Chapter 13

Guidance on the scope of MiFID and CRD IV
The purpose of this chapter is to help UK firms consider:

- whether they fall within the scope of the Markets in Financial Instruments Directive 2014/65/EU (‘MiFID’) and therefore are subject to its requirements;
- how their existing permissions correspond to related MiFID concepts;
- whether the CRD and the EU CRR apply to them, and for certain firms, whether the recast CAD continue to apply to them; and
- if so, which category of investment firm they are for the purposes of the transposition of the recast CAD or CRD and the EU CRR.

This chapter is mostly aimed at questions that are relevant to someone who wants to know whether they need to be authorised under the Act. This means that this chapter does not cover those types of persons for whom MiFID or MIFIR requirements are applied outside the authorisation regime under the Act, such as:

- a data reporting service provider;
- those subject to position limit requirements in derivatives markets;
- those subject to an obligation to trade in derivatives on a regulated market, OTF or MTF;
- persons with a proprietary interest in benchmarks who are obliged to provide access to certain information; or
- central counterparties subject to the requirements about non-discriminatory access for financial instruments.

Background


MiFID is complemented by regulation (EU) No. 600/2014 on markets in financial instruments (‘MiFIR’). MiFID and MiFIR are supplemented by “Level 2 measures”. The most relevant for the purposes of this chapter are Commission Delegated Regulation (EU) 2017/565 (the MiFID Org Regulation) and Commission Delegated Regulation (EU) 2017/592 (regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business). These implementing measures amplify and supplement certain of the concepts and requirements specified in MiFID and MiFIR.

MiFID scope

The scope aspects of MiFID are primarily addressed through the Regulated Activities Order (‘RAO’) and PERG 2 focuses on the scope of regulated activities under the RAO and includes materials on the effect that MiFID has on the RAO. This chapter focuses more on the underlying MiFID investment services and activities, as well as the exemptions.
Where a firm’s regular occupation or business is providing one or more investment services to third parties or performing investment activities in relation to MiFID financial instruments on a professional basis, it is a firm to which MiFID applies unless it is exempt.

Broadly, the exemptions from MiFID are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the Act applies, many authorised professional firms, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders. The exemptions are subject to conditions and limitations described in more detail below (see PERG 13.5).

The Treasury’s implementation of the article 3 MiFID exemption is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital firms. The Treasury legislation enables firms falling within the scope of the exemption to elect to be subject to the requirements of MiFID and thereby acquire passport rights (see Q52).

In each case, it will be for firms and individuals to consider their own circumstances and consider whether they fall within the relevant exemptions. A firm which takes the benefit of one or more of the exemptions in article 2 or 3 MiFID may nevertheless require authorisation under the Act (see PERG 2).

In addition to investment firms, MiFID is also relevant to credit institutions providing investment services or performing investment activities (see Q5), to AIFMs to which article 6.4 of AIFMD applies (in other words, AIFM investment firms) and to UCITS management companies to which article 6.4 of the UCITS Directive applies (in other words, UCITS investment firms).

This guidance is concerned with the scope of MiFID and does not address the question of whether an investment firm that falls within the scope of MiFID is providing a MiFID investment service as opposed to an investment activity.

**CRD IV**

Investment firms subject to MiFID, including those who fall within the article 3 MiFID exemption but opt not to take advantage of it, are subject to the requirements of the CRD and the EU CRR. There are special provisions for certain commodities firms as well as firms whose MiFID investment services and activities are limited to only one or more of the following investment services and activities:

- execution of orders on behalf of clients;
- portfolio management;
- giving investment advice; or
- receiving and transmitting client orders, and

who are not permitted to hold client money or securities nor are authorised to provide ancillary service (1) referred to in Section B of Annex 1 to MiFID (which is safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management).

Collective portfolio management investment firms (a term that is used to refer to both AIFM investment firms and UCITS investment firms) are subject to the requirements of the CRD and the EU CRR, unless they are firms whose
MiFID investment services and activities are limited to those in the preceding paragraph.

Under the UK implementation of the CRD and the EU CRR, the level of capital an investment firm subject to MiFID requires is determined by the type of investment services and activities it provides or performs, its scope of permission and any limitations or requirements attaching to that permission (see ■ PERG 13.6). A firm relying on an article 2 or 3 MiFID exemption is not subject to CRD and the EU CRR.

**How does this document work?**

This document is made up of Q and As divided into the following sections:

- General (■ PERG 13.2);
- Investment services and activities (■ PERG 13.3);
- Financial instruments (■ PERG 13.4);
- Exemptions from MiFID (■ PERG 13.5);
- The CRD IV (■ PERG 13.6); and

We have also included guidance in the form of flow charts to help firms decide whether MiFID and the CRD and the EU CRR (which allow the recast CAD to apply to certain firms) apply to them as well as permission maps indicating which regulated activities and specified investments correspond to MiFID investment services, activities and MiFID financial instruments (see ■ PERG 13 Annex 1, ■ PERG 13 Annex 2 and ■ PERG 13 Annex 3.

Article and recital references are to MiFID (Level 1 measures) unless otherwise stated. References to categories of MiFID investment services and activities and MiFID financial instruments adopt the structure of Annex 1 MiFID: for example, A1 refers to "reception and transmission of orders in relation to one or more financial instruments" and C1 relates to "transferable securities".