

Chapter 4

Own funds requirements

4.9 K-ASA requirement

- 4.9.1** **R** The *K-ASA requirement* of a *MIFIDPRU investment firm* is equal to 0.04% of the *firm's average ASA*.
- 4.9.2** **R** When calculating its *K-ASA requirement* in accordance with this section, a *MIFIDPRU investment firm* must include within its *ASA* any amounts that relate to *MiFID business* of the *firm* that is carried on by any *tied agents* acting on its behalf.
- 4.9.3** **G** Due to the limited types of activities in respect of which a *tied agent* may be exempt from the requirement for *authorisation* in the *UK* (as explained in **■ SUP 12.2.7G**), the *FCA* generally expects that **■ MIFIDPRU 4.9.2R** would not be directly relevant to a *MIFIDPRU investment firm* on an individual basis. However, where **■ MIFIDPRU 4.9** applies on a *consolidated basis* in accordance with **■ MIFIDPRU 2.5** (Prudential consolidation), the *UK parent entity* must include any *ASA* attributable to a *tied agent* of a *third country investment firm* included within the *consolidated situation*.
- 4.9.4** **R** A *firm* must exclude from its measurement of *ASA* any units or shares in a *qualifying money market fund* that are treated as *MiFID client money*.
- 4.9.5** **G**
- (1) The definition of *ASA* includes only *client assets* held by a *MIFIDPRU investment firm* in the course of *MiFID business*. Therefore, *client assets* which are held in connection with business other than *MiFID business* do not need to be included within a *MIFIDPRU investment firm's* calculation of *ASA*, except to the extent that **■ MIFIDPRU 4.9.6R** applies.
 - (2) As explained in **■ MIFIDPRU 4.8.5G**, the definitions of *MiFID client money* and *CMH* include amounts that a *MIFIDPRU investment firm* has placed with *qualifying money market funds* in accordance with **■ CASS 7.13.3R(4)**. As a result, although the resulting units or shares in a *qualifying money market fund* may be treated as *client assets* for the purposes of the *custody rules*, under **■ MIFIDPRU 4.9.4R**, their value must be included in *CMH* not in *ASA*.
 - (3) Although *client assets* that a *firm* holds other than in the course of *MiFID business* do not contribute to the *K-ASA requirement*, a *MIFIDPRU investment firm* should still consider any potential material harms that may arise in connection with receiving assets from *clients* as part of its *ICARA process* under **■ MIFIDPRU 7**.

(4) As part of its *ICARA process*, a *firm* should also consider material harms that may arise in relation to amounts received that are not treated as *client assets* for the purposes of the *custody rules* but in relation to which the *firm* may have future obligations to a *client*, such as under a *title transfer collateral arrangement*.

4.9.6 **R** If a *MIFIDPRU investment firm* is unsure whether *client assets* are held in the course of *MiFID business*, it must treat those assets as held in the course of *MiFID business* for the purposes of this section until it is satisfied that the assets are not held in the course of *MiFID business*.

4.9.7 **R** A *firm* must calculate its *K-ASA requirement* on the first *business day* of each month.

4.9.8 **R** A *firm* must calculate the amount of its *average ASA* by:

- (1) taking the total *ASA* as measured at the end of each *business day* for the previous 9 months;
- (2) excluding the values for the most recent 3 months; and
- (3) calculating the arithmetic mean of the daily values for the remaining 6 months.

4.9.9 **R** When measuring *ASA*, a *firm* must:

- (1) where available, use the market value of the relevant assets; and
- (2) where a market value is not available for an asset, use an alternative measure of fair value, which may include an estimated value calculated on a best efforts basis.

4.9.10 **G** The values used by a *firm* under **■ MIFIDPRU 4.9.8R** should be consistent with the information on *client assets* in any relevant regulatory data reported by the *firm* to the *FCA*, and in any internal or external reconciliations and records maintained in accordance with **■ CASS 6.6** (Records, accounts and reconciliations) unless a *rule* or relevant *guidance* requires the *firm* to take a different approach.

4.9.11 **R** Where either of the following applies, a *firm* must include the value of the relevant assets in its measurement of *ASA*:

- (1) the *firm* has delegated the safeguarding and administration of assets to another entity; or
- (2) another entity has delegated the safeguarding and administration of assets to the *firm*.

4.9.12 **G** The effect of **■ MIFIDPRU 4.9.11R** is that a *firm* will not reduce its level of *ASA* by delegating the safeguarding of assets to a third party. However, a *firm* will increase the level of its *ASA* by accepting the delegation of safeguarding

and administration of assets to the *firm* by a third party. This reflects the harm that may result from a breach of the *firm's* direct safeguarding responsibilities or the *firm's* responsibilities in relation to the selection, appointment and periodic review of any third party to which the *firm* has delegated safeguarding.

4.9.13

R

Where a *firm* has been safeguarding assets constituting ASA for less than 9 *months*, it must calculate its *average ASA* using the modified calculation in ■ MIFIDPRU TP 4.11R(1) with the following adjustments:

- (1) in ■ MIFIDPRU TP 4.11R(1)(b), *n* is the relevant number of *months* for which the *firm* has been safeguarding assets (with the *month* during which the *firm* begins that activity counted as *month zero*); and
- (2) during *month zero* of the calculation, the *firm* must:
 - (a) use a best efforts estimate of expected ASA for that *month* based on its projections when beginning the new activity;
 - (b) use the estimate in (a) as its *average ASA*;
- (3) during *month 1* of the calculation and each *month* thereafter, the *firm* must apply the approach in (1) using observed historical data from the preceding *months*; and
- (4) the modified calculation ceases to apply on the date that falls 9 *months* after the date on which the *firm* began safeguarding assets constituting ASA.