

Specified modified requirements

Chapter 4

Specified modified
requirements

4.1 Specified requirements for MiFID investment firms and for third country investment firms

- 4.1.1 R For a *firm* in relation to its *MiFID* or equivalent *third country business* the *rules* set out in column 1 of the table in ■ TC 4.1.4R below are amended as set out in column 2.
- 4.1.2 R In this section, references to relevant individuals are natural persons who, on behalf of the *firm*:

(1) make *personal recommendations* to *retail clients* in relation to *financial instruments*; or

(2) provide information to *retail clients* about *financial instruments*, *investment services* or *ancillary services*; or

who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (1) or (2).
- 4.1.3 R References in ■ TC 4.1.4R to a relevant individual’s knowledge and competence are to the knowledge and competence necessary to ensure that the *firm*, on behalf of which the relevant individual acts, is able to meet its obligations under:

(1) those *rules* which implemented articles 24 and 25 of *MiFID* (including those *rules* which implemented related provisions under the *MiFID Delegated Directive*); and

(2) related provisions of the *MiFID Org Regulation*.
- 4.1.4 R Unless the context requires otherwise the *rules* in column 1 of the table are amended as set out in column 2:

Column 1 Relevant rule	Column 2 Amendments
TC 2.1.1R(1)	Insert the following at the end of TC 2.1.1R(1): “In addition, a <i>firm</i> must not assess a relevant individual as competent unless the <i>firm</i> has satisfied itself that the relevant individual pos

TC 2.1.2R

sesses the knowledge and competence to enable the *firm* to meet its obligations under SYSC 5.1.5ABR. This means that the relevant individual has also:

(a) obtained appropriate experience which means that the relevant individual has successfully demonstrated the ability to carry on the activities through previous work experience. This work must have been performed, on a full-time equivalent basis, for a minimum period of 6 months; and

(b) attained an appropriate qualification which means a qualification or other test or training course that meets the criteria set out by the ESMA guidelines referred to in TC 1.1.1BG.

The level of knowledge and competence needed to fulfil the *firm's* obligations reflects the scope and degree of the activities, as described in TC 4.1.2R above, carried out by the relevant individual."

The provision is amended by adding after TC 2.1.2R:

"A relevant individual, who has not acquired the necessary knowledge or competence to carry out the activities in TC 4.1.2R above, cannot provide those activities under supervision for a period exceeding 48 months."

TC 2.1.5R(1)

The provision is amended by adding after TC 2.1.5R:

"Where a relevant individual has not acquired the necessary knowledge and competence to carry out the activities described in TC 4.1.2R above:

(a) the *firm* must ensure that the individual supervising the relevant individual:

(i) has been assessed as competent to provide such *personal recommendation* or information;

(ii) has the necessary skills and resources to act as a competent supervisor; and

(iii) takes responsibility for the *personal recommendation* or information, referred to in TC 4.1.2R above, provided by the relevant individual under supervision as if the supervisor is providing the *personal re-*

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Rules in this section relate to the requirements in ■ SYSC 5.1.5ABR.

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For relevant individuals of an *incoming EEA firm*, with an establishment maintained by that *firm* (or its *appointed representative*) in the *United Kingdom*, the matters covered by ■ SYSC 5.1.5ABR are matters reserved for the *United Kingdom* as the *Host State regulator*.

commendation including any *suitability report* (COBS 9) or information; and

(b) the *firm* must ensure that the supervision provided to a relevant individual is tailored to the services provided by the individual."



4.2 Specified requirements for firms carrying on insurance distribution activities

4.2.1

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For a *firm* which carries on *insurance distribution activities* the *rules* and *guidance* set out in column 1 of the table in ■ TC 4.2.5R below are amended as set out in column 2.

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■ TC 4.2.1R is limited as set out in ■ TC App 2 and ■ TC App 3.

4.2.3

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In this section, and the provisions in column 1 of ■ TC 4.2.5R, relevant employees are employees and other *persons*:

(1) directly involved in the carrying on of the *firm's insurance distribution activities*; or

(2) within the management structure responsible for the *firm's insurance distribution activities*; or

(3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).

4.2.4

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In ■ TC 4.2 'employee':

(1) is not restricted to an individual working under a contract of employment; and

(2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and

(3) also includes *appointed representatives* and their employees.

4.2.5

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Column 1	Column 2
Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1
TC 2.1.1R(1)	<div>The provision is amended by adding after TC 2.1.1R(1):</div> <div>'A <i>firm</i> must ensure that a relevant employee's appropriate knowledge and ability includes the re-</div>

Column 1	Column 2
Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1
TC 2.1.15R; TC 2.1.17R; TC 2.1.24R and TC 2.1.25R	<p>requirements set out in SYSC 28.2.3R and is appropriate to the:</p> <p>(a) role and activity carried out by the relevant employee within the <i>firm</i>; and</p> <p>(b) type of distribution and the nature of the products sold.'</p> <p>The <i>rules</i> apply as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>
TC 2.1.15R	<p>(1) For <i>firms</i> whose relevant employees are not also <i>retail investment advisers</i>, the <i>rule</i> applies as if '35 hours' was a reference to '15 hours'.</p> <p>(2) The <i>rule</i> is amended by adding at the end:</p>
TC 2.1.16G	<p>'Where the relevant employee is also a <i>retail investment adviser</i>, the minimum 35 hours appropriate continued professional development requirement in TC 2.1.15R must include a minimum 15 hours covering the requirements in SYSC 28.2.3R.'</p> <p>For relevant employees acting in that capacity, the <i>guidance</i> is replaced by the following:</p> <p>'To meet the requirements in TC 2.1.15R (as modified by TC 4.2.5R) a relevant employee's continued training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.'</p>
TC 2.1.18G, TC 2.1.19G, and TC 2.1.23G	<p>The <i>guidance</i> applies as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>
TC 2.1.24R	<p>The <i>rule</i> is amended by adding after TC 2.1.24R(2):</p> <p>'the <i>firm</i> must be in a position to make available to the <i>FCA</i>, on request, the name of the <i>person</i> responsible for this record keeping requirement.'</p>
TC 3.1.1R	<p>The provision is amended by adding after TC 3.1.1R(3):</p> <p>'a <i>firm</i> must keep an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 <i>month</i> period,</p> <p>(a) for not less than 3 years after the relevant employee stops carrying out the activity; and</p> <p>(b) the <i>firm</i> must be in a position to provide any version of the record to the <i>FCA</i> on request.'</p>

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Where the relevant employee is also a *retail investment adviser* the *rules* and *guidance* in ■ TC 4.2.5R apply as follows (unless otherwise stated in ■ TC 4.2.5R):

 - (1) the unamended *TC rules* and *guidance* in column 1 of ■ TC 4.2.5R apply in relation to the *person* when acting in the capacity of a *retail investment adviser*; and
 - (2) the amended *TC rules* and *guidance* in column 2 apply in relation to the *person* when acting in the capacity of a relevant employee.
- 4.2.7

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Rules and *guidance* in this section relate to the requirements in ■ SYSC 28 (Minimum knowledge and competence requirements for carrying out insurance distribution activities).

