

# Appendix 3 Guidance on passporting issues

## 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive, MCD and IDD to the Regulated Activities Order

**App3.9.1** **G** The following Tables 1, 2, 2ZA, 2A and 2B provide an outline of the *regulated activities* and *specified investments* that may be of relevance to *firms* considering undertaking *passporting activities* under the *CRD, MiFID, AIFMD, the UCITS Directive, the MCD and the IDD*. The tables may be of assistance to *UK firms* that are thinking of offering financial services in another *EEA State* and to *EEA firms* that may offer those services in the *United Kingdom*.

**App3.9.2** **G** The tables provide a general indication of the *investments* and activities specified in the *Regulated Activities Order* that may correspond to categories provided for in the *CRD, MiFID, AIFMD, the UCITS Directive, the MCD or the IDD*. The tables do not provide definitive *guidance* as to whether a *firm* is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a *firm* is carrying on a *passporting activity* will depend on the particular circumstances of the *firm*. If a *firm's* activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.

**App3.9.3** **G** In considering the issues raised in the tables, *firms* should note that:

- (1) article 64 of the *Regulated Activities Order* (Agreeing to carry on specific kinds of activity) may apply in respect of agreeing to undertake the specified activity (see ■ PERG 2.7.21G); and
- (2) article 89 of the *Regulated Activities Order* (Rights to or interests in investments) applies in respect of rights to and interests in the types of *investments* to which the category applies.

### Activities set out in Annex 1 of the CRD .....

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Table 1: CRD activities		Part II RAO Activities	Part III RAO Investments
1.	Taking deposits and other repayable funds from the public	Article 5	Article 74
2.	Lending	Article 61, 64	Article 88
3.	Financial leasing		
4.	Money transmission services		
5.	Issuing and administering means of payment (eg credit cards, travellers' cheques and bankers' drafts)		
6.	Guarantees and commitments		
7.	Trading for own account or for account of customers in: (a) money market instruments (b) foreign exchange (c) financial futures and options (d) exchange and interest rate instruments (e) transferable securities	Article 14, 21, 25 (see Note 1), 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64 Article 14, 21, 25, 64	Article 77, 78, 80, 83-85, 89 Article 83-85, 89 Article 83-85, 89 Article 83-85, 89 Article 76-81, 89
8.	Participation in share issues and the provision of services relating to such issues	Article 14, 21, 25, 53(1), 64	Article 76-81, 89
9.	Advice to undertakings on capital structure, industrial strategy and related questions and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53(1), 64	Article 76-80, 83-85, 89
10.	Money broking	Article 25, 64	Article 77, 78, 89
11.	Portfolio management and advice	Article 14, 21, 25, 37, 53(1), 64	Article 76-81, 83-85, 89
12.	Safekeeping and administration of securities	Article 40, 45, 64	Article 76-81, 83-85, 89
13.	Credit reference services		
14.	Safe custody services		
15.	Issuing electric money	Article 9B	Article 74A

Note 1: The services and activities provided for in Sections A and B of Annex I of *MiFID* when referring to the *financial instruments* provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the CRD from 1 January 2013. See the table at SUP App 3.9.5 G below for mapping of *MiFID investment services and activities*. For further details relating to this residual category, please see the "CRD" section of the passporting forms entitled "Notification of intention to establish a branch in another EEA State" and "Notification of intention to provide cross border services in another EEA State".

**Services set out in Annex I to MiFID**

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Table 2: <i>MiFID investment services and activities</i>		Part II RAO Activities	Part III RAO Investments
<i>A MiFID investment services and activities</i>			
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25	Article 76-81, 82B, 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21	A Article 76-81,82B, 83-85, 89
3.	Dealing on own account	Article 14	Article 76-81, 82B, 83-85, 89
4.	Portfolio management	Article 37 (14, 21, 25 - see Note 1)	Article 76-81, 82B, 83-85, 89
5.	Investment advice	Article 53(1)	Article 76-81, 82B, 83-85, 89
6.	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, 82B, 83-85, 89
7.	Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, 82B, 83-85, 89
8.	Operation of Multilateral Trading Facilities	Article 25D (see Note 2)	Article 76-81, 82B, 83-85, 89
9.	Operation of an OTF	Article 25DA (see Note 3)	Article 77, 77A, 78, 79, 80, 81, 82B, 83-85, 89
Ancillary services		Part II RAO Activities	Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	Article 40, 45, 64	Article 76-81, 82B, 83-85, 89
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53(1), 64	Article 76-80, 82B, 83-85, 89

4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53(1), 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53(1), 64 (see Note 4)	Article 76-81, 82B, 83-85, 89
6.	Services related to underwriting	Article 25, 53(1), 64	Article 76-81, 82B, 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25D, 37, 53(1), 64	Article 83 and 84

Note 1. A *firm* may also carry on these other activities when it is *managing investments*.

Note 2. A *firm* operating an *MTF* under article 25D does not need to have a *permission* covering other *regulated activities*, unless it performs other *regulated activities* in addition to *operating an MTF*.

Note 3. A *firm* operating an *OTF* under article 25DA does not need to have a *permission* covering other *regulated activities*, unless it performs other *regulated activities* in addition to *operating an OTF*.

Note 4. A *firm* which provides *investment research* and financial analysis or other forms of general recommendation relating to transactions in *financial instruments* does not need *permission* under article 53(1) of the *Regulated Activities Order* if it is appropriately authorised (see article 53(1) to (1D) of the *Regulated Activities Order*).

**Activities set out in article 6(2) to (4) of AIFMD**

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Table 2ZA: AIFMD activities		Part II RAO Activities	Part III RAO Investments
1.	<i>AIFM management functions.</i>	Article 51ZC	N/A (activity relates to property of any kind)
2.	Management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement in accordance with article 19(1) of Directive	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76 to 81, 82B, 83 to 85, 89

Table 2ZA: AIFMD activities		Part II RAO Activities	Part III RAO Investments
	2003/41/EC, in accordance with mandates given by investors on a discretionary client-by-client basis (Note 2).		
3.	Investment advice (Note 2).	Articles 53(1), 64	Articles 76 to 81, 82B, 83 to 85, 89
4.	Safe-keeping and administration in relation to <i>shares</i> or <i>units</i> of collective investment undertakings.	Articles 40, 45, 64	Articles 76 to 81, 82B, 83 to 85, 89
5.	Reception and transmission or orders in relation to <i>financial instruments</i> .	Articles 25(1), 64	Articles 76 to 81, 82B, 83 to 85, 89

Note 1. See FUND 1.4.2 R to FUND 1.4.4 R for further information in relation to the activities that *full-scope UK AIFMs* are able to perform.

Note 2. See FUND 1.4.5 G for the position with respect to assets which are not *financial instruments*.

**Activities set out in Article 6(2) and (3) of the UCITS Directive**

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Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	The management of UCITS in the form of unit trusts / common funds or of investment companies; this includes the function mentioned in Annex II of the <i>UCITS Directive</i> (see Note 2).	Article 51ZA	N/A (activity relates to property of any kind) (Note 3)
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 14, 21, 25, 37, 40 (arranging only), 64	Articles 76-81, 82B, 83-85, 89
3.	Investment advice concerning one or more of the instruments listed in Section C of Annex I to <i>MiFID</i> .	Articles 53(1), 64	Articles 76-81, 82B, 83-85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, 82B, 83-85, 89

Table 2A: UCITS Directive activities	Part II RAO Activities	Part III RAO Investments
<p>Note 1. A <i>UCITS management company</i> can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also <i>authorised</i> to carry on the activity set out in row (2) of the table (see COLL 6.9.9 R).</p>		
<p>Note 2. The functions set out in Annex 2 to the <i>UCITS Directive</i> are:</p>		
1.	Investment management.	
2.	Administration:	
	a.	legal and fund management accounting services;
	b.	customer inquiries;
	c.	valuation and pricing (including tax returns);
	d.	regulatory compliance monitoring;
	e.	maintenance of unit-holder register;
	f.	distribution of income;
	g.	unit issues and redemptions;
	h.	contract settlements (including certificate dispatch);
	i.	record keeping.
3.	Marketing.	
<p>Note 3. The <i>regulated activity of managing a UCITS</i> may be carried on for property of any kind (article 4(2) of the <i>regulated activities order</i>). However, the <i>scheme property</i> of a <i>UCITS scheme</i> is limited to certain types of property, in line with COLL 5 (Investment and borrowing powers).</p>		

**Activities set out in articles 2.1(1) and 2.1(2) of the IDD**

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Table 2B: Insurance Distribution Directive Activities/Examples		Part II RAO Activities	Part III RAO Investments
1.	Proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance.	Articles 25, 53(1) and 64	Articles 75, 89 (see Note 1)
1A.	Advising on contracts of insurance or reinsurance	Articles 53(1) and 64	Articles 75, 89
2.	Concluding contracts of insurance or reinsurance	Articles 21, 25, 53(1) and 64	Articles 75, 89
3.	Assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.	Articles 39A, 64	Articles 75, 89
4	Provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on	Articles 21, 25, (where this involves the provision of advice) 53(1), and 64.	Articles 75, 89

Table 2B: Insurance Distribution Directive Activities/Examples	Part II RAO Activities	Part III RAO Investments
the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.		
<p>Note 1. Rights to or interests in <i>life policies</i> are <i>specified investments</i> under Article 89 of the <i>Regulated Activities Order</i>, but rights to or interests in <i>general insurance contracts</i> are not.</p>		
<p>Note 2. Row 4 in Table 2B includes text that appears in article 2.1(1) of the <i>IDD</i>. These activities are not considered to be separate, discrete activities under the <i>IDD</i> but rather are included by way of an example of what constitutes <i>insurance distribution</i>. They have been included in this table for completeness, together with an indication of the Part II RAO activities and Part III RAO investments that may be relevant. This is to indicate, including for <i>firms</i> considering undertaking passport activities under the <i>IDD</i>, how these examples may relate to <i>regulated activities</i> and <i>specified investments</i>.</p>		

**Activities set out in article 4 of the MCD**

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Table 3: MCD activities	Part II RAO specified activities	Part III RAO Investments
1 Acting as credit intermediary	Articles 25A(1), 25A(2A), 53A, 36A(1)(d), (e), (f) and 53DA	Articles 88 and 88D