

MIFID (MISCELLANEOUS AMENDMENTS) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority 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 138 (General rule-making power);
 - (2) section 157(1) (Guidance);
 - (3) section 158A (Guidance on outsourcing by investment firms);
 - (4) section 210(3) (Statement of policy);
 - (5) section 213 (The compensation scheme); and
 - (6) section 395(5) (The Authority's procedures).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

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

(1)	(2)
Principles for Businesses sourcebook (PRIN)	Annex A
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex B
Threshold Conditions (COND)	Annex C
General Provisions (GEN)	Annex D
Prudential sourcebook for Banks, Building Societies and Investment Businesses (BIPRU)	Annex E
Training and Competence sourcebook (TC)	Annex F
Supervision manual (SUP)	Annex G
Compensation sourcebook (COMP)	Annex H

Citation

- E. This instrument may be cited as the MiFID (Miscellaneous amendments) Instrument 2007.

By order of the Board
25 January 2007

Annex A

Amendments to the Principles for Businesses sourcebook (PRIN)

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

Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined.

1.1.1 G The *Principles* (see *PRIN 2*) apply in whole or in part to every *firm*. The application of the *Principles* is modified for *firms conducting MiFID business, incoming EEA firms, incoming Treaty firms and UCITS qualifiers*. *PRIN 3* (Rules about application) specifies to whom, to what and where the *Principles* apply.

Purpose

1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the *FSA's* rule-making powers as set out in the *Act* and reflect the *regulatory objectives*.

...

1.1.6A G *PRIN 4* (Principles : MiFID Business) provides *guidance* on the application of the *Principles to MiFID business*.

...

1.2.2 G Approach to client classification

Principles 6, 8 and 9 and parts of Principle 7, as qualified by PRIN 3.4.1R, apply only in relation to customers (that is, clients which are not ~~market counterparties-eligible counterparties~~). The approach that a firm needs to take regarding classification of clients into customers and ~~market counterparties-eligible counterparties~~ will depend on whether the firm is carrying on designated investment business or other activities, as described in PRIN 1.2.3G and PRIN 1.2.4G.

1.2.3 G Classification: designated investment business

(1) ...

- (2) The *person* to whom a *firm* provides basic advice on a stakeholder product will be a retail client~~private customer~~ for all purposes including the purposes of *Principles* 6, 7, 8 and 9.

...

- 1.2.5 G A *firm* is therefore not required to classify its *clients* (because *COB* 4.1.4R does not apply) and may choose to comply with *Principles* 6, 7, 8 and 9 as if all its *clients* were *customers*. Alternatively, it may choose to distinguish between ~~market eligible counterparties~~ and *customers* in complying with those *Principles*. But, in that case, the *firm* would need to classify any *client* treated as an eligible counterparty~~market counterparty~~. In doing this, the requirements in *SYSC* will apply, including the requirement to establish appropriate systems and controls (*SYSC* 3.1.1R) and the requirement to make and retain adequate records (*SYSC* 3.2.20R). In classifying its ~~market counterparties~~eligible counterparties, it would be open to such a *firm*, although not obligatory, to permit professional clients~~intermediate customers~~ to change ~~opt up to market counterparty~~eligible counterparty status in accordance with *COB* 4.1.12 R. It would also have to treat an ~~market counterparty~~eligible counterparty as a *customer* if the *firm* had chosen to treat the ~~private customer~~ retail client in the circumstances set out in *COB* 4.1.14R.

...

- 3.1.6 R A *firm* will not be subject to a *Principle* to the extent that it would be contrary to the UK's obligations under a *Single Market Directive*.
- 3.1.7 G *PRIN* 4 provides specific guidance on the application of the *Principles* for *MiFID* business.

...

3.4 General

3.4.1 R Clients and the Principles

Although *Principle* 7 refers to *clients*, the requirement of *Principle* 7 relating to ~~market counterparties~~eligible counterparties is that a *firm* must communicate information to ~~market counterparties~~eligible counterparties in a way that is not misleading.

...

3.4.3 G

- (1) ...

- (2) The *person* to whom a *firm* provides basic advice on a stakeholder product will be a retail client~~private customer~~ for all purposes including the purposes of *Principles* 6, 7, 8 and 9.

...

After PRIN 3.4 insert the following:

4 Principles : MiFID business

4.1 Principles : MiFID business

- 4.1.1 G *PRIN* 3.1.6R ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with a *Single Market Directive*. If a *Principle* does purport to impose such an obligation *PRIN* 3.1.6R disapplies that *Principle* but only to the extent necessary to ensure compliance with European law. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN* 3.3.1R, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* which is relevant to an activity has a wider territorial scope. Under *PRIN* 3.1.1R, the territorial application of a number of *Principles* to an *EEA MiFID investment firm*, is narrowed to the extent that responsibility for the matter in question is reserved to the *firm's Home State regulator*. These modifications are relevant to *Principles* 1, 2, 3, 6, 7, 8, 9 and 10.

- 4.1.3 G *Principles* 4, 5 and 11 will have the same scope of territorial application for *MiFID business* as for other business.

What?

- 4.1.4 G (1) Certain requirements under *MiFID* are disapplied for;
- (a) *eligible counterparty business*;
 - (b) transactions concluded under the rules governing a *multilateral trading facility* between its members or participants or between the *multilateral trading facility* and its members or participants in relation to the use of the *multilateral trading facility*;
 - (c) transactions concluded on a *regulated market* between its members or participants.
- (2) Under *PRIN* 3.1.6R, these disapplications may affect *Principles* 1, 2, 6 and 9. *PRIN* 3.1.6R applies only to the extent that the application of a *Principle* would be contrary to the *UK's* obligations under a *Single*

Market Directive in respect of a particular transaction or matter. In line with *MiFID*, these limitations relating to *eligible counterparty business* and transactions under the rules of a *multilateral trading facility* or on a *regulated market* only apply in relation to a *firm's* conduct of business obligations to its *clients* under *MiFID*. They do not limit the application of those *Principles* in relation to other matters, such as *client* asset protections, systems and controls, prudential requirements and market integrity. Further information about these limitations is contained in Part 2 of *COBS* App 1.

(3) *Principles* 3, 4, 5, 7, 8, 10 and 11 are not limited in this way.

4.1.5 G Although *Principle* 8 does not apply to *eligible counterparty business*, a *firm* will owe obligations in respect of conflicts of interest set out in *SYSC* 10 which are wider than those contained in *Principle* 8 in that they apply to *eligible counterparty business*.

Annex B

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

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

Where an entire section of text is being inserted, the place where the change will be made is indicated and the text is not underlined

1.3 Application of the common platform requirements

Who?

1.3.1B G Whilst the *common platform requirements* do not generally apply to *incoming EEA firms, EEA MiFID investment firms* must comply with the *common platform record-keeping requirements in relation to a branch in the United Kingdom.*

...

1.3.2 R The *common platform organisational requirements* apply with respect to the carrying on of the following (unless provided otherwise within a specific rule):

- (1) *regulated activities*;
- (2) activities that constitute *dealing in investments as principal*, disregarding the exclusion in article 15 of the *Regulated Activities Order* (Absence of holding out etc.); ~~and~~
- (3) *ancillary activities*; and
- (4) in relation to *MiFID business, ancillary services.*

Where?

1.3.9 R The *common platform requirements*, except the *common platform record-keeping requirements*, apply to a *common platform firm* in relation to activities carried on by it from an establishment in the *United Kingdom*.

1.3.10 R The *common platform requirements*, except the *common platform requirements on financial crime* and the *common platform record-keeping requirements*, apply to a *common platform firm* in relation to *passport activities* carried on by it from a *branch* in another *EEA State*.

1.3.10A R The *common platform record-keeping requirements* apply to activities carried on by:

- (1) a common platform firm; or
- (2) an EEA MiFID investment firm;

from an establishment maintained in the United Kingdom, unless another applicable rule which is relevant to the activity has a wider territorial scope, in which case the common platform record-keeping requirements apply with that wider scope in relation to the activity described in that rule.

[Note: article 13(9) of *MiFID*]

...

6.1 Compliance

- 6.1.1 R A *common platform 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*.

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

...

After SYSC 8.1 insert the following:

8.2 Outsourcing of portfolio management for retail clients to a non-EEA State.

- 8.2.1 R (1) In addition to the requirements set out in the *MiFID outsourcing rules*, when a *MiFID investment firm* outsources the *investment service of portfolio management to retail clients* to a service provider located in a *non-EEA state*, it must ensure that the following conditions are satisfied:
 - (a) the service provider must be authorised or registered in its home country to provide that service and must be subject to prudential supervision;
 - (b) there must be an appropriate cooperation agreement between the *FSA* and the supervisor in the *non-EEA State*.(in this chapter the "conditions").

[Note: article 15(1) of the *MiFID implementing Directive*]

- (2) In addition to complying with the *common platform outsourcing rules*, if one or both of the conditions are not satisfied, a *MiFID investment firm* may enter into such an *outsourcing* only if it gives prior notification in writing to the *FSA* containing adequate details of the proposed *outsourcing* and the *FSA* does not object to that arrangement within a reasonable time following receipt of that notification.

[Note: article 15(2) and (4) of the *MiFID implementing Directive*]

- (3) For the purposes of this *rule* a "reasonable time" is within one month of receipt of a notification. However, the *FSA* may seek further information from the *MiFID investment firm* in relation to the *outsourcing* proposal if this is necessary to enable the *FSA* to make a decision. Any effect this may have on the *FSA's* response time will be notified to the *MiFID investment firm* and that revised response time will constitute a reasonable time for the purposes of this *rule*.

8.2.2 [intentionally blank]

8.2.3 G The conditions do not apply if the *outsourcing* only concerns ancillary activities connected with *portfolio management*, for example IT processes or execution only activities.

8.2.4 G If a *firm* has received no notice of objection or no request for further information from the *FSA* within one month of the *FSA* receiving the notification, it may *outsource* the *portfolio management* on the basis set out in the notification.

8.2.5 G The *FSA* would use its powers under section 45 of the *Act* to vary a *firm's permission* if it objected to such a notification.

Notification requirements: timing of notification

8.2.6 G A *firm* should only make an *outsourcing* proposal notification to the *FSA* after it has carried out due diligence on the service provider and has had regard to the *guidance* set out in *SYSC* 8.3. The *FSA* will expect a *firm* to only submit an *outsourcing* proposal notification in respect of a service provider that the *firm* has determined is suitable to carry on the *outsourcing* activity.

Notification requirements: content

- 8.2.7 G The *guidance* set out in SYSC 8.3 includes information on what the *FSA* will expect a *firm* to check before the submission of a notification.
- 8.2.8 G A notification under this section should include:
- (1) details on which of the conditions is not met;
 - (2) if applicable, details and evidence of the service provider's authorisation or regulation including the regulator's contact details;
 - (3) the *firm's* proposals for meeting its obligations under this chapter on an ongoing basis;
 - (4) why the *firm* wishes to *outsource* to the service provider;
 - (5) a draft of the *outsourcing* agreement between the service provider and the *firm*;
 - (6) the proposed start date of the *outsourcing*; and
 - (7) confirmation that the *firm* has had regard to the *guidance* in SYSC 8.3, or if it has not, why not.

Notification requirements – additional guidance

- 8.2.9 G Where the *FSA* has not objected to the *outsourcing* agreement, the *firm* should have regard to its obligations under SUP 15 which include making the *FSA* aware of any matters which could affect the *firm's* ability to provide adequate services to its *customers* or could result in serious detriment to its *customers* or where there has been material change in the information previously provided to the *FSA* in relation to the *outsourcing*.
- 8.3 Guidance on outsourcing portfolio management for retail clients to a non-EEA State
- 8.3.1 G This *guidance* is relevant regardless of whether a *firm outsources portfolio management* directly or indirectly via a third party. However, *firms* should note that they may notify a secondary or indirect outsourcing in the same notification as the direct outsourcing.
- 8.3.2 G This *guidance* sets out examples of the type of actions that a *firm* proposing to *outsource* should have undertaken when assessing the suitability of the service provider and its ability to carry on the *outsourced* activity.
- [Note: article 15(3) of the *MiFID implementing Directive*]
- 8.3.3 G If a *firm* can demonstrate that it has taken the following *guidance* into account and has satisfactorily concluded that it would be able to continue to satisfy the *common platform outsourcing rules* and provide adequate

protection for consumers despite not satisfying the conditions, the *FSA* would not be likely to object to that *outsourcing*.

- 8.3.4 G If the *outsourcing* allows the service provider to sub-contract any of the services to be provided under the *outsourcing*, any such sub-contracting shall not affect the service provider's responsibilities under the *outsourcing* agreement.
- 8.3.5 G The *outsourcing* agreement should entitle the *firm* to terminate the *outsourcing* if the service provider undergoes a change of control or becomes insolvent, goes into liquidation or receivership (or equivalent in its home state) or is in persistent material default under the agreement.
- 8.3.6 G The following should be taken into account where the service provider is not authorised or registered in its home country and/or not subject to prudential supervision.
- (1) The *firm* should examine, and be able to demonstrate, to what extent the service provider may be subject to any form of voluntary regulation, including self-regulation in its home state.
 - (2) The *firm* should be able to satisfy the *FSA* that the service provider is committed for the term of the *outsourcing* agreement to devoting sufficient, competent resources to providing the service.
 - (3) In addition to the requirement to ensure that a service provider discloses any developments that may have a material impact on its ability carry out the *outsourcing* (*SYSC* 8.1.8(6)), where the conditions are not met the developments to be disclosed should include, but are not limited to:
 - (a) any adverse effect that any laws or regulations introduced in the service provider's home country may have on its carrying on the *outsourced* activity; and
 - (b) any changes to its capital reserve levels or its prudential risks.
 - (4) The *firm* should satisfy itself that the service provider is able to meet its liabilities as they fall due and that it has positive net assets.
 - (5) The *firm* should require that the service provider prepares annual reports and accounts which:
 - (a) are in accordance with the service provider's national law which, in all material respects, is the same as or equivalent to the *international accounting standards*;
 - (b) have been independently audited and reported on in accordance with the service provider's national law which is the same as or equivalent to international auditing standards.

- (6) The *firm* should receive copies of each set of the audited annual report and accounts of the service provider. If the service provider expects or knows its auditor will qualify his report on the audited report and accounts, or add an explanatory paragraph, the service provider should be required to notify the *firm* without delay.
- (7) The *firm* should satisfy itself, and be able to demonstrate, that it has in place appropriate procedures to ensure that it is fully aware of the service provider's controls for protecting confidential information.
- (8) In addition to the requirement at SYSC 8.1.8R (10) that the service provider must protect any confidential information relating to the *firm* or its *clients*, the *outsourcing* agreement should require the service provider to notify the *firm* immediately if there is a breach of confidentiality.
- (9) The *outsourcing* agreement should be governed by the law and subject to the jurisdiction of an *EEA state*.

8.3.7 G The following should be taken into account by a *firm* where there is no cooperation agreement between the FSA and the supervisory authority of the service provider or there is no supervisory authority of the service provider.

- (1) The *outsourcing* agreement should ensure the *firm* can provide the *FSA* with any information relating to the *outsourced* activity the *FSA* may require in order to carry out effective supervision. The *firm* should therefore assess the extent to which the service provider's regulator and/or local laws and regulations may restrict access to information about the *outsourced* activity. Any such restriction should be described in the notification to be sent to the *FSA*.
- (2) The *outsourcing* agreement should require the service provider to provide the *firm's* offices in the UK with all requested information required to meet the *firm's* regulatory obligations. The *FSA* should be given an enforceable right under the agreement to obtain such information from the *firm* and to require the service provider to provide the information directly.

After SYSC 8 insert the following:

9 Record-keeping

9.1 General rules on record-keeping

9.1.-1 R This chapter applies to the *MiFID business* of a *firm*.

9.1.-2 R This chapter applies only to the extent necessary to implement *MiFID* and the *MiFID implementing directive*.

9.1.1 R A *firm* must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the *FSA* or any other relevant *competent authority* under *MiFID* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[Note: article 13(6) of *MiFID* and article 5(1)(f) of the *MiFID implementing Directive*]

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

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

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

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

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

Guidance on record-keeping

9.1.4 [intentionally blank]

9.1.5 [intentionally blank]

9.1.6 [intentionally blank]

...

Application

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

...

Identifying conflicts

- 10.1.3 R A *common platform firm* must take all reasonable steps to identify conflicts of interest between:

- (1) the *firm*, including its managers, employees, *appointed representatives* (or where applicable, *tiered agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or
- (2) one *client* of the *firm* and another *client*;

that arise, or may arise, in the course of the *firm* providing any service referred to in SYSC 10.1.1R.

[Note: article 18(1) of MiFID]

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Control of information

- 10.2.2 R (1) When a *common platform firm* establishes and maintains a *Chinese wall* (that is, an arrangement that requires information held by a *person* in the course of carrying on one part of the business to be withheld from, or not to be used for, *persons* with or for whom it acts in the course of carrying on another part of its business) it may:

- (a) withhold or not use the information held; and
- (b) for that purpose, permit *persons* employed in the first part of its business to withhold the information held from those employed in that other part of the business;

but only to the extent that the business of one of those parts involves the carrying on of *regulated activities*, ~~or *ancillary activities*~~- or, in the

case of *MiFID business*, the provision of *ancillary services*.

...

Annex C

Amendments to Threshold Conditions (COND)

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

Threshold condition 2: Location of Offices

Paragraph 2, Schedule 6 to the Act

- 2.2.1 D (1) Subject to sub-paragraph ~~1(A)~~ and (3), if the person concerned is a body corporate constituted under the law of any part of the United Kingdom -
- (a) its head office, and
 - (b) if it has a registered office, that office, must be in the United Kingdom.

~~(1A) If -~~

- ~~(a) the regulated activity concerned is any of the investment services and activities, and~~
- ~~(b) the person concerned is a body corporate with no registered office,~~

sub-paragraph (1B) applies in place of sub-paragraph (1).

(1B) If the person concerned has its head office in the United Kingdom, it must carry on business in the United Kingdom.

...

[Note: article 5(4) of MiFID]

- 2.2.2 G *Threshold condition 2(1) and (2) (Location of offices), implement the requirements of article 6 of the *Post BCCI Directive* and article 5(4) of *MiFID* and *threshold condition 2(3) and (4) implements article 2.9 of the *Insurance Mediation Directive*, although the *Act* extends *threshold condition 2* to *firms* which are outside the scope of the *Single Market Directives* and the *UCITS Directive*.**
- 2.2.3 G Neither the *Post BCCI Directive*, *MiFID*, the *Insurance Mediation Directive* nor the *Act* define what is meant by a *firm's* 'head office'. This is not necessarily the *firm's* place of incorporation or the place where its business is wholly or mainly carried on. Although the *FSA* will judge each application

on a case-by-case basis, the key issue in identifying the head office of a *firm* is the location of its central management and control, that is, the location of:

- (1) the *directors* and other senior management, who make decisions relating to the *firm's* central direction, and the material management decisions of the *firm* on a day-to-day basis; and
- (2) the central administrative functions of the *firm* (for example, central compliance, internal audit).

Annex D

Amendments to the General Provisions sourcebook (GEN)

- 1.2.2 R (1) Unless required to do so under the *regulatory system*, a *firm* must ensure that neither it nor anyone acting on its behalf claims, in a public statement or to a *client*, expressly or by implication, that its affairs, or any aspect of them, have the approval or endorsement of the *FSA* or another competent authority.

[Note: article 27(8) of the *MiFID implementing Directive*]

- (2) ...

...

4.1 Application and purpose

Who? What?

- 4.1.1 R This chapter applies to every *firm* and with respect to every *regulated activity*, except that:

- (1) ...
- (3) for an *incoming firm* not falling under (1) or (2), this chapter does not apply to the extent that the *firm* is subject to equivalent rules imposed by its *Home State*; ~~and~~
- (4) for a *UCITS qualifier*, this chapter does not apply; and
- (5) this chapter does not apply in relation to *MiFID business* or the *equivalent business of a third country investment firm*.

Annex E

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

...

Purpose

- 1.1.4 G *BIPRU* 1.1 implements in part Articles 3(1)(b), 5, 9, 10 and 20 of the *Capital Adequacy Directive*. ~~However it amends those definitions so as to base the classification of investment firms on the *ISD* rather than the *MiFID*. *BIPRU* 1.1 will be amended so as to base that classification on the *MiFID* when the *MiFID* is applied to firms by the *FSA*.~~
- 1.1.5 G *Guidance* on the categorisation of *investment firms* for the purposes of *BIPRU* and *GENPRU* ~~from 1 November 2007 will be~~ is included in *PERG* 13 (*Guidance on the scope of the Markets in Financial Instruments Directive* and the recast *Capital Adequacy Directive*).

...

Types of investment firm: Limited activity firms

- 1.1.11 R A *limited activity firm* means (as specified by Article 20(3) of the *Capital Adequacy Directive* (Exemptions from operational risk)) a *CAD investment firm* that satisfies the following conditions:

- (1) ...
- (a) ...
- (b) it satisfies the following conditions:
- (i) ...
- (ii) the only ~~core~~ *investment service* it undertakes is *dealing on own account*;

...

...

Type of investment firm: Limited licence firms

- 1.1.12 R *A limited licence firm* means (as specified by Article 20(2) of the *Capital Adequacy Directive* (Exemptions from operational risk)) a *CAD investment firm* that is not authorised to:
- (1) ...
 - (2) provide the investment services of underwriting or placing *financial instruments* (as referred to in point 46 of Section A of Annex I of ~~the ISDMiFID~~) on a firm commitment basis.
- ...
- 1.1.14 R (1) ...
- (2) *A person* whose head office is in an *EEA State* is a *CAD investment firm* if it is an *investment firm* that is subject to the requirements imposed by ~~the ISDMiFID~~ but excludes the following:
 - (a) ...
 - ...
 - (3) An *investment firm* whose head office is not in an *EEA State* is a *CAD investment firm* if it would have fallen into (2) if:
 - (a) ...
 - (b) it had carried on all its business in the *EEA* and had obtained whatever authorisations for doing so are required under ~~the ISDMiFID~~.
- 1.1.15 G ~~An investment firm with the benefit of an exemption pursuant to Article 2(2) of the ISD is~~ The following are excluded from the definition of a *CAD investment firm* and hence from the definition of *BIPRU investment firm*:
- (1) an investment firm to which *MiFID* does not apply under Article 2(1); and
 - (2) an investment firm with the benefit of an exemption pursuant to Article 3 of *MiFID*.
- 1.1.16 G In accordance with Article 3(1)(b)(iii) of the *Capital Adequacy Directive* (Definitions), an *exempt CAD firm* means an *investment firm* that satisfies the following conditions:
- (1) ...
 - (2) the only ~~core~~ *investment service* for which it is authorised is receiving and transmitting orders from investors (as referred to in Section A of Annex I of ~~the ISDMiFID~~) without holding money or securities belonging to its clients in relation to *investment services* it provides and for that reason it may not at any time place itself in debt

with those clients.

...

- 1.1.19 R A *BIPRU 125K firm* means a *BIPRU investment firm* that satisfies the following conditions:
- (1) it does not:
 - (a) ...
 - (b) underwrite issues of *financial instruments* (as referred in Section A of Annex I of ~~the ISDMiFID~~) on a firm commitment basis;
 - (2) ...
 - (3) it offers one or more of the following services (all as referred to in Section A of Annex I of ~~the ISDMiFID~~):
 - (a) ...
 - (b) ...
 - (c) the management of individual portfolios of investments in *financial instruments*; ~~and~~
 - (4) it is not a *UCITS investment firm*; ~~and~~
 - (5) it does not operate a multilateral trading facility.

Types of investment firm: BIPRU 50K firm

- 1.1.20 R A *BIPRU 50K firm* means a *BIPRU investment firm* that satisfies the following conditions:
- (1) ...
 - (2) it does not hold clients' money or securities in relation to *investment services* it provides and it is not authorised to do so; ~~and~~
 - (3) it is not a *UCITS investment firm*; ~~and~~
 - (4) it does not operate a multilateral trading facility.

...

Types of investment firm: 730K firm

- 1.1.22 R A *BIPRU investment firm* that is not a *UCITS investment firm*, a *BIPRU 50K firm* or a *BIPRU 125K firm* is a *BIPRU 730K firm*. A *BIPRU investment firm* that operates a multilateral trading facility is a *BIPRU 730K firm*.

Meaning of dealing on own account

- 1.1.23 R (1) *Dealing on own account* means (for the purpose of *GENPRU* and *BIPRU*) the service of dealing in any *financial instruments* for own account as referred to in point 2-3 of Section A of ~~the Annex I to the~~ *ISD MiFID*, subject to (2) and (3).

Annex F

Amendments to Training and Competence sourcebook (TC)

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted this is indicated and no text is struck through.

- 2.1.1B G The rules and guidance in this sourcebook support the obligations on common platform firms set out in SYSC 5 and SYSC 6.1 and the FSA's supervisory function in relation to these firms.
- 2.1.2 R (1) In relation to *designated investment business*:
- (a) unless (~~aa-3~~) applies, this chapter applies to a *UK domestic firm* in respect of its *employees* who engage in or oversee activities (~~to the extent indicated in TC 2.1.4R~~):
 - (i) ...
 - (ii) ...
 - (aa) [deleted]
 - (b) unless (bb) applies, this chapter applies to an *overseas firm* in respect of its *employees* who engage in or oversee activities (~~to the extent indicated in TC 2.1.4R~~) from an establishment maintained by the *firm* (or its *appointed representative*) in the *United Kingdom*.
 - (bb) if the *designated investment business* constitutes *insurance mediation activity* or *MiFID business*, this chapter does not apply to an ~~overseas firm~~ which is an *incoming EEA firm*.
- ...
- (3) In relation to *insurance mediation activities* ~~in respect of non-investment insurance contracts carried on with or for a customer~~, or *MiFID business*, this chapter applies to any such activity carried on, ~~by~~ or overseen, by a *UK domestic firm*:
- (a) ...
- ...

Activities to which TC 2 applies

2.1.4 R

	Activity	Extent of Application
<p>1. <i>Employees</i> engaging in:</p>	<p>Advising and dealing ...</p>	<p>1. In relation to <i>designated investment business</i>: (a) if the activity is carried on with or for a private customer <u>retail client</u>, whole of TC 2 applies <u>as if each reference to private customer were a reference to retail client</u>; (b) if the activity is carried on with or for an intermediate customer <u>professional client</u> or an market counterparty <u>eligible counterparty</u>; ... 3. In relation to <i>advising on investments</i> which are <i>non-investment insurance contracts</i> if the activity is carried on with or for a <i>retail customer</i> (see <i>ICOB</i>) the whole of <u>this chapter TC 2</u> applies, except for <u>the rules and guidance relating to appropriate examinations (TC 2.5)</u>, as if in <u>TC 2.2, TC 2.3, TC 2.4 and TC 2.7</u> each reference to private customer were a reference to retail customer.</p>
<p>2. <i>Employees</i> overseeing on a day-to-day basis</p>	<p>(a) operating, or acting as a <i>trustee</i> or <i>depository</i> of, a <i>collective investment scheme</i>; ... (e) taking private customers <u>retail clients</u> through ...</p>	<p>Whole of TC 2 <u>this chapter</u> applies except <u>TC 2.7</u> (Supervising) <u>the rules and guidance relating to supervising and monitoring (TC 2.7)</u>.</p>

- 2.4.2 R (1) ...
 ...
 (b) the *firm* has satisfied itself that the *employee* has an adequate level of knowledge and skills to act ~~with or for private customers~~ while under supervision.
- 2.4.3 G ...
 (1) ...
 (2) appropriate skills in analysing ~~private~~ *customers'* needs and circumstances when applying relevant knowledge.
- 2.5.1 R [deleted]
- 2.5.1A R [deleted]
- 2.5.2 G [deleted]
- ...
- 2.8.1 R (1) ...
 (2) The records in (1) must be retained by the *firm* for the following periods for at least three years after an *employee* ceases to engage in or oversee an activity; ~~except for the records of pension transfer specialists, which must be retained indefinitely.~~
 (a) at least five years where the activity was *MiFID business*;
 (b) indefinitely for the records of *pension transfer specialists*; and
 (c) three years for the records of all other activities.

Schedule 1 to be amended as follows:

...

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<i>TC 2.4.9 G</i>	Attaining Competence	Data on competence	On a continuing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
<i>TC 2.5.1 R</i>	Appropriate examinations	Examination time limits	When employee begins in the activity	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p>
<i>TC 2.5.2 G</i>	Appropriate examinations	Examination passes and dates and other relevant data such as periods of absence	Duration of time limits for that activity	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p>
<i>TC 2.5.6G (1)</i>	Appropriate	Criteria for	At the time of	For 3 years only

	examinations - regulatory module only	application of TC 2.5.5 R to the <i>employee</i>	the application of the <i>rule</i>	<p>after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an <i>employee</i> ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.5.6G (2)	Appropriate examinations	Criteria for application of TC 2.5.5A R to the <i>employee</i>	At the time of the application of the <i>rule</i>	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an <i>employee</i> ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.6.4 G	Maintaining Competence	Criteria for and application of assessment	On a continuing basis after competence	<p>For 3 years only after an employee ceases to engage in or</p>

				<p>oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.7.6 G	Supervising and monitoring	Criteria in deciding level of supervision and how it is carried out	When the <i>employee</i> begins in the activity and on an ongoing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
TC 2.8.1 R (1)	Compliance with sourcebook	Data on competence, relevant to compliance with the sourcebook	When the <i>employee</i> begins in the activity and on a continuing basis	<p>For 3 years only after an employee ceases to engage in or oversee an activity or for</p>

				<p>PTS indefinite.</p> <p><u>For the following periods after an employee ceases to engage in or oversee an activity:</u></p> <p><u>1) 5 years where the activity was MiFID business</u></p> <p><u>2) for PTS, indefinitely; and</u></p> <p><u>3) 3 years for all other activities.</u></p>
--	--	--	--	---

Annex G

Amendments to the Supervision manual (SUP)

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

- 6.3.42 G (1) *Firms* should be aware that the *FSA* may exercise its *own-initiative power* to vary or cancel their *Part IV permission* if they do not:
- (a) commence a *regulated activity* for which they have *Part IV permission* within a period of at least 12 months from the date of being given; or
 - (b) carry on a *regulated activity* for which they have *Part IV permission* for a period of at least 12 months (irrespective of the date of grant).

(1A) The *FSA* may exercise its *own-initiative power* to cancel an *investment firm's Part IV permission* if the *investment firm* has provided or performed no *investment services and activities* at any time during the period of six months ending with the day on which the *warning notice* under section 54(1) of the *Act* is given (see *ENF 5.3.2G*).

[Note: article 8(a) of *MiFID*]

...

- 10.7.13 G A ~~A firm's obligations in respect of its money laundering reporting officer are set out in SYSC 3.2.61R and SYSC 6.3.9R and the scope of application of these provisions is set out in SYSC 1.1.~~ A firm's obligations in respect of its money laundering reporting officer are set out elsewhere in the Handbook (see SYSC 3.2.61R and SYSC 6.3.9R and for their scope, see the application provisions in SYSC 1.1 and SYSC 1.3).

...

12.1 ...

...

12.1.1 R ...

(1A) This chapter applies to a *UK MiFID investment firm* which is considering appointing, has decided to appoint or has appointed an *EEA tied agent*.

...

- (3) This chapter does not apply in relation to a *tiered agent* acting on behalf of an *EEA MiFID investment firm* unless that *tiered agent* is established in the *UK*.

...

- 12.1.5 G This chapter also sets out *guidance* about section 39A of the *Act*, which is relevant to a *UK MiFID investment firm* that is considering appointing an *FSA registered tiered agent*. It also sets out the *FSA's rules*, and *guidance* on those *rules*, in relation to the appointment of an *EEA tiered agent* by a *UK MiFID investment firm*.

- 12.2.1 G (1) ...

- (2) ...

- (3) If an *appointed representative* is also a *tiered agent* he must also satisfy the condition in section 39(1A) of the *Act* in order to be an *exempt person*. See *SUP 12.4.12G* for *guidance* on that condition and *SUP 12.2.16G* for more general *guidance* about *tiered agents*.

...

Business for which an appointed representative is exempt

12.2.7

...

- (2) ~~If the *appointed representative* is an investment firm (see (3)), the business in (1) does not include the reception and transmission of orders on behalf of investors in relation to instruments covered by the *ISD* unless that activity is solely on behalf of another investment firm.~~ If the *appointed representative* is a *tiered agent* of an *EEA firm*, the business for which the *appointed representative* may be exempt includes the following additional activities:

(a) placing *financial instruments*;

(b) providing advice to *clients* or potential *clients* in relation to the placing of *financial instruments*.

- (3) [deleted]

...

What is a tied agent?

- 12.2.16 G (1) A tied agent is a person who acts for and under the responsibility of a MiFID investment firm (or a third country investment firm) in respect of MiFID business (or the equivalent business of the third country investment firm). Most tied agents appointed by firms are also appointed representatives.
- (2) Unless otherwise provided, this chapter applies to a firm that appoints a tied agent that is an appointed representative in the same way as it applies to the appointment of any other appointed representative.
- (3) This chapter sets out the provisions which apply to tied agents:
- (a) established in the UK; or
- (b) established in another EEA State and appointed by a UK MiFID investment firm.
- (4) A tied agent appointed by a firm to carry on investment services and activities or ancillary services on its behalf may not provide cross border services or establish a branch in another EEA State in its own right. This is because tied agents do not have passporting rights. The tied agent of a MiFID investment firm may, however, provide cross border services or establish a branch in another EEA State by availing itself of the appointing firm's passport. MiFID investment firms may also appoint tied agents established in different EEA States.
- (5) A tied agent will not be an appointed representative if it does not and is not likely to conduct any business as a tied agent in the UK. If such a tied agent is appointed by a UK MiFID investment firm it will be an EEA tied agent. EEA tied agents are either FSA registered tied agents or EEA registered tied agents.
- (6) This chapter only applies to a firm that appoints a tied agent that is not an appointed representative where it expressly refers to tied agents.
- (7) Under MiFID, an EEA State may prohibit the appointment of tied agents by MiFID investment firms for which it is the Home State. If a UK MiFID investment firm appoints a tied agent established in such an EEA State, the tied agent must be registered with the FSA. Such an EEA tied agent is referred to in the Handbook as an FSA registered tied agent.
- (8) If a UK MiFID investment firm appoints a tied agent established in an EEA State that allows MiFID investment firms for which it is the home State to appoint tied agents, the tied agent must be registered with the competent authority of the EEA State in which it is

established. Such an *EEA tied agent* is referred to in the *Handbook* as an *EEA registered tied agent*.

...

12.3 What responsibility does a firm have for its appointed representative or EEA tied agent?

Responsibility for appointed representatives

...

12.3.4 G *SYSC 6.1.1R* requires a *MiFID investment firm* to ensure the compliance of its *appointed representative* with obligations under the *regulatory system*. The concept of a *relevant person* in *SYSC* includes an officer or employee of a *tied agent*.

Responsibility for EEA tied agents

12.3.5 R A *UK MiFID investment firm* must not appoint an *EEA registered tied agent* or allow such an agent to continue to act for it unless it accepts or has accepted responsibility in writing for the agent's activities in acting as its *EEA registered tied agent*.

[Note: paragraph 1 of article 23(2) of *MiFID*]

12.3.6 G The effect of section 39A(6)(b) of the *Act* is to prohibit a *UK MiFID investment firm* from appointing an *FSA registered tied agent* unless it has accepted responsibility in writing for the agent's activities in acting as a *tied agent*.

...

12.4 What must a firm do when it appoints an appointed representative or an EEA tied agent?

...

12.4.2A R A *firm* must ensure that a *tied agent* that is an *appointed representative* is of sufficiently good repute and that it possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the *client* or potential *client*. This does not limit a *firm's* obligations under *SUP 12.4.2 R*.

[Note: paragraphs 3 and 4 of article 23(3) of *MiFID*]

...

Appointment of an FSA registered tied agent

- 12.4.11 R If a UK MiFID investment firm appoints an FSA registered tied agent, SUP 12.4.2R and SUP 12.4.2AR apply to that firm as though the FSA registered tied agent were an appointed representative.

[Note: paragraphs 3 and 4 of article 23(3) of MiFID]

Tied agents

- 12.4.12 G (1) A tied agent that is an appointed representative may not start to act as a tied agent until it is included on the applicable register (section 39(1A) of the Act). If the tied agent is established in the UK, the register maintained by the FSA is the applicable register for these purposes. If the tied agent is established in another EEA State, it should consult section 39(1B) of the Act to determine the applicable register.
- (2) A UK MiFID investment firm that appoints an FSA registered tied agent who is not registered with the FSA will, subject to certain conditions, be taken to have contravened a requirement imposed on it by or under the Act (see section 39A(6)(c) and (d) of the Act).
- (3) A UK MiFID investment firm that appoints an EEA registered tied agent will be required to register that agent with the competent authority of the EEA State in which it is established. This requirement will be imposed by the rules of that EEA State.
- (4) If the tied agent is not established in the UK and is appointed by an EEA MiFID investment firm, it cannot commence acting as a tied agent until it is included on the public register of tied agents in the EEA State in which it is established (or in certain cases, of the Home State of the firm).
- (5) If an appointed representative's scope of appointment is to include acting as a tied agent, the principal must notify the FSA of the appointment before the appointed representative starts acting as such (see SUP 12.7.7 R (1A)).
- (6) A tied agent can only act as such for one MiFID investment firm or third country investment firm (see SUP 12.5.6AR(1A)).

...

- 12.5.2 G (1) Regulations 3(1) ~~to~~ and (2) ~~(3)~~ of the Appointed Representatives Regulations makes it a requirement that the contract between the firm and the appointed representative (unless it prohibits the appointed representative from representing other counterparties)

contains a provision enabling the *firm* to:

...

(1A) The requirement described in paragraph (1) does not apply if the *firm* is an *EEA MiFID investment firm*.

...

12.5.2A G If a *UK MiFID investment firm* or a *third country investment firm* appoints an *appointed representative* that is a *tied agent*, regulation 3(6) of the *Appointed Representative Regulations* requires the contract between the *firm* and the *appointed representative* to contain a provision that the *representative* is only permitted to provide the services and carry on the activities referred to in Article 4(1)(25) of *MiFID* while he is entered on the applicable register.

...

12.5.6A R Prohibition of multiple principals for certain activities

...

(1A) If the *appointed representative* is a *tied agent*, the prohibition must prevent the *appointed representative* acting as a *tied agent* for any other *MiFID investment firm* or *third country investment firm*.

...

To be inserted after SUP 12.5.6A

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

12.5.6B G ...

(1A) The effect of SUP 12.5.6A R(1A) is that *tied agents* are restricted to one *principal* when acting as such. A *tied agent* who has a *MiFID investment firm* or a *third country investment firm* as a *principal* may have other *principals* who are not *MiFID investment firms* or *third country investment firms*.

...

Required contract terms for EEA tied agents

12.5.8 R If a *UK MiFID investment firm* appoints an *EEA tied agent*, SUP 12.5.6AR(1A) applies to that *firm* as though the *EEA tied agent* were an *appointed representative*.

[Note: articles 4(1)(25) and 23(1) of *MiFID*]

Required contract terms for FSA registered tied agents

12.5.9 G Under section 39A(6)(a) of the Act a UK MiFID investment firm must ensure that the contract it uses to appoint an FSA registered tied agent complies with the requirements that would apply under the Appointed Representative Regulations if it were appointing an appointed representative.

...

12.6 Continuing obligations of firms with appointed representatives or EEA tied agents

...

12.6.1A R A firm that is a principal of a tied agent that is an appointed representative must monitor the activities of that tied agent so as to ensure the firm complies with obligations imposed under MiFID (or equivalent obligations relating to the equivalent business of a third country investment firm) when acting through that tied agent.

[Note: paragraph 3 of Article 23(2) of MiFID]

...

Appointed representatives not to hold client money

12.6.5 R ...

(2) The firm must take reasonable steps to ensure that if client money is received by the appointed representative, it is paid into a client bank account of the firm, or forwarded to the firm, in accordance with:

(a) CASS 4.3.15 R to CASS 4.3.17 R; or

(b) CASS 5.5.18 R to CASS 5.5.21 R unless acting in accordance with CASS 5.5.23 R (Periodic segregation and reconciliation);
or;

(c) the MiFID client money segregation requirements.

12.6.5A G When complying with the MiFID client money segregation requirements, firms' attention is drawn to the guidance in CASS 7.4.24 G to CASS 7.4.27 G.

...

12.6.7 G Senior management responsibility for appointed representatives

The senior management of a firm should be aware that the activities of appointed representatives are an integral part of the business that they

manage. The responsibility for the control and monitoring of the activities of *appointed representatives* rests with the senior management of the *firm*. ~~Guidance is set out in SYSC 3 on delegation (for example, SYSC 3.2.3 G and SYSC 3.2.4 G) and in the Statements of Principle and Code of Practice for Approved Persons in APER (for example, APER 4.5 and APER 4.6).~~

...

Continuing obligations of firms with tied agents

12.6.13 R A firm must ensure that its tied agent discloses the capacity in which he is acting and the firm he is representing when contacting a client or potential client or before dealing with a client or potential client.

[Note: paragraph 1 of article 23(2) of MiFID]

12.6.14 R A firm must take adequate measures in order to avoid any negative impact of the activities of its tied agent not covered by the scope of MiFID (or relating to the equivalent business of a third country investment firm) could have on the activities carried out by the tied agent on behalf of the firm.

[Note: paragraph 1 of article 23(4) of MiFID]

Continuing obligations of firms with EEA tied agents

12.6.15 R If a UK MiFID investment firm appoints an EEA tied agent, SUP 12.6.1R, SUP 12.6.1AR, SUP 12.6.5R and SUP 12.6.11AR apply to that firm as though the EEA tied agent were an appointed representative.

...

12.7.1 R (1) ...
(a) ...
(aa) if the firm appoints a tied agent and the tied agent is not included in the Register (see SUP 12.4.11 G), before; or
(b) ...

...

...

12.7.5 **RG** To contact the Authorisation and Approvals Department (Authorisation teams):

- (1) telephone on 020 7066 1000; fax on 020 7066 1099; or
- (2) write to: Authorisation and Approvals Department (Authorisation teams), The Financial Services Authority, 25 The North Colonnade,

Canary Wharf, London E14 5HS; or

(3) email [appreps@ fsa.gov.uk](mailto:appreps@fsa.gov.uk).

12.7.6 G [deleted]

Notification of changes in information given to the *FSA*

12.7.7 R ...

(1A) If:

(a) (i) the scope of appointment changes such that the appointed representative acts as a tied agent for the first time; and

(ii) the appointed representative is not included on the Register; or

(b) the appointed representative ceases to act as a tied agent;

the appointed representative's principal must give written notice to the FSA of that change before the appointed representative begins to act as a tied agent (see SUP 12.4) or as soon as the appointed representative ceases to act as a tied agent.

(2) Where there is a change in any of the information provided to the *FSA* under *SUP 12.7.1 R* or *SUP 12.7.7R(1A)*, a *firm* must complete and submit to the *FSA* the form in *SUP 12 Annex 4* (Appointed representative notification form) in accordance with the instructions on the form and within ten *business days* of that change being made or, if later, as soon as the *firm* becomes aware of the change. The Appointed representative notification form must state that the information has changed.

(3) A *firm's* notification under (1) and (2) must be given to a member of or addressed for the attention of the Monitoring and Notifications Department at the address given in *SUP 12.7.5G*.

...

Notifications relating to EEA tied agents

12.7.9 R If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

12.8 Termination of a relationship with an appointed representative or EEA tied agent

...

Termination of a UK MiFID investment firm's relationship with an EEA tied agent

12.8.6 R If a UK MiFID investment firm has appointed an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

...

12.9.2 R A firm must retain these records for at least three years from the date of termination or the amendment of the contract with the *appointed representative*- other than in respect of tied agents when the records must be retained for a period of five years.

...

Record keeping in relation to EEA tied agents

12.9.5 R If a UK MiFID investment firm appoints an EEA tied agent this section applies to that firm as though the EEA tied agent were an appointed representative.

Schedule 1 Record Keeping Requirements

Handbook reference	Subject of Record	Contents of record	When record must be made	Retention Period
...				
SUP 12.9.1 R, SUP 12.9.2 R ₂	<i>Appointed Representatives</i>	(1) <i>Appointed Representative's</i> name ...	On appointment, amendment of contract or termination of contract	3 years from termination or amendment of the contract, <u>other than in respect of tied agents when period is five years.</u>
<u>SUP 12.9.5R</u>	<u><i>EEA tied agents</i></u>	<u>If a UK MiFID investment firm appoints an EEA tied agent the record keeping requirements in SUP 12.9 applies</u>		

			to that <i>firm</i> as though the <i>EEA tied agent</i> were an <u>appointed representative</u> .		
--	--	--	---	--	--

...

Schedule 2 Notification requirements

	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	...				
	SUP 12.7.1 R	<i>Appointed Representatives</i>			⁷ (1) (if the appointment covers <i>insurance mediation activities</i> and the <i>appointed representative</i> is not included on the <i>Register</i> as carrying on such activities in another capacity) before; or ⁷ (2) if the <i>firm</i> appoints a <u><i>tied agent</i></u> and the <u><i>tied agent</i></u> is not included in the <u><i>Register</i></u> (see SUP 12.4.11 G), before; or (23) (otherwise) ten <i>business days</i> after; ⁷ the <i>appointed representative</i> begins to carry on <i>regulated activities</i> under the contract
	...				
	<u>SUP 12.7.7 R (1A)</u>	<i>Appointed Representatives</i>	<u>That fact.</u>	<u>Change of scope of</u>	<u>Notification must be made prior to</u>

		<i>atives_– commenci ng as tied agent.</i>		<i>tied agent's appointme nt</i>	<i>tied agent acting.</i>
	...				
	<u>SUP 12.7.9R</u>	<u><i>EEA tied agents</i></u>	<u><i>If a UK MiFID investment firm appoints an EEA tied agent the notification requirements in SUP 12.7 apply to that firm as though the EEA tied agent were an appointed representative.</i></u>		
	<u>SUP 12.8.6R</u>	<u><i>EEA tied agents</i></u>	<u><i>If a UK MiFID investment firm appoints an EEA tied agent the notification requirements in SUP 12.8 apply to that firm as though the EEA tied agent were an appointed representative.</i></u>		

Annex H

Amendments to the Compensation sourcebook (COMP)

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

5.5 Protected investment business

...

5.5.2 R *COMP 5.5.1R* only applies if the *protected investment business* was carried on from:

(1) an establishment of the *relevant person* in the *United Kingdom*; or

(2) a *branch* of a *UK firm* which is:

(a) ~~an *ISD MiFID investment firm* (including a *credit institution* which is an *ISD MiFID investment firm*)~~; or

(b) a *UCITS management company* established in another *EEA State* (but only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*);

and the claim is an *ICD claim*; or

(3) both (1) and (2).

...

6.2.2 G An *incoming EEA firm*, which is a *credit institution*, an *IMD insurance intermediary*, ~~an *ISD a MiFID investment firm*~~ or a *UCITS management company*, and its *appointed representatives* are not *relevant persons* in relation to the *firm's passported activities*, unless it has *top-up cover* (and in the case of a *UCITS management company*, only in relation to *managing investments* (other than of a *collective investment scheme*), *advising on investments* or *safeguarding and administering investments*). (See definition of "*participant firm*").