

Chapter 4

Own funds requirements



4.9 K-ASA requirement

- 4.9.1
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- The *K-ASA requirement* of a *MIFIDPRU investment firm* is equal to 0.04% of the *firm's average ASA*.
- 4.9.2
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- 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
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- 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
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- 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
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- (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

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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.

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.