Chapter 3

The concept and process of wind-down planning

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3.1 What is wind-down planning?

3.1.1 G Wind-down planning is a process in which the *firm's governing body*:

(1) identifies the steps and resources it needs to wind down its business, especially in a situation where resources are limited; and

(2) evaluates the risks and impact of a wind-down and considers how to mitigate them.

3.1.2 G The objective of wind-down planning is to help to reduce the risk of negative effects on *consumers* and market participants when a *firm* winds down its regulated business.

3.1.3 G The following list is not exhaustive, but an effective wind-down plan typically includes the following components:

(1) The scenarios that could lead to a *firm* no longer being viable, adequate governance processes, management information monitoring and other control processes to support timely wind-down decision making.

(2) A plan to steer the *firm* to wind down its business in an orderly manner once exiting the business has been voluntarily decided or rendered unavoidable by external circumstances.

(3) An assessment of the resources, both financial and non-financial, that are needed to support an orderly wind-down.

(4) Processes for proactively identifying and mitigating any material risks or obstacles to winding down in an orderly manner, (e.g. issues that could lead to significant *consumer* detriment, or create a significant adverse impact to the financial market(s) or other third parties).

3.1.4 G The end product of this process is a documented wind-down plan that is approved by the *firm's governing body*, with a nominated person ensuring it is periodically reviewed as to its adequacy and remains current and relevant to the *firm's* operations.

3.1.5 G A wind-down plan is meant to be a living document, refreshed periodically and after any material change in business/operating model (e.g. addition of new major business line). It is good practice for the *governing body* to approve every material revision.

3.1.6 G We know that some *firms* may have carried out similar planning exercises under different but related regulatory processes (e.g. *ICAAP*, the *ICARA process*). This guide does not replace or re-interpret those processes. However, *firms* may want to take this guide into account to further strengthen their wind-down planning as well as to consider how consistent these processes are with one another.

[**Note:** the *ICARA process* is the process that *MIFIDPRU investment firms* are required to comply with under MIFIDPRU 7.]

Some commonly asked questions about wind-down planning

3.1.7 G **Q1: If a firm is running normally and is generating revenue/profits, would wind-down planning be of any relevance?**

Yes. There is no guarantee that a normally functioning *firm* will not fail in the future. Failure of a *firm* could occur suddenly. Without proper advance planning, a *firm* running into difficulties has an increased likelihood of a disorderly wind-down, potentially leading to *consumer* detriment and/or adverse effects in the market.

Q2: What is the difference between business continuity planning (BCP) and wind-down planning?

Most *firms* would have been asked to submit a description of business continuity plans as part of the *authorisation* process. BCP focuses on the *firm's* ability to continue to function or recover despite unforeseen physical and/or technical interruptions to its business. The *firm's* underpinning assumption is that it will continue to carry on its activities and so BCP focuses on resilience.

On the other hand, wind-down planning deals with situations in which the *firm's* regulated business is no longer viable or the *firm* makes a strategic/ business choice to exit their regulated business(es). The *firm's* assumption is that, for example, it will not be able to continue to carry on its activities or deliver the desired return on capital and so the focus is on how it can wind down its activities and relinquish its regulatory *permission(s)* in an orderly manner.

Q3: Which scenario is the most appropriate for the purpose of wind-down planning?

There are various scenarios which may lead to the wind-down of a *firm* (i.e. wind-down scenarios), such as loss of key *client(s)* or a severe economic downturn.

There is no single wind-down scenario that applies to all *firms*. The most useful scenarios to support forward planning are those that are severe, relevant to the *firm* and that may result in the regulated business not being viable.

Wind-down planning allows *firms* to plan ahead so that they have adequate financial and non-financial resources to:

(1) formulate judgement if they have become unviable;

(2) explore recovery options and/or mitigating actions (e.g. potential capital injections); and

(3) wind down the business in an orderly manner if no other option is available.

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3.2 Time horizon and the people involved in the planning process

3.2.1 G This section explains the time horizon (including the likely starting point and end point of the wind-down period), and some of the associated activities and costs *firms* may want to take into account during the wind-down planning process.

3.2.2 G The starting point of the wind-down period is when the *firm's* governing body (e.g. the Board of *Directors* of a company) makes the formal decision to wind down its regulated business.

3.2.3 G The end point of the wind-down period is when the *FCA* cancels the *firm's* *Part 4A permission*.

3.2.4 G However, wind-down planning is not just about the events during the wind-down period (i.e. between the start point and end point as described above). It also includes what precedes the actual wind-down process. In particular, as wind-down can be triggered by a range of scenarios, *firms* that proactively identify and monitor key management information, relevant metrics and early warning indicators are likely to be better prepared. It can also support more effective decision making and, where appropriate, timely initiation of the wind-down plan if needed.

Illustration of the time horizon

Considerations during Business as Usual	**Start point**	**Wind-down period** **During wind-down period**	**End point**
•Consider a range of wind-down scenarios and possible mitigants •Identify relevant management information to be monitored •Governance process and *in*	A *firm's governing body* makes a decision to wind down	A *firm* wants to close down its regulated business in an orderly fashion and needs sufficient financial and non-financial resources to do so. In parallel a *firm* may try to recover and/or pursue other mitigating ac-	Cancellation of *permission*

ternal controls are in place	tions (e.g. find a potential investor).

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3.2.5 G Given the significance of wind-down planning, the *governing body* of a *firm* is most likely to be accountable for it, with appropriate engagement of relevant experts across the *firm* and, if required, externally. Senior individuals typically manage the wind-down process, ideally under the leadership of a designated representative, and are accountable to the *governing body*. The following table illustrates how different individuals or business areas could be involved in wind-down planning.

Illustration of who could be involved in wind-down planning

Governing body (e.g. Board of Directors)	Senior management	Front line business and support areas	Relevant external experts / third parties
The *firm's governing body* considers and approves the wind-down plan. This may include challenge from *non-executive directors* if relevant.	The planning process is likely to be most effective if it is led by an appropriate accountable person(s) reporting to the *governing body*. For a very large *firm* or *group* of *firms*, a further working group may be created to help coordinate and deliver the process. *Senior management*, e.g. the CEO, CFO, CRO, COO, provide valuable input to the review, validation and challenge, before the plan is presented to the *governing body* for deliberation.	Front line business and support areas are engaged to understand and mitigate potential operational issues and challenges from the wind-down process, e.g. redundancies, IT systems, access to third-party services, etc.	*Firms* may find it useful to consult external experts (e.g. an insolvency practitioner) and other relevant third parties to improve their understanding and management of key wind-down issues/scenarios.

[**Note:** The above table is an illustration, rather than a definitive list. *Firms* may need to analyse their organisational structure, business model and operating model to decide on the appropriate participants, bearing in mind that if a wind-down is actually triggered some of the original participants may no longer be present.]

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3.3 Wind-down scenarios: what would make a firm no longer viable?

3.3.1 G There are many reasons why a *firm* may wind down, including a strategic exit where the *firm* makes a business decision to exit one or more markets and the decision is not due to it being unviable.

3.3.2 G However, our approach document focuses on dealing with scenarios in which a *firm* is no longer viable and is compelled to wind down its business. We refer to these as wind-down scenarios and these are typically used to inform a *firm's* wind-down plan. A *firm* will probably identify more than one wind-down scenario.

3.3.3 G To do this, *firms* may want to consider what events would be likely to make it no longer viable, which is often referred to as reverse stress-testing. A *firm* is not viable if it no longer has adequate financial or non-financial resources to carry on its *regulated activities*. This could happen for a variety of reasons, including:

(1) significant financial losses with no signs of timely recovery;

(2) loss of key *clients* without realistic prospect of their replacement in good time; or

(3) loss of critical infrastructure (e.g. essential IT systems) with no signs of timely recovery.

3.3.4 G A *firm* may consider the following factors when formulating its wind-down scenarios:

(1) business and operating models (business models show how a *firm* makes money, obtains funding and maintains healthy cash-flow while operating models look at the day-to-day operations of the business);

(2) key revenue drivers, *clients* and functions in its operating model; and

(3) vulnerable areas in its business and operating models.

3.3.5 G Ideally, *firms* would consider various scenarios which may lead to winding down (including stressed scenarios) and associated potential recovery options. When a *firm* envisages that its regulated business is no longer viable (e.g. no recovery options remain available), it would start a wind-down process and our guide encourages *firms* to act swiftly and not wait until breaching *threshold conditions* to initiate a wind-down procedure.

3.4 Effective risk management

3.4.1 G A good wind-down plan is most likely to be supported by an effective risk management framework. This may include:

(1) a clear risk appetite that has been approved and validated by the *governing body*;

(2) analysis of wind-down scenarios;

(3) appropriate reporting and monitoring of management information, risk metrics and early warning indicators; and

(4) any potential recovery options.

3.4.2 G A clear risk appetite, as well as an effective risk identification and assessment approach, are important parts of wind-down planning. They can help to identify the risk metrics that need to be monitored and to set the appropriate thresholds.

3.4.3 G Well-structured management information can help to identify emerging risks that could lead to a wind-down scenario. For instance:

(1) funding institutions are reconsidering terms/conditions of credit facilities provided to the *firm*;

(2) approaching the date of contract renewal with a key *client*; and

(3) profit and loss account pressure due to poor market conditions.

3.4.4 G Good reporting processes can help ensure that the *firm* can assess emerging situations as soon as possible and intervene appropriately (i.e. in an attempt to recover).

3.4.5 G A *firm* may consider setting thresholds for relevant management information (e.g. profitability, capital adequacy, liquidity), so that if the data shows breaches of those threshold values it can trigger a report to *senior management* and prompt thinking on the next steps.

3.4.6 G *Firms* may consider potential options for recovery in the face of adverse business conditions, such as selling part of the business or seeking a capital injection. Even if a *firm* has taken these or similar steps aiming for recovery, wind-down planning can still be relevant as there is no guarantee that recovery options would save the *firm's* business.

3.5 Making a decision to wind-down

3.5.1 G In the event of a severe stress, a *firm* may have one or more potential options that might enable it to recover and return to a viable position, for example, finding potential investors to acquire or invest in the failing business. However, in spite of management actions, there may be no effective way to recover from a severe stress; at that stage consideration of the wind-down plan becomes relevant.

3.5.2 G The *firm's governing body* will need to make a formal decision to wind down in a timely manner. The wind-down plan can help the *firm's governing body* evaluate how viable any potential recovery options are against the risk of a disorderly *failure* if the decision to wind down is delayed or deferred for too long.

3.5.3 G Establishing clear indicators and thresholds can help a *firm's governing body* to make timely decisions. The *governing body* can also refer to the *firm's* wind-down scenario analysis to provide an indication of the minimum financial and non-financial resources needed to ensure the orderly winding down of the *firm's* activities. Deferring the wind-down decision to a point where that level of resources is no longer available would significantly increase both the risk and scale of a disorderly *failure*.

3.5.4 G *Firms* may identify what *regulated activities* they will cease once the wind-down decision is made. For instance, a *firm* should not normally take on any more new *clients* once that decision is made.

3.5.5 G We remind *firm's senior management* that they need to be aware of their *directors'* duties and what they must not do if the *firm* becomes insolvent.

3.5.6 G Before the *governing body* takes the decision to wind down, it may find it useful to check that:

(1) the wind-down plan is up-to-date; and

(2) the *firm's* compliance with basic regulatory requirements.

3.5.7 G If the *governing body* takes the decision to wind down, we would recommend allocating a person or group within the *senior management* team with the role of coordinating, directing and implementing the wind-down process and ensuring prompt dissemination of information relevant to decision-making at the *governing body* level. Many elements of these governance, oversight and operational arrangements can be established, in principle, in advance as part of a *firm's* wind-down planning.

3.5.8 G *Firms* should inform the *FCA* as soon as there are signs of a potential *failure* or any other causes for winding down, as well as of the actual wind-down decision. Early engagement with the *FCA* will help to deal with relevant regulatory issues. They should also consider whether to start communications with various stakeholders (see WDPG 4.2 (Communications plan)).

[**Note:** See also *Principle* 11 (Relations with regulators) (PRIN 2.1.1R).]

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3.6 Impact assessment: who will be affected by a wind-down?

3.6.1 G It is important, given the *FCA's consumer* protection and market integrity objectives, that *firms* seek to identify and mitigate any adverse impacts on *consumers*, counterparties and the wider markets that might arise as a result of a wind-down decision. A thorough analysis of all stakeholders will largely help a *firm* identify who might be affected if it winds down. It also helps a *firm* to understand how difficult it will be to wind down, for example, if it has many non-cancellable contracts in place which will inevitably increase the costs of winding down and prolong the length of the wind-down period.

3.6.2 G The obligation on *firms* to treat *customers* fairly continues to apply during the wind-down period. This includes, where relevant, considerations relating to *client monies* and *custody* assets (see WDPG 4.3 (Client monies and custody assets)) or the needs of potentially vulnerable *customers*.

3.6.3 G *Firms* are required to keep up-to-date records. These will prove invaluable in assessing the number and types of *consumers* and counterparties that may be affected by the wind-down.

3.6.4 G *Firms* can support their impact assessment of winding down by a risk assessment of each stakeholder group along with the mitigating actions the *firm* would consider appropriate. Some factors that a *firm* may consider include:

(1) How quickly can a *firm* conclude any outstanding transactions? Will there be any tax or other implications for *customers*?

(2) Can the *firm* help transfer its *customers* to another *financial institution* or, where relevant, *firm* with a *permission* to carry on *regulated claims management activities*? If the *firm* has many *customers* to be transferred out, do other *firms* in the same sector have the capacity to take them on?

(3) How quickly can *client monies* and *custody assets* be returned?

Market participants

3.6.5 G An orderly wind-down minimises the impact on the wider market. Some participants in the market may be more affected than others, for example if the *firm* is a major provider of products for a particular sector, in which case its winding down may cause a greater impact than would otherwise be the case.

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Employees

3.6.6 G A *firm* may need to consider relevant employment legislation, especially if it has businesses that involve *overseas* jurisdictions. It may also choose to identify which *employees* need to be retained during the wind-down period to help with the wind-down operation, for example, compliance and contact centre *employees*.

3.6.7 G Although it may seem less critical to include consideration of other third parties such as landlords, creditors or trade payables, *firms* will need a prudent approach to wind-down planning that factors in the effect of winding down on third parties that have contractual relationships with the *firm*, such as the landlord of the *firm's* office. This ensures that essential needs, such as the need for premises, are still provided for during the wind-down period. It may also avoid a creditor, potentially facing the default of the *firm* on its obligations, triggering insolvency proceedings against the *firm* in anticipation of its exit.

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3.7 Operational analysis: what happens during the wind-down period?

3.7.1 G The wind-down period can be considered as a timeline along which steps are taken, from making the wind-down decision, all the way to the *FCA* cancelling the *firm's permission*. A wind-down plan may be subject to last-minute changes arising from unforeseen external or internal circumstances.

3.7.2 G These steps are effectively a function of, and in turn affect, a *firm's* entire business. A *firm* may find it useful to assess the following non-exhaustive list.

(1) The industry and the sector it operates in and the impact it may cause to the markets when it winds down.

(2) Who its *clients* are and what processes are in place to maintain *client* records.

(3) Dealing with *client complaints* and making adequate provisions for them, particularly post winding down.

(4) Legal and regulatory status (including *FCA permission*).

(5) Applicable legal, regulatory and insolvency requirements. These will include, among others, *directors'* duties under company law, data protection requirements, employment law and *FCA* filing requirements.

(6) Organisational structure and operating model.

(7) Internal processes, systems and human resources.

(8) Processes or systems that are interconnected and/or outsourced.

(9) Existing contractual commitments, such as with *employees* or third parties. In particular, there may be restrictions or penalty clauses for breaking contractual relationships.

(10) Possible sale of all or part of the business and any applicable regulatory processes that may impact the timeline, such as a change in control application. It should also consider whether any arrangements need to be made for the migration of *clients* and how this will be communicated to these *clients*.

(11) Orderly vacation of premises and disposal of fixed assets.

3.7.3 G After conducting its assessment a *firm* can work out an outline of sequenced actions in a wind-down scenario and how long each action will take. The specifics will vary from *firm* to *firm* but some possible considerations include the following.

(1) How would the *firm* announce the wind-down decision and manage communication with stakeholders?

(2) How will the *firm* reconcile *clients'* business records and ensure their interests are not affected? For instance, a *firm* will have to return *client monies* and *client assets* during wind-down.

(3) How would the *firm* deal with *employee* redundancies?

(4) Who needs to be available to assist the winding down?

(5) What systems (e.g. IT systems) need to be available for the wind-down?

(6) When might the *firm* need to engage professional advisors, such as an insolvency practitioner, to support the wind-down process?

3.7.4 G The *firm's governing body* will need to take ultimate ownership of, and accountability for, the timely implementation of the wind-down plan. However, for each step or activity this analysis identifies, it may be helpful to indicate who will be responsible for that particular task.

3.7.5 G At the end of such an analysis, the *firm* will be better able to estimate the length of the wind-down period.

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3.8 Resource assessment

3.8.1 G To achieve the objective of winding-down in an orderly manner, a *firm* needs to have adequate financial and non-financial resources to do this and may ask itself a range of questions.

Non-financial

3.8.2 G What non-financial resources, such as premises, IT, key *employees*, external advisors etc., does it need to carry out the steps identified in the operational analysis and for how long might it need them? (See WDPG 3.7 (Operational analysis: what happens during the wind-down process?)) *Firms* that are part of a larger group may need to consider issues of inter-connectedness, and in particular between regulated and unregulated parts of the group.

3.8.3 G If a *firm* relies on outsourced services, will these services still be available during the wind-down period, or are contingency measures in place? When negotiating outsourcing agreements, *firms* may wish to consider the possible invocation of their wind-down plan and the impact this would have on the contractual relationship.

3.8.4 G If a *firm* is part of a larger *group*, and is depending on *group* resources, would it still have adequate resources to wind down in an orderly manner if the *group* failed?

Financial

3.8.5 G This guide does not provide any *rule* or interpretation in relation to the financial resources requirements applicable to a *firm*. Rather, it highlights some of the factors which a *firm* may want to consider in its wind-down planning.

3.8.6 G It is important that *firms* monitor their solvency on a regular basis to ensure they continue to be able to meet their obligations as they fall due. If a *firm* becomes uncertain of its ability to do so, it may seek professional advice, such as from an auditor or insolvency practitioner to assist.

3.8.7 G A *firm* in wind-down will likely have non-routine *cash* inflows and outflows, which are best monitored on a daily basis. These will include:

(1) inflows, i.e. predicted revenue and other inflows that are likely to be limited after the triggering event and/or if a wind-down decision is made;

(2) ordinary outflows, i.e. the cost of maintaining operational premises and systems; and

(3) extraordinary outflows associated with winding down, such as extra closure costs, legal *fees*, professional services and insolvency practitioner *fees*, redundancy payments, retention payments, pension fund deficits, lease and other termination penalties and the costs of breaking contracts.

3.8.8 G A *firm* might then consider if it would have enough *cash* or cash-equivalent investments to meet operating expenses and any other obligations during the wind-down period.

3.9 Cancellation of permission

3.9.1 G A *firm* needs to have its *Part 4A permission* cancelled to complete the wind-down process. Before the *FCA* can grant a cancellation, we will review, among other things:

(1) generally, whether it would be detrimental to *customers* or would cause market disruptions to cancel the permission;

(2) whether there remain any long-term "tail" commitments for which arrangements acceptable to the *FCA* have not yet been made;

(3) whether there are any existing unresolved *customer complaints* or any that might reasonably be expected in the future;

(4) whether all *client monies* and client assets (if any) have been returned in accordance with *CASS rules*; and

(5) whether there are any outstanding *fees* owed to the *FCA*.

[**Note:** Although we aim to complete a cancellation transaction as quickly as possible, we will need sufficient time to consider whether a *firm* meets the regulatory requirements or prerequisites for cancellation of permission.]