

## Chapter 13

Guidance on the scope of the  
UK provisions which  
implemented MiFID

## 13.3 Investment Services and Activities

### Introduction

13.3

#### Q12. Where do we find a list of MiFID services and activities?

The list in Section A of Annex 1 of MiFID has been onshored in Part 3 of Schedule 2 to the Regulated Activities Order. There are nine investment services and activities in Part 3 (A1 to A9 have now been onshored in paragraph 1 to paragraph 9). However, as explained in ■ PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Article 4 MiFID defines some of them in more detail:

- investment advice (article 4.1(4) MiFID);
- execution of orders on behalf of clients (article 4.1(5) MiFID);
- dealing on own account (article 4.1(6) MiFID); and
- portfolio management (article 4.1(8) MiFID).

A further provision relating to investment advice is contained in article 9 of the *MiFID Org Regulation*.

As explained in ■ PERG 13.1, this chapter only covers the MiFID activities dealt with through the authorisation regime under the Act. The other activities covered by MiFID and MiFIR are not dealt with in section A of Annex 1, as onshored in Part 3 of Schedule 2 of the *Regulated Activities Order*.

#### Q12A. We carry out the activity of bidding in emissions auctions. Is this a MiFID service or activity? [deleted]

#### Reception and transmission

#### Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? (A1 and recital 44)?

Under the general definition of this service, you only provide the service if you are both receiving and transmitting orders. For example, this would be the case if you transmit subscription or redemption orders received from a client to the operator of a collective investment undertaking or transmit buy or sell orders to agency brokers.

This service though is also extended to include arrangements that bring together two or more investors, thereby bringing about a transaction between those investors. This meaning may be relevant, for example, to corporate finance firms. It could include, in our view, negotiating terms for the acquisition or disposal of investments on behalf of a corporate client with a potential buyer or seller, for example as part of a merger or acquisition. You may be providing this service even though, having brought

the investors together, the actual offer or acceptance is not communicated through you.

The extended meaning of the service only applies if the firm brings together two or more investors. A person issuing new securities, including a collective investment undertaking, should not be considered to be an 'investor' for the purpose of this extended meaning. However, an issuer may be an investor for the purpose of the general definition of the service. Accordingly whilst an arrangement whereby a person, on behalf of a client, receives and transmits an order to an issuer will, in our view, amount to reception and transmission, one in which it simply brings together an issuer with a potential source of funding for investment in a company, will not.

If you are party to a transaction as agent for your client or commit your client to it, you may be doing more than receiving and transmitting orders and will need to consider whether you are providing the investment service of executing orders on behalf of clients.

**Q14. We are introducers who merely put clients in touch with other investment firms - are we receiving and transmitting orders?**

No. If all you do is introduce others to investment firms so that they can provide investment services to those clients, this in itself does not bring about a transaction and so will not amount to receiving and transmitting orders. But if you are a person who does more than merely introduce, for example an introducing broker, you are likely to be receiving orders on behalf of your clients and transmitting these to clearing firms and therefore may fall within the scope of MiFID.

**Executing orders**

**Q15. When might we be executing orders on behalf of clients (A2, article 4.1(5) and recital 45)?**

When you are acting to conclude agreements to buy or sell one or more MiFID financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

This activity includes the issue of their own *financial instruments* by an *investment firm* or a credit institution.

**Q15A. Is every issue of financial instruments a MiFID investment service?**

No. Although the answer to Q15 says that executing client orders includes issuing your own *financial instruments*, not every issue of *financial instruments* amounts to the MiFID investment service of execution of orders on behalf of clients. This is explained in more detail in the rest of this answer.

One difficult question is whether the extension of the executing orders service only applies to firms that are already *investment firms* because of other services and activities they provide or whether this part of the

definition is also relevant to someone who is deciding whether they are an *investment firm* in the first place.

In the FCA's view, this part of the definition is not limited to someone that is already an *investment firm* because of its other activities and services. This is because the risks at which recital 45 of MiFID says this part of the definition is aimed apply whether or not the issuer is already an investment firm for another reason. For example, there is no reason why a *firm* that issues its own complicated securities to the retail market should not need authorisation if a *firm* that distributes ones issued by another *firm* requires authorisation.

On the other hand, it cannot be the case that raising capital by issuing its own capital causes an ordinary commercial company to become an *investment firm*. The reasons why this should not be the case include the following:

- If you do not issue *financial instruments* on a professional basis and do not otherwise execute orders on behalf of clients, you will generally not need permission or authorisation to do this. See Q8 for more information.
- The investor may not be your *client*. For example, an ordinary commercial company issuing debt securities to financial investors is unlikely to be providing a service; it is more likely to be receiving one.
- Recital 45 of MiFID confirms that the definition is intended to catch issuers when distributing their own *financial instruments*. Thus if you get another investment firm or credit institution to distribute your *financial instruments*, you will not be executing client orders.

#### Dealing on own account

##### Q16. What is dealing on own account (A3, article 4.1(6)) and recital 24)?

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more MiFID financial instruments.

Dealing on own account involves position-taking which includes proprietary trading and positions arising from market-making. It can also include positions arising from client servicing, for example where a firm acts as a *systematic internaliser* or executes an order by taking a market or 'unmatched principal' position on its books.

Dealing on own account may be relevant to firms with a *dealing in investments as principal* permission in relation to MiFID financial instruments, but only where they trade financial instruments on a regular basis for their own account, as part of their MiFID business. We do not think that this activity is likely to be relevant in cases where a person acquires a long term stake in a company for strategic purposes or for most venture capital or private equity activity. Where a person invests in a venture capital fund with a view to selling its interests in the medium to long term only, in our view he is not dealing on own account for the purposes of MiFID.

If a firm executes client orders by standing between clients on a matched principal basis (back-to-back trading), it is both dealing on own account and executing orders on behalf of clients.

#### Portfolio management

##### Q17. What is portfolio management under MiFID (A4 and article 4.1(8))?

Portfolio management is managing portfolios in accordance with mandates given by *clients* on a discretionary client-by-client basis where such portfolios include one or more *MiFID financial instruments*. If there is only a single *financial instrument* in a portfolio, you may be carrying on portfolio management even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a *fund*, where discretion has been delegated to the manager by the *operator* or manager of the *fund*. In the case of management of a collective investment undertaking, however, an exemption may be available to the operator (see Q43). The advisory agent who keeps clients' portfolios under review and provides advice to enable the client to make investment decisions (but does not exercise discretion to take investment decisions himself) is not carrying on portfolio management but may be providing other investment services such as investment advice under MiFID.

#### **Investment advice**

#### **Q18. What is investment advice under MiFID (A5 and article 4.1(4))?**

Investment advice means providing personal recommendations to a client, either at his request or on your own initiative, in respect of one or more transactions relating to MiFID financial instruments.

#### **Q19. What is a 'personal recommendation' for the purposes of MiFID (article 9 of the MiFID Org Regulation)?**

A personal recommendation is a recommendation that meets the following conditions:

- it is given to a person in his capacity as an investor, or potential investor, or as agent for either; and
- 20180103 • it:
- is presented as suitable for him or based on a consideration of his personal circumstances; and
  - constitutes a recommendation to him to do one or more of the following:
    - buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular financial instrument; or
    - exercise, or not to exercise, any right conferred by a particular financial instrument to buy, sell, subscribe for, exchange, or redeem a financial instrument.

This is similar to the UK regulated activity of *advising on investments* but is narrower in scope insofar as it requires the recommendation to be of a personal nature. A personal recommendation does not include advice given to an issuer to issue securities, as the latter is not an "investor" for the purposes of MiFID or article 53 of the RAO.

As explained in ■ PERG 8.24.1AG, there are circumstances in which the UK regulated activity is also based on giving personal recommendations. ■ PERG 8.30B (Personal recommendations) gives *guidance* on the definition in the context of the UK regulated activity. In the FCA's view that *guidance* is also relevant to the meaning of 'personal recommendation' under MiFID.

#### **Q20. Can you give us some other practical examples of what are not personal recommendations under MiFID?**

A recommendation is not a personal recommendation if it is issued exclusively to the public (article 9 of the *MiFID Org Regulation*) Advice about financial instruments in a newspaper, journal, magazine, publication, internet communication addressed to the public in general or in a radio or television broadcast should not amount to a personal recommendation. However, use of the internet does not automatically mean that a communication is not a personal recommendation on the grounds that it is made to the public. Therefore, for instance, while advice through a generally accessible website is unlikely to be a personal recommendation, an email communication provided to a specific person, or to several persons, may amount to investment advice.

Merely providing information to clients should not itself normally amount to investment advice. Practical examples include:

- advising clients on how to fill in an application form;
- disseminating company news or announcements;
- merely explaining the risks and benefits of a particular financial instrument; and
- producing league tables showing the performance of financial instruments against published benchmarks.

However, you should bear in mind that, where a person provides only selective information to a client, for example, when comparing one MiFID financial instrument against another, or when a client has indicated those benefits that he seeks in a product, this could, depending on the circumstances, amount to an implied recommendation and hence investment advice for the purposes of MiFID.

If you provide an investment research service to your clients or otherwise provide recommendations intended for the public generally, this is not MiFID investment advice (A5) although it may be an ancillary service (B5) for the purposes of MiFID and may also amount to the regulated activity of *advising on investments* for which you are likely to require *authorisation*.

**Q21. Is generic advice investment advice for the purposes of MiFID (recitals 15 to 17 to the MiFID Org Regulation)?**

No. Investment advice is limited to advice on particular MiFID financial instruments, for example "I recommend that you buy XYZ Company shares". If you only provide generic advice on MiFID financial instruments and do not provide advice on particular MiFID financial instruments, you are not a firm to which MiFID applies and do not require *authorisation*.

If you are an investment firm to which MiFID applies, however, the generic advice that you provide may be subject to MiFID-based requirements. For example, if you recommend to a client that it should invest in equities rather than bonds and this advice is not in fact suitable, you are likely, depending on the circumstances of the case, to contravene MiFID requirements to:

- act honestly, fairly and professionally in accordance with the best interests of your clients; and
- provide information to clients that is fair, clear and not misleading.

Acts carried out by an investment firm that are preparatory to the provision of a MiFID investment service or activity are an integral part of that service or activity. This would include the provision of generic advice. Therefore if a person provides generic advice to a client or a potential client prior to or in the course of the provision of investment advice or any other MiFID

investment service or activity, that generic advice is part of that MiFID investment service or activity.

Providing a general recommendation about a transaction in a financial instrument or a type of financial instrument is an ancillary service within Section B(5) of Annex I of MiFID.

#### **Underwriting and firm commitment placing**

##### **Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis (A6)?**

A6 comprises two elements:

- the 'underwriting of financial instruments'; and/or
- the 'placing of financial instruments on a firm commitment basis'.

Underwriting is a commitment to take up financial instruments where others do not acquire them. In our view, placing is the service of finding investors for securities on behalf of a seller and may involve a commitment to take up those securities where others do not acquire them. We associate underwriting and placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

In our view, the 'firm commitment' aspect of the placing service relates to the person arranging the placing, as opposed to the person who has agreed to purchase any instruments as part of the placing. Accordingly, placing on a firm commitment basis occurs where a firm undertakes to arrange the placing of MiFID financial instruments and to purchase some or all the instruments that it may not succeed in placing with third parties. In other words, the placing element of A6 requires the same person to arrange the placing and provide a firm commitment that some or all of the instruments will be purchased.

Where a person distributes units in a UCITS fund to investors, in our view this does not amount to placing although it is likely to involve the reception and transmission of orders.

#### **Placing without a firm commitment**

##### **Q23. When might placing of financial instruments without a firm commitment basis arise (A7)?**

Where the person arranging the placing does not undertake to purchase those MiFID financial instruments he fails to place with third parties.

#### **Operating a multilateral trading facility**

##### **Q24. What is a multilateral trading facility (A8, article 4.1(22) and recital 7 of MiFIR)?**

A multilateral trading facility involves a multilateral trading system (for example, a trading platform) operated either by an investment firm or by a market operator which brings together multiple buyers and sellers of financial instruments (for more on multilateral systems, see the answer to Q24B).

A multilateral trading facility does not include bilateral systems where an investment firm enters into every trade on own account (as opposed to



acting as a riskless counterparty interposed between the buyer and the seller).

For there to be an MTF, the buying and selling of MiFID financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and orders (for example, their price and time of receipt in the system) that determine the resulting trades. An MTF may be contrasted with an OTF (see Q24A for OTFs) in this regard, because the operator of an OTF is required to carry out order execution on a discretionary basis.

### **Operating an organised trading facility**

#### **Q24A. What is an organised trading facility (A9, article 4.1(23) and recitals 8 and 9 of MiFIR)?**

An OTF is a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in certain products are able to interact in the system in a way that results in a contract (for more on multilateral systems, see the answer to Q24B).

Only bonds, *structured finance products*, emission allowances and derivatives may be traded. Equity instruments may not be traded on an OTF.

Order execution must be carried out on an OTF on a discretionary basis. By contrast with the operation of an MTF or regulated market, the operator of the OTF must exercise discretion in either of, or both:

- placing/retracting client orders; or
- matching client orders.

In exercising its discretion, the operator must comply with the requirement under article 18 of MiFID to establish objective criteria for the efficient execution of orders, and must also comply with the best execution requirements under article 27 of MiFID.

### **Multilateral system**

#### **Q24B. Where can I find more information about what a multilateral system is (article 4.1(19))?**

[deleted]

#### **Q24C. What is a multilateral system?**

A *multilateral system* is a system or facility in which multiple third-party buying and selling trading interests in *financial instruments* are able to interact in the system (see article 2(1)(11) UK MiFIR).

A *multilateral system*, for these purposes, comprises each of the following main elements:

- it has the characteristics of a trading system or facility;
- it comprises multiple third-party buying and selling trading interests;
- it allows trading interests to interact in the system; and
- those trading interests are in financial instruments.

We provide guidance on each of these elements below.

### **Characteristics of a system or facility**



A *multilateral system* has the characteristics of a trading system or facility. Recital 7 UK MiFIR clarifies that a trading system or facility includes markets composed of a set of rules and a trading platform, as well as those only functioning on the basis of a set of rules. The rules relate to how multiple third-party trading interests in *financial instruments* are able to interact in the system (see below). The rules could be reflected in contracts and/or operating procedures. As such, a system is technology neutral for these purposes, as shown by the different types of trading systems referred to in Annex I to *MiFID RTS 1*, and Annex I to *MiFID RTS 2*. For guidance on voice broking, please refer to Q24D below.

General purpose communications systems would not as such amount to trading systems or facilities. This means that the following services in and of themselves would not amount to operating a *multilateral system*:

- acting as an internet services provider;
- providing a telephone network;
- providing a website; or
- providing chatroom facilities.

Even if the provider of the general purpose communication system is not operating a *multilateral system*, a person using that system to operate a trading system or facility will operate a *multilateral system* if the other elements of the definition of a *multilateral system* are met.

If a system has features specifically designed to enable the interaction of trading interests in *financial instruments*, this would indicate that it is a trading system or facility. More generally, we will consider the role of the operator and its monitoring of the use of the system. Operating the platform requires more than simply providing technology or software. Our assessment of whether there is a trading system or facility will also take into consideration a wider range of factors, including for example:

- its target users and the actual use of a system by its users;
- any relevant restrictions on how the system may be used and their practical effect;
- whether the system is designed to enable trading of any kind amongst users; and
- the determinants of the remuneration of the operator and the extent to which these are linked to the interaction of trading interests in financial instruments in the system.

Accordingly, whilst general communications systems, for example, are used for the purposes of trading *financial instruments*, they will not amount to a *multilateral system* unless they were ever operated by a person for these purposes and then subject to these criteria.

It is possible for a firm to operate more than one piece of technology which, when taken together, have the characteristics of a trading system or facility.

**There are multiple third-party buying and selling trading interests**

There needs to be multiple third-party buying and selling trading interests for a system to be a *multilateral system*. Recital 7 UK MiFIR clarifies that the expression 'buying and selling trading interests' is to be understood in a broad sense and includes orders, quotes and indications of interest.

The inclusion of the words 'third-party' in this expression makes it clear that the trading interests in question are not the trading interests of the system operator.

The fact that when any two persons negotiate within the system they do so between themselves does not make the system bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others (other than the operator). This is the service a person receives as a user of the system.

#### Trading interests are able to interact in the system

Multiple third-party trading interests must also be able to interact in the system for it to be a *multilateral system*. A *multilateral system* involves the bringing together of third-party trading interests (see also recital 7 UK MiFIR).

Interaction takes the form of an exchange of information relevant to essential terms of a transaction in *financial instruments* (being price, quantity or subject matter).

Accordingly, in our view, a system which enables this information to be inputted and then responded to in the system would allow trading interests to interact in the system.

Interaction between trading interests can arise in a system because the system:

- matches trading interests within its system; or
- allows users to respond within the system to other users' trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction.

Interaction between trading interests in the system does not require a contract to be entered into for the sale/purchase of *financial instruments* (i.e. execution of a transaction to take place) within the system if it is with a view to the parties agreeing the terms of a trade.

As clarified by recital 8 UK MiFIR, any system that merely receives, pools, aggregates and broadcasts trading interests should not be considered a *multilateral system*. This means that a bulletin board should not be considered a trading venue because there is no interaction between trading interests within its system. Similarly, a system which simply notifies the parties of general expressions of interest in relation to *financial instruments* does not amount to an interaction of trading interests in the system. For further guidance on bulletin boards, please refer to Q24H to Q24L below. In addition, neither the service of portfolio compression, which reduces non-market risks in derivative portfolios without changing the market risk, nor post-trade confirmation services, constitute a *multilateral system* by themselves.

#### Financial instruments

The interaction of multiple third-party buying and selling trading interests in the system must be in *financial instruments* for the system to be a *multilateral system*. A *financial instrument* is an instrument specified in Part 1 of Schedule 2 to the *Regulated Activities Order*. Please refer to ■ PERG 13.4 for further guidance on *financial instruments*.

#### Trading venue perimeter – specific cases

##### Q24D. Does voice broking involve the operation of a multilateral system?

Voice broking may but need not comprise the operation of a *multilateral system*.

Merely arranging or executing client orders over the telephone does not constitute a *multilateral system*, although it may amount to other investment services such as reception and transmission or execution of orders on behalf of clients.

A trading system or facility could, however, take the form of a voice trading system (as referred to in Annex I *MiFID RTS 2*) or a hybrid system (as referred to in Annex I *MiFID RTS 1* and Annex I *MiFID RTS 2*). For example, a firm that operates a platform where trading interests of clients are broadcast to other users and then engages in voice broking to enable negotiation between these parties would operate a trading system or facility, unless Q24F applies. Voice broking may also be part of a *multilateral system* when operating in conjunction with other modes of execution such as electronic order books operated by that broker.

**Q24E. Does a firm that undertakes portfolio management operate a multilateral system by operating an internal matching system to execute trading interests relating to the portfolio of one of its clients against trading interests relating to the portfolio of another of its clients?**

No. A firm engaged in *portfolio management*, in whatever capacity, must exercise discretion in relation to the *financial instruments* it manages. We do not consider that such a firm operates a *multilateral system* when, in the exercise of this discretion, it executes trading interests relating to the portfolio of one of its *clients* (which may be a fund) against the trading interests relating to the portfolio of another of its *clients* in an internal matching system. We also do not consider that it is the purpose of ■ COLL 6.9.9R and ■ FUND 1.4.3R to prevent a *UCITS management company* or an *external AIFM* that is a *full-scope UK AIFM* from doing this in these circumstances. This is because in these circumstances the portfolio manager is the only user of the system and hence, there is no interaction of multiple third-party trading interests in the system.

**Q24F. Does a firm using or operating a system to execute trades on behalf of clients operate a multilateral system?**

No, if a firm uses or operates a system for the purpose only of executing these trades on a trading venue consistent with the intentions of the parties to the underlying transactions to trade on a trading venue, in accordance with the venue's rules. For example, when arranging a large-in-scale or negotiated trade in accordance with the rules of the venue, in our view these arrangements do not amount to the operation of a *multilateral system* – in accordance with Q24C – in the case of UK MiFIR or otherwise. For guidance on execution of orders on behalf of clients, see ■ PERG 13 Q15.

**Q24G. Would a crowdfunding platform be regarded as a multilateral system?**

In our view, a crowdfunding platform does not amount to a *multilateral system* when the business funding interests of an issuer of *shares*, *debentures* or *alternative debentures*, as expressed in an offer made by that issuer, on the one hand, are matched with the interests of investors on the other.

A bulletin board provided to assist investors is not itself a *multilateral system* where the trading interests would not be able to interact within the system. By contrast, a crowdfunding platform in which multiple third-party buying and selling trading interests of investors in *financial instruments* are able to interact within a system (for example, in a secondary market) would be a *multilateral system*.

**Bulletin boards**

**Q24H. What is a bulletin board?**

There is no definition of a bulletin board. Recital 8 UK MiFIR, however, refers to ‘facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests’ or ‘other entities aggregating or pooling potential buying or selling interests’ and implies that such bulletin boards or entities should not be considered a *multilateral system*.

**Q24I. Is a bulletin board a multilateral system?**

No. The reason is that, whilst trading interests (including information relevant to essential terms of a transaction in *financial instruments* (being price, quantity or subject matter)) can be posted on a bulletin board, trading interests are not able to interact in such a system. In light of Q24C (see the section on ‘Trading interests are able to interact with each other’) above, we would not regard a firm as operating only a bulletin board if:

- it matches trading interests within the system;
- it enables users to respond within the system to other users’ trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction; or
- users can commit to or enter into contracts for the sale/purchase of the financial instruments (i.e. execute transactions) within the system.

By contrast, as a system simply notifying users of general expressions of interest in *financial instruments* does not give rise to an interaction of trading interests in the system, a bulletin board operator can notify and introduce potential counterparties to each other without operating a *multilateral system*.

Please see Q24J to Q24L below for further guidance on bulletin boards.

**Q24J. Can the operator of a bulletin board as described in Q24H assist users with exchanging contact details?**

The operator of a bulletin board could (subject to data protection legislation) enable publication of contact details of users advertising buying and selling interests on its bulletin board, so that users can use these to contact each other bilaterally outside the system.

However, some users may have reservations about the publication of their contact details. In these circumstances, one possibility might be for them to agree to share contact details on a case-by-case basis. Any such request should be limited to requesting to see another user’s contact details and not extend to communicating in relation to, negotiating or accepting essential terms of a transaction (being price, quantity or subject matter).

**Q24K. Can an operator of a bulletin board as described in Q24H provide template documentation to assist its users with negotiating and executing transactions?**

Yes, an operator of a bulletin board can make available template documentation for download by users of the bulletin board. It can also require users to use this template documentation. This will not mean that the bulletin board is a *multilateral system*, provided that users use the template documentation to negotiate and execute transactions bilaterally outside the system. The operator should not, however, complete the

template documentation in relation to the essential terms of these transactions (being price, quantity or subject matter).

**Q24L. Can an operator of a bulletin board as described in Q24H provide post-trade services?**

Yes, it is possible for the operator of a bulletin board to provide post-trade services, including in relation to settlement. This might include, for example, assisting with the transfer of funds or registering the transfer of *financial instruments*. The operator could be informed by users of the bulletin board that they have entered into a contract for the sale/purchase of a *financial instrument*, i.e. executed a transaction, bilaterally outside the system and then provide post-trade services in relation to that transaction to them. Providing simply these post-trade services does not require the operator to have permission for *operating a multilateral trading facility* or *operating an organised trading facility*. The operator should, however, consider whether the post-trade services provided may include any *payment services* (see ■ PERG 15.3) or *electronic money* issuance (see ■ PERG 3A).

**Q25. What about ancillary services (Annex 1, section B)? Do we need to be authorised if we wish to provide these services?**

Yes, but only when providing these services is a *regulated activity*, for example, if you provide custody services which fall within the *regulated activity of safeguarding and administering investments*. You are not an investment firm within the scope of MiFID, however, if you only perform ancillary services (regardless of whether these are *regulated activities* requiring *authorisation* under the Act).

**Q26. We are an investment firm - can we apply for passporting rights that include ancillary services?**

[deleted]