

Chapter 1

Application

1.2 SNI MIFIDPRU investment firms

Basic conditions for classification as an SNI MIFIDPRU investment firm

1.2.1

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A MIFIDPRU investment firm is an SNI MIFIDPRU investment firm if it satisfies the following conditions:

- (1) its *average AUM*, as calculated in accordance with ■ MIFIDPRU 4.7.5R is less than £1.2 billion;
- (2) its *average COH*, as calculated in accordance with ■ MIFIDPRU 4.10.19R is less than:
 - (a) £100 million per *day* for *cash trades*; and
 - (b) £1 billion per *day* for *derivatives trades*;
- (3) its *average ASA*, as calculated in accordance with ■ MIFIDPRU 4.9.8R is zero;
- (4) its *average CMH*, as calculated in accordance with ■ MIFIDPRU 4.8.13R is zero;
- (5) it does not have *permission* for any of the following:
 - (a) *dealing on own account*; or
 - (b) *underwriting of financial instruments and/or placing of financial instruments* on a firm commitment basis;
- (6) its on- and off-balance sheet total is less than £100 million;
- (7) its total annual gross revenue from *investment services and/or activities* is less than £30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year;
- (8) it has not been classified as a *non-SNI MIFIDPRU investment firm* due to the effect of ■ MIFIDPRU 10.2 (Categorisation of clearing firms as non-SNI MIFIDPRU investment firms);
- (9) its *average DTF*, as calculated in accordance with ■ MIFIDPRU 4.15.4R, is zero; and
- (10) it is not appointed to act as a *depository* in accordance with ■ FUND 3.11.10R(2) or ■ COLL 6.6A.8R(3)(b)(i).

1.2.2 **G** The definitions of *ASA* and *CMH* relate to *client* assets and *client* money that are held in the course of *MiFID* business. As a result, a *firm* may hold *client* assets or *client* money in the course of business other than *MiFID* business (provided that it has the necessary *permissions* to do so) and still meet the conditions to be classified as an *SNI MIFIDPRU investment firm*. When determining whether *client* assets or *client* money are to be treated as held in the course of *MiFID* business for these purposes, *MIFIDPRU investment firms* should refer to the *rules* and *guidance* in ■ MIFIDPRU 4.8 (K-CMH requirement) and ■ 4.9 (K-ASA requirement).

Additional provisions relating to the calculation of conditions to be classified as an SNI MIFIDPRU investment firm

1.2.3 **R** Notwithstanding the calculation methodologies in ■ MIFIDPRU 4, the *firm* must use the following for the purposes of the conditions in ■ MIFIDPRU 1.2.1R:

- (1) end-of-day values to calculate:
 - (a) its *average AUM* under ■ MIFIDPRU 1.2.1R(1);
 - (b) its *average COH* under ■ MIFIDPRU 1.2.1R(2);
 - (c) its *average ASA* under ■ MIFIDPRU 1.2.1R(3);
- (2) intra-day values to assess its *average CMH* under ■ MIFIDPRU 1.2.1R(4).

1.2.4 **R**

- (1) By way of derogation from ■ MIFIDPRU 1.2.1R, a *firm* may use the alternative approach in (2) to measure:
 - (a) its *average AUM* for the purposes of ■ MIFIDPRU 1.2.1R(1); and/or
 - (b) its *average COH* for the purposes of ■ MIFIDPRU 1.2.1R(2).
- (2) The alternative approach is to apply the methodologies in ■ MIFIDPRU 4 for measuring *average AUM* and *average COH*, but with the following modifications:
 - (a) the measurement must be performed over the immediately preceding 12 *months*; and
 - (b) the exclusion of the 3 most recently monthly values does not apply.
- (3) If a *firm* uses the derogation in (1), it must:
 - notify the *FCA* by submitting the form in ■ MIFIDPRU 1 Annex 1R via the *online notification and application system*; and
 - apply the alternative approach for a continuous period of at least 12 *months* from the date specified in the *firm's* notice in (a).
- (4) If a *firm* ceases to apply the derogation in (1), it must notify the *FCA* by submitting the form in ■ MIFIDPRU 1 Annex 1R via the *online notification and application system*.

1.2.5 **G** Where a *firm* relies on the derogation in ■ MIFIDPRU 1.2.4R, the alternative approach applies only for the purpose of determining whether the *firm* meets the requirements to be classified as an *SNI MIFIDPRU investment firm*.

It does not apply for the purpose of the *firm's* calculation of its *K-factor requirement* under ■ MIFIDPRU 4.

- 1.2.6** **R** (1) Subject to (2), a *firm* must use the values recorded at the end of the last financial year for which accounts have been finalised and approved by its *management body* to assess each of the following conditions:
- (a) its on- and off-balance sheet total under ■ MIFIDPRU 1.2.1R(6); and
 - (b) its total annual gross revenue under ■ MIFIDPRU 1.2.1R(7).
- (2) The *firm* must use provisional accounts where its accounts have not been finalised and approved after 6 *months* from the end of the last financial year.
- 1.2.7** **R** (1) A *firm* may use the end-of-day value for *average CMH* instead of the intra-day value under ■ MIFIDPRU 1.2.3R(2) if:
- (a) there is an error in record-keeping or in the reconciliation of accounts that incorrectly indicates that the *firm* has breached the zero threshold in ■ MIFIDPRU 1.2.1R(4); and
 - (b) the error is resolved before the end of the *business day* to which it relates.
- (2) If a *firm* uses an end-of-day value under (1), it must notify the *FCA* immediately of:
- the error;
 - the reasons that the error occurred; and
 - how the error has been corrected.
- (3) The notification in (2) must be submitted via the *online notification and application system* using the form in ■ MIFIDPRU 1 Annex 2R.
- 1.2.8** **G** (1) ■ MIFIDPRU 1.2.7R applies where a *firm* has incorrectly recorded an amount of *client money* as *CMH* and identifies the mistake before the end of the same *business day*. This could occur, for example, where there has been an error in data entry, or where a *firm* incorrectly records *client money* as meeting the *CMH* definition.
- (2) ■ MIFIDPRU 1.2.7R does not apply where a *firm* mistakenly accepts an amount that satisfies the *CMH* definition and subsequently returns that amount to the relevant *client*. In that case, the *firm* will have breached the zero threshold in ■ MIFIDPRU 1.2.1R(4) and the situation has not arisen due to an error in record-keeping or reconciliation. A *firm* that wishes to be classified as an *SNI investment firm* should therefore operate effective systems and controls that prevent it from mistakenly accepting *money* or assets that constitute *CMH* or *ASA*.
- 1.2.9** **R** A *MIFIDPRU investment firm* must assess the following conditions on the basis of the *firm's* individual situation:
- (1) *average ASA* under ■ MIFIDPRU 1.2.1R(3);

- (2) average *CMH* under ■ MIFIDPRU 1.2.1R(4);
- (3) average *DTF* under ■ MIFIDPRU 1.2.1R(9);
- (4) whether the *firm* has *permission to deal on own account*;
- (5) whether the *firm* is a *clearing member* or an *indirect clearing firm*;
and
- (6) whether the *firm* is appointed to act as a *depository* in accordance with ■ FUND 3.11.10R(2) or ■ COLL 6.6A.8R(3)(b)(i).

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A MIFIDPRU investment firm must assess the conditions in (2) on the basis of the combined position of each of the following entities that form part of the same *group* as the *firm*;

MIFIDPRU investment firms;

designated investment firms;

collective portfolio management investment firms; and

third country investment firms that carry on *investment services and/or activities* in the UK.

The relevant conditions are:

- (a) where a MIFIDPRU investment firm has metrics for *AUM*, average *AUM* under ■ MIFIDPRU 1.2.1R(1);
- (b) where a MIFIDPRU investment firm has metrics for *COH*, average *COH* under ■ MIFIDPRU 1.2.1R(2);
- (c) the on- and off-balance sheet total under ■ MIFIDPRU 1.2.1R(6);
and
- (d) total annual gross revenue under ■ MIFIDPRU 1.2.1R(7).

When measuring the combined total annual gross revenue under (2)(d), the *firm* may exclude any double counting that arises in respect of gross revenues generated within the *group*.

When calculating the contribution of the following to the combined position of the *group*, the *firm* must:

- (a) for a *collective portfolio management investment firm*, include only amounts that are attributable to the *investment services and/or activities* that fall within ■ COLL 6.9.9R (4) to ■ COLL 6.9.9R (6) or ■ FUND 1.4.3R (3) to ■ FUND 1.4.3R (6); and
- (b) for a *third country investment firm*:
 - (i) include only amounts that are attributable to the *investment services and/or activities* that are carried on by the *third country investment firm* in the UK; and
 - (ii) apply the definitions of *AUM* and *COH* as if the references to "*MiFID business*" in those definitions included the *investment services and/or activities* in (i).

1.2.11

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- (1) ■ MIFIDPRU 1.2.10R applies to each individual MIFIDPRU investment firm by reference to the relevant entities that form part of that firm's

group. The purpose of the rule is to prevent a MIFIDPRU investment firm from dividing its business between separate group entities that may each carry-on investment services and/or activities in the UK in order to avoid being classified as a non-SNI MIFIDPRU investment firm. Where two or more MIFIDPRU investment firms exceed one or more of the relevant thresholds in ■ MIFIDPRU 1.2.10R on a combined basis, each of those firms will be treated as a non-SNI MIFIDPRU investment firm.

- (1A) (a) A MIFIDPRU investment firm that does not have metrics for AUM or COH, does not need to take into account the AUM or COH of other members of its group when calculating average AUM under ■ MIFIDPRU 1.2.1R(1) or average COH under ■ MIFIDPRU 1.2.1R(2). This is illustrated by the example in (b).
- (b) Firm A (a MIFIDPRU investment firm providing services for the execution of orders on behalf of clients, with no AUM itself) is part of the same group as Firm B and Firm C (both MIFIDPRU investment firms providing portfolio management services, each with AUM of £0.8 billion). As Firm A does not have any AUM, it does not need to take into account the average AUM of Firms B and C when considering the average AUM threshold in ■ MIFIDPRU 1.2.1R(1), and Firm A is therefore not a non-SNI investment firm under this particular metric. Firms B and C would both be non-SNI MIFIDPRU investment firms because they do have metrics for AUM and because their combined average AUM is more than the threshold in ■ MIFIDPRU 1.2.1R(1).
- (2) Where a MIFIDPRU investment firm forms part of an investment firm group to which consolidation applies under ■ MIFIDPRU 2.5, ■ MIFIDPRU 2.5.21R explains how ■ MIFIDPRU 1.2 applies to the consolidated situation of the relevant UK parent entity.

Summary of conditions for classification as an SNI MIFIDPRU investment firm and associated calculation requirements

1.2.12

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The following table summarises the effect of ■ MIFIDPRU 1.2.1R to ■ 1.2.10R.

| Measure | Measurement of relevant values | Threshold to be classified as an SNI MIFIDPRU investment firm | Application of threshold on an individual basis or combined basis of investment firms within a group (see MIFIDPRU 1.2.9R and 1.2.10R) | |
|---------------------------|--------------------------------|---|--|------------|
| Average AUM | End-of-day | Less than £1.2 billion | Combined | See Note 1 |
| Average COH (cash trades) | End-of-day | Less than £100 million per day | Combined | See Note 1 |

| Measure | Measurement of relevant values | Threshold to be classified as an SNI MIFIDPRU investment firm | Application of threshold on an individual basis or combined basis of investment firms within a group (see MIFIDPRU 1.2.9R and 1.2.10R) | |
|---|--|---|--|-------------------|
| Average COH (derivatives) | End-of-day | Less than £1 billion per day | Combined | See Note 1 |
| Average ASA | End-of-day | Zero | Individual | |
| Average CMH | Intra-day | Zero | Individual | See Note 2 |
| Average DTF | End-of-day | Zero | Individual | |
| NPR | <i>Firm must not have permission to deal on own account, so these measures must always be zero</i> | | Individual | |
| CMG | | | Individual | |
| TCD | | | Individual | |
| On- and off-balance sheet total | End of last financial year for which accounts finalised by <i>management body</i> | Less than £100 million | Combined | See Note 3 |
| Total annual gross revenue from <i>investment services and/or activities</i> | End of last financial year for which accounts finalised by <i>management body</i> | Less than £30 million, based on an average of annual figures for the two-year period immediately preceding the given financial year | Combined | See Notes 3 and 4 |
| Whether <i>firm</i> is a <i>clearing member</i> or <i>indirect clearing firm</i> under MIFIDPRU 10.2 | <i>Firm must not be a clearing member or indirect clearing firm</i> | | Individual | |
| Whether the <i>firm</i> has been appointed to act as a <i>depository</i> in accordance with FUND 3.11.10R(2) or COLL 6.6A.8R(3)(b)(i) | <i>Firm must not be appointed as a depository under the relevant FUND and COLL provisions</i> | | Individual | |

| Measure | Measurement of relevant values | Threshold to be classified as an SNI MIFIDPRU investment firm | Application of threshold on an individual basis or combined basis of investment firms within a group (see MIFIDPRU 1.2.9R and 1.2.10R) |
|--------------|---|---|--|
| Notes | | | |
| Note 1: | Under MIFIDPRU 1.2.4R, the <i>firm</i> can choose to calculate the relevant values for these measures by applying the applicable methodologies in MIFIDPRU 4 to the most recent 12 <i>months</i> without excluding the three most recent monthly values. | | |
| Note 2: | Under MIFIDPRU 1.2.7R, the <i>firm</i> may use the end-of-day value if there has been an error in record keeping or in reconciliation of accounts that incorrectly indicates the <i>firm</i> has breached the zero threshold for <i>average CMH</i> , provided that the error is corrected before the end of the <i>business day</i> to which it relates. | | |
| Note 3: | Under MIFIDPRU 1.2.6R, the <i>firm</i> must use provisional accounts where the relevant accounts have not been finalised and approved after 6 <i>months</i> from the end of the last financial year. | | |
| Note 4: | Under MIFIDPRU 1.2.10R, the <i>firm</i> may exclude any double counting that arises in respect of gross revenues generated within the <i>group</i> . | | |

Non-SNI MIFIDPRU investment firms that subsequently satisfy the conditions to be an SNI MIFIDPRU investment firm

1.2.13

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- (1) This *rule* applies to a *non-SNI MIFIDPRU investment firm* that subsequently satisfies all the conditions in ■ MIFIDPRU 1.2.1R.
- (2) The *firm* in (1) shall be reclassified as an *SNI MIFIDPRU investment firm* only if:
 - (a) the *firm* satisfies the relevant conditions for a continuous period of at least 6 *months* (or any longer period that has elapsed before the *firm* submits the notification in (b)); and
 - (b) the *firm* notifies the *FCA* that it satisfies the conditions in (a).
- (3) The notification in (2)(b) must be submitted via the *online notification and application system* using the form in ■ MIFIDPRU 1 Annex 3R.

Ceasing to meet the conditions to be an SNI MIFIDPRU investment firm

1.2.14

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Where a *MIFIDPRU investment firm* no longer satisfies all the conditions set out in ■ MIFIDPRU 1.2.1R, it ceases to be an *SNI MIFIDPRU investment firm* with immediate effect, except where ■ MIFIDPRU 1.2.15R applies.

- 1.2.15 **R**
- (1) Where a *MIFIDPRU investment firm* exceeds one or more of the thresholds in (2), but continues to satisfy all other conditions in ■ MIFIDPRU 1.2.1R, it ceases to be an *SNI MIFIDPRU investment firm* 3 months after the date on which it first exceeded the relevant threshold.
 - (2) The relevant thresholds are:
 - (a) the *average AUM* threshold in ■ MIFIDPRU 1.2.1R(1);
 - (b) either or both of the *average COH* thresholds in ■ MIFIDPRU 1.2.1R(2);
 - (c) the on- and off-balance sheet total threshold in ■ MIFIDPRU 1.2.1R(6); and
 - (d) the total annual gross revenue threshold in ■ MIFIDPRU 1.2.1R(7).

- 1.2.16 **R**
- (1) If a *MIFIDPRU investment firm* ceases to satisfy one of the conditions in ■ MIFIDPRU 1.2.1R, it must promptly notify the *FCA*.
 - (2) The notification in (1) must be submitted via the *online notification and application system* using the form in ■ MIFIDPRU 1 Annex 4R.

- 1.2.17 **G**
- Where a *firm* ceases to satisfy one of the conditions in ■ MIFIDPRU 1.2.15R, but subsequently satisfies that condition within the three-month period referred to in that rule, the *firm* will still be reclassified as a *non-SNI MIFIDPRU investment firm* 3 months after the date on which it first ceased to satisfy that condition. The *firm* will only be reclassified as an *SNI MIFIDPRU investment firm* if it satisfies the conditions in, and requirements of, ■ MIFIDPRU 1.2.13R.

Application of senior management, remuneration and systems and controls requirements to SNI MIFIDPRU investment firms

- 1.2.18 **R**
- (1) Subject to (2) and (3), the following provisions do not apply to an *SNI MIFIDPRU investment firm*:
 - (a) ■ MIFIDPRU 7.3 (Risk, remuneration and nomination committees);
 - (b) the provisions in ■ SYSC 19G (MIFIDPRU Remuneration Code) which are not listed in ■ SYSC 19G.1.6R(2).
 - (2) Subject to (4) and (5), if a *non-SNI MIFIDPRU investment firm* satisfies the conditions in ■ MIFIDPRU 1.2.1R to be classified as an *SNI MIFIDPRU investment firm*, the provisions in (1) will cease to apply only:
 - (a) 6 months after the date on which the *firm* first satisfied those conditions (or after any longer period that has elapsed before the *firm* submits the notification in (b)(ii)); and
 - (b) provided that the *firm*:
 - (i) continued to satisfy the conditions throughout the period in (a); and
 - (ii) has notified the *FCA* under ■ MIFIDPRU 1.2.13R(2)(b).

- (3) Subject to (4) and (5), if an *SNI MIFIDPRU investment firm* no longer satisfies the conditions in ■ MIFIDPRU 1.2.1R to be classified as an *SNI MIFIDPRU investment firm*, it must:
 - (a) notify the *FCA* immediately in accordance with ■ MIFIDPRU 1.2.16R of the date on which it ceased to satisfy the conditions; and
 - (b) comply with the provisions in (1) within 12 *months* from the date on which the *firm* ceased to satisfy the conditions.
- (4) ■ MIFIDPRU 7.3 (Risk, remuneration and nomination committees) does not apply to a *non-SNI MIFIDPRU investment firm* if the *firm* meets the conditions in ■ MIFIDPRU 7.1.4R.
- (5) The provisions listed in ■ SYSC 19G.1.1R(4) do not apply to a *non-SNI MIFIDPRU investment firm* if the *firm* meets the conditions in ■ SYSC 19G.1.1R(2).

1.2.19

G Under the Capital Requirements (Country-by-Country Reporting) Regulations 2013 (SI 2013/3118) as amended, *non-SNI MIFIDPRU investment firms* may be required to disclose information relating to their branches or subsidiaries outside the *UK*. The Regulations also set out how the country-by-country reporting obligations apply when a *MIFIDPRU investment firm* is reclassified as an *SNI MIFIDPRU investment firm* or a *non-SNI MIFIDPRU investment firm*.