



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY

Consultation Paper | CP43/16

# Implementation of MiFID II: Part 2

November 2016

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Responses are requested by Monday 27 February 2017.

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## 1 Overview

1.1 In this consultation paper (CP) the Prudential Regulation Authority (PRA) sets out its proposals for rules to transpose parts of the Markets in Financial Instruments Directive (MiFID) II. This is part of a legislative package, comprising the Directive, MiFID II (2014/65/EU);<sup>1</sup> the Markets in Financial Instruments Regulation (2014/600/EU) (MiFIR);<sup>2</sup> and Commission Delegated Regulation on organisational requirements and operating conditions (the ‘Delegated Regulation’).<sup>3</sup>

1.2 The CP is relevant to banks, building societies, PRA-designated investment firms and their qualifying parent undertakings, which for this purpose comprise financial holding companies and mixed financial holding companies, as well as credit institutions, PRA-designated investment firms and financial institutions that are subsidiaries of these firms.

1.3 This CP includes proposals to enhance governance through MiFID II management body requirements and key organisational requirements which will apply to MiFID and non-MiFID business. In the interests of a coherent approach to corporate governance, these MiFID II requirements are aligned, as far as possible, to requirements under CRD IV.<sup>4</sup> As the Delegated Regulation prescribes more detailed requirements in those areas for MiFID business and firms in scope, those specific matters will no longer be subject to PRA rules. The PRA sets out its proposed approach to how those management body and organisational requirements will apply to non-MiFID business.<sup>5</sup>

1.4 The PRA sets out proposals for granting authorisations in respect of a new MiFID investment activity, ‘operation of an organised trading facility (OTF)’, a new MiFID financial instrument ‘emission allowances’ and structured deposits. The power for the PRA to accept applications from firms for these permissions in advance of 3 January 2018 may be granted by HM Treasury (HMT) in a statutory instrument. If the PRA is granted this power, the PRA proposes that firms would be able to apply for permissions in advance of 3 January 2018. The PRA also sets out proposals for consequential amendments under the General Provisions Part and the Glossary.

1.5 The policy contained in this CP has been designed in the context of the current UK and EU regulatory framework. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including changes arising once any new arrangements with the European Union take effect.

### Background

1.6 MiFID I applied from 2007 and comprised a directive<sup>6</sup> and an implementing directive and regulation.<sup>7</sup> Together these set conditions for the authorisation and ongoing regulation of investment firms, regulated markets and multilateral trading facilities (MTF). It was designed

1 Directive 2014/65/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>.

2 Regulation 600/2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600>.

3 Commission Delegated Regulation: [http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation\\_en.pdf](http://ec.europa.eu/finance/securities/docs/isd/mifid/160425-delegated-regulation_en.pdf).

4 Capital Requirements Directive (2013/36/EU) (CRD) and Capital Requirements Regulation (575/2013) (CRR) – jointly ‘CRD IV’.

5 Rules 2.3, 2.3A and 2.4(5) of the Compliance and Internal Audit Part of the PRA Rulebook, rules 4.1, 5.1, 5.1A and 5.7 of the General Organisational Requirements Part and rules 2.6 and 2.7 of the Outsourcing Part.

6 Directive 2004/39/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1398325978410&uri=CELEX:02004L0039-20110104>.

7 Commission Directive 2006/73/EC <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006L0073&from=EN>; Commission regulation 1287/2006/EC <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:241:0001:0025:EN:PDF>.

to encourage competition between trading venues and ensure appropriate levels of protection for investors and consumers of investment services across the European Economic Area (EEA).

1.7 Following the 2008 financial crisis, the European Commission (EC) reviewed the MiFID I framework and concluded that it should be updated. These updates were designed to strengthen investor protection, reduce the risks of a disorderly market, address systemic risks, harmonise regulation across the European Union (EU) and increase the efficiency of financial markets. As a result of this review, the EU adopted a new package in June 2014. The MiFID II package includes:

- a directive revising and expanding the existing framework, which will be implemented through UK legislation in relevant areas; and
- a regulation which applies directly to firms across the EU.

1.8 MiFID II will apply from 3 January 2018 and Member States must transpose their provisions in national legislation and regulations by 3 July 2017.<sup>1</sup> HMT consulted on changes required to UK legislation in March 2015<sup>2</sup> and the Financial Conduct Authority (FCA) consulted on some of the necessary changes to its Handbook in December 2015,<sup>3</sup> July 2016<sup>4</sup> and September 2016, and has said it will publish one further consultation.<sup>5</sup>

1.9 This is the second PRA consultation on implementing MiFID II, and follows CP9/16, 'Implementation of MiFID II: Part 1',<sup>6</sup> which consulted on implementation of the MiFID II passporting regime and algorithmic trading. The final rules following CP9/16 were published in Policy Statement 29/16.<sup>7</sup>

### **The PRA's approach to implementing MiFID II**

1.10 The PRA is continuing the approach set out in CP9/16. MiFID II comprises a considerable package of reforms to the provision of investment services and activities in the EU. As the United Kingdom's prudential regulator for credit institutions and designated investment firms, the PRA is responsible for implementing those aspects of the MiFID II package that set out prudential requirements for affected PRA-authorized persons.

1.11 Co-ordination between the PRA and FCA is required under the Financial Services and Markets Act 2000 (FSMA) when either regulator is making rules. The PRA has aligned its proposals closely to those of the FCA, and this should contribute to ensuring clarity for firms and a proportionate approach to regulation.

1.12 The approach to implementation retains the approach of the 'common platform'. The common platform was initially devised to ensure that a single set of requirements apply to

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1 Directive 2016/1034/EU [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.175.01.0008.01.ENG&toc=OJ:L:2016:175:TOC](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.175.01.0008.01.ENG&toc=OJ:L:2016:175:TOC) and Regulation.

2 HM Treasury CP: Transposition of the Markets in Financial Instruments Directive II, March 2015; [www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii](http://www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii).

3 FCA CP15/43: Markets in Financial Instruments Directive II Implementation - Consultation Paper I, December 2015: [www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i](http://www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i).

4 FCA CP 16/19: Markets in Financial Instruments Directive II implementation proposals – Consultation Paper II [www.fca.org.uk/publications/consultation-papers/markets-financial-instruments-directive-ii-implementation-proposals-cp16-19](http://www.fca.org.uk/publications/consultation-papers/markets-financial-instruments-directive-ii-implementation-proposals-cp16-19).

5 FCA CP16/29 : Markets in Financial Instruments Directive II Implementation – Consultation Paper III [www.fca.org.uk/publications/consultation-papers/cp16-29-mifid-ii-implementation](http://www.fca.org.uk/publications/consultation-papers/cp16-29-mifid-ii-implementation).

6 March 2016, <http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp916.aspx>.

7 PRA Policy Statement 'MiFID II: Response to CP9/16' October 2016: [www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2916.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps2916.aspx).



firms subject to MiFID I and CRD,<sup>1</sup> as opposed to separate regulatory requirements arising from these directives being imposed upon the same business functions. Certain organisational and management body requirements are directly applicable to the MiFID business of firms by virtue of the Delegated Regulation. However, the PRA has taken the approach to continue to apply a single set of requirements in respect of both MiFID and non-MiFID business of firms. Accordingly the rules will extend the arrangements required by the Delegated Regulation to be put in place for all of the business of firms.

1.13 Some of the proposals in this CP will require firms to apply to the PRA for permissions to carry out new trading activity introduced by MiFID II. To implement these, if granted the power by HMT, the PRA proposes that firms would be able to apply for permissions in advance of 3 January 2018. Chapter 3 sets out the PRA's proposals and approach.

### **Responses and next steps**

1.14 This consultation closes on Monday 27 February 2017. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP43\_16@bankofengland.co.uk.

1.15 The proposed implementation date for the proposals in this CP is 1 January 2018.

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<sup>1</sup> Capital Requirements Directive (2013/36/EU) (CRD).

## 2 Proposals

2.1 The PRA proposes to amend its rules by extending the substantive requirements of the Delegated Regulation to apply across all businesses and firms within the scope of the rules. This will ensure that firms are able to apply the same requirements and standards across the whole of its business.

2.2 The proposed change is drafted by reference to the substantive provisions of the relevant articles of the Delegated Regulation in the General Organisational Requirements; Compliance and Internal Audit; Skills, Knowledge and Expertise; and Risk Control Parts of the Rulebook. The text of the Delegated Regulation is similar (with some extensions) to many of the provisions of the MiFID I implementing directive (which is transposed into the PRA Rulebook as part of MiFID I transposition). A link is provided to the Delegated Regulation in the draft rules for ease of reference.

2.3 The changes to the PRA Rulebook and supervisory statements are mainly on presentation. The main amendments are as follows:

- introducing new PRA rules to implement Articles 9 and 16 of MiFID II which relate to the Management body and Organisational requirements respectively;
- removal from the PRA Rulebook of provisions that are superseded by provisions in the Delegated Regulation as they are directly applicable;
- consequential changes to PRA Rulebook notes and supervisory statements to update references from MiFID to MiFID II;
- granting authorisations in respect of a new MiFID investment activity, 'operation of an organised trading facility (OTF)', a new MiFID financial instrument, 'emission allowances' and structured deposits; and
- consequential amendments under the General Provisions Part and the Glossary.

2.4 The proposed changes to PRA rules are set out in Appendices 1 to 4.

### Management body

2.5 MiFID II aims to strengthen the role of the management body by providing measures that harmonise corporate governance frameworks across firms. The management body requirements in MiFID II focus on, among other things, the effective oversight and control that the management body should have over the activities of the firms (especially in areas such as risk strategy and internal governance); in addition it deals with issues such as board members' time commitment and diversity which should be taken into account by regulators. Article 9(1) imports into MiFID II the requirements on governance arrangements and the management body in Article 88 and Article 91 of CRD IV, respectively.

2.6 The PRA proposes to introduce PRA rules to require firms to implement the management body requirements under MiFID II. The management body requirements, contained in Article 9 of MiFID II, seek to enhance governance by setting the responsibilities of the management body. The PRA proposes to implement these management body requirements through changes to the General Organisational Requirements and Skills, Knowledge and Expertise Parts in the PRA Rulebook.

2.7 Article 9 of MiFID II aims to enhance effective oversight and control over the activities of firms and requires the management body to assume clear responsibilities across the business cycle of the firm, including setting strategic objectives, and responsibility for the risk strategy and the internal governance of the firm.<sup>1</sup> These proposals promote sound internal governance arrangements as well as a sound risk culture.

2.8 Firms should note that European Securities and Markets Authority (ESMA) and the European Banking Authority (EBA) are consulting on joint guidelines on the assessment of the suitability of members of the management body and key function holders under CRD IV and MiFID II.<sup>2</sup>

### Organisational requirements

2.9 The PRA proposes to introduce rules to require firms to implement the organisational requirements under MiFID II. The organisational requirements involve new requirements about the operation of the compliance function, outsourcing, and record-keeping, including a list of minimum records set out in the Delegated Regulation. The PRA proposes to implement these organisational requirements through changes to the Compliance and Internal Audit, General Organisational Requirements, Outsourcing, Record Keeping and Risk Control Parts. The organisational requirements are contained in Article 16 of MiFID II. The PRA also proposes to introduce rules to extend the substance of the requirements of the Delegated Regulation (Articles 21-25 and 72) as set out in 2.1.

### Consequential updates to MiFID references

2.10 References to MiFID in rules have been updated to MiFID II. These changes are not a change in policy. The updates to rules are marked in Appendix 1. References to MiFID in PRA supervisory statements will also be updated.<sup>3</sup>

### New regulated activity and financial instrument

2.11 Annex I, Section A of MiFID II includes a new regulated activity of 'operation of an OTF' and new MiFID financial instrument of 'emissions allowances'. It also requires investment firms and credit institutions to comply with certain requirements when selling or advising clients in relation to structured deposits.

2.12 These new MiFID regulated activities, MiFID financial instruments and activities in respect of structured deposits are proposed to be transposed into UK legislation via amendments to the Regulated Activities Order (RAO). HMT consulted on the changes in March 2015.<sup>4</sup> The PRA's proposals and draft rules are subject to the outcome of the open HMT consultation.

### Operation of an OTF

2.13 MiFID II introduces a new category of trading venue called an organised trading facility (OTF). An OTF is a new type of trading facility alongside a regulated market (RM) and

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1 Recital 54 Directive 2014/65/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>.  
 2 [www.esma.europa.eu/documents/10180/1639842/Consultation+Paper+on+Joint+ESMA+EBA+Guidelines+on+suitability+of+management+body+%28EBA-CP-2016-17%29.pdf](http://www.esma.europa.eu/documents/10180/1639842/Consultation+Paper+on+Joint+ESMA+EBA+Guidelines+on+suitability+of+management+body+%28EBA-CP-2016-17%29.pdf).  
 3 The supervisory statements (SSs) that will be updated are SS17/13 'Credit risk mitigation' [www.bankofengland.co.uk/Pages/Search.aspx?q=ss17%2F13](http://www.bankofengland.co.uk/Pages/Search.aspx?q=ss17%2F13); SS20/13 'Third country equivalence aspects of the credit risk provisions in the CRR, and recognised exchanges' [www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2013update.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2013update.aspx); SS20/15 'Supervising building societies' treasury and lending activities' [www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2015.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2015/ss2015.aspx); SS21/15 'Internal governance' [www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2115update.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2115update.aspx); and SS28/15 'Strengthening individual accountability in banking' [www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2815update2.aspx](http://www.bankofengland.co.uk/pr/Pages/publications/ss/2016/ss2815update2.aspx).  
 4 See page 6, footnote 2.

multilateral trading facility (MTF). OTFs will be able to be operated by either an investment firm, credit institution or a regulated investment exchange (RIE).

2.14 HMT has consulted on amending the RAO to include the OTF category as a regulated activity and emission allowance as a specified investment. Firms will have to apply to the PRA for a Variation of Permission (VoP) to add this activity or investment to their Part 4A permission. No special procedure for this is included in the proposed RAO amendment Order, so the normal legislative rules for VoPs apply. More information on the VoP process for PRA authorised firms is available on the Bank of England website.<sup>1</sup> If HMT grant the power for the appropriate regulator to process these applications in advance of MiFID II implementation, the PRA proposes that firms would be able to apply in advance of 3 January 2018. For dual regulated firms the appropriate regulator is the PRA. Firms will however have the ability to apply from such time as the amendments to the RAO are made. The PRA will provide more information on this when the final policy is issued.

### Structured deposits

2.15 MiFID II introduces new provisions in relation to structured deposits; HMT has proposed that as part of the transposition of these provisions in the United Kingdom, amendments are made to the RAO to include: a definition of a structured deposit; extend the regulated activities of dealing in investments as agent; arranging deals in investments; managing investments and advising on investments to structured deposits; and make transitional provision for VoPs relating to these activities. Note that, if a firm already has permission to accept deposits, it will not need an additional permission to accept structured deposits.

2.16 Recital 39 to MiFID II notes that, “Structured deposits have emerged as a form of investment product but are not covered under any legislative act for the protection of investors at Union level, while other structured investments are covered by such legislative acts. It is therefore appropriate to strengthen the confidence of investors and to make regulatory treatment concerning the distribution of different packaged retail investment products more uniform in order to ensure an adequate level of investor protection across the Union. For that reason, it is appropriate to include in the scope of this Directive structured deposits.”

2.17 HMT intends to amend the RAO (consulted on in March 2015)<sup>2</sup> to extend the regulated activities of dealing in investments as agent (Article 21), arranging deals in investments (Article 25), managing investments (Article 37) and advising on investments (Article 53) to cover structured deposits.

2.18 The proposed RAO amendment Order would add into the RAO the definition of a structured deposit, based on that contained in Article 4(1)(43) of MiFID II:

“‘Structured deposit’ means a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors, such as:

- An index or combination of indices excluding variable rate depositions whose return is directly linked to an interest rate index such as Euribor or Libor;
- A financial instrument or combination of financial instruments;

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<sup>1</sup> Variation of permission: <http://www.bankofengland.co.uk/pr/Pages/authorisations/variationpermission/default.aspx>.  
<sup>2</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418281/PU\\_1750\\_MiFID\\_II\\_26.03.15.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418281/PU_1750_MiFID_II_26.03.15.pdf).

- A commodity or combination of commodities or other physical or non-physical non-fungible asset; or
- A foreign exchange rate or combination of foreign exchange rates.”

2.19 The proposed RAO amendment Order, includes a transitional provision by which, for as long as it applies, the VoP requirements contained in FSMA are disabled for firms that are already advising on investments, arranging deals in investments (including making arrangements with a view to transactions in investments), dealing in investments as agent, and managing investments. Instead, a VoP is deemed to have taken place, and permission to carry out the relevant regulated activity or activities in relation to structured deposits is deemed to have been obtained, if the relevant firm has notified the appropriate regulator of its wish to carry out the relevant activity or activities in relation to structured deposits, and the appropriate regulator has acknowledged receipt of the notification.

2.20 The PRA proposes to direct firms that wish to follow this transitional approach to notify the PRA using the form available on its website.<sup>1</sup>

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<sup>1</sup> Variation of permission: [www.bankofengland.co.uk/prs/Pages/authorisations/variationpermission/applying.aspx](http://www.bankofengland.co.uk/prs/Pages/authorisations/variationpermission/applying.aspx).

### 3 The PRA's statutory obligations

3.1 Before making any rules, the Financial Services and Markets Act 2000 (FSMA)<sup>1</sup> requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective,<sup>2</sup> insurance objective<sup>3</sup> (if applicable), and secondary competition objective;<sup>4</sup>
- an explanation of the PRA's reasons for believing that making the proposed rules are compatible with its duty to have regard to the regulatory principles;<sup>5</sup> and
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons.<sup>6</sup>

3.2 The PRA is also required by the Equality Act 2010<sup>7</sup> to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

#### Cost benefit analysis

3.3 The proposals in this CP relating to management body and organisational requirements extend the scope of existing MiFID requirements already met by the population of affected firms, and do so in a way that is expected to impose incremental costs on firms of minimal significance. The proposals are expected to generate modest benefits by further strengthening existing internal governance arrangements and promoting a sound risk culture. Many of the rules transposing MiFID II Implementing Directive are contained in the Delegated Regulation which is directly applicable to affected PRA-authorized persons.

3.4 The proposals relating to consequential updates to MiFID references are not expected to impose material incremental costs on firms. The cost of any VoP applications arising in relation to the operation of an OTF is not expected to impose material costs on firms and the grandfathering notification provisions relating to structured deposits avoid the need for a VoP altogether. The proposals are expected to generate benefits by ensuring that investors in the newly regulated activities and financial instruments that are the subject of this CP have the levels of investor protection extended to them that already exist for investors in the regulated activities and financial instruments within the scope of the existing MiFID I regime. In terms of the record keeping, additional costs will be marginal as the proposals require only minimal additional information to be kept, and systems already in place should allow it to be stored.

#### Compatibility with the PRA's objectives

3.5 The PRA has a general objective to promote the safety and soundness of the firms it regulates and a specific insurance objective to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders. These

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1 Section 138J of FSMA.

2 Section 2B of FSMA.

3 Section 2C of FSMA.

4 Section 2H(1) of FSMA.

5 Sections 2H(2) and 3B of FSMA.

6 Section 138K of FSMA.

7 Section 149.

proposals are intended to contribute to the safety and soundness of firms by requiring the management body to assume clear responsibilities and firms to put in place effective oversight and controls over their activities.

3.6 The PRA has a secondary objective to facilitate, so far as is reasonably possible, effective competition in the markets for services provided by PRA-authorized persons in carrying out regulated activities. Since the PRA expects its proposals to introduce costs of minimal significance, it does not expect there to be any impact on competition.

### **Regulatory principles**

3.7 In developing the proposals set out in this CP, the PRA has had regard to the regulatory principles. Three of the principles are of particular relevance to the proposals in this CP:

- The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction. The PRA's approach to implementing MiFID II is to transpose the legislation in line with its responsibilities as a national competent authority, but while providing as much continuity as possible for firms and without enhancing or increasing the new requirements under MiFID II. The PRA's proposals are closely aligned with those of the FCA. It is the PRA's intention that extra burdens as a result of its implementation of MiFID II should be proportionate to the benefits.
- The principle that the regulators should exercise their functions as transparently as possible. The PRA is setting out these proposals to provide clarity and certainty to firms on its approach to implementation. This is consistent with the principle that the PRA exercise its functions transparently.
- The principle that a firm's senior management is responsible for the firm's activities and for ensuring that its business complies with regulatory requirements. The proposals in this CP seek to enhance accountability by, for instance, ensuring firms clearly allocate responsibilities to senior individuals and that the management defines, approves and oversees the organisation of the firm.

### **Impact on mutuals**

3.8 In the PRA's opinion, the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms.

### **Equality and diversity**

3.9 The PRA has performed an assessment of the policy proposals and does not consider that the proposals give rise to equality and diversity implications.

## Appendices

- 
- 1 PRA Rulebook: Internal governance instrument**

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  - 2 PRA Rulebook: Notifications instrument**

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  - 3 PRA Rulebook: Glossary instrument**

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  - 4 PRA Rulebook: General provisions instrument**



## Appendix 1: PRA Rulebook: Internal governance instrument

### PRA RULEBOOK: CRR FIRMS: INTERNAL GOVERNANCE INSTRUMENT 2017

#### Powers exercised

- A. The Prudential Regulation Authority (“PRA”) 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 137G (The PRA’s general rules); and
  - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G (2) (Rule-making instruments) of the Act.

#### Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of the proposed rules and had regard to representations made.

#### PRA Rulebook: CRR Firms: Internal Governance Instrument 2017

- D. The PRA makes the rules in Annexes A to F to this instrument.

| Part                                | Annex |
|-------------------------------------|-------|
| Compliance and Internal Audit       | A     |
| General Organisational Requirements | B     |
| Outsourcing                         | C     |
| Record Keeping                      | D     |
| Risk Control                        | E     |
| Skills, Knowledge and Expertise     | F     |

#### Commencement

- E. This instrument comes into force on [DATE].

#### Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Internal Governance Instrument 2017.

#### By order of the Board of the Prudential Regulation Authority

[DATE]

## **Annex A**

In this Annex, new text is underlined and deleted text is struck through.

**Part**

# **COMPLIANCE AND INTERNAL AUDIT**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. COMPLIANCE**
- 3. INTERNAL AUDIT**

**Links**

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*, ~~and~~
- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definitions shall apply:

Article 22 Compliance Requirements

means the requirements and obligations set out in Article 22 (Compliance) of the MODR.

Article 24 Audit Requirements

means the requirements and obligations as set out in Article 24 (Internal Audit) of the MODR.

*host Member State*

has the meaning given in Article 4(1)(2455) of *MiFID II*.

**~~[Note: Art. 2(6) of the MiFID implementing Directive]~~**

other matters

means, in relation to a requirement under the MODR, matters within the scope of 1.1 that are not within the scope of that requirement.

## 2 COMPLIANCE

---

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

**[Note: Art. 16(2) of MiFID II]**

~~2.2 A firm must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under the regulatory system, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the PRA to exercise its powers effectively under the regulatory system and to enable any other competent authority to exercise its powers effectively under MiFID.~~

**[Note: Art. 6(1) of the MiFID implementing Directive]**

2.2A A MiFID investment firm must extend the arrangements required by the Article 22 Compliance Requirements so that they apply with respect to other matters on the following basis:

- (1) references to “Directive 2014/56/EU” are references to “the regulatory system”;
- (2) references to “investment services and activities” and “investment services, activities” are references to financial services and activities;
- (3) references to “relevant persons” are references to relevant persons; and
- (4) references to “Article 25(2) of this Regulation” are references to General Organisational Requirements 4.2.

2.2B A firm that is not a MiFID investment firm must comply with Article 22 Compliance Requirements on the basis set out in 2.2A and as if references to “investment firm” refer to a firm.

~~2.3 A firm must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:~~

- ~~(1) to monitor on a permanent basis and to assess, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with 2.2 and the actions taken to address any deficiencies in the firm’s compliance with its obligations; and~~
- ~~(2) to advise and assist the relevant persons responsible for carrying out regulated activities to comply with the firm’s obligations under the regulatory system.~~

**[Note: Art. 6(2) of the MiFID implementing Directive]**

~~2.4 In order to enable the compliance function to discharge its responsibilities properly and independently, a firm must ensure that the following conditions are satisfied:~~

- ~~(1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;~~
- ~~(2) a compliance officer must be appointed and replaced by the management body and must be responsible for the compliance function and for any reporting as to compliance required by General Organisation Requirements 4.2;~~

- ~~(3) — the *relevant persons* involved in the compliance functions must not be involved in the performance of services or activities they monitor;~~
- ~~(4) — the method of determining the *remuneration* of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.~~

**[Note: Art. 6(3) first paragraph of the *MiFID implementing Directive*]**

- ~~2.5 — A *firm* need not comply with 2.4(3) or (4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.~~

**[Note: Art. 6(3) second paragraph of the *MiFID implementing Directive*]**

- 2.6 (1) This rule applies to a *firm* conducting *investment services and activities* from a *branch* in another *EEA State*.
- (2) References to the *regulatory system* in 2.1, 2.2A and 2.3 apply in respect of a *firm's branch* as if *regulatory system* includes a *host Member State's* requirements under *MiFID II* and the *MiFID implementing Directive* which are applicable to the *investment services and activities* conducted from the *firm's branch*.

**[Note: Art. 4316(2) of *MiFID II*]**

### 3 INTERNAL AUDIT

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- ~~3.1 — A *firm* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:~~
- ~~(1) — to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the *firm's* systems, internal control mechanisms and arrangements;~~
- ~~(2) — to issue recommendations based on the result of work carried out in accordance with (1);~~
- ~~(3) — to verify compliance with those recommendations; and~~
- ~~(4) — to report in relation to internal audit matters in accordance with General Organisational Requirements 4.2.~~

**[Note: Art. 8 of the *MiFID implementing Directive*]**

- 3.1A — A *MiFID investment firm* must extend the arrangements required by the *Article 24 Audit Requirements* so they apply with respect to *other matters* on the following basis:
- (1) references to “investment services and activities” are financial services and activities;
- (2) references to “relevant persons” are references to *relevant persons*; and

(3) references to “Article 25(2)” are references to General Organisational Requirements 4.2.

3.2 A firm that is not a MiFID investment firm must comply with the Article 24 Audit Requirements on the basis set out in 3.1A and as if references to “investment firm” refer to a firm.

Part

## COMPLIANCE AND INTERNAL AUDIT

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Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>financial crime</i>    | <i>s1H FSMA</i>                           |
| <i>person</i>             | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |

## **Annex B**

In this Annex, new text is underlined and deleted text is struck through.

**Part**

# **GENERAL ORGANISATIONAL REQUIREMENTS**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. GENERAL REQUIREMENTS**
- 2A. WHISTLEBLOWING**
- 3. PERSONS WHO EFFECTIVELY DIRECT THE BUSINESS**
- 4. RESPONSIBILITY OF SENIOR PERSONNEL**
- 5. MANAGEMENT BODY**
- 6. NOMINATION COMMITTEE**
- 7. GROUP ARRANGEMENTS**

**Links**



## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*; ~~and~~
- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definitions shall apply:

Article 21 Organisational Requirements

means requirements and obligations as set out in Article 21(1)(a),(c),(e)(f),(3),(4) (General Organisational Requirements) of the *MODR*.

Article 25 Senior Management Requirements

means requirements and obligations as set out in Article 25 (Responsibility of senior management) of the *MODR*.

other matters

means, in relation to a requirement under the *MODR*, matters within the scope of 1.1 that are not within the scope of that requirement.

....

## 2 GENERAL REQUIREMENTS

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

**[Note: Art. 74(1) of the CRD, Art. 4316(5) second paragraph of MiFID II]**

- 2.2 The arrangements, processes and mechanisms referred to in 2.1 must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the *firm's* activities and must take into account the specific technical criteria described in 2.6, Skills, Knowledge and Expertise 3.2, Risk Control and Remuneration.

**[Note: Art. 74(2) of the CRD]**

- 2.2A A MiFID investment firm must extend the arrangements required by the Article 21 Organisational Requirements, so they apply with respect to other matters on the following basis:

- (1) references to “investment services and activities” are references to financial services and activities;
- (2) references to “relevant persons” are references to relevant persons; and
- (3) references to “Article 25(2)” are references to General Organisational Requirements 4.2.

- 2.2B A firm that is not a MiFID investment firm must comply with the Article 21 Organisational Requirements, on the basis set out in 2.2A and as if references to “investment firm” refer to a firm.

- 2.3 ~~A firm must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services and activities undertaken in the course of that business establish, implement and maintain:~~

- ~~(1) decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;~~
- ~~(2) adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the firm; and~~
- ~~(3) effective internal reporting and communication of information at all relevant levels of the firm. [deleted]~~

**[Note: Arts. ~~5(1) final paragraph, 5(1)(a), 5(1)(c) and 5(1)(e) of the MiFID implementing Directive]~~**

- 2.4 A firm must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question. Without prejudice to the ability of a competent authority to require access to communications in accordance with applicable law, a firm must have sound security mechanisms in place to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage maintaining the confidentiality of the data at all times.

**[Note: Art. 16(5) 5(2) of the MiFID II implementing Directive]**

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

**[Note: Art. 4316(4) of MiFID II]**

- 2.6 A *firm* must establish, implement and maintain an adequate contingency and business continuity plans to ensure the firm's ability to operate on an ongoing basis and limit losses on the event of severe business disruption. ~~policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its regulated activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.~~

**[Note: ~~Art. 5(3) of the MiFID implementing Directive and Art. 85(2) of the CRD~~]**

- 2.7 A *firm* must establish, implement and maintain accounting policies and procedures that enable it, at the request of the *PRA*, to deliver in a timely manner to the *PRA* financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules. ~~[deleted]~~

**[Note: ~~Art. 5(4) of the MiFID implementing Directive~~]**

- 2.8 A *firm* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with ~~2.3 to 2.7 this Chapter~~ and take appropriate measures to address any deficiencies.

**[Note: ~~Art. 5(5) of the MiFID implementing Directive~~]**

## 2A WHISTLEBLOWING

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- 2A.1 (1) 2A.2 applies to every *CRR firm*.
- (2) 2A.3 – 2A.6 apply to any *CRR firm* that has average total gross assets exceeding £250 million, determined on the basis of the annual average amount of gross assets calculated across a rolling period of five years or, if it has been in existence for less than five years, across the period during which it has existed (in each case, calculated with reference to the *CRR firm's* annual accounting reference date).
- 2A.2 (1) A *firm* must establish, implement and maintain appropriate and effective arrangements for the disclosure of *reportable concerns* by a *person*, including a *firm's employee*, internally through a specific, independent and autonomous channel.
- (2) The channel in (1) may be provided through arrangements with third parties, including social partners, subject to any applicable requirement under the Outsourcing Part.

**[Note: Art. 71(3) of the CRD and Art. 73(2) of MiFID II]**

...

## 3 PERSONS WHO EFFECTIVELY DIRECT THE BUSINESS

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- 3.1 The *senior personnel* of a *firm* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

**[Note: Art. 9(1) of MiFID II, Art. 13(4)91(1) of the CRD]**

- 3.2 A *firm* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in 3.1.

**[Note: Art. 9(46) first paragraph of *MiFID II* and Art. 13(1) of the *CRD*]**

#### **4 RESPONSIBILITY OF SENIOR PERSONNEL**

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~~4.1 A firm, when allocating functions internally, must ensure that senior personnel and, where appropriate, the supervisory function, are responsible for ensuring that the firm complies with its obligations under the regulatory system. In particular, senior personnel and, where appropriate, the supervisory function must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the firm's obligations under the regulatory system and take appropriate measures to address any deficiencies.~~

**[Note: Art. 9(1) of the *MiFID implementing Directive*]**

~~4.1A A *MiFID investment firm* must extend the arrangements required by the *Article 25 Senior Management Requirements* so they apply with respect to the *other matters* on the following basis:~~

- ~~(1) references to "Directive 2014/56/EU" are references to "the *regulatory system*"; and~~
- ~~(2) references to "Articles 22, 23 and 24" are references to Compliance and Internal Audit and Risk Control.~~

~~4.1B A firm that is not a *MiFID investment firm* must comply with the *Article 25 Senior Management Requirements* on the basis set out in 4.1A and as if references to "investment firm" refer to a *firm*.~~

~~4.2 A firm must ensure that:~~

- ~~(1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by Compliance and Internal Audit 2.2 to 2.4 and 3.1, and Risk Control 2.1, 2.2 and 2.4 to 2.6, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and~~
- ~~(2) the *supervisory function*, if any, receives on a regular basis written reports on the same matters.~~

**[Note: Art. 9(2) and Art. 9(3) of the *MiFID implementing Directive*]**

#### **5 MANAGEMENT BODY**

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~~5.1 A firm must ensure that the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest. The *firm* must ensure that the *management body*:~~

- ~~(1) has overall responsibility for the *firm*;~~
- ~~(2) approves and oversees implementation of the *firm's* strategic objectives, risk strategy and internal governance;~~
- ~~(3) ensures the integrity of the *firm's* accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*;~~

- (4) oversees the process of disclosure and communications;
- (5) has responsibility for providing effective oversight of *senior management*; and
- (6) monitors and periodically assesses:
  - (a) the adequacy and the implementation of the *firm's* strategic objectives in the provision of its *regulated activities*;
  - (b) the effectiveness of the *firm's* governance arrangements and adequacy of the policies relating to the provision of services to *clients*; and
  - (c) takes appropriate steps to address any deficiencies.

**[Note: Art. 88(1) of the CRD and Art. 9(3) of MiFID II]**

5.1A Without prejudice to 5.1, those arrangements must ensure that the *management body* defines, approves and oversees:

- (1) the organisation of the *firm* for the provision of *regulated activities*, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the *firm* has to comply with; and
- (2) a policy as to services, activities, products and operations offered or provided in accordance with the risk tolerance of the *firm* and the characteristics and needs of the *clients* of the *firm* to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and
- (3) a remuneration policy of *persons* involved in the provision of services to *clients* aiming to encourage responsible business conduct, fair treatment of *clients* as well as avoiding conflict of interest in the relationship with *clients*.

**[Note: Art. 9(3) of MiFID II]**

5.2 A *firm* must ensure that the members of the *management body* of the *firm*:

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

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

5.3 A *firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.

**[Note: Art. 91(39) of the CRD]**

- 5.4 A *firm* must ensure that the members of the *management body* of the *firm* do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the *firm's* activities.

**[Note: Art. 91(3) of the CRD and Art. 9(1) of MiFID II]**

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

**[Note: Art. 91(3) of the CRD and Art. 9(1) of MiFID II]**

- 5.6 For the purposes of 5.4 and 5.5:
- (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and
  - (2) the following shall count as a single directorship:
    - (a) executive or non-executive directorships held within the same *group*; or
    - (b) executive or non-executive directorships held within:
      - (i) *firms* that are members of the same institutional protection scheme provided that the conditions set out in Article 113(7) of the *CRR* are fulfilled; or
      - (ii) *undertakings* (including non-financial entities) in which the *firm* holds a *qualifying holding*.

**[Note: Art. 91(4) and (5) of the CRD and Art. 9(1) of MiFID II]**

- 5.7 A *firm* must ensure that the members of the *management body* of the *firm* have adequate access to information and documents that are needed to oversee and monitor management decision-making.

**[Note: Art. 9(3) of MiFID II]**

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## 6 NOMINATION COMMITTEE

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- 6.1 A *firm* that is significant must:
- (1) establish a nomination committee composed of members of the *management body* who do not perform any executive function in the *firm*;
  - (2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice; and

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

**[Note: Art. 88(2) of the CRD and Art. 9(1) of MiFID II]**

6.2 A *firm* that has a nomination committee must ensure that the nomination committee:

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

**[Note: Art. 88(2) and Art. 91(10) of the CRD and Art. 9(1) of MiFID II]**

6.3 A *firm* that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the *management body*. For that purpose a *firm* that does not have a nomination committee must put in place a policy promoting diversity on the *management body*.

**[Note: Art. 91(10) of the CRD and Art. 9(1) of MiFID II]**

...

## Part

**GENERAL ORGANISATIONAL REQUIREMENTS**

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Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>person</i>             | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>qualifying holding</i> | <i>Art. 4(1)(36) of the CRR</i>           |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |



## **Annex C**

In this Annex, new text is underlined and deleted text is struck through.

**Part**

# **OUTSOURCING**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. OUTSOURCING**

**Links**

## 1 APPLICATION AND DEFINITIONS

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1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*, ~~and~~
- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definitions shall apply:

Articles 30, 31 Outsourcing Requirements

means requirements and obligations as set out in Articles 30 and 31 (Outsourcing) of the MODR.

...

competent authority

means the authority, designated by each EEA State in accordance with Article 67 of MiFID II, unless otherwise specified in MiFID II.

**[Note: Art. 4(1)(26) of MiFID II]**

...

other matters

means, in relation to a requirement under the MODR, matters within the scope of 1.1 that are not within the scope of that requirement.

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## 2 OUTSOURCING

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2.1 A firm must:

- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *relevant services and activities* on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and
- (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
  - (a) the quality of its internal control; and
  - (b) the ability of the *PRA* to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID II*.

**[Note: Art. 1316(5) first paragraph of *MiFID II*]**

2.1A A *MiFID investment firm* must extend the arrangements and meet the requirements of the Articles 30, 31 Outsourcing Requirements, so they apply with respect to other matters on the following basis:

- (1) references to “authorisation” under *MiFID II* are references to authorisation for the purposes of this Part;
- (2) references to “obligations under *MiFID II* are references to a firm’s obligations under the *regulatory system*;
- (3) references to “investment services and activities” are references *relevant services and activities*;
- (4) references to “client” includes anyone who is a *client*; and
- (5) references to “competent authority” are references to the *PRA* or the *FCA* acting other than in the capacity of a *competent authority* for the purposes of *MiFID II* or *CRR*.

2.1B A firm that is not a *MiFID investment firm* must comply with the Articles 30, 31 Outsourcing Requirements on the basis set out in 2.1A and as if references to “investment firm “ refer to a *firm*.

2.2 ~~For the purposes of this Part, an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *firm* with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its *relevant services and activities*.~~

2.3 ~~Without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this Part:~~

- (1) ~~the provision to the *firm* of advisory services, and other services which do not form part of the *relevant services and activities* of the *firm*, including the~~

~~provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel; and~~

- ~~(2) — the purchase of standardised services, including market information services and the provision of price feeds.~~

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

~~2.4 — If a *firm* outsources critical or important operational functions or any *relevant services and activities*, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:~~

- ~~(1) — the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;~~
- ~~(2) — the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;~~
- ~~(3) — the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined; and~~
- ~~(4) — none of the other conditions subject to which the *firm's* *authorisation* was granted must be removed or modified.~~

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

~~2.5 — A *firm* must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any *relevant services and activities*.~~

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

~~2.6 — A *firm* must in particular take the necessary steps to ensure that the following conditions are satisfied:~~

- ~~(1) — the service provider must have the ability, capacity and any *authorisation* required by law to perform the *outsourced* functions, services or activities reliably and professionally;~~
- ~~(2) — the service provider must carry out the *outsourced* services effectively, and to this end the *firm* must establish methods and procedures for assessing the standard of performance of the service provider<sub>1</sub>;~~
- ~~(3) — the service provider must properly supervise the carrying out of the *outsourced* functions, and adequately manage the risks associated with the *outsourcing*;~~
- ~~(4) — appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;~~
- ~~(5) — the *firm* must retain the necessary expertise to supervise the *outsourced* functions or services effectively and to manage the risks associated with the *outsourcing*, and must functions and manage those risks;~~

- (6) — ~~the service provider must disclose to the *firm* any development that may have a material impact on its ability to carry out the *outsourced* functions effectively and in compliance with applicable laws and regulatory requirements;~~
- (7) — ~~the *firm* must be able to terminate the arrangement for the *outsourcing* where necessary, without detriment to the continuity and quality of its provision of services to *clients*;~~
- (8) — ~~the service provider must co-operate with the *PRA* and any other relevant *competent authority* in connection with the *outsourced* activities;~~
- (9) — ~~the *firm*, its auditors, the *PRA* and any other relevant *competent authority* must have effective access to data related to the *outsourced* activities, as well as to the relevant business premises of the service provider, and the *PRA* and any other relevant *competent authority* must be able to exercise those rights of access;~~
- (10) — ~~the service provider must protect any confidential information relating to the *firm* and its *clients*;~~
- (11) — ~~the *firm* and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the function, service or activity that has been *outsourced*.~~

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

2.7 — ~~A *firm* must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement~~

**~~[Note: Art. 14(3) of the *MiFID implementing Directive*]~~**

2.8 — ~~If a *firm* and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with 2.5 to 2.9, take into account the extent to which the *firm* *controls* the service provider or has the ability to influence its actions.~~

**~~[Note: Art. 14(4) of the *MiFID implementing Directive*]~~**

2.9 — ~~A *firm* must make available on request to the *PRA* and any other relevant *competent authority* all information necessary to enable the *PRA* and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.~~

**~~[Note: Art. 14(5) of the *MiFID implementing Directive*]~~**

Part

## **OUTSOURCING**

---

Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |

## Annex D

In this Annex, new text is underlined and deleted text is struck through.

Part

# **RECORD KEEPING**

---

Chapter content

1. APPLICATION AND DEFINITIONS
2. RECORD KEEPING

Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*; and

unless another applicable *rule* which is relevant to the activity has a wider territorial scope, in which case this Part applies with that wider scope in relation to the activity described in that *rule*;

- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definitions shall apply:

Article 72 Record Keeping Requirements

means requirements and obligations as set out in Article 72 (Record Keeping) of the MODR.

other matters

means, in relation to a requirement under the MODR, matters within the scope of 1.1 that are not within the scope of that requirement.

## 2 RECORD KEEPING

---

2.1 A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services, activities and transactions undertaken by it, which must be sufficient to enable the *PRA* or any other relevant competent authority under *MiFID II* to: ~~monitor the firm's compliance with the requirements~~

- (1) fulfil its supervisory tasks and perform the enforcement actions under the *regulatory system*; and



- (2) in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

**[Note: Art. 1316(6) of MiFID II and Art. 5(1)(f) of the MiFID implementing Directive]**

2.1A A MiFID investment firm must extend the arrangements required by the Article 72 Record Keeping Requirements so they apply with respect to other matters on the following basis:

- (1) references to “competent authority” are references to the PRA or the FCA acting other than in the capacity of a competent authority for the purposes of MiFID II or CRR; and
- (2) references to “Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures” are references to “the regulatory system”.

2.1B A firm that is not a MiFID investment firm must comply with the Article 72 Record Keeping Requirements on the basis set out in 2.1A and as if references to “investment firm” refer to a firm.

2.2 A *firm* must retain all records kept by it under this Part in relation to its *MiFID business* for a period of at least five years.

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

~~2.3 In relation to its *MiFID business*, a *firm* must retain records in a medium that allows the storage of information in a way accessible for future reference by the *PRA* or any other relevant *competent authority* under *MiFID*, and so that the following conditions are met:~~

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

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

Part

## **RECORD KEEPING**

---

Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |

## **Annex E**

In this Annex, new text is underlined and deleted text is struck through.

**Part**

# **RISK CONTROL**

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**Chapter content**

- 1. APPLICATION AND DEFINITIONS**
- 2. RISK CONTROL**
- 3. RISK COMMITTEE**
- 4. GROUP ARRANGEMENTS**

**Links**

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*; ~~and~~
- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definition shall apply:

*Article 23 Risk Control Requirements*

means requirements and obligations as set out in Article 23 (Risk Management) of the *MODR*.

*other matters*

means, in relation to a requirement under the *MODR*, matters within the scope of 1.1 that are not within the scope of that requirement.

## 2 RISK CONTROL

---

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

**[Note: Art. 7(1)(a) of the *MiFID implementing Directive*, Art. 13(5) second paragraph of *MiFID*]**

2.1A A *firm's* risk management procedures must include effective procedures for risk assessment.

**[Art. 16(5) second paragraph of *MiFID II*]**

~~2.2 A firm must adopt effective arrangements, processes and mechanisms to manage the risk relating to the firm's activities, processes and systems, in light of that level of risk tolerance.~~

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

2.2A A MiFID investment firm must extend the arrangements required by the Article 23 Risk Control Requirements so they apply with respect to other matters on the following basis:

- (1) references to "relevant persons" are references to relevant persons;
- (2) references to "investment services and activities" are references to regulated activities;
- (3) references to policies and procedures includes the policies and procedures set out in this Part; and
- (4) references to provision of reports and advice to senior management includes the provision of report and advice to senior personnel in accordance with General Organisation Requirements 4.2.

2.2B A firm that is not a MiFID investment firm must comply with the Article 23 Risk Control Requirements on the basis set out in 2.2A and as if references to "investment firm" refer to a firm.

~~2.3 A firm must ensure that the management body of a firm must approve and periodically reviews the strategies and policies for taking up, managing, monitoring and mitigating the risks the firm is or might be exposed to, including those posed by the macroeconomic environment in which it operates in relation to the status of the business cycle.~~

~~[Note: Art. 76(1) of the CRD]~~

~~2.4 A firm must monitor the following:~~

- ~~(1) the adequacy and effectiveness of the firm's risk management policies and procedures;~~
- ~~(2) the level of compliance by the firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with 2.2;~~
- ~~(3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements or processes and mechanisms or follow such policies and procedures.~~

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

~~2.5 A firm must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:~~

- ~~(1) implementation of the policies and procedures referred to in 2.1 to 2.4; and~~

~~(2) — provision of reports and advice to *senior personnel* in accordance with General Organisational Requirements 4.2.~~

~~[Note: Art. 7(2) first paragraph of the *MiFID implementing Directive*]~~

~~2.6 — Where a *firm* is not required under 2.5 to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with 2.1 to 2.4 satisfy the requirements of those *rules* and are consistently effective.~~

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

2.7 (1) A *firm* must ensure the following:

~~(a) The the *management body* of a *firm* has overall responsibility for risk management; and it must devote sufficient time to the consideration of risk issues; and~~

~~(2) (b) The the *management body* of a *firm* ~~must be actively~~ is actively involved in and ensures that adequate resources are allocated to the management of all material risks addressed in the *rules* implementing the *CRD* and in the *CRR* as well as in the valuation of assets, the use of external ratings and internal models related to those risks.~~

~~(3) A *firm* must establish reporting lines to the *management body* that cover all material risks and risk management policies and changes thereof.~~

[Note: Art. 76(2) of the *CRD*]

### 3 RISK COMMITTEE

---

3.1 (1) A *firm* that is significant must establish a risk committee composed of members of the *management body* who do not perform any executive function in the firm. Members of the risk committee must have appropriate knowledge, skills and expertise to fully understand and monitor the risk strategy and the risk appetite of the *firm*.

(2) A *firm* must ensure that ~~The~~ risk committee ~~must~~ advises the *management body* on the ~~institution~~ *firm's* overall current and future risk appetite and assists the *management body* in overseeing the implementation of that strategy by *senior management*.

(3) A *firm* must ensure that the ~~The~~ risk committee ~~must~~ reviews whether prices of liabilities and assets offered to clients take fully into account the *firm's* business model and risk strategy. Where prices do not properly reflect risks in accordance with the business model and risk strategy, the *firm* must ensure that the risk committee ~~must~~ presents a remedy plan to the *management body*.

[Note: Art. 76(3) of the *CRD*]

3.2 (4) — A *firm* must ensure that the *management body* in its *supervisory function* and, where a risk committee has been established, the risk committee:

- (1) ~~A firm must ensure that the management body in its supervisory function and, where a risk committee has been established, the risk committee have adequate access to information on the risk profile of the firm and, if necessary and appropriate, to the risk management function and to external expert advice; and~~
- (2) ~~The management body in its supervisory function and, where one has been established, the risk committee must~~ determine the nature, the amount, the format, and the frequency of the information on risk which it is to receive.

**[Note: Art. 76(4) of the CRD]**

- 3.3 In order to assist in the establishment of sound *remuneration* policies and practices, a firm must ensure that the risk committee ~~must~~, without prejudice to the tasks of the *remuneration* committee, examines whether incentives provided by the *remuneration* system take into consideration risk, capital, liquidity and the likelihood and timing of earnings.

**[Note: Art. 76(4) of the CRD]**

- 3.4 A firm must ensure the following:
- (1) ~~A firm's~~ the risk management function ~~(2.5) must be~~ independent from the operational functions and ~~have~~ has sufficient authority, stature, resources and access to the *management body*;
- (2) ~~The~~ the risk management function ~~must ensure~~ that all material risks are identified, measured and properly reported. ~~It must be~~ is actively involved in elaborating the *firm's* risk strategy and in all material risk management decisions and ~~it must be~~ is able to deliver a complete view of the whole range of risks of the *firm*; and
- (3) ~~A firm must ensure that~~ the risk management function is able to report directly to the *management body* in its supervisory function, independent from *senior management* and that it can raise concerns and warn the *management body*, where appropriate, where specific risk developments affect or may affect the *firm*, without prejudice to the responsibilities of the *management body* in its supervisory and/or managerial functions pursuant to the *CRD* and the *CRR*.

**[Note: Art. 76(5) of the CRD]**

- 3.5 A firm must ensure that ~~The~~ head of the risk management function ~~must be~~ is an independent senior manager with distinct responsibility for the risk management function. Where the nature, scale and complexity of the activities of the *firm* do not justify a specially appointed *person*, another senior *person* within the *firm* may fulfil that function, provided there is no conflict of interest. A firm must ensure that the ~~The~~ head of the risk management function is not removed without prior approval of the *management body* and ~~must be~~ is able to have direct access to the *management body* where necessary.

**[Note: Art. 76(5) of the CRD]**

...

Part

## **RISK CONTROL**

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Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>person</i>             | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |



## Annex F

In this Annex, new text is underlined and deleted text is struck through.

### Part

# **SKILLS, KNOWLEDGE AND EXPERTISE**

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### Chapter content

1. **APPLICATION AND DEFINITIONS**
2. **SKILLS, KNOWLEDGE AND EXPERTISE**
3. **SEGREGATION OF FUNCTIONS**
4. **AWARENESS OF PROCEDURES**
5. **GENERAL**
6. **GROUP ARRANGEMENTS**

### Links

## 1 APPLICATION AND DEFINITIONS

---

1.1 Unless otherwise stated, this Part applies to a *CRR firm*:

- (1) with respect to the carrying on of the following from an establishment in the *UK*:
  - (a) *regulated activities*;
  - (b) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of *Regulated Activities Order*;
  - (c) *ancillary activities*;
  - (d) in relation to *MiFID business, ancillary services*; and
  - (e) *unregulated activities in a prudential context*; ~~and~~
- (2) with respect to the carrying on of *passport activities* by it from a *branch* in another *EEA state*;
- (3) in a *prudential context* with respect to activities wherever they are carried on; and
- (4) taking into account any activity of other members of a *group* of which the *firm* is a member.

1.2 In this Part, the following definitions shall apply:

*Article 21 Skills Requirements*

means requirements and obligations as set out in Article 21(1)(b),(d),(g) (General Organisational Requirements) of the MODR.

*other matters*

means, in relation to a requirement under the MODR, matters within the scope of 1.1 that are not within the scope of that requirement.

## 2 SKILLS, KNOWLEDGE AND EXPERTISE

---

~~2.1 A firm must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.~~

~~**[Note: Art. 5(1)(d) of the MiFID implementing Directive]**~~

2.1A A MiFID investment firm must extend the arrangements required by the Article 21 Skills Requirements so they also apply with respect to other matters on the basis that references to “relevant persons” are references to relevant persons.

2.1B A firm that is not a MiFID investment firm must comply with the Article 21 Skills Requirements on the basis set out in 2.1A and as if references to “investment firm” refer to a firm.

### 3 SEGREGATION OF FUNCTIONS

---

- 3.1 ~~A firm must ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent these persons from discharging any particular functions soundly, honestly and professionally.~~

~~**[Note: Art. 5(1)(g) of the MiFID implementing Directive]**~~

- 3.2 ~~A firm must ensure that its~~The senior personnel of a firm must define arrangements concerning the segregation of duties within the firm and the prevention of conflicts of interest.

~~**[Note: Art. 88 of the CRD and Art. 9(1) of MiFID II]**~~

### 4 AWARENESS OF PROCEDURES

---

- 4.1 ~~A firm must ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities.~~

~~**[Note: Art. 5(1)(b) of the MiFID implementing Directive]**~~

### 5 GENERAL

---

- 5.1 ~~The systems, internal control mechanisms and arrangements established by a firm in accordance with this Part must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.~~

~~**[Note: Art. 5(1) final paragraph of the MiFID implementing Directive]**~~

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

~~**[Note: Art. 5(5) of the MiFID implementing Directive]**~~

...

Part

## **SKILLS, KNOWLEDGE AND EXPERTISE**

---

Externally defined glossary terms

| <b>Term</b>               | <b>Definition source</b>                  |
|---------------------------|---|
| <i>EEA State</i>          | <i>Schedule 1 Interpretation Act 1978</i> |
| <i>group</i>              | <i>s421 FSMA</i>                          |
| <i>regulated activity</i> | <i>s22 FSMA</i>                           |

## **Appendix 2: PRA Rulebook: Notifications instrument**

### **PRA RULEBOOK: CRR FIRMS: NOTIFICATIONS INSTRUMENT [DATE]**

#### **Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) 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 137G (The PRA’s general rules);
  - (2) section 137T (General supplementary powers); and
  - (3) [article 13 (3) Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016].
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

#### **Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

#### **PRA Rulebook: CRR Firms: Notifications Instrument**

- D. The PRA makes the rules in the Annex to this instrument.

#### **Commencement**

- E. This instrument comes into force on [DATE].

#### **Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR firms: Notifications [DATE] Instrument.

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex

In this Annex, deleted text is struck through and new text is underlined.

### Part

# NOTIFICATIONS

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Chapters

...  
12 STRUCTURED DEPOSITS NOTIFICATION

## **1 APPLICATION AND DEFINITIONS**

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....

1.2 In this Part, the following definitions shall apply:

...

*structured deposits notification*

means a notification under [Article 13 (2) (b) Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2016].

...

## **12 STRUCTURED DEPOSITS NOTIFICATION**

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12.1 The PRA directs that a *firm* wishing to make a *structured deposits notification* use the form specified on the PRA's website and submit the form online via the PRA's website at [www.bankofengland.co.uk/pr/](http://www.bankofengland.co.uk/pr/).

## **Appendix 3: PRA Rulebook: Glossary instrument**

### **PRA RULEBOOK: CRR FIRMS: GLOSSARY INSTRUMENT 2017**

#### **Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (4) section 137G (The PRA’s general rules); and
  - (5) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

#### **Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

#### **PRA Rulebook: Glossary Instrument 2017**

- D. The PRA makes the rules in Annex A to this instrument.

#### **Commencement**

- E. This instrument comes into force on [DATE].

#### **Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Glossary Instrument 2017.

By order of the Board of the Prudential Regulation Authority  
[DATE]

## Annex A

### Amendments to the Glossary

In the Glossary Part of the PRA Rulebook, amend the following definitions where underlining indicates new text and deleted text is struck through.

#### *ancillary service*

means any of the services listed in Section B of Annex 1 to *MiFID II*.

#### *approved counterparty*

...

(3) a *MiFID investment firm* whose ~~authorise~~ authorisation (as referred to in article 5 of *MiFID II*) authorises it to carry on activities of the kind referred to in (2);

...

#### *branch*

...

(2) (in relation to an *investment firm*) given in Article 4(1)(~~30~~)(26) of *MiFID II*.

...

#### *competent authority*

means the authority, designated by each *EEA State* in accordance with Article ~~486~~7 of *MiFID II*, unless otherwise specified in *MiFID II*.

#### **[Note: Art. 4(1)(~~22~~)(26) of *MiFID II*]**

#### *eligible counterparty*

has the meaning given in the *FCA Handbook* from time to time~~as at 31 July 2015~~ for the purposes other than for the purposes of the part of the *FCA Handbook* ~~(as at 31 July 2015)~~ in High Level Standards that has the title Principles for Businesses.

#### *financial instruments*

means the instruments specified in Section C of Annex I of *MiFID II*.

#### *investment services and/or activities*

means any of the services and activities listed in Section A of Annex I to *MiFID II*.

#### ~~*MiFID*~~

~~means the European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).~~

#### ~~*MiFID implementing Directive*~~



~~means Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.~~

*MiFID investment firm*

means a *firm* to which *MiFID II* applies.

MODR

means the Commission Delegated Regulation (EU) supplementing *MiFID II* of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*non-directive firm*

...

- (6) an *investment firm* authorised under *MiFID II*.

...

*professional client*

has the meaning given in the *FCA Handbook* from time to time ~~as at 31 July 2015.~~

*regulated market*

*means:*

...

- (1) a regulated market as defined in article 4(1)(21) of *MiFID II* ~~point (14) of Article 4 of Directive 2004/39/EC;~~ or

...

*transferable securities*

means as defined in article 4(1) ~~(18)~~ (44) of *MiFID II*.

## **Appendix 4: PRA Rulebook: General provisions instrument**

### **PRA RULEBOOK: CRR FIRMS: GENERAL PROVISIONS INSTRUMENT [2017]**

#### **Powers exercised**

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
  - (2) section 137G (The PRA’s general rules); and
  - (3) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instrument) of the Act.

#### **Pre-conditions to making**

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

#### **PRA Rulebook: CRR Firms: General Provisions Instrument [2017]**

- D. The PRA makes the rules in the Annex to this instrument.

#### **Commencement**

- E. This instrument comes into force on [DATE].

#### **Citation**

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: General Provisions Instrument [2017].

**By order of the Board of the Prudential Regulation Authority**  
[DATE]

## Annex A

In this Annex new text is underlined and deleted text is struck through

### Amendments to the General Provisions Part

#### 7 APPLICATION AND DEFINITIONS

---

1.1 In this Part, the following definitions shall apply:

...

*MTF*

has the meaning given in ~~the FCA Handbook~~ Article 4(1)(22) of MiFID II.

...

*regulated market*

has the meaning given in ~~the FCA Handbook~~ Article 4(1)(21) of MiFID II.

...