

Specified modified requirements

Chapter 4

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requirements

4.1 Specified requirements for MiFID investment firms and for third country investment firms

4.1.1 **R** For a *firm* in relation to its *MiFID or equivalent third country business* the *rules* set out in column 1 of the table in **TC 4.1.4R** below are amended as set out in column 2.

4.1.2 **R** In this section, references to relevant individuals are natural persons who, on behalf of the *firm*:

- (1) make *personal recommendations to retail clients* in relation to *financial instruments*; or
- (2) provide information to *retail clients* about *financial instruments, investment services or ancillary services*; or

who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (1) or (2).

4.1.3 **R** References in **TC 4.1.4R** to a relevant individual's knowledge and competence are to the knowledge and competence necessary to ensure that the *firm*, on behalf of which the relevant individual acts, is able to meet its obligations under:

- (1) those *rules* which implemented articles 24 and 25 of *MiFID* (including those *rules* which implemented related provisions under the *MiFID Delegated Directive*); and
- (2) related provisions of the *MiFID Org Regulation*.

4.1.4 **R** Unless the context requires otherwise the *rules* in column 1 of the table are amended as set out in column 2:

Column 1 Relevant rule	Column 2 Amendments
TC 2.1.1R(1)	Insert the following at the end of TC 2.1.1R(1): "In addition, a <i>firm</i> must not assess a relevant individual as competent unless the <i>firm</i> has satisfied itself that the relevant individual pos

	<p>asses the knowledge and competence to enable the <i>firm</i> to meet its obligations under SYSC 5.1.5ABR. This means that the relevant individual has also:</p> <p>(a) obtained appropriate experience which means that the relevant individual has successfully demonstrated the ability to carry on the activities through previous work experience. This work must have been performed, on a full-time equivalent basis, for a minimum period of 6 months; and</p> <p>(b) attained an appropriate qualification which means a qualification or other test or training course that meets the criteria set out by the ESMA guidelines referred to in TC 1.1.1BG.</p> <p>The level of knowledge and competence needed to fulfil the <i>firm's</i> obligations reflects the scope and degree of the activities, as described in TC 4.1.2R above, carried out by the relevant individual."</p>
TC 2.1.2R	<p>The provision is amended by adding after TC 2.1.2R:</p> <p>"A relevant individual, who has not acquired the necessary knowledge or competence to carry out the activities in TC 4.1.2R above, cannot provide those activities under supervision for a period exceeding 48 months."</p>
TC 2.1.5R(1)	<p>The provision is amended by adding after TC 2.1.5R:</p> <p>"Where a relevant individual has not acquired the necessary knowledge and competence to carry out the activities described in TC 4.1.2R above:</p> <p>(a) the <i>firm</i> must ensure that the individual supervising the relevant individual:</p> <p>(i) has been assessed as competent to provide such <i>personal recommendation</i> or information;</p> <p>(ii) has the necessary skills and resources to act as a competent supervisor; and</p> <p>(iii) takes responsibility for the <i>personal recommendation</i> or information, referred to in TC 4.1.2R above, provided by the relevant individual under supervision as if the supervisor is providing the <i>personal re-</i></p>

commendation including any suitability report (COBS 9) or information; and

(b) the firm must ensure that the supervision provided to a relevant individual is tailored to the services provided by the individual."

4.1.5 **G** Rules in this section relate to the requirements in ■ SYSC 5.1.5ABR.

4.1.6 **G** For relevant individuals of an *incoming EEA firm*, with an establishment maintained by that *firm* (or its *appointed representative*) in the *United Kingdom*, the matters covered by ■ SYSC 5.1.5ABR are matters reserved for the *United Kingdom* as the *Host State regulator*.



4.2 Specified requirements for firms carrying on insurance distribution activities

- 4.2.1** **R** For a *firm* which carries on *insurance distribution activities* the *rules and guidance* set out in column 1 of the table in ■ TC 4.2.5R below are amended as set out in column 2.
- 4.2.2** **R** ■ TC 4.2.1R is limited as set out in ■ TC App 2 and ■ TC App 3.
- 4.2.3** **R** In this section, and the provisions in column 1 of ■ TC 4.2.5R, relevant employees are employees and other *persons*:

 - (1) directly involved in the carrying on of the *firm’s insurance distribution activities*; or
 - (2) within the management structure responsible for the *firm’s insurance distribution activities*; or
 - (3) responsible for the supervision of a relevant employee acting in the capacity as set out in (1).
- 4.2.4** **R** In ■ TC 4.2 ‘employee’:

 - (1) is not restricted to an individual working under a contract of employment; and
 - (2) includes (without limitation) any natural or legal person whose services are placed at the disposal of the *firm*, under an arrangement between the *firm* and a third party; and
 - (3) also includes *appointed representatives* and their employees.
- 4.2.5** **R**

Column 1	Column 2
Relevant rules or guidance	Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1
TC 2.1.1R(1)	The provision is amended by adding after TC 2.1.1R(1): <i>‘A firm must ensure that a relevant employee’s appropriate knowledge and ability includes the re-</i>

Column 1 Relevant rules or guidance	Column 2 Amendments either extending the scope, or adding and/or replacing rules and guidance in Column 1
TC 2.1.15R; TC 2.1.17R; TC 2.1.24R and TC 2.1.25R	<p>requirements set out in SYSC 28.2.3R and is appropriate to the:</p> <p>(a) role and activity carried out by the relevant employee within the <i>firm</i>; and</p> <p>(b) type of distribution and the nature of the products sold.'</p> <p>The <i>rules</i> apply as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>
TC 2.1.15R	<p>(1) For <i>firms</i> whose relevant employees are not also <i>retail investment advisers</i>, the <i>rule</i> applies as if '35 hours' was a reference to '15 hours'.</p> <p>(2) The <i>rule</i> is amended by adding at the end: 'Where the relevant employee is also a <i>retail investment adviser</i>, the minimum 35 hours appropriate continued professional development requirement in TC 2.1.15R must include a minimum 15 hours covering the requirements in SYSC 28.2.3R.'</p>
TC 2.1.16G	<p>For relevant employees acting in that capacity, the <i>guidance</i> is replaced by the following: 'To meet the requirements in TC 2.1.15R (as modified by TC 4.2.5R) a relevant employee's continued training and development can encompass various types of facilitated learning opportunities including courses, e-learning and mentoring.'</p>
TC 2.1.18G, TC 2.1.19G, and TC 2.1.23G	<p>The <i>guidance</i> applies as if references to <i>retail investment advisers</i> included 'relevant employees'.</p>
TC 2.1.24R	<p>The <i>rule</i> is amended by adding after TC 2.1.24R(2): 'the <i>firm</i> must be in a position to make available to the <i>FCA</i>, on request, the name of the <i>person</i> responsible for this record keeping requirement.'</p>
TC 3.1.1R	<p>The provision is amended by adding after TC 3.1.1R(3): 'a <i>firm</i> must keep an up-to-date record of the continued professional training or development completed by each relevant employee in each 12 <i>month</i> period,</p> <p>(a) for not less than 3 years after the relevant employee stops carrying out the activity; and</p> <p>(b) the <i>firm</i> must be in a position to provide any version of the record to the <i>FCA</i> on request.'</p>

- 4.2.6 **R** Where the relevant employee is also a *retail investment adviser* the *rules and guidance* in ■ TC 4.2.5R apply as follows (unless otherwise stated in ■ TC 4.2.5R):
- (1) the unamended *TC rules and guidance* in column 1 of ■ TC 4.2.5R apply in relation to the *person* when acting in the capacity of a *retail investment adviser*; and
 - (2) the amended *TC rules and guidance* in column 2 apply in relation to the *person* when acting in the capacity of a relevant employee.
- 4.2.7 **G** *Rules and guidance* in this section relate to the requirements in ■ SYSC 28 (Minimum knowledge and competence requirements for carrying out insurance distribution activities).

