	~~Not applicable~~	~~*IPRU(INV)* 3 applies~~

…

~~***Exempt CAD firms***~~

3.-60(8) R ~~*Rules* 3-61 to 3-182 do not apply to an *exempt CAD firm*, unless it carries on any *regulated activity* other than *MiFID business*.~~ [deleted]

~~***Exempt BIPRU commodities firms***~~

3.-60(9) G ~~An *exempt BIPRU commodities firm* should determine whether it is a *broad scope firm* or one of the other categories in this *rule*.~~ [deleted]

~~***Exempt IFPRU commodities firm***~~

3.-60(10) G ~~An *exempt IFPRU commodities firm* should determine whether it is a *broad scope firm* or one of the other categories in this *rule*.~~ [deleted]

…

Obligation to calculate PRR*

…

3.-80(2) G Notwithstanding the methods available for calculating the *PRR*, a *firm* may, in respect of any individual position, calculate a *PRR* which is more conservative than that calculated under the appropriate *rule*. However, in that case, the *firm* will need to be able to demonstrate that, in all circumstances, the calculation being employed does give rise to a higher *PRR* for the position.

~~* For guidance notes as to which methods to apply, see **Appendix 20**~~

…

Models approach

3.-169A G A *firm* may seek a modification or *waiver* from the *FCA* to use a *VaR model* as the basis for calculating the *PRR* on its commodity positions.

The *FCA* will grant a modification or *waiver* permitting the use of a *VaR model* only where a number of qualitative and quantitative standards are met. In assessing the *VaR model* the *FCA* will have regard to the matters set out in *BIPRU* 7.10 as it applied on 31 December 2021.

…

Appendix 1 GLOSSARY OF TERMS FOR IPRU(INV) 3

…

qualifying debt security means a *debt security* which:

…

(3) (for the purposes of *rule* 3-173B) meets the following conditions:

…

(d) ~~it is a mortgage backed *security* relating to residential real estate of the type referred to in *BIPRU* 3.4.94R(1)(d)(i) which meets the requirements about legal certainty referred to in *BIPRU* 3.4.62R; or~~ [deleted]

…

…

…

IPRU-INV 3 Appendix 20 is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

3 Appendix 20 GUIDANCE NOTES ON RECONCILIATION OF FIRM'S BALANCES WITH A COUNTERPARTY WHICH IS A MEMBER OF AN EXCHANGE (RULE 3-11(1)(D)) AND IPRU(INV) 9.6.1R (FOR AN EXEMPT CAD FIRM)) [deleted]

Amend the following as shown.

4 Lloyd's Firms

…

4.2 PURPOSE

…

4.2.4 R A *members' adviser* is not regulated by the *Society* and accordingly this chapter specifies the financial resource and accounting requirements to be met. *Firms* which fall within the scope of this chapter will be *firms* with *permission* only to advise persons on *syndicate* participation at Lloyd's. The nature of that advisory business is akin to corporate finance advice and so the applicable requirements are those in *IPRU-INV* 3 relevant to *firms* giving corporate finance advice. *Firms* with other *permissions* will fall within the scope of other chapters of *IPRU(INV)*, ~~*GENPRU*, *BIPRU*, *IFPRU* (and the *UK CRR*)~~ *MIFIDPRU* or *INSPRU*.

…

5 Financial resources

5.1 Application

5.1.1 R (1) (a) This chapter applies to an *investment management firm*, other than:

(i) [deleted]

(ii) a *MiFID investment firm* ~~(unless it is an *exempt CAD firm* for the purpose of calculating its own funds and if it carries on any *regulated activity* other than *MiFID business*)~~.

(aa) This chapter applies, as set out in *IPRU-INV* 5.1.2R, to:

(i) ~~*exempt CAD firms*;~~ [deleted]

(ii) **OPS firms**;

(iii) non-OPS Life Offices and non-OPS Local Authorities; and

(iv) individuals admitted to membership collectively.

5.1.2 R

	~~**Exempt CAD firms**~~	**OPS firms (see Note 1 below)**	**Non-OPS Life Offices and Non-OPS Local Authorities**	**Individuals admitted to membership collectively**
Financial resources rules				
IPRU-INV 5.2.1R to 5.7.3R	~~No (see Note 3 below)~~	No	No	Yes
	Individuals whose sole **investment business** is giving investment advice to institutional or corporate investors		*Firms* subject to "lead regulator arrangements"	All other *firms*
Financial resources rules				
IPRU-INV 5.2.1R to 5.7.3R	No		No	Yes
			(see Note 2 below)	
Accounting records rules				
IPRU-INV 5.3.1R(1) to	No		Yes	Yes

5.3.1R(6)				
Note 1. *Firms* are referred to the specific compliance reports for **OPS firms** required by Chapter 16 of the Supervision ~~Manual~~ manual.				
Note 2. A *firm* subject to "lead regulator arrangements" whereby a body other than the *FCA* is responsible for its financial regulation shall comply with the corresponding **financial resources rules** and **financial returns** rules of that body, and a breach of such rules shall be treated as a breach of the rules of the *FCA*.				
~~Note 3. The financial and non-financial resources rules for an *exempt CAD firm* are set out in *IPRU-INV chapter 9*. However, *IPRU-INV* 5.2.1R to 5.7.3R apply to an *exempt CAD firm* for the purpose of calculating its **own funds** (see *IPRU-INV* 9.2.9R(2)(a)) (although the Category A items of Tier 1 capital as set out in *IPRU-INV* 5.8.1R are replaced by all the items in *IPRU-INV* 9.3.1R) and if it carries on any *regulated activity* other than *MiFID business* (see *IPRU-INV* 9.2.3R).~~				

…

5.1.5 R Any reference in *IPRU-INV* 5 to the *UK CRR* is to the *UK CRR* in the form in which it stood at 31 December 2021.

…

5.3 Financial resources

…

5.3.2 R For a *firm* that has a *Part 4A permission* for *acting as trustee or depositary of a UK UCITS*, own funds has the meaning in article 4(1)(118) of the ~~*EU CRR*~~ *UK CRR*.

…

5.4 Financial resources requirement

…

Exceptions from the liquid capital requirement

5.4.2 R The **financial resources requirement** is an **own funds requirement** determined in accordance with *IPRU-INV* 5.4.3R for a *firm* if its **permitted business** does not include *establishing, operating or winding up a personal pension scheme* and ~~which~~ where:

(i) ~~is an *exempt CAD firm* which is also a *residual CIS operator* or a *small authorised UK AIFM* and that scheme or AIF only invests in *venture capital investments* for **non-retail clients**; or~~ [deleted]

(ii) ~~is not an *exempt CAD firm* if:~~

(a) the *firm's* **permitted business** does not include the holding of customers' monies or assets and it neither executes transactions (or otherwise arranges deals) in **investments** nor has such transactions executed for itself or its customers; or

(b) the *firm's* **permitted business** includes the activities as in (a) above, but only in respect of *venture capital investments* for **non-retail clients**; or

(c) the *firm* is a *trustee* of an *authorised unit trust scheme* whose **permitted business** consists only of trustee activities and does not include any other activity constituting **specified trustee business** or the *firm* is a depositary of an *ICVC* or *ACS* or a *depositary* appointed in line with *FUND* 3.11.12R (Eligible depositaries for UK AIFs) or a UK depositary of a *non-UK AIF* whose **permitted business** consists only of depositary activities.

(d) the *firm's* permitted business limits it to acting a residual CIS operator or a small authorised *UK AIFM* where the main purpose of the *collective investment scheme* or *AIF* (as applicable) is to invest in *permitted immovables* whether in the *UK* or abroad.

…

5.4.6 G If a *firm* that is the *depositary* of a *UCITS scheme* is seeking to determine its **own funds requirement** on the basis of the standardised approach in article 317 ~~*EU CRR*~~ *UK CRR*, it should notify the *FCA* in advance.

…

5.4.8 R A *firm* which is the *depositary* of a *UCITS scheme* must comply with the *rules* in *IFPRU* 2 as it applied on 31 December 2021, as if it were an *IFPRU investment firm* that is not a *significant IFPRU investment firm*.

5.4.9 G ~~A *firm* to which *IPRU-INV* 5.4.8R applies is, in particular, reminded of the *rules* in *IFPRU* 2 that determine whether a *firm* must apply the *ICAAP rules* on an individual basis or comply with them on a *consolidated basis* or *sub-consolidated basis* (see *IFPRU* 2.2.45R to *IFPRU* 2.2.49R).~~ [deleted]

…

5.8 Calculation of own funds and liquid capital

5.8.1 R A *firm* must calculate its **own funds** and **liquid capital** as shown below, subject to the detailed requirements set out in *IPRU-INV* 5.8.2R.

Financial resources			**Category**	**IPRU-INV 5.8.2R paragraph**
Tier 1				
	(1)	Paid-up share capital (excluding preference shares)	A	
	(1A)	Eligible LLP members' capital		
	(2)	Share premium account		
	(3)	Reserves		2A
	(4)	Non-cumulative preference shares		
Less:	(5)	**Investments** in own shares	B	
	(6)	Intangible assets		
	(7)	Material current year losses		4
	(8)	Material holdings in credit and financial institutions ~~and, for *exempt CAD firms* only, material insurance holdings.~~		5 ~~and 5A~~
	(8A)	Excess LLP members' drawings		
Tier 1 capital = (A-B)			C	
Plus: TIER 2				1
	(9)	Revaluation reserves	D	
	(10)	Fixed term cumulative preference share capital		~~1(a)~~
	(11)	Long-term **Qualifying Subordinated Loans**		~~1(a);~~ 6

	(12)	Other cumulative preference share capital and debt capital ~~but, for *exempt CAD firms*, only perpetual cumulative preference share capital and **qualifying capital instruments**~~		~~6A~~
	(13)	Qualifying arrangements		7
"Own Funds" = (C+D)			E	
Plus: TIER 3				
	(14)	Net **trading book** profits	F	~~1(b)(i);~~ 8
	(15)	Short-term **Qualifying Subordinated Loans** and excess Tier 2 capital		1(b)~~(ii); 1(c)~~; 9
Less:	(16)	Illiquid assets	G	10
Add:	(17)	**Qualifying Property**		11
"Liquid Capital" = (E+F+G)				

5.8.2	R	1 Deductions and Ratios (Items 10, 11 and 15)	(a)	~~Notwithstanding *IPRU-INV* 5.8.1R and 5.8.2R for an *exempt CAD firm*, in calculating **own funds**, all of Item 8 must be deducted after the total of Tier 1 and Tier 2 capital and the following restrictions apply:~~ [deleted]	
				~~(i)~~	~~the total of fixed term cumulative preference shares (item 10) and long-term **qualifying subordinated loans** (item 11) that may be included in Tier 2 capital is limited to 50 per cent of Tier 1 capital;~~
				~~(ii)~~	~~Tier 2 capital must not exceed 100 per cent of Tier 1 capital.~~
			(b)	A *firm* ~~which is not an *exempt CAD firm* and~~ which is subject to a **liquid capital requirement** under *IPRU-INV* 5.4.1R may take into account **qualifying subordinated loans** in the calculation of **liquid capital** up to a maximum of 400% of its Tier 1 capital.	

…			
~~5A Material insurance holdings (Item 8)~~	~~(a)~~	~~A material insurance holding means the holdings of an *exempt CAD firm* of items of the type set out in (b) in any:~~	
		~~(i)~~	~~*insurance undertaking*; or~~
		~~(ii)~~	~~*insurance holding company*;~~
		~~that fulfils one of the following conditions:~~	
		~~(iii)~~	~~it is a subsidiary undertaking of that *firm*; or~~
		~~(iv)~~	~~that *firm* holds a participation in it.~~
	~~(b)~~	~~An item falls into this provision for the purpose of (a) if it is:~~	
		~~(i)~~	~~an ownership share; or~~
		~~(ii)~~	~~subordinated debt or another item of capital that forms part of the *tier two capital resources* that falls into *GENPRU* 2 or, as the case may be, *INSPRU* 7, or is an item of "basic own funds" defined in the *PRA Rulebook*: Glossary.~~
…			
~~6A Perpetual cumulative preference share capital~~	~~Perpetual cumulative preference share capital may not be included in the calculation of own funds by an *exempt CAD firm* unless it meets the following requirements:~~		
	~~(a)~~	~~it may not be reimbursed on the holder's initiative or without the prior agreement of the *FCA*;~~	
	~~(b)~~	~~the instrument must provide for the *firm* to have the option of deferring the dividend payment on the share capital;~~	
	~~(c)~~	~~the shareholder's claims on the *firm* must be wholly subordinated to those of all non-subordinated creditors;~~	
	~~(d)~~	~~the terms of the instrument must provide for the loss-absorption capacity of the share capital and unpaid~~	

		~~dividends, whilst enabling the *firm* to continue its business; and~~	
	~~(e)~~	~~it must be fully paid up.~~	
7 Qualifying arrangements (Item 13)	~~(a)~~	~~An *exempt CAD firm* may only include a **qualifying undertaking** or other arrangement in item 13 if it is a **qualifying capital instrument** or a **qualifying capital item**.~~	
	~~(b)~~	A *firm* ~~which is not an *exempt CAD firm*~~ may only include **qualifying undertakings** in its calculation of **liquid capital** if:	
		(i)	it maintains **liquid capital** equivalent to 6/52 of its **annual expenditure** in a form other than **qualifying undertakings**; and
		(ii)	the total amount of all **qualifying undertakings** plus **qualifying subordinated loans** does not exceed the limits set out in paragraph (1)(b) above.
8 Net trading book profits (Item 14)	~~For *firms* which are not *exempt CAD firms* unaudited~~ Unaudited profits can be included at item 14.		
	…		
…			

…

IPRU-INV 9 is deleted in its entirety. The deleted text is not shown but the chapter is marked [deleted] as shown below.

9 Financial resources requirements for an exempt CAD firm [deleted]

Amend the following as shown.

11 Collective Portfolio Management Firms and Collective Portfolio Management Investment Firms

11.1 INTRODUCTION

Application

…

11.1.2 G A *collective portfolio management firm* that manages an *AIF* is an *internally managed AIF* or an *external AIFM*. If the *firm* is a *full-scope UK AIFM* this affects the *firm's* ~~*base capital resources requirement*~~ base own funds requirement (see *IPRU-INV* 11.3.1R). An *internally managed AIF* that is a *full-scope UK AIFM* is not permitted to engage in activities other than the management of that *AIF*, whereas an *external AIFM* that is a *full-scope UK AIFM* may manage *AIFs* and/or *UCITS*, provided it has *permission* to do so. A *full-scope UK AIFM* that is an *external AIFM* and/or a *UCITS management company* may undertake any of the additional investment activities permitted by article 6(4) of *AIFMD* or article 6(3) of the *UCITS Directive* (as applicable), provided it has *permission* to do so, but if so it is classified as a *collective portfolio management investment firm*, as opposed to a *collective portfolio management firm*.

A *collective portfolio management investment firm* is ~~also~~ a *MIFIDPRU investment* firm, and so is subject to the requirements ~~of either (i) *GENPRU* and *BIPRU* or (ii) *IFPRU*~~ of *MIFIDPRU* in addition to the requirements of *IPRU-INV* 11, as explained in ~~*IPRU-INV* 11.6.2G~~ *IPRU-INV* 11.6.3G.

11.1.2A G A *small authorised UK AIFM* that is not also a *UCITS management company* is not a *collective portfolio management firm* or a *collective portfolio management investment firm* and is therefore not subject to *IPRU-INV* 11. This type of *firm* is subject to *IPRU-INV* 5 if it is an *investment management firm*~~, *GENPRU* and *BIPRU* if it is a *BIPRU firm* or *IFPRU* if it is an *IFPRU investment firm*~~ or *MIFIDPRU* if it is a *MIFIDPRU investment firm*.

…

Purpose

11.1.4 G (1) …

(2) ~~This original purpose of this chapter was to implement relevant requirements of *AIFMD* and the *UCITS Directive*, which included imposing capital and professional indemnity insurance requirements on a *full-scope UK AIFM* and a *UCITS management company*. *AIFMD* and the *UCITS Directive* incorporate references to provisions of the *Banking Consolidation Directive* and the *Capital Adequacy Directive* in relation to initial capital, own funds and fixed overheads. However, in line with article 163 of the *CRD*, the *Banking Consolidation Directive* and the *Capital Adequacy Directive* were repealed from 1 January 2014 and references to these directives were replaced with references to the *CRD* and the *UK CRR* in line with the correlation table set out in Annex II to the *CRD* and in Annex IV to the *UK CRR*.~~ [deleted]

11.2 MAIN REQUIREMENTS

Collective portfolio management firm

11.2.1 R A *firm* must:

(1) …

(2) at all times, maintain *own funds* which equal or exceed:

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R); and

(ii) the amount specified in ~~article 97 of the *UK CRR* (Own funds based on fixed overheads) (as replicated in *IPRU-INV* 11.3.3AUK))~~ *IPRU-INV* 11.3.3AR; plus

…

(3) at all times, hold liquid assets (in line with *IPRU-INV* 11.3.17R) which equal or exceed:

(a) the higher of:

(i) the *funds under management requirement* (in line with *IPRU-INV* 11.3.2R) less the *base own funds requirement* (in line with *IPRU-INV* 11.3.1R); and

(ii) the amount specified in ~~article 97 of the *UK CRR* (Own funds based on fixed overheads)~~ *IPRU-INV* 11.3.3AR; plus

…

…

11.3 DETAIL OF MAIN REQUIREMENTS

…

Own Funds based on Fixed Overheads

11.3.3A ~~UK~~ R (1) ~~In accordance with Articles 95 and 96, an investment firm and firms referred to in point (2)(c) of Article 4(1) that provide the investment services and activities listed in points the *UK* legislation that implemented (2) and (4) of Section A of Annex I to Directive 2004/39/EC shall hold eligible capital~~ A *firm* must hold *own funds* of at least one quarter of the fixed overheads of the preceding year.

(2) ~~Where there is a change in the business of an investment firm since the preceding year that the competent authority considers to be material, the competent authority may adjust the requirement laid down in paragraph 1.~~ A *firm* must calculate its fixed overheads using the methodology for calculating *relevant expenditure* in *MIFIDPRU* 4.5 (Fixed overheads requirement).

(3) ~~Where an investment firm has not completed business for one year, starting from the day it starts up, an investment firm shall hold eligible capital of at least one quarter of the fixed overheads projected in its business plan, except where the competent authority requires the business plan to be adjusted.~~ A *firm* that has not been in business for one year may use its projected fixed overheads in accordance with the approach in *MIFIDPRU* 4.5.11R.

~~[Note: article 97(1) to (3) of the *UK CRR*] *EU CRR*]~~

…

11.6 ADDITIONAL REQUIREMENTS FOR COLLECTIVE PORTFOLIO MANAGEMENT INVESTMENT FIRMS

11.6.1 G A *collective portfolio management investment firm* is required to comply with ~~the applicable requirements of either of the following sourcebooks in addition to complying with *IPRU-INV* 11:~~ *MIFIDPRU* in addition to *IPRU-INV* 11.

~~(1) *GENPRU* and *BIPRU* if it is a *BIPRU firm*; or~~

~~(2) *IFPRU* if it is *IFPRU investment firm*.~~

11.6.2 G (1) A *collective portfolio management investment firm* may undertake the following *MiFID business*: *portfolio management*; investment advice; safekeeping and administration in relation to *shares* or *units* of collective investment undertakings; and (if it is an *AIFM investment firm*) reception and transmission of orders in relation to *financial instruments*.

(2) ~~Subject to the conditions that the *firm* is not authorised to provide safekeeping and administration in relation to *shares* or *units* of collective investment undertakings and is not permitted to hold client money or client assets in relation to its *MiFID business* (and for that reason may not place itself in debt with those clients) competent authorities may allow the *firm* to stay on the capital requirements that would be binding on that *firm* as at 31 December 2013 the *UK* legislation that implemented under the *Banking Consolidation Directive* and the *Capital Adequacy Directive* (in line with article 95(2) of the *UK CRR*). The *FCA* exercised this derogation and, as such, a *firm* meeting those conditions is a *BIPRU firm*. If the above conditions are not met, a *collective*~~

~~*portfolio management investment firm* is an *IFPRU investment firm*.~~ [deleted]

11.6.3 G A *collective portfolio management investment firm* is required to comply with the applicable requirements of ~~the sourcebooks set out in *IPRU-INV* 11.6.1G~~ *MIFIDPRU*, in parallel with its requirements under *IPRU-INV* 11. This means that a capital instrument or liquid asset may be used to meet either or both sets of requirements provided it meets the conditions set out in the relevant sourcebook.

11.6.4 G (1) ~~When a *collective portfolio management investment firm* that is a *BIPRU firm* calculates the *credit risk capital requirement* and the *market risk capital requirement* for the purpose of calculating the variable capital requirement under *GENPRU* 2.1.40R it must do so only in respect of *designated investment business*. For this purpose, *managing an AIF* or *managing a UK UCITS* is excluded from *designated investment business*.~~ [deleted]

(2) ~~Generally, *BIPRU* only applies to a *collective portfolio management investment firm* that is a *BIPRU firm* in respect of its *designated investment business* (excluding *managing an AIF* and *managing a UK UCITS*). However, *BIPRU* 2.2 (Internal capital adequacy standards), *BIPRU* 2.3 (Interest rate risk in the non-trading book), *BIPRU* 8 (Group risk - consolidation) and *BIPRU* 11 (Disclosure) apply to the whole of its business.~~ [deleted]

11.6.5 G (1) ~~When a *collective portfolio management investment firm* that is an *IFPRU investment firm* calculates the total risk exposure amount in article 92(3) of the *UK CRR*, the *own funds requirements* referred to in article 92(3)(a) (Risk weighted exposure amount for credit risk and dilution risk) and article 92(3)(b) (Risk weighted exposure amount for position risk) should include only those arising from its *designated investment business*. For this purpose, *managing an AIF* or *managing a UK UCITS* is excluded from *designated investment business*.~~ [deleted]

(2) ~~Generally, *IFPRU* only applies to the *designated investment business* (excluding *managing an AIF* and *managing a UK UCITS*) of a *collective portfolio management investment firm* that is an *IFPRU investment firm*. However, *IFPRU* 2.2 (Internal capital adequacy standards) and *IFPRU* 2.3 (Supervisory review and evaluation process: Internal capital adequacy standards) apply to the whole of its business.~~ [deleted]

11.6.6 G A *collective portfolio management investment firm* is not required to include its collective portfolio management activities when calculating its *K-factor metrics* under *MIFIDPRU*.

…

11.7 CAPITAL REPORTING

11.7.1 G The reporting requirements of capital adequacy for a *collective portfolio management firm* and a *collective portfolio management investment firm* are set out in *SUP* 16.12 (Integrated regulatory reporting). In summary, the relevant capital adequacy forms for its business of *managing an AIF* or *managing a UK UCITS* are as follows:

(1) a *collective portfolio management firm* is required to submit FIN066 (and FSA042 if it is a *UCITS firm*); and

(2) a *collective portfolio management investment firm* ~~that is an *IFPRU investment firm*~~ is required to submit FIN067 (and FSA042 if it is a *UCITS investment firm*) and also report ~~using COREP~~ in accordance with *MIFIDPRU* 9. ~~; and~~

(3) ~~a *collective portfolio management investment firm* that is a *BIPRU firm* is required to submit FIN068 (and FSA042 if it is a *UCITS investment firm*) and FSA003.~~ [deleted]

…

13 Financial Resources Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

Application

13.1.1 R This chapter applies to a *firm* which is a *personal investment firm* ~~as set out in the table below~~.

~~**Type of personal investment firm**~~	~~**Application of this Chapter**~~
~~A *personal investment firm* which is an *exempt CAD firm*~~	~~13.1, 13.1A, 13.13 and 13.14~~
~~A *personal investment firm* which is a *category B firm*~~	~~13.1 and 13.13 to 13.15~~

…

…

Capital resources: general accounting principles

13.1.4A R (1) …

(2) The accounting principles are referred to in~~:~~

~~(a)~~ the Notes for completion of the Retail Mediation Activities Return (*RMAR*) (under the heading "Accounting Principles") in *SUP* 16 Annex 18BG ~~for a *category B firm*; and~~

~~(b) the Guidance notes for data items in FSA032 (under the heading "Defined terms") in *SUP* 16 Annex 25AG for an *exempt CAD firm*.~~

…

Requirement to hold professional indemnity insurance

…

13.1.6 R ~~An *exempt CAD firm* is not required to effect and maintain professional indemnity insurance unless it chooses this *option* (see 13.1A).~~ [deleted]

…

Limits of indemnity

13.1.10 R If the *firm* is an *IDD insurance intermediary*, ~~whether or not it is also an *exempt CAD firm*,~~ the appropriate minimum *limits of indemnity* per year are no lower than:

(1) EUR 1,250,000 for a single claim against the *firm*; and

(2) EUR 1,850,000 in the aggregate.

[Note: articles 10(4) and 10(5) of the *IDD*]

13.1.11 R ~~If the *firm* is an *exempt CAD firm* that maintains professional indemnity insurance under 13.1A.3(1)(b), the appropriate minimum *limits of indemnity* per year are no lower than:~~

~~(1) EUR 1,000,000 for a single claim against the *firm*; and~~

~~(2) EUR 1,500,000 in the aggregate.~~ [deleted]

~~[Note: article 31(1) of the *CRD* (see also *IPRU-INV* 13.1A.3R)]~~

13.1.12 R ~~If the *firm* is both an *IDD insurance intermediary* and an *exempt CAD firm* that maintains professional indemnity insurance under *IPRU(INV)* 13.1A.4(1)(b), the appropriate additional *limits of indemnity* to *IPRU(INV)* 13.1.10R per year are no lower than:~~

~~(1) EUR 500,000 for a single claim against the *firm*; and~~

~~(2) EUR 750,000 in the aggregate.~~ [deleted]

~~[Note: article 31(2) of the *CRD* (see also *IPRU-INV* 13.1A.4R)]~~

13.1.13 R If the *firm* is not an *IDD insurance intermediary* ~~or an *exempt CAD firm*~~, then the following *limits of indemnity* apply:

(1) if the *firm* has relevant income of up to £3,000,000, no lower than £500,000 for a single *claim* against the *firm* and £500,000 in the aggregate; or

(2) if the *firm* has relevant income of more than £3,000,000, no lower than £650,000 for a single claim against the *firm* and £1,000,000 in the aggregate.

…

Additional capital resources - exclusions

13.1.23 R …

Note 2 - The calculation of a *firm's* capital resources is set out in sections ~~13.1A to 13.15 (see *IPRU-INV* 13.1.1R for application of these sections to an *exempt CAD firm* or a *category B firm*)~~ *IPRU-INV* 13.13 to 13.15.

…

Additional capital resources - excess

13.1.27 R …

Note 2 - The calculation of a *firm's* capital resources is set out in section~~s~~ ~~13.1A to 13.15 (see *IPRU-INV* 13.1.1R for application of these sections to an *exempt CAD firm* or a *category B firm*)~~ *IPRU-INV* 13.13 to 13.15.

…

IPRU-INV 13.1A is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

13.1A Capital resources and professional indemnity insurance requirements for an exempt CAD firm [deleted]

Amend the following as shown.

13.13 CAPITAL RESOURCES REQUIREMENT FOR ~~AN EXEMPT CAD FIRM AND A CATEGORY B FIRM~~ A PERSONAL INVESTMENT FIRM

Application

13.13.1 R This section applies to a *personal investment firm* ~~which is either:~~

~~(1) an *exempt CAD firm*; or~~

~~(2) a *category B firm*.~~

Requirement

13.13.2 R (1) A *firm* to which *MIPRU* does not apply must calculate its capital resources requirement as in (2).

(2) The *firm* must calculate its capital resources requirement as the higher of:

(a) £20,000; and

(b) the amount equivalent to the applicable percentage of its *annual income* specified in table 13.13.2(2)(b), depending on the type of *firm*.

Table 13.13.2(2)(b)

This table forms part of *IPRU-INV* 13.13.2R.

(A)	**(B)** **Type of** *firm*	**(C)** **Applicable percentage of** *annual income*
~~(1)~~	~~*Exempt CAD firm*~~	~~5%~~
…	…	…

…

13.14 CALCULATION OF ANNUAL INCOME FOR ~~AN EXEMPT CAD FIRM AND A CATEGORY B FIRM~~ A PERSONAL INVESTMENT FIRM

Application

13.14.1 R This section applies to a *personal investment firm* ~~which is either:~~

~~(1)~~ ~~an *exempt CAD firm*; or~~

~~(2)~~ ~~a *category B firm*~~.

Annual income

…

13.14.3 R …

(3) The relevant reporting form under *SUP* 16.12 is~~:~~

~~(a)~~ the Retail Mediation Activities Return (*RMAR*) (Section B: Profit and Loss Account) ~~for a *category B firm*; and~~

(b) ~~FSA030 (Income Statement) for an *exempt CAD firm*~~.

…

…

13.15 CALCULATION OF OWN FUNDS TO MEET THE CAPITAL RESOURCES REQUIREMENT FOR A ~~CATEGORY B FIRM~~ PERSONAL INVESTMENT FIRM

Application

13.15.1 R This section applies to a *personal investment firm* ~~which is a *category B firm*~~.

13.15.2 G ~~The calculation of *own funds* by an *exempt CAD firm* is in *IPRU-INV* 13.1A.14R.~~ [deleted]

…

~~Subordinated loans – Category B firm~~

13.15.7 R A ~~*category B firm*~~ *firm* may include a short-term subordinated loan as capital resources (see table in *IPRU-INV* 13.15.3R), if all the conditions in *IPRU-INV* 13.15.8R are satisfied.

…

Restrictions

13.15.9 R A ~~*Category B firm*~~ *firm* must calculate:

…

13.15.10 R A ~~*Category B firm*~~ *firm* must treat as a liability in the calculation or its capital resources any amount by which the sum of *IPRU-INV* 13.15.9R(1) exceeds the product of *IPRU-INV* 13.15.9R(2).

14 Consolidated Supervision for Investment Businesses

14.1 APPLICATION

14.1.1 R Subject to rule 14.1.2, *consolidated supervision* and this chapter apply to a *firm* which is a member of a group if:

(1) It is:

(a) a *securities and futures firm*, subject to the financial rules in Chapter 3, which is a *broad scope firm* but not a *venture capital firm*. ~~; and~~

(2) ~~It is neither a *BIPRU firm* nor an *IFPRU investment firm*.~~ [deleted]

…

Cases where consolidated supervision under this chapter will not apply

14.1.2 R A *firm* is not subject to ~~*consolidated supervision*~~ consolidated supervision under the rules in this Chapter where any of the following conditions are fulfilled:

(1) the *firm* is included in the supervision on a consolidated basis of the group of which it is a member by a *competent authority* other than the *FCA*; or

(2) the *firm* is ~~a member of a *UK consolidation group* already~~ included in the supervision on a consolidated basis of the group of which it is a member by the *FCA* under ~~*BIPRU* 8~~ *MIFIDPRU* 2.5 (prudential consolidation); or

(3) ~~the *firm* is a member of a group already included in the supervision on a consolidated basis of the group of which it is a member by the appropriate regulator under Part One, Title II, Chapter 2 of the *UK CRR*.~~ the *firm* is subject, along with a *MIFIDPRU investment firm*, to the *group capital test* in *MIFIDPRU* 2.6 (the group capital test).

…

Exemption from consolidated supervision

14.1.4 R A *firm* need not meet the requirements in rules 14.3.1 and 14.3.2 if:

…

(2) no *firm* in the group *deals in investments as principal*, except where it is dealing solely as a result of its activity of operating a *collective investment scheme*~~, or where the *firm's* positions fulfil the *CAD Article 5* exempting criteria;~~

…

…

14.2 SCOPE OF CONSOLIDATION

…

Exclusions

14.2.5 R A *firm* may, having first notified the FCA in writing, exclude from its group the following:

…

(2) any entity the inclusion of which within the group would be misleading or inappropriate for the purposes of ~~*consolidated supervision*~~ consolidated supervision.

…

14.5 GROUP FINANCIAL RESOURCES REQUIREMENT

…

14.5.2 R Financial resources requirements for individual entities in the group are:

…

(2A) for entities that are *recognised third country credit institutions* or *recognised third country investment firms* and which ~~is~~ are subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement;

(2B) for entities not in (2A) that are regulated by a third country competent authority named in the table in *BIPRU* ~~8 Annex 3R~~ 8 Annex 6R as it applied on 31 December 2021 and which is subject to the local regulatory capital requirement of that regulator, that local regulatory capital requirement; and

…

…

14 App 1 Interpretation

App 1.1 G Glossary of defined terms for Chapter 14

…

~~*CAD Article 5 exempting criteria*~~	~~the following criteria in respect of the *firm's* dealing positions:~~ ~~- such positions arise only as a result of the *firm's* failure to match investors orders precisely;~~ ~~- the total market value of all such positions is subject to a ceiling of 15% of the *firm's* initial capital; and~~ ~~- such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.~~

…

Annex A Limited liability partnerships: Eligible members' capital

Annex A 1 INTRODUCTION

…

1.5 G The following *rules* allow inclusion of members' capital within a *firm's* capital if it meets the conditions in this annex:

Chapter	**IPRU(INV) rule**	**How eligible LLP members' capital should be treated for the purposes of the IPRU(INV) rule**
3	Table 3-61	*Eligible LLP members' capital* may be counted as Tier 1 capital under item "A" within Table 3-61.
5	Table 5.2.2 (1): Item (1A)	*Eligible LLP members' capital* may be counted as Tier 1 capital within Category A of Table 5.2.2(1).
~~9~~	~~9.3.1~~	~~*Eligible LLP members' capital* may be counted as initial capital with *IPRU-INV* 9.3.1~~
11	Table 11.4	*Eligible LLP members' capital* may be counted as Item (5) in Table 11.4.
13	Table 13.15.3(1) ~~13.1A.6~~	*Eligible LLP members' capital* may be counted as capital resources relating to companies in *IPRU-INV* 13.15.3(1). ~~*Eligible LLP members' capital* may be counted as initial capital within *IPRU-INV* 13.1A.6.~~

…

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