

MiFID (MISCELLANEOUS AMENDMENTS) (NO 2) INSTRUMENT 2007**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 150(2) (Actions for damages);
 - (3) section 156 (General supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

- D. The modules of the Handbook listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex A
Interim Prudential sourcebook for Investment Businesses (IPRU(INV))	Annex B
Supervision manual (SUP)	Annex C

Citation

- E. This instrument may be cited as the MiFID (Miscellaneous Amendments) (No 2) Instrument 2007.

By order of the Board
24 May 2007

Annex A

Amendments to the Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

1.1.16 R ...

(1) ...

(2) ~~the only investment service for which it is authorised is~~ it is only authorised to provide the service of investment advice and/or receiving and transmitting orders from investors (as referred to in Section A of Annex I of MiFID) without in both cases holding money or securities belonging to its clients in relation to investment services it provides and which for that reason ~~it~~ may not at any time place itself in ~~debt~~ debit with ~~those~~ its clients.

...

Annex B

Amendments to the Interim Prudential sourcebook for Investment Businesses (IPRU(INV))

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire section of text is being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

Changes made to certain provisions by this Annex replace the changes made to the same provisions by Annexes A and B to the *Interim Prudential Sourcebook for Investment Businesses (Exempt CAD Firms) Instrument 2007 (FSA 2007/2)*.

Contents

Chapter

- 1 ...
- 2 Authorised Professional Firms
- 3 Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms
- ...
- 10 ~~Securities and Futures Firms which are Investment Firms~~[deleted]
- ...
- Chapter 1: Application and General Provisions
- ...
- 1.1.1 G Before 1 January 2007, the Interim Prudential Sourcebook for Investment Businesses (*IPRU(INV)*) was part of the *Handbook* that dealt with capital requirements for *investment firms* subject to the position risk requirements of the previous version of the *Capital Adequacy Directive*. Now, however, *investment firms* which are subject to the risk-based capital requirements of the *Capital Adequacy Directive* are subject to the General Prudential Sourcebook (*GENPRU*) and the Prudential Sourcebook for Banks, Building Societies and Investment Firms (*BIPRU*). ~~However the FSA has not yet removed the parts of *IPRU(INV)* that deal with requirements for *firms* subject to risk-based capital requirements of the previous version of the *Capital Adequacy Directive*. Consequently, many provisions of *IPRU(INV)* will not apply to any *firm*. The FSA intends to remove these provisions in due course.~~
- ...
- 1.2 Application

...

1.2.2 R (1) *IPRU(INV)* applies to:

...

- (g) the *Society of Lloyd's* (in relation to *underwriting agents*); ~~and~~
- (h) [deleted]
- (i) a *credit union* which is a *CTF provider*; and
- (j) an exempt CAD firm.

...

1.2.5 R Table

This table belongs to *IPRU(INV)* 1.2.4R

<i>Authorised Pprofessional firm</i>	Chapters 1 and 2
<i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>)	Chapters 1 and 3
<i>Securities and futures firm</i> (which is an <i>exempt BIPRU commodities firm</i>)	Chapters 1 and 3
<i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i> other than a <i>firm</i> which was subject to the requirements of Chapter 10 before 1 November 2007)	Chapters 1, 3 and 9
The <i>Society of Lloyd's</i> (in relation to <i>underwriting agents</i>) and <i>members' advisers</i>	Chapters 1 and 4
<i>Investment management firm</i> (which is not an <i>exempt CAD firm</i>)	Chapters 1 and 5
<i>Investment management firm</i> (which is a <u><i>local firm</i></u>)	Chapters 1, 5 and 9
<i>Service company</i>	Chapters 1 and 6
<i>Securities and futures firm</i> which is a <i>MiFID investment firm</i> and a <i>local firm</i>	Chapters 1 and 10
<i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i> and was subject to the requirements of Chapter 10 before 1 November 2007)	Chapters 1, 9 and 10

<i>Personal investment firm</i>	Chapters 1 and 13
<i>Credit union which is a CTF provider</i>	Chapters 1 and 8

...

Chapter 2 : Authorised Pprofessional firms

2.1 Application

2.1.1 R (1) ...

(2) The definitions in the *Glossary annexed to the General Provisions Instrument 2001* (which is applicable to the *Handbook* generally) apply to this Chapter.

2.1.2 R (1) An *authorised professional firm* of a kind falling within (2) must comply with such of *IPRU(INV)* 3, 5, 9 ~~10~~ or 13 which in accordance with *IPRU(INV)* 2.1.4R, most appropriately correlates to the type and scale of the business which it conducts.

(2) The type of *authorised professional firm* to which (1) applies is one:

(a) which is also an *ISD investment firm exempt CAD firm*;

...

...

(4) An *authorised professional firm* which, in accordance with (1), is required to comply with *IPRU(INV)* 3, 5, 9 ~~10~~ or 13 must immediately give notification of that fact to the *FSA* in accordance with *SUP* 15.7 (Forms and methods of notification).

...

2.1.4 R This table belongs to *IPRU(INV)* 2.1.1R

TYPE OF BUSINESS ACTIVITY	CHAPTER OF SOURCEBOOK
(i) <i>managing investments</i> other than for <i>private customers</i> ; or	<i>Investment management firm – IPRU(INV) 5</i>
...	<i>Investment management firm (which is an exempt CAD firm) – IPRU(INV) 5 and 9</i>
(iii) acting as the manager or trustee of an AUT; or [deleted]	
...	
(i) a <i>regulated activity</i> carried on as a	<i>Securities and futures firm – IPRU(INV) 10 (ISD firm);</i>

<p>member of an <i>exchange</i>; or</p> <p>(ii) acting as a <i>market maker</i> in <i>securities</i> or <i>derivatives</i>; or</p>	<p>or <u><i>Securities and futures firm</i> (which is an <i>exempt CAD firm</i>) - IPRU(INV) 9</u></p>
<p>(iii) <i>corporate finance business</i>; or</p> <p>(iv) <i>dealing</i> or <i>arranging deals</i> in <i>securities</i> or <i>derivatives</i>, other than <i>inter-professional investments</i>; or</p> <p>(v) the provision of clearing services as a <i>clearing firm</i>; or</p> <p>(vi) <i>spread betting</i>;</p>	<p><u><i>Securities and futures firm</i> (which is not a <i>MiFID investment firm</i>) – IPRU(INV) 3 (non <i>ISD firm</i>)</u></p>

2.1.5 G An *authorised professional firm* will be ~~an *ISD investment firm*~~ a *MiFID investment firm* if its business activities include the provision of a ~~*core investment service*~~ *investment services and/or activities* for a third party. An *authorised professional firm* will not however be ~~an *ISD investment firm*~~ a *MiFID investment firm* if it falls within one of the exclusions contained in ~~paragraph 2 of Article 2 of the directive~~ *MiFID*. Paragraph 2(c) of Article 2(1)(c) provides for an exclusion for an *authorised professional firm* which provides ~~*core investment service*~~ *investment services and/or activities* in an incidental manner in the course of a professional activity (~~provided and~~ that activity is regulated by the *firm's designated professional body*).

...

Chapter 3: Financial resources for Securities and Futures Firms which are not *MiFID Investment Firms* or which are *Exempt BIPRU Commodities Firms*

...

3-1 R This chapter applies to a *securities and futures firm* which:

(a) is not a *MiFID investment firm*;

(b) ~~is a *securities and futures firm* which is an *exempt CAD firm* and which was not subject to the requirements of chapter 10 before 1 November 2007~~ is an *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business*; or

(c) is an *exempt BIPRU commodities firm*.

...

3-6 G The financial and non-financial resources rules for an *exempt CAD firm* are set out in *IPRU(INV)* chapter 9. As such, rules 3-61 to 3-182 do not apply to an *exempt CAD firm* unless it carries on any *regulated activity* other than

MiFID business (see *IPRU(INV)* 9.2.3R). ~~An exempt CAD firm remains subject to the non-financial resources rules (rule 3-10 to rule 3-41(9)) contained in this chapter.~~

...

3-10(2) R ...

(b) demonstrate whether or not the *firm* is or was at that time complying with its *financial resources requirement* ~~or, in the case of an exempt CAD firm, its obligations under *IPRU(INV)* 9~~; and

...

...

3-73(4) R ...

G ...

G *FSA* would consider 10% of a *firm's* expenditure incurred on its behalf by third parties to be material ~~for the purposes of 10-73(4)R.~~

...

Operational risks

3-79(2) ...

G In assessing whether to impose a *requirement* on a *firm* to cover an unusual risk profile or operational risks, the *FSA* will consider various criteria. ~~Relevant *guidance* can be found in sections 4 and 5 of Appendix 48 to *IPRU(INV)* 10.~~ In addition, the *FSA* will take into account material group risks to a *firm*, where these have not been captured in a group financial resources test. Secondary requirements may be applied, for example, where there has been a major failure on the part of a *firm* to maintain adequate controls, as a means of providing an additional capital buffer whilst these problems are addressed.

...

3-173A R
(1) ...

(a)

(b) after notifying the *FSA* in writing, ~~in accordance with rule 10-174.~~

...

APPENDIX 1 - GLOSSARY OF TERMS FOR *IPRU(INV)* 3

Amend the following definitions as shown:

investment [delete the existing definition and replace with the following]
means a *designated investment*.

Delete the following definitions from Appendix 1; the text is not shown struck through:

Act

authorised person

authorised unit trust scheme

body corporate

business day

clearing firm

clearing house

client money

close relative

closing date

collective investment scheme

contract for differences

controller

core investment service

debenture

derivative

designated investment exchange

director

EEA

EEA state

firm

FSA

future

geared futures and options fund

government & public securities

group

holding company

incoming EEA firm

internal controls

investment firm

ISA

local

marketable instrument

marketing group

money

OECD

operator

option

OTC

permission

recognised investment exchange

recognised scheme

Regulated Activities Order

regulated collective scheme

reporting accountant

requirement

security

share

sole trader

subsidiary

Takeover Code

Takeover Panel

tender offer

unregulated collective investment scheme

venture capital business

venture capital firm

venture capital investment

warrant

...

Appendix 20

GUIDANCE NOTES ON RECONCILIATION OF FIRM'S BALANCES WITH A COUNTERPARTY WHICH IS A MEMBER OF AN EXCHANGE (~~rule~~ RULE 3-11(1) (d)) AND IPRU(INV) 9.6.1R (FOR AN EXEMPT CAD FIRM))

Introduction

1 The purpose of this guidance is to state how under rule 3-11(1)(d) and IPRU(INV) 9.6.1R (for an exempt CAD firm) the reconciliation process with counterparties which are also members of exchanges should be performed.

...

The obligation on firms

9 Where a *firm* receives a statement from a counterparty during the year, the recipient *firm* is not also required by virtue of rule 3-11(1)(d) (or IPRU(INV) 9.6.1(1)R for an exempt CAD firm) to send a further statement to that counterparty in the same year.

10 ... Rule 3-11 (or IPRU(INV) 9.6.1R for an exempt CAD firm) only requires that specific balances be covered. ...

11 Rule 3-11(3) (or IPRU(INV) 9.6.1(1)R(4) for an exempt CAD firm) requires a *firm* to respond, within one month of receipt, to a circularisation request received from another *firm*. The one month response period should also be observed in relation to circularisation requests received under rule 3-11(1)(d) (or IPRU(INV) 9.6.1(1)R for an exempt CAD firm).

...

Chapter 4: Lloyd's firms

...

4.2.4 G A *members' adviser* is not regulated by the *Society* and accordingly this chapter specifies the financial resource and accounting requirements to be met. *Firms* which fall within the scope of this chapter will be *firms* with *permission* only to advise persons on *syndicate* participation at Lloyd's. The nature of that advisory business is akin to corporate finance advice and so the applicable requirements are those in *IPRU(INV)* 3 relevant to *firms* giving corporate finance advice. *Firms* with other *permissions* will fall within the scope of other chapters of *IPRU(INV)*, *GENPRU*, *BIPRU* or *INSPRU*.

...

Interim Prudential Requirements for Former IMRO Firms

CHAPTER 5: FINANCIAL RESOURCES

5.1.1 Application

...

5.1.1(1)(a) R This chapter applies to an *investment management firm*, other than an *European investment firm* ~~in~~ coming *EEA firm* or *MiFID investment firm* (unless it is an *exempt CAD firm* for the purpose of calculating its *own funds* and if it carries on any *regulated activity* other than *MiFID business*) as set out in Table 5.1.1(1)(a).

(b) R This chapter does not apply to a *European investment firm*.~~[deleted]~~

TABLE 5.1.1(1)(a)		APPLICATION OF CHAPTER 5		
...				
Accounting records rules				
5.3.1(1)	Yes	No	...	
to				
5.3.1(6)				
Financial notification rules				
5.5.1(1)	Yes	No	No	No
...				
Note 3	The financial <u>and non-financial</u> resources rules for an <i>exempt CAD firm</i> are set out in <i>IPRU(INV)</i> chapter 9. However, rules 5.2.1(1) to 5.2.7(5) apply to an <i>exempt CAD firm</i> for the purpose of calculating its <i>own funds requirement</i> (see <i>IPRU(INV)</i> 9.2.89R(2)(a)) (although the <u>Category A items of Tier 1 capital as set out in Table 5.2.2(1) are replaced by all the items in <i>IPRU(INV)</i> 9.3.1R</u>) and if it carries on any <i>regulated activity</i> other than <i>MiFID business</i> (see <i>IPRU(INV)</i> 9.2.3R). An exempt CAD firm remains subject to the non-financial resources rules (rule 5.3.1(1) to rule 5.5.1(1))			

contained in this chapter.

...

5.2.1 GENERAL REQUIREMENT

ADEQUACY OF FINANCIAL RESOURCES

...

- 5.2.1(3) R A firm's financial resources means:
- (a) ...
 - (b) its *liquid capital*, if the *firm* is subject to a *liquid capital requirement* under paragraph (a) of rule 5.2.3(1); ~~or~~
 - (c) ~~where the *firm* is an *ISD firm* subject to an *own funds requirement* and a *liquid capital requirement* under paragraph (b) of rule 5.2.3(1), its *own funds* and its *liquid capital*; or~~ ~~[deleted]~~
 - (d) ~~where the *firm* is an *ISD firm* and a trustee of an *authorised unit trust scheme* subject to paragraph (c) of rule 5.2.3(1), its *own funds* or its *liquid capital*.~~ ~~[deleted]~~

...

5.2.3 FINANCIAL RESOURCES REQUIREMENT

DETERMINATION OF REQUIREMENT

- 5.2.3(1)(a) R The *financial resources requirement* for a *firm* ~~which is not an *ISD firm*~~ is a *liquid capital requirement*, determined in accordance with paragraph (a) of rule 5.2.3(4), unless the *firm* falls within any of the exceptions in rule 5.2.3(2).
- (b) R ~~The *financial resources requirement* for a *firm* which is an *ISD firm* is an *own funds requirement* determined in accordance with paragraph (b) of rule 5.2.3(3), and a *liquid capital requirement* calculated in accordance with paragraph (b) or (c) of rule 5.2.3(4).~~ ~~[deleted]~~
- (c) R ~~The *financial resources requirement* for a *firm* which is an *ISD firm*, but which is also a trustee of an *authorised unit trust scheme* or a *depository* of an *ICVC*, is the higher of an *own funds requirement* determined in accordance with paragraph (a)(i) of rule 5.2.3(3) and a *liquid capital requirement* calculated in accordance with paragraph (b) of rule 5.2.3(4).~~ ~~[deleted]~~

EXCEPTIONS FROM THE LIQUID CAPITAL REQUIREMENT

- 5.2.3(2) R The *financial resources requirement* for a *firm* which is not an *ISD exempt CAD firm* is an *own funds requirement* determined in

accordance with paragraph (a) of rule 5.2.3(3) if its *permitted business* does not include *establishing, operating or winding-up a personal pension scheme* and:

(a) ...

...

OWN FUNDS REQUIREMENT

5.2.3(3)(a) R ...

(b) R ~~The *own funds requirement* for an *ISD firm* subject to paragraph (b) of rule 5.2.3(1) is an amount determined in accordance with Table 5.2.3(3)(b).~~[deleted]

Liquid capital requirement

5.2.3(4)(a) R ...

(b) R ~~The *liquid capital requirement* for an *ISD firm* subject to paragraph (b) or (c) of rule 5.2.3(1) is its *total capital requirement* calculated in accordance with rule 5.2.3(5), unless paragraph (c) of rule 5.2.3(4) applies.~~[deleted]

(c) R ~~The *liquid capital requirement* for an *ISD firm* whose *expenditure based requirement* consists of 6/52 of its *annual audited expenditure*, determined in accordance with Table 5.2.3(5)(a), is the greater of:~~

(i) ~~one quarter of its *annual audited expenditure* calculated in accordance with rule 5.2.4(1); and~~

(ii) ~~its *total capital requirement* calculated in accordance with rule 5.2.3(5).~~[deleted]

...

5.2.5(1) R ...

(b) in the event of the winding up of the *firm*, the loan ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled; ~~and~~

(c) ...

(ii) the loan does not have a minimum or fixed maturity but requires 5 years notice of repayment; and

(d) the loan is fully paid-up.

...

5.2.7 ~~LARGE EXPOSURES~~

5.2.7(1) G ~~[deleted]~~

~~GENERAL REQUIREMENT~~

5.2.7(2) R ~~[deleted]~~

~~LARGE EXPOSURE LIMITS~~

5.2.7(3) R ~~[deleted]~~

~~EXCEPTION TO THE LARGE EXPOSURE LIMITS~~

5.2.7(4) R ~~[deleted]~~

~~TRANSITIONAL ARRANGEMENTS~~

5.2.7(5) ~~[deleted]~~

Table 5.2.2(1)	CALCULATION OF OWN FUNDS AND LIQUID CAPITAL	
...		
(8)	Material holdings in credit and financial institutions <u>and, for exempt CAD firms only, material insurance holdings</u>	5 and 5A
...		
(12)	Other cumulative preference share capital and debt capital <u>but, for exempt CAD firms, only perpetual cumulative preference share capital and qualifying capital instruments</u>	6A
...		

PART II		
DETAILED REQUIREMENTS		
1	<u>Deductions and Ratios (Items 10, 11 and 15)</u>	(a) <u>Notwithstanding Table 5.2.2(1), for an firm which is an ISD firm exempt CAD firm, in calculating own funds, all of Item 8 must be deducted after the total of Tier 1 and Tier 2 capital and the following restrictions apply:</u>
		(i) the total of fixed term cumulative preference shares (item 10) and

long-term *qualifying subordinated loans* (item 11) that may be included in Tier 2 capital is limited to 50 per cent of Tier 1 capital; ~~and- (But see sub-paragraph (b)(ii) below.)~~

(ii) Tier 2 capital must not exceed 100 per cent of Tier 1 capital.

(b) [deleted]

(c) A firm which is not an *ISD firm exempt CAD firm* and which is subject to a *liquid capital requirement* under rule 5.2.3(1)(a) may take into account *qualifying subordinated loans* in the calculation of *liquid capital* up to a maximum of 400% of its Tier 1 capital.

...

5A Material insurance holdings (Item 8)

(a) A *material insurance holding* means the holdings of an *exempt CAD firm* of items of the type set out in (b) in any:

(i) *insurance undertaking*; or

(ii) *insurance holding company*;

that fulfils one of the following conditions:

(iii) it is a *subsidiary undertaking* of that *firm*; or

(iv) that *firm* holds a participation in it.

(b) An item falls into this provision for the purpose of (a) if it is:

(i) an *ownership share*; or

(ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

6	...	
6A	<u>Perpetual cumulative preference share capital</u>	<p><u>Perpetual cumulative preference share capital may not be included in the calculation of <i>own funds</i> by an <i>exempt CAD firm</i> unless it meets the following requirements:</u></p> <ul style="list-style-type: none"> (a) <u>it may not be reimbursed on the holder's initiative or without the prior agreement of the <i>FSA</i>;</u> (b) <u>the instrument must provide for the <i>firm</i> to have the option of deferring the dividend payment on the share capital;</u> (c) <u>the shareholder's claims on the <i>firm</i> must be wholly subordinated to those of all non-subordinated creditors;</u> (d) <u>the terms of the instrument must provide for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the <i>firm</i> to continue its business; and</u> (e) <u>it must be fully paid-up.</u>
7	Qualifying arrangements (Item 13)	<ul style="list-style-type: none"> (a) An <i>ISD-firm</i> <u><i>exempt CAD firm</i></u> may only include a <i>qualifying undertaking</i> or other arrangement in item 13 if it is a <i>qualifying capital instrument</i> or a <i>qualifying capital item</i>. (b) A <i>firm</i> which is not an <i>ISD-firm</i> <u><i>exempt CAD firm</i></u> may only include <i>qualifying undertakings</i> in its calculation of <i>liquid capital</i> if: <ul style="list-style-type: none"> ...
8	Net trading book profits (Item 14)	<p>For <i>non-ISD-firms</i> <u>which are not <i>exempt CAD firms</i></u> the unaudited profits can be included at item 14. For <i>ISD-firms</i> <u>the amount which may be included at item 14 must comprise the <i>firm's trading book profits</i> less any foreseeable charges or dividends and any losses suffered in respect of its other business, save to the extent that these have been taken into account in calculating item 3 and/or item 7 of Part I.</u></p>

<p>Note</p> <p>...</p>

...

Delete Table 5.2.3(3)(b) in its entirety; the text is not shown struck through.

Table 5.2.3(3)(b) ~~OWN FUNDS REQUIREMENT~~ [deleted]

...

<p>Table 5.2.3(5)(b)</p> <p>...</p> <p>F Determination of disallowed value of <i>units</i></p> <p>The disallowed value of units held in a <i>unit trust manager's</i> <u><i>UCITS management company's</i></u> box is the difference between:</p> <p>(a) ...</p> <p>(b) the adjusted value of the units, being the value of the units calculated at cancellation prices less the value calculated at cancellation prices of the units multiplied by the following percentages based on the types of <i>investments</i> in the individual <i>unit trust</i> <u><i>UCITS</i></u> schemes:</p> <p>...</p>	<p>POSITION RISK REQUIREMENT</p> <p>PART I</p>
--	--

...

5.3.1 RECORDS

5.3.1(1) R ...

- (2) enable the *firm* to demonstrate its continuing compliance with its *financial resources requirements* ~~or, in the case of an exempt CAD firm, its obligations under IPRU(INV) 9~~; and

...

...

5.5.1 FINANCIAL NOTIFICATION

NOTIFICATION REQUIREMENTS FOR ISD FIRMS

- 5.5.1(1) R ~~An ISD firm must notify the FSA in writing as soon as it has reason to believe that any of the following has occurred:~~
- ~~(a) a counterparty in a repo or reverse repo transaction or a securities lending or borrowing transaction has defaulted; or~~
 - ~~(b) the firm is in breach of the requirement to maintain own funds in excess of its own funds requirement; or~~
 - ~~(c) it is in breach of the large exposures limits set out in rule 5.2.7(3).[deleted]~~

...

APPENDIX 1 - (INTERPRETATION)

GLOSSARY OF TERMS FOR CHAPTER 5 (FORMER IMRO FIRMS)

Amend the following definitions as shown:

investment firm has the meaning given to *investment firm* in the main *Glossary* except that it excludes persons to which ~~the ISD MiFID~~ does not apply as a result of articles 2.2 or 3 of ~~the ISD MiFID~~.

Note: An *investment firm* is not necessarily a *firm* for the purposes of the rules.

own funds requirement has the meaning given in rule 5.2.3(3)(a) ~~and (b)~~ (Own funds requirement).

participation [delete the existing definition and replace with the following]
has the meaning given to the term in the *Glossary*.

trading book in relation to a *firm's* business or ~~exposures~~ exposures, means:

- (a) ...
- (b) ~~exposures~~ exposures due to unsettled securities transactions, free deliveries, *OTC derivative* instruments, repurchase agreements and securities lending transactions based on securities included in (a)(i) to (iii) above, reverse repurchase agreements and securities borrowing transactions based on securities included in (a)(i) to (iii) above; and
- (c) fees, commission, interest and dividends, and margin on exchange-traded derivatives which are directly related to the items included in (a) and (b) above.

Delete the following definitions from Appendix 1; the text is not shown struck through:

accepting deposits

Act

advice and advising on investments

ancillary activity

ancillary investment services undertaking

appointed representatives

approved bank

approved person

associate

authorised corporate director

authorised person

authorised unit trust scheme

body corporate

branch

certificates representing certain securities

chief executive

client money

close relative

collective investment scheme

competent authority

contractually based investment

control

controlled function

core investment service

custodian

custody

debenture

deposit

depository

designated investment

designated investment business

designated investment exchange

director

EEA

EEA right

EEA State

European investment firm

exempt exposure

exempted person or exempt person

exemption order

exposure

financial holding company

firm

friendly society

FSA

general prohibition

Glossary

government and public security

group

holding company

Home State

Home State regulator

Host State

ICVC

incoming EEA firm

initial capital

investment agreement

investment trust

investment trust savings scheme

ISA

ISA manager

ISD or Investment Services Directive

ISD firm

ISD investment services

large exposure

life policy

long-term insurance contract

market maker

non-core investment service

occupational pension scheme

operator

ordinary business investor

own account transaction

own funds return

own funds transitional provisions

packaged product

partially exempt exposures

pension contract

PEP

permission

permitted third party

powers of intervention

principal

RAO or Regulated Activities Order

recognised clearing house

recognised investment exchange

recognised scheme

redemption

registrar

regulated collective investment scheme

rule or rules

SARs

scheme

securities

small business investor

sole trader

subsidiary

Takeover Code

takeover or related operation

trustee

trustee firm

unit trust scheme

units

UK authorised investment firm

United Kingdom (UK)

unregulated collective investment scheme

venture capital investment

warrant

Chapter 9: Financial resources requirements for an exempt CAD firm

9.1 Application

9.1.1 R (1) This chapter applies to an *exempt CAD firm* which is:

(~~1a~~) an *investment management firm*; or

(~~2b~~) a *securities and futures firm*.

(2) This chapter also applies to a *local firm*.

9.2 General requirements

9.2.1 G For an *exempt CAD firm*, the *rules* contained within this chapter replace the *rules* in respect of financial resources, ~~and~~ financial resources requirements and non-financial resources related requirements contained within Chapter 3, or 5 or 10, as applicable. However, an *exempt CAD firm* must continue to comply with the requirements of Chapter 3, or 5 or 10, as applicable, for its ~~non-financial resources related requirements~~ and to the extent it is referred to Chapter 3, or 5 and 10 by a *rule* in this chapter.

...

9.2.3 R An *exempt CAD firm* that carries on any *regulated activity* other than *MiFID business* must also have and maintain at all times financial resources calculated in accordance with the chapter of *IPRU(INV)* to which the *firm* is otherwise subject (Chapters 3, or 5 or 10) at least equal to the requirements set out in the relevant chapter.

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are not IMD insurance intermediaries

9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

...

...

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

9.2.5 R (1) A *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to the limits set out in 9.2.4R(1)(b) ~~for a firm that is not~~

and in addition has to have:

...

...

Comparable guarantee

- 9.2.7 R (a) If another *authorised person* which has net tangible assets of more than £10 million provides a comparable guarantee, an *exempt CAD firm* can treat it as an alternative to effecting or maintaining professional indemnity insurance pursuant to the rules relating to professional indemnity insurance above.
- (b) If the *exempt CAD firm* is a member of a *group* in which there is an *authorised person* with net tangible assets of more than £10 million, the comparable guarantee must be from that *person*.
- (c) A comparable guarantee means a written agreement on terms at least equal to those required by the *initial capital* and professional indemnity insurance requirements above to finance the claims that might arise as a result of the breach by the *exempt CAD firm* of its duties under the *regulatory system* or civil law.

Initial capital and ongoing capital requirements for local firms

- 9.2.8 R A local firm must:
- (a) have initial capital of €50,000; and
- [Note: Article 67(2) of MiFID and Article 6 of CAD]
- (b) maintain own funds calculated in accordance with the rules relating to own funds in 9.5, at least equal to the requirement for initial capital.

Ongoing capital requirements

- 9.2.89 R (1) An *exempt CAD firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with (2)), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.
- (2) (a) If the *exempt CAD firm* is an *investment management firm* its *own funds* must be calculated in accordance with the *rules* in IPRU(INV) 5.2.1(1) to 5.2.7(5).
- (b) If the *exempt CAD firm* is a *securities and futures firm* (~~subject to either Chapter 3 or Chapter 10~~) its *own funds* must be calculated in accordance with the *rules* relating to *own*

funds in IPRU(INV) 9.5 10.61(1)(B) to 10-176.

...

9.4 Policy terms for professional indemnity insurance

Insurers whose professional indemnity insurance policies can be used by an exempt CAD firm

- 9.4.1 R An exempt CAD firm that has professional indemnity insurance in accordance with this chapter must take out and maintain professional indemnity insurance that is at least equal to the requirements of the rule below from:

...

Terms to be incorporated in the professional indemnity insurance policy

- 9.4.2 R The policy of professional indemnity insurance must incorporate terms which make provision for:
- (1) cover in respect of claims for which an exempt CAD firm may be liable as a result of the conduct of itself, its *employees* and its *appointed representatives* (acting within the scope of their appointment);
 - ...
 - (4) cover in respect of *Ombudsman* awards made against the exempt CAD firm.

Policies in other currencies

- 9.4.3 R If a professional indemnity insurance policy is denominated in any currency other than euros, an exempt CAD firm must take reasonable steps to ensure that the *limits of indemnity* are, when the policy is effected and at *renewal*, at least equivalent to those required for the purposes of the rules relating to professional indemnity insurance above.

...

The following text is all new and is not underlined.

After 9.4.4R, insert 9.5 and 9.6 as follows:

9.5 Calculation of own funds

- 9.5.1 R A *firm's initial capital*:

minus the sum of the items set out against **B**

plus the sum of the items set out against **C**

minus *material holdings in credit and financial institutions and material insurance holdings*

equals *own funds*.

9.5.2 R Table

This table forms part of *rule 9.5.1R*

(1) <i>Investments in own shares at book value</i>	B
(2) <i>Intangible assets</i>	
(3) <i>Material current year losses</i>	
(1) Revaluation reserves	C
(2) Perpetual cumulative preference <i>share</i> capital	
(3) Long-term subordinated loans	
(4) Perpetual long-term subordinated loans	
(5) Fixed term preference <i>share</i> capital	

Perpetual long-term subordinated loans and perpetual cumulative preference share capital

9.5.3 R Perpetual long-term subordinated loans and perpetual cumulative preference *share* capital may not be included in the calculation of *own funds* unless they meet the following requirements:

- (1) it may not be reimbursed on the holder's initiative or without the prior agreement of the *FSA*;
- (2) the instrument must provide for the *firm* to have the option of deferring the dividend payment on the share capital;
- (3) the shareholder's claims on the *firm* must be wholly subordinated to those of all non-subordinated creditors;
- (4) the terms of the instrument must provide for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the *firm* to continue its business; and
- (5) it must be fully paid-up.

Subordinated loans

- 9.5.4 R A *firm* may include a subordinated loan in the calculation of its *own funds* only:
- (a) if it is drawn up in accordance with the standard forms obtained from the *FSA*;
 - (b) if it is signed by authorised signatories of all the parties; and
 - (c) to the extent that it is fully paid up.

Long-term subordinated loans

- 9.5.5 R A long-term subordinated loan may not be included in the calculation of *own funds* unless it meets the following requirements:
- (1) it must be fully paid-up;
 - (2) it has an original maturity of at least five years;
 - (3) the extent to which it may be used in the calculation of *own funds* shall be amortised on a straight line basis during at least the five years before repayment; and
 - (4) it must not become repayable before the agreed repayment date other than in the winding-up of the *firm* or unless the *firm* has provided the *FSA* with at least five years' written notice.
- 9.5.6 R A *firm* must not (except in accordance with the terms of the loan) make any payment of interest if after such action the *firm's own funds* will fall below 120% of its *own funds requirement*.

Perpetual non-cumulative and cumulative preference share capital

- 9.5.7 R A *firm* may include perpetual non-cumulative and cumulative preference share capital in its *initial capital* and its *own funds* only if there is an agreement between the *firm* and the shareholders which provides that redemption of the shares may not take place, if after such redemption the *firm* would be in breach of its *own funds requirement*.

Own funds - Restrictions

- 9.5.8 R (1) In calculating *own funds*:
- (i) the total amount of revaluation reserves, perpetual cumulative preference *share* capital, long-term subordinated loans, perpetual long-term subordinated loans and fixed term preference *share* capital must not exceed 100% of *initial capital* minus **B**; and
 - (ii) the total amount of fixed term preference *share* capital and long-term subordinated loans must not exceed 50% of *initial*

capital minus **B**.

9.6 Non-financial resource requirements

Reconciliation of balances

- 9.6.1 R (1) A *firm* must reconcile all balances and positions with:
- (a) *banks* and *building societies* (other than a client bank account subject to the *client money rules*), *exchanges*, *approved exchanges*, *clearing houses* and *intermediate brokers*; and
 - (b) *market counterparties* which are members of an *exchange* or *approved exchange*
- as recorded by the *firm* to the balance or position on a statement or circularisation obtained by the *firm* from those entities and must correct any differences by agreement on a timely basis, unless:
- (i) the balances and positions due to and from the *market counterparty* have been agreed by other means; or
 - (ii) it arises solely as a result of identified differences in timing between the records of the *firm* and the *bank* or *building society*.
- (2) A *firm* must perform reconciliations under (1) above as frequently as is appropriate for the volume of transactions on the accounts and in any event not less than once every five weeks or, in relation to positions with *market counterparties*, not less than once every year.
- (3) A *firm* must circularise or request statements from *banks*, *building societies*, *exchanges*, *approved exchanges*, *clearing houses*, *intermediate brokers* and *market counterparties* which are members of an *exchange* or an *approved exchange* in good time in order to be able to comply with (1) and (2) above.
- (4) A *firm* must use its best endeavours to respond within one month of receipt to any circularisation from another *firm* requesting confirmation of outstanding balances.
- 9.6.2 G For guidance notes on the reconciliation of a *firm's* balance with *market counterparties* see Appendix 20 to Chapter 3.

Financial notification

- 9.6.3 R A *firm* must notify the *FSA* in writing as soon as it has reason to believe that it is in breach of its *own funds requirement*.

APPENDIX 9(1) (INTERPRETATION)

Amend the following definition as shown:

<i>own funds</i>	means the own funds of a <i>firm</i> calculated in accordance with rule 9.2.89R(2) and 9.2.8R(b).
<i>verified</i>	... (f) follow up problem areas of which he is already aware in the course of auditing the <i>firm's</i> financial statements; and a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the FSA.

Insert the following definitions in the appropriate alphabetical position in Appendix 9(1); the text is all new and is not underlined:

<i>approved exchange</i>	means an investment exchange listed as such in Appendix 33 to IPRU(INV) 3.
<i>exchange</i>	means a <i>recognised investment exchange</i> or <i>designated investment exchange</i> .
<i>intangible assets</i>	the full balance sheet value of a <i>firm's</i> intangible assets including goodwill, capitalised development costs, licences, trademark and similar rights etc.
<i>intermediate broker</i>	in relation to a <i>margined transaction</i> , means any person through whom the <i>firm</i> undertakes that transaction.
<i>material current year losses</i>	means losses of an amount equal to 10% or more of <i>initial capital</i> minus B (with B calculated in accordance with Table 9.5.2R).
<i>material holding</i>	means a <i>firm's</i> holdings of <i>shares</i> and any other interest in the capital of a <i>credit institution</i> or <i>financial institution</i> : (a) which exceeds 10% of the capital of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer, the full amount is a <i>material holding</i> ; or (b) holdings not deducted under (a) if the total amount of such holdings exceeds 10% of that <i>firm's own funds</i> , in which case only the excess amount is a <i>material holding</i> .
<i>material insurance holdings</i>	(a) means the holdings of an <i>exempt CAD firm</i> of items of the type set out in (b) in any: (i) <i>insurance undertaking</i> ; or (ii) <i>insurance holding company</i>

that fulfils one of the following conditions:

- (iii) it is a *subsidiary undertaking* of that *firm*; or
 - (iv) that *firm* holds a participation in it.
- (b) An item falls into this provision for the purpose of (a) if it is:
- (i) an *ownership share*; or
 - (ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

own funds requirement

means the requirement set out in 9.2.9R(1) and 9.2.8R(b).

Delete Chapter 10 in its entirety; the text is not shown struck through:

Chapter 10: ~~Financial resources for Securities and Futures Firms which are Investment Firms~~[deleted]

...

Chapter 13: Financial Resource Requirements for Personal Investment Firms

...

Table 13.1(1)

This table forms part of 13.1.9

NOTIFIABLE EVENTS	
1.	...
2.	...
3.	<i>Exempt CAD firms</i>
	(a) [deleted]
	(b) [deleted]
	(c) [deleted]
	(d) [deleted]
	(e) [deleted]

(f) [deleted]

...

13.1A.3 R ...

(2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £510,000.

13.1A.4 R ...

(2) If a *firm* chooses to comply with either (b) or (c) above, it must nevertheless have *initial capital* of at least £510,000.

...

Ongoing capital requirements

13.1A.6 R ~~A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, (*own funds* to be calculated in accordance with 13.3.2R), at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.~~

Initial capital

13.1A.7 R A *firm's initial capital* consists of the sum of the following items:

6

...

Perpetual non-cumulative preference share capital

13.1A.8 R A *firm* may include *preference share* capital in *initial capital* only where
7 any *coupon* on it is not cumulative, and the *firm* is under no obligation to pay a *coupon* in any circumstances.

Audited retained earnings

13.1A.9 R When calculating *initial capital*, a *firm* may include its audited retained
8 earnings only after making the following adjustments:

...

Externally verified interim net profits or current account

13.1A. R A *firm* may include interim net profits or current account when calculating
109 *initial capital* to the extent that they have been *verified* by the *firm's* external auditor and are net of any foreseeable tax, dividend and other appropriations.

13.1A.4 R When calculating *initial capital*, a *firm* may include its partners' capital only

410 after making the following adjustments:

...

Defined benefit pension scheme: defined benefit liability

13.1A. R For the calculation of *initial capital*, a *firm* may substitute for a *defined*
112 *benefit liability* the *firm's deficit reduction amount*. The election must be applied consistently in respect of any one financial year.

13.1A. G A *firm* should keep a record of and be ready to explain to its supervisory
132 contacts in the *FSA* the reasons for any difference between the *deficit reduction amount* and any commitment the *firm* has made in any public document to provide funding in respect of a *defined benefit occupational pension scheme*.

The following text is all new and is not underlined.

After 13.1A.12G, insert 13.1A.13R to 13.1A.17R as follows:

Ongoing capital requirements

13.1A.13 R A *firm* must, at all times, maintain a combination of professional indemnity insurance and *own funds*, at least equal to the requirements in this chapter for professional indemnity insurance and *initial capital*.

13.1A.14 R A *firm's initial capital*:
minus the sum of the items set out against **B**
plus the sum of the items set out against **C**
minus *material holdings in credit and financial institutions and material insurance holdings*
equals *own funds*.

13.1A.15 R Table 13.1A.15R

This table forms part of *rule* 13.1A.14

(1) <i>Investments in own shares</i> at book value	B
(2) Intangible assets	
(3) <i>Material current year losses</i>	
(4) Excess of current year drawings over current year profits	
(1) Revaluation reserves	

(2) Perpetual cumulative preference <i>share capital</i> and <i>debt capital</i>	C
(3) Long-term subordinated loans (in accordance with <i>IPRU (INV) 13.5.5AR</i>)	
(4) Fixed term preference <i>share capital</i> (if not redeemable by shareholders within 5 years)	

Perpetual cumulative preference share capital

- 13.1A.16 R Perpetual cumulative preference *share capital* may not be included in the calculation of *own funds* unless it meets the following requirements:
- (1) it may not be reimbursed on the holder's initiative or without the prior agreement of the *FSA*;
 - (2) the instrument must provide for the *firm* to have the option of deferring the dividend payment on the share capital;
 - (3) the shareholder's claims on the *firm* must be wholly subordinated to those of all non-subordinated creditors;
 - (4) the terms of the instrument must provided for the loss-absorption capacity of the share capital and unpaid dividends, whilst enabling the *firm* to continue its business; and
 - (5) it must be fully paid-up.

Own funds – Restrictions

- 13.1A.17 R (1) In calculating *own funds*:
- (i) the total amount of revaluation reserves, perpetual cumulative preference *share capital*, long-term subordinated loans and fixed term preference *share capital* must not exceed 100% of *initial capital* minus the sum of the items set out against B; and
 - (ii) the total amount of fixed term preference *share capital* and long-term subordinated loans must not exceed 50% of *initial capital* minus the sum of the items set out against B.

...

13.2 Financial Resources Tests

- 13.2.1 R An *exempt CAD firm* must meet:
- (1) ~~Financial Resources Test 1 (the *Own funds Test*)~~ calculated

in accordance with section 13.3;[deleted]

...

...

13.2.2 G [deleted]

...

Delete Table 13.A and replace with the new table below; the text is not underlined:

SUMMARY OF FINANCIAL RESOURCES FOR EXEMPT CAD FIRMS			
Type of <i>firm</i>	Financial Resources Test 1A Adjusted <i>net current assets</i> Test	Financial Resources Test 2 Expenditure-based Test	Rules/section references
<i>Exempt CAD firm</i>	Adjusted net current assets of £1	Financial resources equal to the highest of 4/52 of Relevant Annual Expenditure or 13/52 of Relevant Annual Expenditure without <i>special adjustments</i> or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1D and 13.5.2 to 13.5.4
<i>Exempt CAD firm</i> which is a network	Adjusted net current assets of £1	Financial resources equal to the higher of 13/52 of Relevant Annual Expenditure or £400 per <i>adviser</i>	13.1A.14 13.4 13.5.1B and 13.5.2 to 13.5.4

13.3 Financial Resources Test 1 – Own Funds

~~Requirement~~

13.3.1 R ~~[deleted]~~

13.3.1A G ~~[deleted]~~

~~Calculation of own funds~~

13.3.2 R ~~[deleted]~~

13.3.2A R ~~[deleted]~~

13.3.2B G ~~[deleted]~~

Delete Table 13.3.2(2) in its entirety; the text is not shown struck through.

Table 13.3.2(2)~~[deleted]~~

...

13.5 Financial Resources Test 2 – Expenditure-based Requirement

Requirement

13.5.1 R ~~[deleted]~~

13.5.1A R ~~[deleted]~~

13.5.1B R ~~A Category A2 firm which is permitted to carry on the activity of managing investments or to delegate such activity to an investment firm, or a Network in Category A2 or A3, An exempt CAD firm which is a network~~ must have financial resources calculated in accordance with whichever of (1), or (2) produces the higher amount:

(1) ...

(2) ...

13.5.1C R ~~[deleted]~~

13.5.1D R (1) ~~[deleted]~~

(2) ~~An Category A3 exempt CAD firm~~ which is not permitted to carry on the activity of *managing investments* or to delegate such activity to an *investment firm* must have financial resources calculated in accordance with whichever of (3), (4) or (5) produces the highest amount.

...

...

CALCULATION OF FINANCIAL RESOURCES TO MEET TESTS 1, 1A OR 2

13.5.4 R An exempt CAD firm must be able to calculate its financial resources at any time on the basis of the balance sheet it could draw up at that time. For this purpose:

- (1) ~~a Category A1 firm must adjust the assets in the balance sheet as specified in table 13.5.4(1) and include the liabilities after making the adjustments specified in table 13.5.4(1). [deleted]~~
- (2) ~~an Category A2 or A3 exempt CAD firm, must adjust the assets in the balance sheet as specified in table 13.5.4(2) and include the liabilities after making the adjustments specified in table 13.5.4(2).~~

...

13.5.4A R ~~An exempt CAD firm must be able to identify separately any trading book items as indicated in rule 13.8 and any special adjustments. [deleted].~~

Delete Table 13.5.4(1) Part I in its entirety; the text is not shown struck through.

Table 13.5.4(1) Part I [deleted]

Delete Table 13.5.4(1) Part II in its entirety; the text is not shown struck through.

Table 13.5.4(1) Part II [deleted]

Table 13.5.4(2) Part I

This table forms part of rule 13.5.4

FIRMS IN CATEGORY A2 AND A3 EXEMPT CAD FIRM		
ASSETS	CALCULATION	TYPE OF ADJUSTMENT
...

Table 13.5.4(2) Part II

This table forms part of rule 13.5.4

FIRMS IN CATEGORY A2 AND A3 EXEMPT CAD FIRM		
LIABILITY	CALCULATION	TYPE OF ADJUSTMENT

...
-----	-----	-----

...

SUBORDINATED LOANS

13.5.5 R *A exempt CAD firm* may treat a subordinated loan as a financial resource, as specified in table ~~13.3.2(1)~~ 13.1A.15R, and subject to *rule* 13.5.5C, if the long term ~~or short term~~ subordinated loan is eligible for such treatment in accordance with *rule* 13.5.5A ~~or B as applicable~~.

...

13.5.5B R [deleted]

13.5.5C R The total amount of long term ~~or short term~~ subordinated loans that a *exempt CAD firm* may include in the calculation of its financial resources is restricted as stipulated in ~~table 13.3.2(2)~~ 13.1A.17R and in *SUP* 16.

Delete the text and tables in 13.6 entirely; the text is not shown struck through.

13.6 Large exposures [deleted]

Delete the text and table in 13.8 entirely; the text is not shown struck through.

13.8 Trading Book [deleted]

...

APPENDIX 13(1): Defined terms for Chapter 13

Amend the following definitions as shown:

collateral [delete the existing definition and replace with the following]

has the meaning given to the term in the *Glossary*.

initial margin [delete the existing definition and replace with the following]

has the meaning given in paragraph (2) of the definition of the term in the *Glossary*.

material holding [delete the existing definition and replace with the following]

means a *firm's* holdings of *shares* and any other interest in the capital of a *credit institution* or *financial institution*:

- (a) which exceeds 10% of the capital of the issuer, and, where this is the case, any holdings of subordinated debt of the same issuer, the full amount is a *material holding*; or

- (b) holdings not deducted under (a) if the total amount of such holdings exceeds 10% of that *firm's own funds*, in which case only the excess amount is a *material holding*.

verified

...

follow up problem areas of which he is already aware in the course of auditing the *firm's* financial statements,

a copy of whose report asserting that the interim net profits are reasonably stated has been submitted to the *FSA* (although this does not apply to *exempt CAD firms*);

Insert the following definitions in the appropriate alphabetical position in Appendix 13(1); the text is all new and is not underlined:

material insurance holdings

- (a) means the holdings of an *exempt CAD firm* of items of the type set out in (b) in any:

(i) *insurance undertaking*; or

(ii) *insurance holding company*;

that fulfils one of the following conditions:

(iii) it is a *subsidiary undertaking* of that *firm*; or

(iv) that *firm* holds a participation in it.

- (b) An item falls into this provision for the purpose of (a) if it is:

(i) an *ownership share*; or

(ii) subordinated debt or another item of capital that falls into Article 16(3) of the *First Non-Life Directive* or, as applicable, Article 27(3) of the *Consolidated Life Directive*.

own funds

means the own funds of a *firm* calculated in accordance with 13.1A.14R.

Delete the following definitions from Appendix 13(1); the text is not shown struck through:

accepting deposit

Act

advice or advising on investments

affiliated company

ancillary activity
appointed representative
appropriate personal pension
approved bank
approved collateral
approved depository
approved person
arranging (bringing about) deals in investments
associate
AUT
authorised corporate director
authorised fund
authorised person
authorised unit trust scheme
bearer form
bid price
body corporate
bonded investment
branch
broker fund
broker fund adviser
building society
business day
buying
Category A1 firm
Category A2 firm
Category A3 firm

charge
clearing firm
clearing house
client agreement
client asset rules
client bank account
client money
client money distribution rules
client transaction account
close relative
collective investment scheme
commencement
commencement day
commission
commodity
company
contingent liability investment
contracts of insurance
control
controlled activity
core investment service
corporate finance business
credit
custody asset
custody rules
deal
dealing

debenture
deposit
depository
derivative
designated investment
designated investment business
designated investment exchange
EEA right
EEA State
European Economic Area
evidential provision
exempt person
exemption order
exposure
fee
Financial Ombudsman Service Limited
firm
First Life Directive
forward price
friendly society
FSA
future
geared futures and options fund
government and public security
group
guidance
habitual residence

higher volatility fund
holding company
incoming EEA firm
incoming Treaty firm
incorporated friendly society
industrial assurance policy
insurance business
Insurance Directives
insurance undertaking
insurer
intermediate broker
introducer
investment
investment company with variable capital
investment firm
investment manager
investment services
Investment Services Directive
investment trust
investment trust savings scheme
IPRU(INV)
ISD investment firm
lead regulated firm
life policy
long-term insurance contract
making arrangements with a view to transactions in investments
managing investments

market maker
market value
marketable instrument
money-market instrument
nominee company
occupational pension scheme
OEIC
offer price
Ombudsman
on-exchange
open market position
open-ended investment company
option
OTC
over the counter
overseas firm
overseas introducing broker
overseas person
overseas regulator
own account order
own account transaction
packaged product
parent undertaking
penny share
pension annuity
pension buy-out contract
pension contract

pension opt-out
pension policy
pension scheme
pension transfer
PEP
PEP manager
PEP transfer
permitted activity
permitted third party
person
personal equity plan
personal pension contract
personal pension policy
personal pension scheme
PIA
plan manager
premium
previous regulator
principal
product provider
professional firm
property enterprise trust
pure protection contract
qualifying investment
recognised clearing house
recognised investment exchange
Regulated Activities Order

regulated activity
regulated collective investment scheme
regulated market
related designated investment
retirement fund
rule
safe custody investments
scheme holding
scheme particulars
security
sell
series of transactions
service company
share
small self-administered scheme
sole trader
specified investment
subsidiary
surrender value
traded life policy
unauthorised person
undertaking
unit
unit trust scheme
unregulated collective investment scheme
warrant
whole life assurance

Chapter 14: CONSOLIDATED SUPERVISION FOR INVESTMENT BUSINESSES

14.1 Application

14.1.1 R Subject to rule 14.1.2, *consolidated supervision* and this chapter apply to a *firm* which is a member of a group if:

(1) it is:

- (a) a *securities and futures firm*, subject to the financial rules in Chapter 3, which is a *broad scope firm* but not a *venture capital firm*; and
- (b) ~~a *securities and futures firm*, subject to the financial rules in Chapter 10, unless the *firm* is an *exempt CAD firm*; or~~ [deleted]
- (c) ~~a *category A personal investment firm*, subject to the financial rules in Chapter 13; and~~ [deleted]

(2) it is not a *BIPRU firm*.

...

14.4 Group financial resources

...

14.4.3 R Financial resources will be defined based upon the main *firm* in the group to which this chapter applies as follows:

...

- (4) ~~if an *ISD securities and futures firm*, Table 10-62(2)AR, but excluding any adjustment in (E) of that Table;~~ [deleted]
- (5) ~~if a *personal investment firm*, Table 13.3.2(1)R.~~ [deleted]

...

14.5 Group financial resources requirement

...

14.5.1 R ...

(1) ...

- (a) requirements in respect of intra-group balances with other entities within the scope of consolidation should be excluded; and

(b) ~~large exposures requirements of individual group entities should be excluded; [deleted]~~

(2) the sum of any adjustments that are made to each *firm's* financial resources, calculated on a solo basis in accordance with rule 14.4.3, in order to arrive at the amount of financial resources used to meet its solo financial resources requirement. These adjustments must exclude deductions in respect of the investment in and other relationships with other entities that are included within the scope of consolidation; ~~and:~~

(3) ~~if the main firm in the group is a securities and futures firm under rule 14.1.1(4), a group large exposures requirement. [deleted]~~

...

14.5.3 G (1) ...

...

(3) ~~In 14.5.1(2), the adjustments referred to, are for investment management firms, the illiquid assets and qualifying property adjustments, and for securities and futures firms, the adjustments referred to in item (E) of Table 10-62(2)A. For personal investment firms, the adjustment required by 14.5.1(1) and (2) combined is the higher of:~~

(a) ~~the own funds requirement in 13.3.1R or 13.10.1R and;~~

(b) ~~the sum of the relevant expenditure based requirement and illiquid assets, position risk, and counterparty risk adjustments required by Chapter 3 of IPRU(INV). [deleted]~~

Appendix 14(1) (Interpretation)

Amend the following definition as shown:

investment firm *investment firm* as in the main *Glossary* except that it excludes persons to which the ~~ISD~~ MiFID does not apply as a result of articles 2-2 or 3 of the ~~ISD~~ MiFID.

non-trading book ~~as in the Glossary in IPRU(INV) chapter 10.~~ in relation to a firm's business or exposures, means any position, counterparty exposure or balance sheet item not falling within the definition of trading book.

trading book as in the *Glossary* in IPRU(INV) chapter ~~40~~ 5.

Delete the following definitions from Appendix 14(1); the text is not shown struck through:

asset management company

Category A personal investment firm

Category D firm

group of connected third parties

large exposure

large exposures requirement

securities and futures firm

venture capital firm

Annex D [Required Forms]

These forms are the required forms referred to in IPRU(INV) and are listed below (a short contents list appears at the beginning of each section of the annex):

IPRU(INV)	FORM
Chapter	
2	<u>Authorised Professional firms</u>
3	<u>Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms) (former SFA Non-ISD Firms)</u>
...	...
...	...
<u>109</u>	<u>Securities and Futures Firms which are Investment Firms (former SFA ISD Firms) Exempt CAD Firms</u>
<u>109.1</u>	...
<u>10.2</u>	<u>Short Term Subordinated Loan Agreement [deleted]</u>
<u>109.3</u>	...
<u>109.4</u>	...
<u>109.5</u>	...
<u>10.6</u>	<u>Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]</u>
<u>10.7</u>	<u>Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]</u>

109.8 ...

...

Annex D, Chapter 2

2 Authorised Professional Firms

...

FORM OF BOND FOR AUTHORISED PROFESSIONAL FIRMS

...

(8) ...

- b. That the Principal is an authorised Professional Firm which has Permission ...

...

(9) ...

"the Principal" means the authorised Professional Firm named herein and includes each of the partners thereof where applicable;

...

...

Annex D, Chapter 3

3 Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms (~~former SFA Non-ISD Firms~~)

...

3.5 Guidance Notes on Completion of Agreements

A GENERAL

Introduction

...

2. All communications with the FSA regarding the proposed Agreement should in the first instance be via the firm's ~~inspector~~ usual contact.

~~ISD/Non-ISD~~

3. Firms are advised to ensure that the appropriate form of ~~ISD (Chap.10)/non-ISD (Chap.3)~~ subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm's authorisation categorisation. Should the firm's categorisation ~~change be changing from ISD to non-ISD (or vice versa)~~, this should be discussed with the firm's ~~inspector~~ usual contact as it is likely that any subordinated loan agreement in place will have to be revised.

...

16. Under rule IPRU(INV) 3-63(5) ~~(which is only relevant in relation to non-ISD firms)~~, an amount repayable within three months of the effective date of the loan or advance is only acceptable as an eligible capital substitute in the absence of a waiver. ...

17. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice ~~for a non-ISD form~~ in relation to IPRU(INV) 3 are as follows:

...

...

Annex D, Chapter ~~109~~

~~109~~ Securities and Futures Firms which are Investment Firms (former SFA ISD Firms) Exempt CAD Firms

Form	Page
109.1 ...	
10.2 Short Term Subordinated Loan Agreement [deleted]	17
109.3 ...	
109.4 ...	
109.5 ...	
10.6 Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]	38
10.7 Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision [deleted]	53
109.8 ...	

~~109.1~~ Approved Form of Long-Term Subordinated Loan Agreement

A. Front Page

...

WHEREAS the Borrower wishes to use the Loan, or each Advance under the Facility (as those expressions are defined in the Standard Terms) in accordance with FSA rule IPRU(INV) ~~40-639.5~~ and has fully disclosed to the FSA the circumstances giving rise to the Loan or Facility and the effective Subordination of the Loan and each Advance.

...

Schedule 2

C. Standard Terms

...

“Financial Rules” means the rules in IPRU(INV) ~~409~~ in the FSA handbook;

...

~~10.2 Approved Form of Short Term Subordinated Loan Agreement~~[deleted]

~~409.3~~ FORM OF DEED OF TERMINATION

...

~~409.4~~ FORM OF DEED OF VARIATION

...

~~409.5~~ FORM OF GUARANTOR UNDERTAKING

...

~~10.6 Approved Form of Long Term Subordinated Loan Agreement for the purposes of Consolidated Supervision~~[deleted]

~~10.7 Approved Form of Short Term Subordinated Loan Agreement for the purposes of Consolidated Supervision~~[deleted]

~~409.8~~ Guidance Notes on Completion of Agreements

...

ISD/Non-ISD

3. Firms are advised to ensure that the appropriate form of ~~ISD (Chap.10)/non-ISD (Chap.3)~~ subordinated loan agreement is used (Chap 9/Chap 3). This is, of course, dependent on the firm’s authorisation categorisation. Should the firm’s categorisation change ~~be changing from ISD to non-ISD (or vice versa)~~, this should be discussed with the firm’s ~~inspector~~ usual contact as it is likely that any subordinated loan agreement in place will have to be revised. ~~Subordinated loan agreements for ISD firms are further classified as either short term or long term this turns on whether the loan is to have an original maturity period of at least 2 or 5 years.~~

...

6. Firms are referred to rule IPRU(INV) ~~10-639.5~~ on the use of subordinated loans, including restrictions on approved lenders, repayment provisions and gearing limits.

...

ISD:-Long-term form

16. Firms are advised that for ~~an ISD~~ a long-term form the repayment date must be a specified date not less than 5 years from one or more of:
- the date of drawdown;
 - the borrower giving notice in writing to the lender and the FSA; or
 - the lender giving notice in writing to the borrower and the FSA.

...

ISD:-Short term form

18. ~~For short term agreements the applicable repayment period is at least two years, rather than five years as required for a long term form, but otherwise the requirements are as above.~~[deleted]
19. Paragraph 9: Examples of suggested wordings for either a fixed repayment date or repayment on notice for a short term form are as follows:
- (a) ~~"The Borrower shall repay [the Loan/each Advance made to it] on the [date which falls two years after the date] [second anniversary] of drawdown of the [Loan/relevant Advance]."~~
 - (b) ~~"The Borrower shall repay [the Loan/each Advance made to it] two years after the date on which:~~
 - (a) ~~the Borrower gives written notice to the Lender and to the FSA;~~
 - ~~or~~
 - (b) ~~the Lender gives written notice to the Borrower and to the FSA."~~

Note: either (a) or (b) above by itself is sufficient.

- (c) ~~"[The Loan / Each Advance made to the Borrower] shall be repayable on the date specified by notice in writing given by the Lender to the Borrower and to the FSA or notice in writing given by the Borrower to the Lender and to the FSA, in either case that date being not less than two years after the date on which the notice is given."~~[deleted]

...

Annex C

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

3.1.2 R Applicable sections (see SUP 3.1.1 R)

(1) Category of firm		(2) Sections applicable to the firm	(3) Sections applicable to its auditor
(1)	<i>Authorised professional firm</i> which is required by <i>IPRU(INV)</i> 2.1.2R to comply with chapters 3, 5, 10 <u>9</u> or 13 of <i>IPRU(INV)</i> and which has an auditor appointed under or as a result of a statutory provision other than in the <i>Act</i> (Note 1)
...
(7)	<i>Investment management firm, personal investment firm</i> (other than a <i>small personal investment firm</i> or <u><i>exempt CAD firm</i></u>), or <i>securities and futures firm</i> (<u>other than an <i>exempt CAD firm</i></u>)
(7A)	<i>Investment management firm, personal investment firm</i> (other than a <i>small personal investment firm</i> or <u><i>exempt CAD firm</i></u>), or <i>securities and futures firm</i> (<u>other than an <i>exempt CAD firm</i></u>) not within (7)
...			
(7C)	<i>BIPRU investment firm</i> or <u><i>exempt CAD firm</i></u>

...

3.9.5 R Table Auditor's report

whether the auditor has:

...		
(10)	...	
	(b)	a category A personal investment firm (see SUP 3.9.6 R): IPRU(INV) 13.2R and IPRU(INV) 13.5R; [deleted]
	(c)	...
	(d)	a securities and futures firm which is not an <i>ISD MiFID</i> investment firm: IPRU(INV)3-70R, IPRU(INV)3-71R and IPRU(INV)3-73R;
	(e)	a securities and futures firm which is an ISD investment firm: IPRU(INV)10-71R, IPRU(INV)10-72R and IPRU(INV)10-73R; [deleted]
...	...	
(13)	...	
	(c)	a securities and futures firm which is not an <i>ISD MiFID</i> investment firm: IPRU(INV)3-10R;
	(d)	a securities and futures firm which is an ISD investment firm IPRU(INV)10-10R; (except IPRU(INV)10-10R(3)(m)-(n)) [deleted]
...	...	

...

3.9.6 R In SUP 3.9.5 R(10)(b) and (c), a "Category A *personal investment firm*" is a *personal investment firm* which is an *ISD investment firm* and a "Category B *personal investment firm*" is a *personal investment firm* other than an exempt CAD firm category A *personal investment firm*.

...

9.3.2 G ...

(5) ...

(c) for a securities and futures firm (or other firm required to comply with IPRU(INV) 3 or IPRU(INV) 10): IPRU(INV) 10-74R 3-79R and IPRU(INV) App 48 ; and

...

...

SUP Appendix 1

App 1.3 Prudential categories and sub-categories

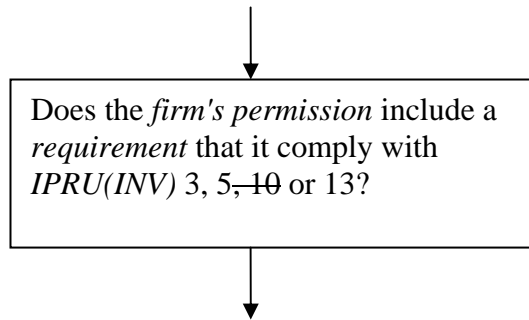
G Prudential categories and sub-categories used in the Prudential sourcebooks and the Supervision manual

Prudential categories (Note 1)	Applicable prudential requirements (Note 2)	Prudential sub-categories
...
<i>Investment management firm*</i>	<i>IPRU(INV) 1 and 5</i>	<u><i>Exempt CAD firm</i></u> (see also <i>IPRU(INV) 9</i>) <i>OPS firm</i> ...
...
<i>Personal investment firm*</i>	...	<i>Category A firm</i> <i>Category A1 firm</i> <i>Category A2 firm</i> <i>Category A3 firm</i> ... <i>Category B3 firm</i> <u><i>Exempt CAD firm</i></u> ...
<i>Securities and futures firm*</i>	<i>IPRU(INV) 1 and either 3 or 409</i> ...	<i>IPRU(INV) 3:</i> ... <i>Energy market participant</i> ... <i>IPRU(INV) 409:</i> <u><i>Exempt CAD firm</i></u> <i>Category A</i> <i>Category B</i> <i>Category C</i> <i>Category D</i> <i>Category D – corporate finance advisory firm</i>
...		

...

Fig App 1.7 G Figure 1: Determination of a firm's prudential category - general

...



...

App 1.8 Notes to Figures 1 and 2

App 1.8.1 G Table Note 1

Chapter of IPRU(INV) that requirement on permission requires the firm to comply with	Firm's prudential category
...	
Chapter 10	<i>Securities and futures firm</i>
...	