

Chapter 4

General organisational requirements

4.1 General requirements

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering certain aspects of the MiFID compliance function requirements. See <http://www.esma.europa.eu/content/Guidelines-certain-aspects-MiFID-compliance-function-requirements> .]

Application to a common platform firm

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For a *common platform firm*:

- (1) the *MiFID Org Regulation* applies, as summarised in ■ SYSC 1 Annex 1 3.2G, ■ SYSC 1 Annex 1 3.2-AR and ■ SYSC 1 Annex 1 3.2-BR; and
- (2) the *rules and guidance* apply as set out in the table below:

Subject	Applicable rule or guidance
General requirements	SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR
Business continuity	SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G
Audit committee	SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G
Persons who effectively direct the business	SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R
Responsibility of senior personnel	SYSC 4.3.3G
Management body	SYSC 4.3A.-1R to SYSC 4.3A.7R
Nominations committee	SYSC 4.3A.8R to SYSC 4.3A.11R

Application to a MiFID optional exemption firm and to a third country firm

4.1.-1

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For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the *rules and guidance* in this chapter apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in ■ SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with ■ SYSC 1 Annex 1 3.2CR(2).

General requirements

4.1.1

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(1) A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

(2) [deleted]

[Note: article 74 (1) of *CRD*, article 16(5) second paragraph of *MiFID*, article 12(1)(a) of the *UCITS Directive*, and article 18(1) of *AIFMD*]

(3) Without prejudice to the ability of the *FCA* or any other relevant *competent authority* to require access to communications in accordance with *MiFID* and *MiFIR*, a *common platform firm* must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:

- (a) to guarantee the security and authentication of the means of transfer of information;
- (b) to minimise the risk of data corruption and unauthorised access; and
- (c) to prevent information leakage.

[Note: article 16(5) third paragraph of *MiFID*]

4.1.1A

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A *full-scope UK AIFM* must comply with the *AIFM Remuneration Code*.

[Note: article 13(1) of *AIFMD*]

4.1.1B

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A *full-scope UK AIFM* must, in particular:

- (1) have rules for personal transactions by its *employees* or for the holding or management of investments it invests on its own account;
- (2) ensure that each transaction involving the *AIFs* may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected; and
- (3) ensure that the assets of the *AIFs* managed by the *AIFM* are invested in accordance with the *instrument constituting the fund* and the legal provisions in force.

[Note: article 18(1) second paragraph of *AIFMD*]

4.1.1C

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A *BIPRU firm* and a *third country BIPRU firm* must comply with the *BIPRU Remuneration Code*.

4.1.1D

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A *UK UCITS management company* must comply with the *UCITS Remuneration Code* if it:

- (1) manages a *UCITS scheme*; or

(2) manages an *EEA UCITS scheme*.

[Note: article 14a(1) of the *UCITS Directive*]

4.1.1E **R** A *UK UCITS management company* must have appropriate procedures for its employees to report potential or actual breaches of national provisions transposing the *UCITS Directive* internally through a specific, independent and autonomous channel.

[Note: article 99d(5) of the *UCITS Directive*]

4.1.1F **G** ■ SYSC 18 (Guidance on Public Interest Disclosure Act: Whistleblowing) contains further *guidance* on the effect of the Public Interest Disclosure Act 1998 in the context of the relationship between *firms* and the *FCA*.

4.1.2 **R** For a *common platform firm*, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the *common platform firm's* activities and must take into account the specific technical criteria described in article 21(3) of the *MiFID Org Regulation*, ■ SYSC 5.1.7 R, ■ SYSC 7 and whichever of the following as applicable:

(for a *firm* to which ■ SYSC 19A applies) ■ SYSC 19A (IFPRU Remuneration Code);

(for a *full-scope UK AIFM*) ■ SYSC 19B (AIFM Remuneration Code);

(for a *firm* to which ■ SYSC 19C applies) ■ SYSC 19C (BIPRU Remuneration Code);

(for a *firm* to which ■ SYSC 19D applies) ■ SYSC 19D (Dual-regulated firms Remuneration Code); or

(for a *firm* to which the remuneration part of the *PRA Rulebook* applies) the remuneration part of the *PRA Rulebook*.

[Note: article 74 (2) of *CRD*]

4.1.2A **G** Other *firms* should take account of the comprehensiveness and proportionality *rule* (■ SYSC 4.1.2 R) as if it were *guidance* (and as if "should" appeared in that *rule* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.2AA **R** Where ■ SYSC 4.1.2 R applies to a *BIPRU firm*, it must take into account the specific technical criteria described in ■ SYSC 19C.

4.1.2B **R** For a *management company* or a *full-scope UK AIFM*, the arrangements, processes and mechanisms referred to in ■ SYSC 4.1.1 R and ■ SYSC 4.1.1A R must also take account of the *UCITS schemes* and *EEA UCITS schemes* managed by the *management company* or the *AIFs* managed by the *full-scope UK AIFM*.

[Note: article 12(1) second paragraph of the *UCITS Directive* and article 18(1) second paragraph of *AIFMD*]

Resources for management companies and AIFMs

4.1.2C **R** A management company, a full-scope UK AIFM and an incoming EEA AIFM branch must have, and employ effectively, the resources and procedures that are necessary for the proper performance of its business activities.

[Note: articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 12(1)(c) of *AIFMD*]

4.1.2D **R** A full-scope UK AIFM must use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

[Note: article 18(1) first paragraph of *AIFMD*]

Subordinate measures relating to provisions implementing article 12(1) of AIFMD

4.1.2E **G** Articles 16 to 29 of the *AIFMD level 2 regulation* provide detailed rules supplementing the provisions of article 12(1) of *AIFMD*, articles 57 to 66 of the *AIFMD level 2 regulation* provide detailed rules supplementing articles 12 and 18 of *AIFMD*.

Mechanisms and procedures for a firm

4.1.3 **G**

4.1.4 **R** A firm (with the exception of a common platform firm and a sole trader who does not employ any person who is required to be approved under section 59 of the Act (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the firm, and the nature and range of the financial services, claims management services and other activities undertaken in the course of that business:

- (1) (if it is a management company) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- (2) establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the firm;
- (3) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the firm; and
- (4) (if it is a management company) establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved.

[Note: articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*]

4.1.4A **G** A *firm* that is not a *common platform firm* or a *management company* should take into account the decision-making procedures and effective internal reporting *rules* (■ SYSC 4.1.4R (1), ■ (3) and ■ (4)) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.5 **R** A *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[Note: article 4(2) of the *UCITS implementing Directive*]

Business continuity.....

4.1.6 **R** A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[Note: article 16(4) of *MiFID*]

4.1.7 **R** A *CRR firm* and a *management company* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a *management company*, its *collective portfolio management activities*, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[Note: article 4(3) of the *UCITS implementing Directive* and article 85(2) of *CRD*]

4.1.7A **G** Other *firms* should take account of the business continuity *rules* (■ SYSC 4.1.6 R and ■ 4.1.7 R) as if they were *guidance* (and as if "should" appeared in those *rules* instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1).

4.1.8 **G** The matters dealt with in a business continuity policy should include:

- (1) resource requirements such as people, systems and other assets, and arrangements for obtaining these resources;
- (2) the recovery priorities for the *firm's* operations;
- (3) communication arrangements for internal and external concerned parties (including the *FCA*, *clients* and the press);

- (4) escalation and invocation plans that outline the processes for implementing the business continuity plans, together with relevant contact information;
- (5) processes to validate the integrity of information affected by the disruption; and
- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with ■ SYSC 4.1.10R and for a *common platform firm* with article 21(5) of the *MiFID Org Regulation*.

Operators of electronic systems in relation to lending: arrangements to administer loans in the event of platform failure

4.1.8A R *An operator of an electronic system in relation to lending must take reasonable steps to ensure that arrangements are in place to ensure that P2P agreements facilitated by it will continue to be managed and administered, in accordance with the contract terms, if at any time it ceases to carry on the activity of operating an electronic system in relation to lending.*

4.1.8B R Any arrangements made under ■ SYSC 4.1.8A R must be notified to lenders under *P2P agreements*:

- (1) when such arrangements are made; or
- (2) if later, when the lender first becomes a lender under a *P2P agreement* with that operator; or
- (3) if the arrangements are changed, when that change is made; and
- (4) if the arrangement involves another *firm* taking over the management and administration of *P2P agreements* if the operator ceases to *operate the electronic system in relation to lending*, the notification to lenders must inform lenders of the identity of the *firm* with which the arrangements have been made and how that *firm* will hold the lenders' *money*.

4.1.8C G Arrangements to ensure *P2P agreements* facilitated by the *firm* continue to be managed and administered may include:

- (1) entering into an arrangement with another *firm* to take over the management and administration of *P2P agreements* if the operator ceases to *operate the electronic system in relation to lending*; or
- (2) holding sufficient collateral in a segregated account to cover the cost of management and administration while the loan book is wound down; or
- (3) entering into an arrangement for another *firm* to act as guarantor for the *P2P agreements* which includes a legally enforceable arrangement to meet the costs of the guarantee in full; or
- (4) managing the loan book in a way that ensures that income from *P2P agreements* facilitated by the *firm* is sufficient to cover the costs of

managing and administering those agreements during the winding down process, taking into account the reduction of the loan pool and fee income from it.

4.1.8D G When designing its arrangements, a *firm* should take into account insolvency law to ensure that the insolvency of the *firm* does not prejudice the operation of arrangements that the *firm* has put in place.

Operators of electronic systems in relation to lending: title transfer

4.1.8E R

(1) An operator of an electronic system in relation to lending must not accept, take, or receive the transfer of full ownership of money relating to P2P agreements.

(2) If an operator of an electronic system in relation to lending has made a client money election under ■ CASS 7.10.7AR, when it is operating an electronic system in relation to non-P2P agreements it must also not accept, take, or receive the transfer of full ownership of money relating to non-P2P agreements.

Accounting policies: management company

4.1.9 R A management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the FCA, to deliver in a timely manner to the FCA financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[Note: article 4(4) of the UCITS implementing Directive]

Regular monitoring: management company

4.1.10 R A management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with ■ SYSC 4.1.4 R to ■ SYSC 4.1.9 R and take appropriate measures to address any deficiencies.

[Note: article 4(5) of the UCITS implementing Directive]

Regular monitoring: other firms

4.1.10A G Other firms should take account of the regular monitoring rule (■ SYSC 4.1.10 R) as if it were guidance (and as if "should" appeared in that rule instead of "must") as explained in ■ SYSC 1 Annex 1 3.3 R(1), but ignoring the cross-reference to ■ SYSC 4.1.5 R and ■ SYSC 4.1.9R.

Audit committee

4.1.11 G Depending on the nature, scale and complexity of its business, it may be appropriate for a *firm* to form an audit committee. An audit committee could typically examine management's process for ensuring the appropriateness and effectiveness of systems and controls, examine the arrangements made by management to ensure compliance with requirements and standards under the regulatory system, oversee the

functioning of the internal audit function (if applicable) and provide an interface between management and external auditors. It should have an appropriate number of *non-executive directors* and it should have formal terms of reference.

4.1.12 **G** [deleted]

Risk control: additional guidance.....

4.1.13 **G** *Firms* should also consider the additional *guidance* on risk-centric governance arrangements for effective risk management contained in ■ SYSC 21.

Apportionment of responsibilities: the role of the non-executive director.....

4.1.14 **G** The role undertaken by a *non-executive director* will vary from one *firm* to another. Where a *non-executive director* is an *approved person*, for example where the *firm* is a *body corporate*, his responsibility and therefore liability will be limited by the role that he undertakes.

4.1.15 **R**