Chapter 1

Application

1.1 Application and purpose

Application

1.1.1 G There is no overall application provision for *MIFIDPRU*. Each chapter or section has its own application statement. However, *MIFIDPRU* broadly applies to the following:

(1) *MIFIDPRU investment firms*;

(2) *UK parent entities*; and

(3) *parent undertakings* in an *investment firm group* that are incorporated in, or have their principal place of business in, the *United Kingdom*.

1.1.2 G (1) The definition of a *MIFIDPRU investment firm* includes a *collective portfolio management investment firm*. This means that a *collective portfolio management investment firm* must comply with the *rules* in *MIFIDPRU*, except to the extent that a provision of *MIFIDPRU* otherwise provides.

(2) A *collective portfolio management investment firm* is also subject to the prudential requirements in ■ IPRU-INV 11 (Collective Portfolio Management Firms and Collective Portfolio Management Investment Firms). These *firms* should refer to ■ IPRU-INV 11.6 for further *guidance* on how the requirements in *MIFIDPRU* interact with the requirements in ■ IPRU-INV 11.

(3) As explained in ■ MIFIDPRU 1.1.5G, many requirements in *MIFIDPRU* apply only in relation to the *MiFID business* of a *firm* and therefore will not apply to the collective portfolio management activities carried on by a *collective portfolio management investment firm*. However, some requirements in *MIFIDPRU* apply to the *firm* as a whole.

Application to overseas firms

1.1.3 G *MIFIDPRU* does not directly apply to an *undertaking* which is not incorporated in, and does not have its principal place of business in, the *United Kingdom*. However, *MIFIDPRU* imposes some obligations on *UK parent entities* and *responsible UK parents* relating to *undertakings* established in a *third country* that form part of the same *investment firm group*. ■ MIFIDPRU 2 (Levels of application) contains additional *guidance* on the application of *MIFIDPRU* to *investment firm groups*.

1.1.4 G

(1) This *guidance* provision applies to a *third country MIFIDPRU investment firm*. It is without prejudice to the *FCA's* general approach to authorising *overseas firms*.

(2) The *FCA* will not normally give a *Part 4A permission* to a *third country MIFIDPRU investment firm* unless the *FCA* is satisfied that the applicant will be subject to prudential regulation by a *regulatory body* in its home jurisdiction and the regulatory requirements are broadly equivalent to the requirements that would apply under *MIFIDPRU*.

(3) When conducting the assessment in (2), the *FCA* will take into account the following non-exhaustive list of factors:

(a) whether the requirements of the jurisdiction are likely to achieve similar prudential outcomes to *MIFIDPRU*;

(b) how the overseas *regulatory body* supervises and enforces those requirements in practice;

(c) the broader legal framework applicable to the applicant in the jurisdiction; and

(d) whether there are adequate arrangements in place between the *FCA* and the overseas *regulatory body* to facilitate any necessary supervisory cooperation.

(4) The *FCA* considers that the approach described in (2) and (3) is consistent with the following:

(a) The requirements in the *threshold conditions* including, in particular, the effective supervision *threshold condition* described in ■ COND 2.3, the appropriate resources *threshold condition* described in ■ COND 2.4 and the suitability *threshold condition* described in ■ COND 2.5.

(b) The need for the *FCA* to be able to apply effective supervision to a *third country MIFIDPRU investment firm* to ensure appropriate protection for *consumers* or potential *consumers*. This relies on cooperation between the *FCA* and the overseas *regulatory body* that supervises that *third country MIFIDPRU investment firm* and on the *FCA* being able to place appropriate reliance on the supervision applied by that overseas *regulatory body*.

(5) If a *third country MIFIDPRU investment firm* is not subject to prudential regulation by a *regulatory body* in its home jurisdiction which is broadly equivalent to the requirements that would apply under *MIFIDPRU*, the *FCA* will normally expect it to establish a *subsidiary* in the *United Kingdom*. That *subsidiary* would need to be authorised as a *MIFIDPRU investment firm* and would then be directly subject to the requirements in *MIFIDPRU*. The *subsidiary* would need to demonstrate that it meets the *threshold conditions* to obtain *authorisation*.

(6) Although a *third country MIFIDPRU investment firm* that is granted a *Part 4A permission* is not subject to *MIFIDPRU*, it must still comply with the requirements in the *threshold conditions* and *Principles* on an ongoing basis. This includes the obligation under *Principle* 11 (Relations with regulators) to inform the *FCA* of anything of which the *FCA* would reasonably expect notice, which may include interactions between the *firm* and its overseas *regulatory body*.

Purpose

1.1.5 G The purpose of *MIFIDPRU* is to set out the detailed prudential requirements that apply to a *MIFIDPRU investment firm*. *MIFIDPRU* does not apply to a *designated investment firm*, which is subject to prudential regulation by the *PRA*. Generally, the *rules* in *MIFIDPRU* are intended to cover the *MiFID business* undertaken by a *firm*, but certain requirements apply to a *firm* as a whole.

1.1.6 G The requirements in *MIFIDPRU* expand upon the basic requirements under the appropriate resources *threshold condition* referred to in ■ COND 2.4 and the requirement in *Principle* 4 for a *firm* to maintain adequate financial resources.

Tied agents

1.1.7 G (1) Certain provisions of *MIFIDPRU* refer to, or apply in relation to, *tied agents*. The definition of a *tied agent* refers to a *person* who, on behalf of an *investment firm* (including a *third country investment firm*):

(a) promotes *investment services* or *ancillary services* to *clients* or prospective *clients*;

(b) receives and transmits instructions or orders from the *client* in respect of *investment services* or *financial instruments*;

(c) places *financial instruments*; or

(d) provides advice to *clients* or prospective *clients* in respect of *investment services* or *financial instruments*.

(2) The references in *MIFIDPRU* to *tied agents* do not include *appointed representatives* that do not meet the definition of a *tied agent* (for example, because the relevant *appointed representative* does not carry on its activities in relation to the *MiFID business* of its principal *firm*). However, a *firm's* potential responsibility for *appointed representatives* (whether or not they are also *tied agents*) will be a relevant factor for a *firm's ICARA process* under ■ MIFIDPRU 7 (Governance and risk management).

Voluntary application of stricter requirements

1.1.8 R No provision in *MIFIDPRU* prevents a *firm* from:

(1) holding *own funds* (or components of *own funds*) or *liquid assets* that exceed those required by *MIFIDPRU*; or

(2) applying other measures that are stricter than those required by *MIFIDPRU*.

1.1.9 G (1) If a *firm* applies stricter measures than those required under *MIFIDPRU* in accordance with ■ MIFIDPRU 1.1.8R, the *firm* must still ensure that it meets the basic requirements of *MIFIDPRU*. This is illustrated by the following two examples:

(a) Example 1: A *firm* decides to hold *own funds* of 0.03% of its *average AUM*, rather than 0.02% as required under

■ MIFIDPRU 4.7.5R. This would be a stricter measure that still met the basic requirements of *MIFIDPRU* and therefore would be permitted under ■ MIFIDPRU 1.1.8R.

(b) Example 2: A *firm* decides to hold a significant amount of additional *own funds* instead of applying the deductions from its *common equity tier 1 capital* required under ■ MIFIDPRU 3.3.6R. This is on the basis that the additional *own funds* far exceed the estimated value of the required deductions and the *firm* considers that the deduction calculations are too onerous. While the *firm* may consider that holding these additional *own funds* is a stricter measure, this approach would not meet the basic requirements of *MIFIDPRU*, which require the *firm* to calculate and apply the deductions. In addition, the failure to apply the correct deductions to *common equity tier 1 capital* may result in the *firm* incorrectly applying the *concentration risk* requirements and limits in ■ MIFIDPRU 5. This approach would therefore not be permitted under ■ MIFIDPRU 1.1.8R because it does not meet the basic requirements of *MIFIDPRU*.

(2) If a *firm* wishes to apply a stricter measure but is unsure of whether that measure would meet the basic requirements of *MIFIDPRU*, it should discuss the proposal with the *FCA* before applying the measure.

Notifications and applications under MIFIDPRU for which there is no dedicated form

1.1.10 R This *rule* applies where:

a notification or an application for permission is required under a provision in (2); and

the provisions in *MIFIDPRU* do not specify that a particular notification or application form must be used for that purpose.

The relevant provisions in (1) are:

a *rule* in *MIFIDPRU*;

a provision of the *UK CRR* that is applied by *MIFIDPRU*; or

a provision in binding technical standards made for the purposes of the *UK CRR* where those binding technical standards are applied by *MIFIDPRU*.

Where this *rule* applies, a *firm*, *UK parent entity* or *GCT parent undertaking* that is subject to the relevant provision in (2) must:

where the provision requires a notification, complete the notification form in ■ MIFIDPRU 1 Annex 5R and submit it to the *FCA* using the *online notification and application system*; or

where the provision requires an application for permission, complete the application form in ■ MIFIDPRU 1 Annex 6R and submit it to the *FCA* using the *online notification and application system*.