

Chapter 4

General organisational requirements

4.1 General requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements> .]

Application to a common platform firm

4.1.-2

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For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR
Business continuity	SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G
Audit committee	SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G
Persons who effectively direct the business	SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R
Responsibility of senior personnel	SYSC 4.3.3G
Management body	SYSC 4.3A.-1R to SYSC 4.3A.7R
Nominations committee	SYSC 4.3A.8R to SYSC 4.3A.11R

Application to a MiFID optional exemption firm and to a third country firm

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For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

4.1.1

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(1) A firm must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

(2) [deleted]

[Note: article 74 (1) of CRD, article 16(5) second paragraph of MiFID, article 12(1)(a) of the UCITS Directive, and article 18(1) of AIFMD]

(3) Without prejudice to the ability of the FCA or any other relevant competent authority to require access to communications in accordance with MiFID and MiFIR, a common platform firm must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:

- (a) to guarantee the security and authentication of the means of transfer of information;
- (b) to minimise the risk of data corruption and unauthorised access; and
- (c) to prevent information leakage.

[Note: article 16(5) third paragraph of MiFID]

4.1.1A

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A full-scope UK AIFM must comply with the AIFM Remuneration Code.

[Note: article 13(1) of AIFMD]

4.1.1B

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A full-scope UK AIFM must, in particular:

- (1) have rules for personal transactions by its employees or for the holding or management of investments it invests on its own account;
- (2) ensure that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and
- (3) ensure that the assets of the AIFs managed by the AIFM are invested in accordance with the instrument constituting the fund and the legal provisions in force.

[Note: article 18(1) second paragraph of AIFMD]

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4.1.1D

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A UK UCITS management company must comply with the UCITS Remuneration Code if it manages a UCITS scheme.[Note: article 14a(1) of the UCITS Directive]

- 4.1.1E** **R** A UK UCITS management company must have appropriate procedures for its employees to report potential or actual breaches of UK provisions which implemented the UCITS Directive internally through a specific, independent and autonomous channel.
[Note: article 99d(5) of the UCITS Directive]
- 4.1.1F** **G** ■ SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further guidance on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between firms and the FCA.
- 4.1.2** **R** For a common platform firm, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the common platform firm's activities and must take into account the specific technical criteria described in article 21(3) of the MiFID Org Regulation, ■ SYSC 5.1.7 R, ■ SYSC 7 and whichever of the following is applicable:
- [deleted];
 - (for a full-scope UK AIFM) ■ SYSC 19B (AIFM Remuneration Code);
 - [deleted];
 - (for a firm to which ■ SYSC 19D applies) ■ SYSC 19D (Dual-regulated firms Remuneration Code);
 - (for a firm to which the remuneration part of the PRA Rulebook applies) the remuneration part of the PRA Rulebook; or
 - (6) (for a firm to which ■ SYSC 19G applies) ■ SYSC 19G (MIFIDPRU Remuneration Code).
- 4.1.2A** **G** Other firms should take account of the comprehensiveness and proportionality rule (■ SYSC 4.1.2 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).
- 4.1.2AA** **R** [deleted]
- 4.1.2B** **R** For a management company or a full-scope UK AIFM, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R and ■ SYSC 4.1.1A R must also take account of the UCITS schemes managed by the management company or the AIFs managed by the full-scope UK AIFM.
[Note: article 12(1) second paragraph of the UCITS Directive and article 18(1) second paragraph of AIFMD]

Resources for management companies and AIFMs

4.1.2C **R** A *management company* and a *full-scope UK AIFM* must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.
[Note: articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 12(1)(c) of *AIFMD*]

4.1.2D **R** A *full-scope UK AIFM* must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of *AIFs*.
[Note: article 18(1) first paragraph of *AIFMD*]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

4.1.2E **G** Articles 16 to 29 of the *AIFMD level 2 regulation* provide detailed rules supplementing the *UK provisions* which implemented article 12(1) of *AIFMD*, and articles 57 to 66 of the *AIFMD level 2 regulation* provide detailed rules supplementing the *UK provisions* which implemented articles 12 and 18 of *AIFMD*.

Mechanisms and procedures for a firm

4.1.3 **G**

4.1.4 **R** A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services, *claims management services* and other activities undertaken in the course of that business:

- (1) (if it is a *management company*) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the *firm*;
- (3) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and
- (4) (if it is a *management company*) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *management company* as well as effective information flows with any third party involved.

[Note: articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*]

4.1.4A **G** A *firm* that is not a *common platform firm* or a *management company* should take into account the decision-making procedures and effective internal reporting *rules* (■ SYSC 4.1.4R (1), ■ (3) and ■ (4)) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.5 **R** A *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[Note: article 4(2) of the *UCITS implementing Directive*]

Business continuity.....

4.1.6 **R** A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[Note: article 16(4) of *MIFID*]

4.1.7 **R** A *CRR firm* and a *management company* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a *management company*, its *collective portfolio management activities*, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[Note: article 4(3) of the *UCITS implementing Directive* and article 85(2) of *CRD*]

4.1.7A **G** Other *firms* should take account of the business continuity *rules* (■ SYSC 4.1.6 R and ■ 4.1.7 R) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.8 **G** The matters dealt with in a business continuity policy should include:

- (1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
- (2) the recovery priorities for the *firm's* operations;
- (3) communication arrangements for internal and external concerned parties (including the *FCA*, *clients* and the press);
- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
- (5) processes to validate the integrity of information affected by the disruption; and

- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with ■ SYSC 4.1.10R and for a *common platform firm* with article 21(5) of the *MiFID Org Regulation*.

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

4.1.8A

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- (1) An operator of an electronic system in relation to lending must have arrangements in place to ensure that *P2P agreements* facilitated by it will have a reasonable likelihood of being managed and administered, in accordance with the contract terms between the *firm* and its relevant borrower and lender customers, if at any time it ceases to manage and administer those *P2P agreements*.
- (2) Under (1), and wherever the requirement in (1) is referenced in the *FCA's rules and guidance*, the reference to *P2P agreements* includes any *non-P2P agreement* included in a *P2P portfolio*.
- (3) The arrangements under (1) must not be designed to prefer any particular customers or class of customers for whom it manages and administers *P2P agreements* or *non-P2P agreements*.

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4.1.8C

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Arrangements that are required to be put in place under ■ SYSC 4.1.8AR may include any one or more of the following:

- (1) entering into an arrangement with another *firm* that has the appropriate *permissions* to take over the management and administration of *P2P agreements* if the operator ceases to *operate the electronic system in relation to lending* and, where appropriate:
 - (a) obtaining prior and informed consent from *lender clients* to fund the continued cost of management and administration of their respective loans, for example through increased commissions; and/or
 - (b) obtaining prior and informed consent from *lender clients* and *borrower clients* for the transfer of the service of managing and administration of *P2P agreements* from the *firm* to that other *firm*; or
- (2) holding sufficient collateral to cover the cost of management and administration while the loan book is wound down, ensuring that the collateral is held through a structure that is ring-fenced in the event of the *firm's* insolvency; or
- (3) [deleted]
- (4) managing the loan book in a way that ensures that income from *P2P agreements* facilitated by the *firm* is sufficient to cover the costs of managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.

4.1.8D

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- (1) When designing its arrangements, a *firm* should take into account the general law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place.
- (2) A *firm* should consider the need to obtain professional advice on the adequacy of its arrangements. For example, a *firm* may benefit from obtaining legal advice or advice from a qualified insolvency practitioner on the likelihood of its arrangements securing the required outcome for continuity of management and administration of *P2P agreements*.
- (3) In assessing the adequacy of its arrangements, a *firm* should consider, in particular:
 - (a) whether any terms included in relevant contracts as part of its arrangements are enforceable, for example terms in customer, service and supplier contracts;
 - (b) the extent to which other practical obstacles could foreseeably prevent the implementation of the arrangements or frustrate the required outcome, including whether the *firm* will be likely to have sufficient financial resources to fund the implementation of the arrangements at the relevant time;
 - (c) whether the arrangements make adequate provision for any activities that are ancillary to the management and administration of *P2P agreements* upon which the required outcome is, or could be, dependent;
 - (d) whether, having regard to **SYSC 4.1.8AR(3)**, its arrangements are designed so as not to produce a better outcome for its customers who are party to *non-P2P agreements* than for customers who are party to *P2P agreements*;
 - (e) whether its arrangements take into account any relevant security arrangements in relation to loans; and
 - (f) whether its arrangements take into account any relevant tax arrangements for *lender clients*.
- (4) *Firms* are reminded of the disclosure requirements in **COBS 18.12.28R** (Information concerning platform failure).
- (5) *Firms* may find it useful to refer to the FCA's Wind-down Planning Guide (*WDPG*) when designing their arrangements.

4.1.8DA

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In line with Principle 11 and **SUP 15.3.8G** (Communication with the appropriate regulator in accordance with Principle 11), a firm should notify the FCA in writing if it is contemplating:

- (1) ceasing to manage and administer *P2P agreements* facilitated by it;
- (2) implementing its arrangements under **SYSC 4.1.8AR**; or
- (3) implementing any other arrangements that have a similar purpose.

4.1.8DB

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An operator of an electronic system in relation to lending must produce and keep up to date a *P2P resolution manual* which contains information about

the *firm* that, in the event of the *firm's* insolvency, would assist in resolving the *firm's* business of management and administration of *P2P agreements* that it has facilitated. For these purposes, the reference to *P2P agreements* includes any *non-P2P agreement* included in a *P2P portfolio*. It must, as a minimum, include a written explanation of each of the following:

- (1) how the *firm* conducts the business of management and administration of *P2P agreements* that it has facilitated, what the day-to-day operation of that business entails and what resources would be needed to continue that business if the *firm* ceased to carry it on, including a specification of:
 - (a) critical staff and their respective roles;
 - (b) critical premises;
 - (c) the *firm's* IT systems, including details of data storage and data recovery arrangements;
 - (d) the *firm's* record-keeping systems, including how records are organised;
 - (e) all relevant bank accounts and payment facilities;
 - (f) all relevant *persons* outside of the *firm*, and their respective roles, including any outsourced service providers;
 - (g) all relevant legal documentation, including customer, service and supplier contracts;
 - (h) the *firm's group*, using a structure chart showing:
 - (i) the legal entities in the *group*;
 - (ii) the ownership structure of those entities; and
 - (iii) the jurisdiction of those entities; and
 - (i) how the *firm* holds and manages any security for loans;
- (2) the steps that would need to be implemented under the arrangements in place under ■ SYSC 4.1.8AR in order for *P2P agreements* facilitated by the *firm* to continue to be managed and administered;
- (3) any terms in contracts that may need to be relied on to ensure *P2P agreements* facilitated by it will continue to be managed and administered under those arrangements; and
- (4) how the *firm's* systems can produce the detail specified in ■ COBS 18.12.31R (Ongoing disclosures) for each *P2P agreement* facilitated by it.

4.1.8DC

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An operator of an electronic system in relation to lending must put in place arrangements to ensure that its *P2P resolution manual* would be immediately available to:

- (1) an administrator, receiver, trustee, liquidator or analogous officer appointed in respect of it or any material part of its property; and
the FCA, on request.

4.1.8DD **R** A operator of an electronic system in relation to lending must store its P2P resolution manual in the same place as its CASS resolution pack, if **■** CASS 10 (CASS resolution pack) applies to it.

Operators of electronic systems in relation to lending: title transfer

4.1.8E **R**

(1) An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.

(2) If an operator of an electronic system in relation to lending has made a client money election under **■** CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.

Accounting policies: management company

4.1.9 **R** A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[Note: article 4(4) of the UCITS implementing Directive]

Regular monitoring: management company

4.1.10 **R** A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with **■** SYSC 4.1.4 R to **■** SYSC 4.1.9 R and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

Regular monitoring: other firms

4.1.10A **G** Other firms should take account of the regular monitoring rule (**■** SYSC 4.1.10 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in **■** SYSC 1 Annex 1 3.3 R(1), but ignoring the cross-reference to **■** SYSC 4.1.5 R and **■** SYSC 4.1.9R.

Audit committee

4.1.11 **G** Depending on the nature, scale and complexity of its business, it may be appropriate for a firm to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the regulatory system, oversee the functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of non-executive directors and it should have formal terms of reference.

4.1.12 [G] [deleted]

Risk control: additional guidance

4.1.13 [G] *Firms* should also consider the additional *guidance* on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.

Apportionment of responsibilities: the role of the non-executive director

4.1.14 [G] The role undertaken by a *non-executive director* will vary from one *firm* to another.

Investment strategy and investment decision making of an operator of a personal pension scheme or stakeholder pension scheme

- 4.1.15 [G]
- (1) This *guidance* sets out the *FCA’s* expectation on how an operator of a *personal pension scheme* or a *stakeholder pension scheme* may take into account *ESG financial considerations* and *other financial considerations* and *non-financial matters* as part of its *investment strategy* or *investment decision making*, to demonstrate compliance with *Principles 2, 3, 6 or 8*.
 - (2) This *guidance* only applies where the *personal pension scheme* or *stakeholder pension scheme* operator’s *investment strategy* or *investment decision* could have a material impact on a *client* or a *relevant policyholder’s investment* returns and relates to a product where:
 - (a) the primary purpose of the product is to provide an *investment return*; and
 - (b) the *investment risk* is borne by a *client* who is a natural person or a *relevant policyholder*.
 - (3) As part of its *investment strategy* or *investment decision making*, an operator of a *personal pension scheme* or a *stakeholder pension scheme* should take into account *ESG financial considerations* and *other financial considerations*, over the period of time that the *firm* reasonably considers is needed to achieve the objective of the *investment* or the *investment strategy*.
 - (4) References to *other financial considerations* in (3) may include (but are not limited to) interest rates, liquidity, concentration, exchange rate, political and counterparty risks.
 - (5) As part of its *investment strategy* or *investment decision making* in relation to a product, an operator of a *personal pension scheme* or a *stakeholder pension scheme* may take into account *non-financial matters* if:
 - the *firm* has good reason to consider that affected *clients* or *relevant policyholders* would generally share the views on which the *non-financial matters* are based; and
 - taking those matters into account would not involve a risk of a significant financial detriment to an affected *investment*.

- (6) (5) does not apply to a *firm's investment strategy or investment decision making in relation to a product (other than in relation to a relevant scheme or a pathway investment) that has been deliberately designed by the firm to take into account non-financial matters, and clients or relevant policyholders make an active decision to select that product.*