

## Chapter 13

# Guidance on the scope of the UK provisions which implemented MiFID



Annex 2

The list of MiFID investment services in Section A of Annex 1 of MiFID, has been onshored in Part 3 of Schedule 2 to the Regulated Activities Order and the list of MiFID instruments in Section C of Annex 1 to MiFID has been onshored in Part 1 of Schedule 2 to the Regulated Activities Order. However, as explained in ■ PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this Annex.

Table 1 - MiFID Investment services and activities and the Part 4A permission regime

MiFID Investment Services and Activities	Part 4A permission	Comments
A1- Reception and transmission of orders in relation to one or more financial instruments	Arranging (bringing about) deals in investments (article 25(1) RAO)  Bidding in emissions auctions (article 24A RAO)	Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders.  The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders.  See Q13, Q14 and Q34A for further guidance.
A2- Execution of orders on behalf of clients	Dealing in investments as agent (article 21 RAO)  Dealing in investments as principal (article 14 RAO)  Bidding in emissions auctions (article 24A RAO)	Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal.  See Q15, Q15A and 34A for further guidance.

MiFID Investment Services and Activities	Part 4A permission	Comments
A3- Dealing on own account	Dealing in investments as principal (article 14 RAO)	Where a firm is dealing on own account, it needs permission to carry on the activity of dealing in investments as principal.  See Q16 and 34A for further guidance.
A4- Portfolio management	Managing investments (article 37 RAO)  Dealing in investments as principal (article 14 RAO)  Dealing in investments as agent (article 21 RAO)  Arranging (bringing about) deals in investments (article 25(1) RAO)  Making arrangement with a view to transactions in investments (article 25(2))	A firm performing the portfolio management service needs a permission to carry on the activity of managing investments.  Firms may also need permission to perform other regulated activities to enable them to give effect to decisions they make as part of their portfolio management (see adjacent column).  See Q6, Q6A, Q17 and Q43 for further guidance.
A5- Investment advice	<i>Advising on investments (except P2P agreements)</i> (article 53(1) RAO)	A firm providing investment advice will need permission to carry on the activity of advising on investments.  See Q18 and Q19 to Q21 for further guidance.
A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Dealing in investments as principal (article 14 RAO)  Dealing in investments as agent (article 21 RAO)	Where a firm underwrites an issue of financial instruments and holds them on its books before they are sold or offered to third parties, it needs permission to carry on the activity of dealing in investments as principal.  Where an underwriting firm sells the relevant instruments as agent for the issuer and then purchases any remaining instruments as principal, it needs permission to carry on the activity of dealing in investments as agent in relation to its selling activity and of dealing in investments as principal in relation to its purchase of the remaining instruments.  See Q22 for further guidance.

MiFID Investment Services and Activities	Part 4A permission	Comments
A7- Placing of financial instruments without a firm commitment basis	<p>Dealing in investments as agent (article 21 RAO)</p> <p>Arranging (bringing about) deals in investments (article 25(1) RAO)</p>	<p>Where a firm arranges the placement of financial instruments with another entity, it needs permission to carry on the activity of arranging (bringing about) deals in investments.</p> <p>Where a firm sells the relevant instruments on behalf of the issuer, it also needs permission to carry on the activity of dealing in investments as agent.</p> <p>See Q22 for further guidance.</p>
A8- Operation of Multilateral Trading Facilities	Operating a multilateral trading facility (article 25D RAO)	<p>Firms performing this service will need permission to carry on the regulated activity of operating a multilateral trading facility.</p> <p>Firms will not require permission to carry on any other regulated activities if all they do is operate a multilateral trading facility. If they carry on additional regulated activities, they should ensure that their permission properly reflects this.</p> <p>See Q24 for further guidance.</p>
A9- Operation of organised trading facilities	Operating an organised trading facility (article 25DA RAO)	<p>Firms performing this service will need permission to carry on the regulated activity of operating an organised trading facility.</p> <p>Firms will not require permission to carry on any other regulated activities if all they do is operate an organised trading facility. If they carry on additional regulated activities, they should ensure that their permission properly reflects this.</p> <p>See Q24A for further guidance.</p>
<p><b>Note:</b> The activity of <i>bidding in emissions auctions</i> can form part of A1, A2 or A3. In terms of the <i>permission regime</i>, <i>bidding in emissions auctions</i> does not form part of any other <i>regulated activity</i> (see PERG 2.7.7CG) and so a <i>firm</i> must have a separate <i>permission</i> to undertake that activity.</p>		

Table 2: MiFID financial instruments and the Part 4A permission regime

MiFID financial instrument	Part 4A permission category	Commentary
C1- Transferable securities	share (article 76)	<p>The permission investment categories in column 2 (Part 4A permission category) are wider than the MiFID definition of transferable securities, as they comprise both securitised and non-securitised instruments. An instrument is not a transferable security under MiFID if it is not negotiable on the capital market. Therefore an investment listed in column (2) will not always be a transferable security. Firms with permissions containing any of the Part 4A permission investment categories in column (2) will fall outside the article 3 MiFID exemption as transposed in domestic legislation, where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master agreement).</p> <p>It is possible in theory that options, futures and contracts for differences under the RAO that are not mentioned in column (2) could be a MiFID transferable security. However column (2) includes the main RAO derivatives that the FCA thinks may in practice be transferable securities.</p> <p>For further guidance on the article 3 exemption see Q49; for further guidance on transferable securities see Q28.</p>
	debenture (article 77)	
	alternative debenture (article 77A)	
	government and public security (article 78)	
	warrant (article 79)	
	certificate representing certain securities (article 80)	
	unit (article 81)	
	option (excluding a commodity option and option on a commodity future)	
	future (excluding a commodity future and a rolling spot forex contract)	
	contract for differences (excluding a spread bet, a rolling spot forex contract and a binary bet)	
C2- Money market instruments	spread bet	<p>Money market instruments are classes of instruments normally dealt in on the money markets.</p> <p>For further guidance on money market instruments see Q28A.</p>
	debenture (article 77)	
	alternative debenture (article 77A)	
	government and public security (article 78)	
C3- Units in a collective investment undertaking	certificate representing certain securities (article 80)	<p>C3 includes units in regulated and unregulated collective investment schemes. This category also includes closed-ended corporate schemes, such as investment trust companies</p>
	unit (article 81)	
	shares (article 76)	

MiFID financial instrument	Part 4A permission category	Commentary
		(hence the reference to shares in the adjacent column).
		For further guidance, see Q29.
C4- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash	option (excluding a commodity option and an option on a commodity future)	C4 includes in our view derivatives relating to commodity derivatives, for example options on commodity futures.
	commodity option and option on a commodity future	For further guidance, see Q31A to Q31S.
	future (excluding a commodity future and a rolling spot forex contract)	Note that for the purposes of the permission regime, commodity options and options on commodity futures are treated as a single permission category. (see PERG 2 Annex 2 G Table 2).
	rolling spot forex contract	
	contract for differences (excluding a spread bet, a rolling spot forex contract and a binary bet)	
	spread bet	
C5- Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)	binary bet	C5 instruments are generally contracts for differences. Where a C5 instrument provides for the possibility of physical settlement, it may also be either a commodity future or commodity option, depending on its structure.
	commodity option and option on a commodity future	
	commodity future	
	contract for differences (excluding a spread bet, a rolling spot forex contract and a binary bet)	
C6- Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a <i>United Kingdom</i> regulated market, a <i>UK</i> MTF or an a <i>UK</i> OTF	binary bet	For further guidance see Q33A.
	commodity option and option on a commodity future	C6 instruments will generally be either commodity futures or commodity options, depending on their structure. Those instruments with a cash settlement option may also be contracts for differences.
	commodity future	
	contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)	
C7- Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in C.6. This category does not include spot contracts or contracts that meet certain conditions that are designed to exclude contracts for commercial purposes	binary bet	For further guidance see Q33B.
	commodity option and option on a commodity future	For further guidance see Q33C.
	commodity future	
	contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)	
	binary bet	

MiFID financial instrument	Part 4A permission category	Commentary
C8- Derivative instruments for the transfer of credit risk	option (excluding a commodity option and an option on a commodity future)	C8 derivatives are financial instruments designed to transfer credit risk, often referred to as credit derivatives.
	contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)	For further guidance see Q31.
	spread bet	
	rolling spot forex contract	
C9- Financial contracts for differences	contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)	In our view, C9 derivatives could include those contracts for differences with a financial underlying, for example the FTSE index.
	spread bet	
	rolling spot forex contract	
C10- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to various specified underlyings that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event) This category does not include contracts that meet certain conditions designed to exclude non-financial derivative instruments.	option (excluding commodity option and option on a commodity future)	For further guidance see Q34.
	future (excluding a commodity future and a rolling spot forex contract)	
	contract for differences (excluding spread bet, a rolling spot forex contract and a binary bet)	
	spread bet	
	binary bet	
C11- Emission allowances	Emission allowances	See Q34A
<b>Note:</b> In our view, the categories of financial instrument in C1 to C11 are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within C1 and C3.		