Prudential sourcebook for MiFID Investment Firms

MIFIDPRU TP 6
Application of criteria to be classified as an SNI MIFIDPRU investment firm: transitional

		Application		
6.1	R	MIFIDPRU TP 6 applies to the following:		
		(1)	a *MIFIDPRU investment firm*; and	
		(2)	a *UK parent entity*, in accordance with MIFIDPRU TP 6.9R.	
		Purpose		
6.2	G	(1)	MIFIDPRU TP 6 explains how a *MIFIDPRU investment firm*, or a *UK parent entity* which is applying MIFIDPRU 1.2 on a *consolidated basis*, should determine whether it meets the conditions to be classified as an *SNI MIFIDPRU investment firm* on the date on which *MIFIDPRU* begins to apply.	
		(2)	Under MIFIDPRU TP 6.4R, a *MIFIDPRU investment firm* or a *UK parent entity* may use either the reasonable estimates approach or the alternative calculation in MIFIDPRU TP 4.5R(2) to determine missing historical data points for the purposes of applying the *average AUM* or *average COH* conditions under MIFIDPRU 1.2.1R(1) and (2).	
		(3)	Under MIFIDPRU TP 6.7R, a *MIFIDPRU investment firm* or a *UK parent entity* must use its best efforts to estimate any missing historical data points for the purposes of applying the condition relating to total annual gross revenue from *investment services and/or activities* in MIFIDPRU 1.2.1R(7).	
		(4)	The transitional arrangements in MIFIDPRU TP 6 apply only to the extent that the *firm* has missing historical data points. If a *firm* has observed historical data covering any part of the relevant period, the *firm* should use those data points when applying the relevant calculations.	
		Duration		
6.3	G	The duration of the transitional arrangements in MIFIDPRU TP 6 depends on the relevant condition for classification as an *SNI MIFIDPRU investment firm* under MIFIDPRU 1.2. Under MIFIDPRU TP 6.4R(5) and MIFIDPRU TP 6.7R(3), the transitional arrangements cease to apply once a *firm* or *UK parent entity* has (or should have) collected sufficient historical information to apply the relevant condition in accordance with the applicable methodology in MIFIDPRU 1.2.		
		Missing historical data for application of SNI classification criteria: transitional for individual MIFIDPRU investment firms		
6.4	R	(1)	This *rule* applies to the extent that a *MIFIDPRU investment firm* does not have the necessary historical data to determine whether the following conditions are met:	
			(a)	the *average AUM* condition in MIFIDPRU 1.2.1R(1); or
			(b)	the *average COH* condition in MIFIDPRU 1.2.1R(2).
		(2)	If a *firm* decides to apply the alternative approach in MIFIDPRU 1.2.4R for the purposes of assessing whether a condition in (1) is met, this *rule* applies to the extent that the *firm* does not have the necessary historical data to apply that alternative approach to the relevant condition.	

		(3)	Where this *rule* applies, a *firm* may (subject to (4) and MIFIDPRU TP 6.5R) use either of the approaches set out in MIFIDPRU TP 4.5R(2) to assess whether the relevant condition in (1) is met.
		(4)	A *firm's* choice of approach under (3) must be consistent with any choice that the *firm* has made under MIFIDPRU TP 4.5R(2) in relation to the same *K-factor average metric* for the purposes of applying the transitional arrangements in MIFIDPRU TP 4.
		(5)	This *rule* ceases to apply in relation to a condition in (1) on the earlier of the following:

| | | | (a) | the date on which the *firm* has collected sufficient historical information necessary to apply the condition in accordance with the applicable methodology under MIFIDPRU 1.2; or |
| | | | (b) | the date that falls *n months* after the date on which *MIFIDPRU* began to apply, where *n* is the number of *months*' worth of data points required to apply that condition in accordance with the applicable methodology under MIFIDPRU 1.2. |

| 6.5 | R | (1) | This *rule* applies where a *firm* has chosen to apply both of the approaches below to determine whether the *average AUM* condition in MIFIDPRU 1.2.1R(1) or the *average COH* conditions in MIFIDPRU 1.2.1R(2) is met: |

| | | | (a) | the alternative approach in MIFIDPRU 1.2.4R; and |
| | | | (b) | the modified calculation under MIFIDPRU TP 4.5R(2)(b). |

| | | (2) | Where this *rule* applies, the modified calculation applies as if: |

| | | | (a) | in MIFIDPRU TP 4.11R(1)(a), the words "excluding the most recent *y months*" were deleted; and |
| | | | (b) | MIFIDPRU TP 4.11R(1)(c) and (d) were omitted. |

| 6.6 | R | (1) | A *firm* must apply its chosen approach under MIFIDPRU TP 6.4R(2) consistently in relation to a specific condition in MIFIDPRU TP 6.4R(1). |
| | | (2) | A *firm* may apply different approaches under MIFIDPRU TP 6.4R(2) in relation to different conditions in MIFIDPRU TP 6.4R(1). |

6.7	R	(1)	This *rule* applies to the extent that a *MIFIDPRU investment firm* does not have the necessary historical data to determine if the condition relating to the total annual gross revenue from *investment services and/or activities* in MIFIDPRU 1.2.1R(7) is met.
		(2)	Where this *rule* applies, a *firm* must use its best efforts to estimate any missing historical data points for the calculation of the condition in (1).
		(3)	This *rule* ceases to apply in relation to a condition in (1) on the earlier of the following:

| | | | (a) | the date on which the *firm* has collected sufficient historical information necessary to apply the condition in accordance with the standard methodology under MIFIDPRU 1.2; or |
| | | | (b) | the date on which two complete financial years for the *firm* have elapsed after the date that *MIFIDPRU* began to apply. |

| 6.8 | R | If the *FCA* requests, a *firm* must provide a reasonable explanation of how the *firm* has determined any estimate under MIFIDPRU TP 6.4R(3) or MIFIDPRU TP 6.7R(2). |

| 6.9 | G | (1) | It is unnecessary to provide transitional arrangements for the following conditions: |

			(a)	the *average ASA* condition in MIFIDPRU 1.2.1R(3);
			(b)	the *average CMH* condition in MIFIDPRU 1.2.1R(4);
			(c)	whether the *firm* has *permission* to *deal on own account* in MIFIDPRU 1.2.1R(5);

			(d)	the condition relating to the balance sheet total of the *firm* in MIFIDPRU 1.2.1R(6);
			(e)	the *average DTF* condition in MIFIDPRU 1.2.1R(9); and
			(f)	the condition relating to acting as a depositary in MIFIDPRU 1.2.1R(10).

(2) The *average ASA* and *average CMH* conditions require that the *firm* has not held any *MiFID client money*, or any *client* assets in the course of *MiFID business*, during the preceding 9 *months*, excluding the most recent 3 *months*. A *firm* should already have information on whether it has held *client money* or *client* assets in the past. If the *firm* is unable to determine whether any amounts of *client money* or *client* assets were held in connection with *MiFID business*, it should apply MIFIDPRU 4.8.6R or MIFIDPRU 4.9.6R and treat the amounts as if they were held in connection with *MiFID business* for these purposes.

(3) The conditions in (1)(c), (1)(d) and (1)(f) do not rely on historical information and therefore can be assessed by the *firm* at the point at which *MIFIDPRU* first begins to apply without any need for transitional arrangements.

(4) The *average DTF* condition requires that the *firm* must not have entered into any transactions by *dealing on own account* or through the *execution of orders on behalf of clients* in the *firm's* own name during the preceding 9 *months*, excluding the most recent 3 *months*. The *FCA* considers that a *firm* should already know whether it executed any transactions in that capacity during the relevant period.

6.10 G (1) MIFIDPRU TP 6.4R(5) and MIFIDPRU TP 6.7R(3) specify the date on which the transitional arrangements for applying certain conditions under MIFIDPRU 1.2.1R will cease to apply. From that date onwards, the *firm* will need to apply the standard methodology for determining whether it meets the relevant condition. This date may vary depending on the position of the individual *firm* and the relevant condition.

(2) Under MIFIDPRU TP 6.4R(5)(a), if a *firm* has sufficient historical information to apply a condition in MIFIDPRU TP 6.4R(1), it is no longer permitted to rely on the transitional arrangements. The following are examples of how this requirement applies:

(a) Example 1: On the date on which *MIFIDPRU* begins to apply, Firm A already has historical data on its *AUM* covering the previous 10 *months*. Assuming that the *firm* is applying the standard criteria under MIFIDPRU 1.2.1R (and not the alternative approach in MIFIDPRU 1.2.4R), the *average AUM* condition under MIFIDPRU 1.2.1R(1) requires 15 *months* of historical data. Since the *firm* must be collecting *AUM* data once *MIFIDPRU* begins to apply, Firm A will have sufficient data to apply the standard calculation for the *average AUM* condition 5 *months* later. At that point, the *firm* will no longer be able to rely on the transitional arrangements under MIFIDPRU TP 6, but instead must use the observed historical data to determine whether the condition in MIFIDPRU 1.2.1R(1) is met.

(b) Example 2: Firm B has notified the *FCA* under MIFIDPRU 1.2.4R that it is using the alternative approach to applying the *average AUM* condition in MIFIDPRU 1.2.1R. Firm B has 13 *months* of historical data on its *AUM*. Under MIFIDPRU TP 6.4R(5)(a), Firm B may not rely on the transitional arrangements in MIFIDPRU TP 6. Although the standard calculation for the *AUM* condition in MIFIDPRU 1.2.1R(1) would require 15 *months* of historical data, the alternative approach under MIFIDPRU 1.2.4R(2) requires only 12 *months* of data. As Firm B has sufficient observed historical data to apply its chosen methodology, the transitional arrangements do not apply.

6.11	G	(1)	MIFIDPRU 6.4R(4) and 6.6R are designed to ensure consistency in a *firm's* approach to applying the transitional arrangements in MIFIDPRU TP 4 and MIFIDPRU TP 6.
		(2)	MIFIDPRU TP 6.4R(4) requires a *firm* to be consistent in its choice of approaches for the purposes of MIFIDPRU TP 4 and MIFIDPRU TP 6. For example, Firm A does not have sufficient information to calculate its *average AUM* for the purposes of the condition in MIFIDPRU 1.2.1R(1) and the *K-AUM requirement* under MIFIDPRU 4.7. If Firm A chooses to use the reasonable estimates approach under MIFIDPRU TP 4.5R(2) to calculate its *K-AUM requirement*, the *firm* must also use the reasonable estimates approach under MIFIDPRU TP 6.4R(3) to apply the *average AUM* condition in MIFIDPRU 1.2.1R(1). The estimates that Firm A uses for both purposes must be consistent.
		(3)	MIFIDPRU TP 6.6R prevents a *firm* from alternating between approaches for the purposes of MIFIDPRU TP 6. For example, Firm B chooses under MIFIDPRU TP 6.4R(3) to apply the alternative calculation in MIFIDPRU TP 4.11R for the purposes of the determining whether the *average COH* condition in MIFIDPRU TP 6.4R(1) is met. Firm B may not later decide to switch to applying the reasonable estimates approach to determine whether that condition is met.
6.12	G		Under MIFIDPRU TP 5, a *MIFIDPRU investment firm* is required to collect at least 1 *month* of *K-factor metrics* that are relevant to any *investment services and/or activities* it carries on before *MIFIDPRU* begins to apply in full. When determining any estimate for the purposes of MIFIDPRU TP 6.4R(3) or MIFIDPRU 6.7R(2), a *firm* should consider any observed historical data that is available. Where the observed historical data covers a short period, a *firm* should take into account possible seasonal variations in figures or other factors which may be relevant to the accuracy of the estimate.

Missing historical data for application of SNI classification criteria: transitional for investment firm groups to which consolidation applies

6.13	R	(1)	A *UK parent entity* to which consolidation under MIFIDPRU 2.5 applies may apply the transitional arrangements in MIFIDPRU TP 6.4R to 6.12G to its *consolidated situation* in accordance with this *rule*.
		(2)	Where a *UK parent entity* is applying MIFIDPRU TP 6.4R to 6.12G in accordance with (1), the following modifications apply:
		(a)	a reference to a condition in MIFIDPRU 1.2.1R is a reference to that condition as it applies on a *consolidated basis*; and
		(b)	a reference to a "*MIFIDPRU investment firm*" or a "*firm*" is a reference to the *UK parent entity*.
		(3)	Any estimate produced by the *UK parent entity* of an *investment firm group* under MIFIDPRU TP 6.4R(3) or MIFIDPRU TP 6.7R(2) for the purposes of its *consolidated situation* must be consistent with any estimates produced on an individual basis by any *MIFIDPRU investment firms* forming part of that *investment firm group*.