

Policy Statement | PS9/17

# Implementation of MiFID II: Part 2

April 2017



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PRUDENTIAL REGULATION  
AUTHORITY







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## 1 Overview

1.1 This Prudential Regulation Authority (PRA) policy statement (PS) provides final policy as part of the PRA's transposition of the Markets in Financial Instruments Directive II (MiFID II) following Consultation Paper (CP) 43/16 'Implementation of MiFID II: Part 2'.<sup>1</sup> This is part of a legislative package, comprising the Directive, MiFID II (2014/65/EU);<sup>2</sup> the Markets in Financial Instruments Regulation (2014/600/EU) (MiFIR);<sup>3</sup> and Commission Delegated Regulation on organisational requirements and operating conditions (the 'MODR').<sup>4</sup> 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>5</sup>

1.2 This PS 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, investment firms and financial institutions that are subsidiaries of these firms.

1.3 This policy maintains the PRA's approach and adopts an intelligent 'copy out' approach to transposition by:

- introducing new PRA rules to implement Articles 9 and 16 of MiFID II which relate to the management body and organisational requirements respectively;
- deleting the PRA rules that are superseded by provisions in the MODR as they are directly applicable;
- extending the application of the MODR to the non-MiFID business of MiFID investment firms and MiFID and non-MIFID business of CRR firms, as a matter of domestic policy, to continue to give effect to the common platform approach adopted by the PRA;
- consequential changes to references in the PRA Rulebook and supervisory statements (SSs) 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)' and, where applicable, adding new MiFID financial instruments, 'emission allowances', and binary options to existing activities;
- receiving notifications and granting authorisations in respect of dealing, advising, managing and arranging structured deposits; and
- consequential amendments under the General Provisions Part and the Glossary of the PRA Rulebook.

1.4 The PRA received no responses to CP43/16. The final rules are as consulted, with some minor drafting changes to the instruments to clarify language, correct formatting and referencing (see Appendices 1-4).

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1 November 2016; [www.bankofengland.co.uk/pradoc/Pages/publications/cp/2016/cp4316.aspx](http://www.bankofengland.co.uk/pradoc/Pages/publications/cp/2016/cp4316.aspx).

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

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

4 Commission Delegated Regulation (MODR) (EU) 2017/565: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN>.

5 Capital Requirements Directive (2013/36/EU) (CRD) and Capital Requirements Regulation (575/2013) (CRR) – jointly 'CRD IV'.

1.5 Appendices 5-7 include links to three supervisory statements (SSs). The three SSs have been updated to refer to MiFID II where previously they referred to MiFID, and associated implementing directives. The PRA considered the expectations in the SSs and concluded there were no changes to policy as a result of these updated references.

1.6 The policy contained in this PS 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 those arising once any new arrangements with the EU take effect.

### **Statutory obligations**

1.7 The PRA is required by the Financial Services and Markets Act 2000 (FSMA) to:

- publish a statement on the impact of rules on mutuals where the final rule differs from the draft of the proposed rule;<sup>6</sup>
- have regard to any representations made in relation to proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the rules as made; and
- publish a cost benefit analysis (CBA) of any changes to the consultation proposals which the PRA considers to be significant.

1.8 The PRA has made some minor drafting changes to the draft instruments to clarify language, correct formatting and referencing, as well as making the following amendments:

- General Organisational Requirements 2.2B and 2.6, which were included in the draft instrument, have now been underlined to indicate they are to be inserted into the PRA Rulebook;
- Notifications 12.1 has been amended to link to the structured deposits notification form on the PRA website;<sup>7</sup> and
- a new Annex has been added to the Notifications Instrument to delete the new Notification 12.1 and associated definition on structured deposit notification, from 3 January 2018, as the power to accept these notifications only applies up to that date.

1.9 The PRA does not consider the changes are significant or will have an impact that will be significantly different to mutuals from other authorised firms. Therefore, the PRA has not updated the assessment of impact on mutuals or CBA from the CP.

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6 Section 138K of FSMA.

7 [www.bankofengland.co.uk/pru/Pages/authorisations/varyingpermission/applying.aspx](http://www.bankofengland.co.uk/pru/Pages/authorisations/varyingpermission/applying.aspx).

## 2 Implementation

2.1 MiFID II will apply from Wednesday 3 January 2018 and Member States must transpose their provisions in national legislation and regulations by Monday 3 July 2017.<sup>8</sup> HM Treasury responded in February 2017 to the legislative changes consulted on required to transpose MiFID II into UK law<sup>9</sup> and the Financial Conduct Authority (FCA) consulted on the necessary changes to its Handbook in December 2015, July 2016, September 2016, and December 2016.<sup>10</sup> In February 2017, HM Treasury published its response to an earlier consultation on the transposition of MiFID II alongside drafts of statutory instruments.<sup>11</sup>

2.2 The PRA's rules, and the relevant sections of the SSs that apply to MiFID II, (Appendices 1-7) will take effect from Wednesday 3 January 2018.

2.3 CP43/16 set 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 regulated activities of dealing, advising, managing and arranging structured deposits. As the PRA received no responses to the CP, it will proceed with its proposed approach to processing variations of permissions (VoPs), and for notifications made in relation to structured deposits.

2.4 The power for the PRA to consider complete applications for VoPs for firms that wish to add these activities and investment types to their FSMA Part 4A permission in advance of Wednesday 3 January 2018 has been granted by HM Treasury in a statutory instrument.<sup>12</sup> Firms should submit complete applications for variation of permission by 3 July 2017. Further information is available to firms on the authorisations webpages on the Bank of England website.<sup>13</sup>

2.5 HM Treasury has provided the PRA with a power of direction so that a firm that gives the PRA notice (in such form as the PRA directs) before Wednesday 3 January 2018, that it wishes to carry out the following activities: Structured deposit in respect of the regulated activities; Dealing in investment as principle; Arranging deals in investment; Making arrangements with a view to transactions in investment; Managing investments; and Advising on investments, may do so submitting the form found at Notifications 12.1. When the PRA acknowledges receipt of the notification these activities will be added to the firm's Part 4A permission from Wednesday 3 January 2018. Further information is available to firms on the authorisations webpages on the Bank's website.

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8 Art 93 MiFID II as amended by 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).

9 HM Treasury Transposition of the Markets in Financial Instruments Directive II: response to consultation February 2017 [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); [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).

10 Available at the FCA's website, [www.fca.org.uk](http://www.fca.org.uk).

11 [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).

12 [www.legislation.gov.uk/ksi/2017/488/pdfs/uksi\\_20170488\\_en.pdf](http://www.legislation.gov.uk/ksi/2017/488/pdfs/uksi_20170488_en.pdf).

13 [www.bankofengland.co.uk/prd/Pages/authorisations/variationpermission/default.aspx](http://www.bankofengland.co.uk/prd/Pages/authorisations/variationpermission/default.aspx).

## Appendices

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- 1 PRA Rulebook: CRR firms: Internal governance instrument 2017, available at [www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx).
  - 2 PRA Rulebook: CRR firms: Notifications instrument 2017, available at [www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx).
  - 3 PRA Rulebook: CRR firms: Glossary instrument 2017, available at [www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx).
  - 4 PRA Rulebook: CRR firms: General provisions instrument 2017, available at [www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ps/2017/ps917.aspx).
  - 5 SS21/15 'Internal Governance' UPDATE, available at [www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss2115update.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss2115update.aspx).
  - 6 SS20/13 'Third country equivalence aspects of the credit risk provisions in the CRR, and recognised exchanges' UPDATE, available at [www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss2013update.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss2013update.aspx).
  - 7 SS17/13 'Credit risk mitigation' UPDATE, available at [www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss1713update.aspx](http://www.bankofengland.co.uk/prad/Pages/publications/ss/2017/ss1713update.aspx).
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