

Chapter 2

Onshoring of senior management arrangements and systems and controls obligations

2.1 Background

- 2.1.1** **G** This guide sets out an overview of the FCA's approach to the onshoring of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. The guide focuses on the regulatory regime for UK firms and is aimed at UK MiFID investment firms, that is investment firms that would require authorisation under MiFID and credit institutions carrying on MiFID business, and MiFID Optional exemption firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive's full application. See PERG 13 Q49.
- 2.1.2** **G** [deleted]
- 2.1.3** **G** MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect of the whistleblowing obligations in MiFID II contained in primary legislation, onshoring of the MiFID II Level 1 requirements takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorized firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.
- 2.1.4** **G** The Commission Delegated Regulation 2017/565 of 25 April 2016), as onshored by the Exit Regulations, contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions.

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2.3 Main types of senior management and organisational requirements in MiFID II

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MiFID II's senior management and systems and controls requirements for firms fall into five broad categories:

- management body (article 9);
- general organisational requirements (article 16);
- conflicts of interest (article 23);
- remuneration and performance management of sales staff (article 24);
- whistleblowing (article 73).

Firms operating an MTF or an OTF are subject to additional systems and controls for algorithmic trading (see MAR 5 and 5A). Likewise, MAR 7A contains systems and controls requirements for other firms engaged in algorithmic trading or providing direct electronic access.

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The general organisational requirements in article 16 are added to by detailed provisions in the MiFID Org Regulation including the following areas:

- compliance;
- risk management;
- internal audit;
- responsibility of senior management;
- complaints handling;
- remuneration policies and practices;

- personal transactions;
- outsourcing;
- conflicts of interest;
- record-keeping.

2.4 MiFID II onshoring and SYSC

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The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are used to onshore the provisions in the directive. As such, the approach to onshoring MiFID II retains the familiar approach of the common platform and the following:

- the application of common platform requirements in SYSC 1 Annex 1 Part 3 and Table B for MiFID optional exemption firms;
- a rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's designated investment business, MiFID or otherwise (SYSC 1 Annex 1 2.8AR) (in the Handbook, the definition of 'MiFID investment firm' captures any UK firm to which MiFID would apply if the United Kingdom were a Member State);
- a rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm's designated investment business, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);
- signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in the new Table C in SYSC 1 Annex 1;
- chapter SYSC 10A on recording telephone conversations and electronic communications;
- section SYSC 18.6 on the whistleblowing obligations imposed upon MiFID investment firms which includes a signposting mechanism pointing firms to similar obligations derived from other single market legislation; and
- section SYSC 19F in respect of remuneration and performance management of sales staff.



2.5 Navigating SYSC

2.5.1 **G** In order to navigate SYSC material implementing MiFID II, it is essential to follow the relevant application provisions in the sourcebook.

2.5.2 **G** SYSC 1.1A summarises the application of the sourcebook to different types of firms. UK MiFID investment firms and MiFID optional exemption firms fall into the category of 'every other firm' in SYSC 1.1A and so the applicable chapters are 4 to 12, 18, 19A, 19D and 21. The detailed application of the provisions in chapters 4-10 is cut back in SYSC 1 Annex 1 and it is this annex which provides the starting point for understanding and determining the application of the common platform requirements to your business. More specifically, SYSC 1 Annex 1 Part 3.1G provides a roadmap for individual categories of firms, including UK MiFID investment firms and MiFID optional exemption firms, in explaining how the common platform requirements and the MiFID Org Regulation apply to them.

2.6 UK MiFID investment firms

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In the case of UK MiFID investment firms, these are common platform firms for the purposes of the Handbook so are subject to the following MiFID II related obligations:

- SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table A Column A. This table identifies whether individual provisions in these chapters apply:

- (i) either as rules or guidance;
- (ii) only to certain sub-categories of common platform firms; or
- (iii) are non-applicable.

These obligations apply to the firm's regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.

- The MiFID Org Regulation.

Certain provisions of the MiFID Org Regulation are also adapted to apply to the firm's non-MiFID business in accordance with SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR. The effect of SYSC 1 Annex 1.2.8AR is to adapt the MiFID Org Regulation so that a small number of its terms are to be read as if they were broader corresponding Handbook terms. For example, references in the MiFID Org Regulation to 'investment service' and 'investment services and activities' are to be read as 'designated investment business'. This helps maintain a common single standard of organisational requirements applying to all of a UK MiFID investment firm's business.

- Other non-common platform requirements including recording telephone conversations and electronic communications (SYSC 10A), whistleblowing (SYSC 18) and remuneration and performance management of sales staff (SYSC 19F). These chapters apply to a firm's MiFID and other business to the extent set out in the application provisions of each chapter.

2.7 MiFID optional exemption firms

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- SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table B Column A. This table identifies whether individual provisions in these chapters apply:

- (i) either as rules or guidance; or

- (ii) are non-applicable. These obligations apply to the firm's regulated activities and other activities identified in SYSC 1 Annex 1.2.8R.

- Articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation are applied to the business of a MiFID optional exemption firm in accordance with SYSC 1 Annex 1 3.2CR. The effect of SYSC 1 Annex 1 3.2CR is to apply these provisions of the MiFID Org Regulation:

- (i) as either rules or guidance in accordance with SYSC 1 Annex 1 Part 3 Table C; and

- (ii) to the firm's regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.

The effect of SYSC 1 Annex 1 3.2CR is to also to adapt articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation so that a small number of terms in the regulation are to be read as if they were broader corresponding Handbook terms, as set out in SYSC 1 Annex 1.2.8AR.

- Other non-common platform requirements applying MiFID optional exemption firms include recording telephone conversations and electronic communications (SYSC 10A) and remuneration and performance management of sales staff (SYSC 19F). The requirements in these chapters apply to a firm's business to the extent set out in the application provisions in each chapter.

2.8 Other firms- Collective portfolio management investment firms and authorised professional firms

2.8 **G** This short summary focuses only on MiFID II onshoring and not obligations arising under other single market legislation

2.8.1 **G** A collective portfolio management investment firm ('CPMI') takes the form of a 'UCITS investment firm' or an 'AIFM investment firm', as defined in the FCA Handbook Glossary. A UCITS investment firm is subject to the common platform requirements as set out in Column A+ in SYSC 1 Annex 1 Table A. An AIFM investment firm is subject to the requirements listed in Column A in SYSC 1 Annex 1 Table A in relation to their MiFID business. More generally, both a UCITS investment firm and an AIFM investment firm fall within the Handbook definition of MiFID investment firm broadly when doing MiFID business - this is relevant as regards the application of SYSC 10A ('Recording telephone conversations and electronic communications'). By contrast, neither SYSC 18 ('Whistleblowing') nor SYSC 19.1 (MiFID remuneration incentives) apply to their MiFID business, as a result of the derogations in the application provisions in these chapters.

2.8.2 **G** Authorised professional firms falling within the exemption in paragraph 1(d) of Part 1 of Schedule 3 to the RAO will be subject to common platform requirements as set out in Column B in SYSC 1 Annex 1 Table A. If they satisfy the criteria of a MiFID optional exemption firm (in accordance with Chapter 1 of Part 2 of the MiFI regulations) they will be subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A. If they fall within both the exemptions in paragraph 1(d) of Part 1 of Schedule 3 to the RAO and Chapter 1 of Part 2 of the MiFI regulations, they are entitled to comply only with the common platform requirements relating to article 2(1)(c) exempt firms in Column B in SYSC 1 Annex 1 Table A. Where they would be required to be authorised by MiFID II, they will be subject to common platform requirements in Column A in SYSC 1 Annex 1 Table A and other SYSC requirements as a UK MiFID investment firm, except to the extent indicated otherwise (including SYSC 1 Annex 1 2.5R).

For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.

See the definition of authorised professional firms at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=A>. In essence, the definition captures persons regulated by a designated professional body under Part XX FSMA, with a Part 4A permission.



2.9 Other organisational requirements

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In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in [PROD]. Firms will also remain subject to obligations in the form of the relevant senior management, certification, COCON and approved persons requirements.

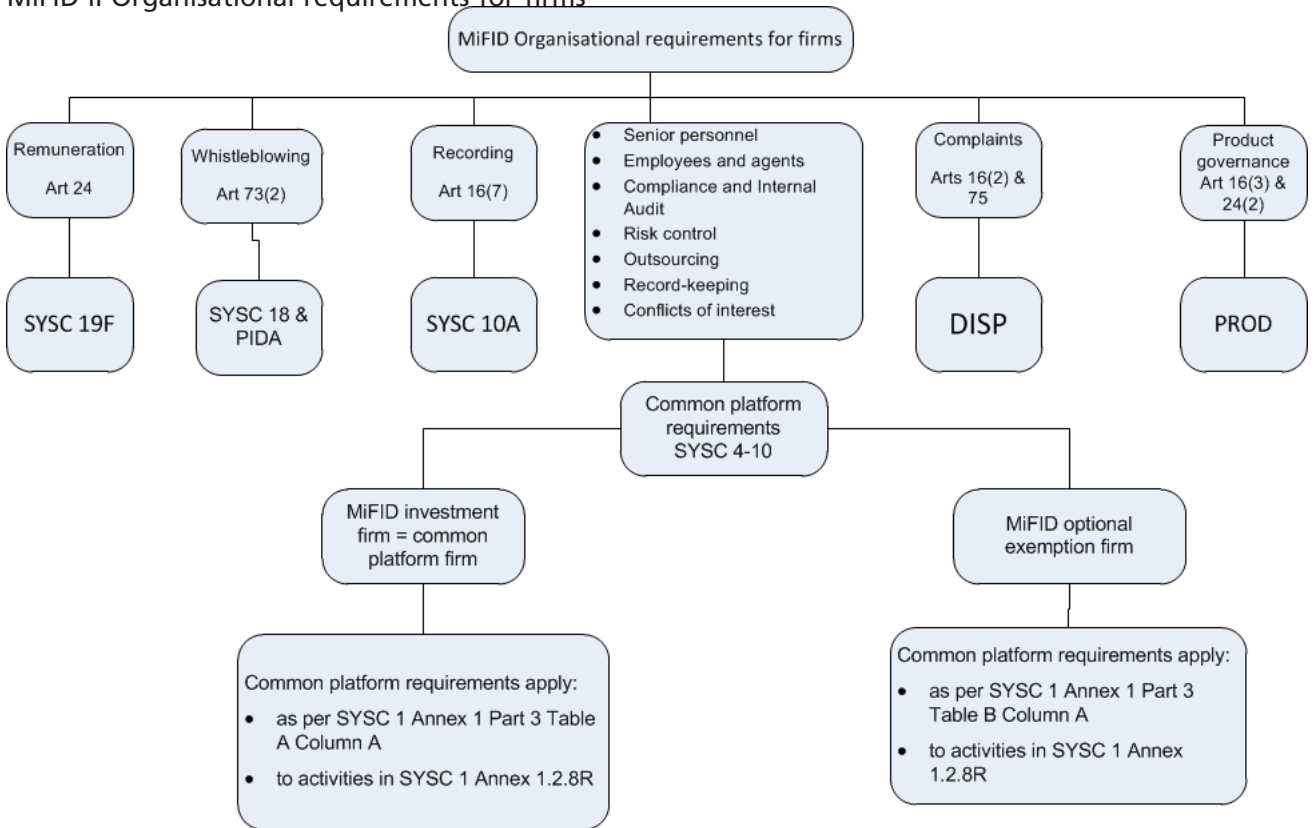
Overview

The diagrams in this Annex provide an overview of organisational requirements deriving from MiFID II and the location of their implementation, as well as the MiFID Org Regulation including its extension to non-MiFID II business in the case of UK MiFID investment firms and MiFID optional exemption firms.

The diagram focuses on the position of UK MiFID investment firms (other than CPMI and authorised professional firms

) and MiFID optional exemption firms.

MiFID II Organisational requirements for firms



MiFID Org Regulation

