

PASSPORTING (MIFID) 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 156 (General supplementary power); and
 - (3) 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. (1) Annex B of this instrument comes into force on 14 February 2007;
 (2) Annex E of this instrument comes into force on 1 November 2007;
 (3) otherwise this instrument comes into force on 6 February 2007.

Amendments to the Handbook

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

(1)	(2)
Glossary	Annex A
Glossary	Annex B
Supervision manual (SUP) (changes of a general nature)	Annex C
Professional Firms sourcebook (PROF)	Annex D
Supervision manual (SUP) (MiFID-related changes)	Annex E

Citation

- E. This instrument may be cited as the Passporting (MiFID) Instrument 2007.

By order of the Board
 25 January 2007

Annex A

Amendments to the Glossary

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

<i>consent notice</i>	a notice given by the <i>FSA</i> to a <i>Host State regulator</i> under: <u>(a) paragraph 19(4) (Establishment) of Part III of Schedule 3 to the Act (Exercise of Passport Rights by UK firms); or</u> <u>(b) paragraph 20(3A) (Services) of Part III of Schedule 3 to the Act (Exercise of Passport Rights by UK firms).</u>
<i>notice of intention</i>	a notice of intention <u>(as described in SUP 13.5) given by a UK firm</u> to: <u>(a) establish a branch in an EEA State given by a UK firm under paragraph 19(2) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms); or</u> <u>(b) provide services in an EEA State under paragraph 20(1) of Part III of Schedule 3 to the Act (Exercise of passport rights by UK firms).</u>
<u><i>relevant EEA details</i></u>	<u>the details listed in regulation 14 of the EEA Passport Rights Regulations and set out in SUP 13 Ann 1R (Requisite details or relevant details: branches).</u>
<u><i>relevant UK details</i></u>	<u>the details required in regulation 15 of the EEA Passport Rights Regulations and set out in SUP 13 Ann 2R (Relevant UK details: branches of insurance undertakings).</u>
<i>requisite details</i>	the details required in <u>regulation 1 of the EEA Passport Rights Regulations</u> and set out in SUP 13 Ann 1R (Requisite details: branches and SUP 13 Ann 1R (Requisite details: cross border services).

Annex B

Amendments to the Glossary

In this Annex, underlining indicates new text.

EEA State [delete existing definition and replace with the following]
(in accordance with Schedule 1 to the Interpretation Act 1978), in relation to any time -

(a) a state which at that time is a member State; or
(b) any other state which is at that time a party to the EEA agreement.

[Note: Current non-member State parties to the EEA agreement are Norway, Iceland and Lichtenstein. Where the context requires, references to an *EEA State* include references to Gibraltar as appropriate].

Annex C

Amendments to the Supervision Manual (SUP) (changes of a general nature)

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

Where entire sections of the text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

...

13.3.2 G A *UK firm* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the *Act* are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*). These conditions are that:

(1) the *UK firm* has given the *FSA*, in accordance with the *FSA rules* (see *SUP* 13.5.1R), notice of its intention to establish a *branch* (known as a ~~notice of intention~~ notice of intention) which;

...

(3) (a) if the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, one month has elapsed beginning on the date on which the *UK firm* received notice that the *FSA* had given a ~~consent notice~~ consent notice as described in *SUP* 13.3.6G (1) (see *SUP* 13.3.2AG);

...

13.3.2A G ... Accordingly, the *UK firm* may establish the *branch* to which its ~~notice of intention~~ notice of intention relates as soon as the conditions referred to in *SUP* 13.3.2G(1) are satisfied. The list of *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA's* website at www.fsa.gov.uk.

13.3.2B G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may establish a *branch* in another *EEA State* under the *Insurance Mediation Directive*. In this case, the ~~notice of intention~~ notice of intention in *SUP* 13.3.2G(1) should be given to the *FSA* by the *firm* on behalf of the *appointed representative*.

...

~~How long will the process take?~~

13.3.4 G [deleted]

13.3.4A G [deleted]

...

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) ~~If a UK firm has given the FSA a notice of intention in the required form, then:~~
- (a) ~~If the UK firm's EEA right derives from the Banking Consolidation Directive, the Investment Services Directive, or the UCITS Directive, the FSA will give the Host State regulator a consent notice within three ~~months~~ months unless it has reason to doubt the adequacy of a UK firm's resources or its administrative structure;~~
- (2) ~~(a)~~ (a) If the UK firm's EEA right derives from the Insurance Directives, the FSA will give the Host State regulator a consent notice within three ~~months~~ months unless it has reason to:
- (i) doubt the adequacy of the UK firm's resources or its administrative structure; or
- (ii) question the reputation, qualifications or experience of the *directors* or managers of the UK firm or its proposed authorised agent;
- in relation to the business the UK firm intends to conduct through the proposed *branch*; The Host State regulator then has a further two months to notify the applicable provisions (if any) and prepare for the supervision, as appropriate, of the UK firm.
- (b) In assessing the matters in (2)(a), the FSA may, in particular, seek further information from the firm or require a report from a skilled person (see SUP 5 (skilled persons)).
- (c) If the FSA has required a financial recovery plan of a UK firm of the kind mentioned in paragraph 1 of article 38 of the Consolidated Life Directive or paragraph 1 of article 20a of the First Non-Life Directive, the FSA will not give a consent notice for so long as it considers that policyholders are threatened within the meaning of those provisions.

- (d) If the *UK firm's EEA right* derives from the *Insurance Mediation Directive* and *SUP 13.3.2G(2)* applies, the *FSA* will give the *Host State regulator* a *consent notice* within one *month* of the date on which it received the ~~*UK firm's UK firm's notice of intention*~~ *notice of intention*. In cases where *SUP 13.3.2 G-(2)* does not apply (see *SUP 13.3.2AG*), the *UK firm may establish a branch* as soon as it satisfies the conditions referred to in *SUP 13.3.2G*.
- (2) in assessing the matters in *SUP 13.3.5 G (1)(b)* the *FSA* may, in particular, seek further information from the *firm* or require a report from a *skilled person* (see *SUP 5 (Skilled Persons)*).
- (3) If the *FSA* has required a financial recovery plan of a *UK firm* of the kind mentioned in paragraph 1 of article 38 of the *Life Directive (2002/83/EC)* or paragraph 1 of article 20a of the *First Non Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders'* are threatened within the meaning of paragraph 1.
- 13.3.6 G (1) ...
- (2) The *consent notice* will contain, among other matters, the *requisite details* (see ~~*SUP 13 Annex 1*~~) or, (if the *firm* is passporting under the *Insurance Directives*), the ~~*EEA relevant details*~~ *relevant EEA details* (see *SUP 13 Annex 21*) provided by the *UK firm* in its ~~*notice of intention*~~ *notice of intention* (see *SUP 13.5 (Notices of intention)*).
- 13.3.7 G (1) ...
- (2) If the *FSA* decides to refuse to give a *consent notice*, then paragraph 19(12) of Part III of Schedule 3 to the *Act* requires the *FSA* to give the *UK firm* a *decision notice* within three ~~*months*~~ *months* of the date on which it received the *UK firm's* ~~*notice of intention*~~ *notice of intention* (two ~~*months*~~ *months* in the case of a *UK firm* which is a *UCITS management company*)...
- ...
- 13.4.2 G A *UK firm* cannot start providing *cross border services* into another *EEA State* under an *EEA right* unless it satisfies the conditions in paragraphs 20(1) of Part III of Schedule 3 to the *Act* and, if it derives its *EEA right* from the *Insurance Directives*, paragraph 20(4B) of Part III of Schedule 3 to the *Act*. It is an offence for a *UK firm* which is not an *authorised person* to breach this prohibition (paragraph 21 of Part III of Schedule 3 to the *Act*).The conditions are that:

- (1) the *UK firm* has given the *FSA*, in the way specified by *FSA rules* (see *SUP 13.5.2R*), notice of its intention to provide cross border services (known as a ~~notice of intention~~ notice of intention) which:

...

- 13.4.2A G An *appointed representative* appointed by a *firm* to carry on *insurance mediation activity* on its behalf may provide *cross border services* in another *EEA State* under the *Insurance Mediation Directive*. In this case the ~~notice of intention~~ notice of intention in *SUP 13.4.2G(1)* should be given to the *FSA* by the *firm* on behalf of the *appointed representative*.

Issuing a consent notice or notifying the Host State regulator

- 13.4.4 G ~~If a *UK firm* has given the *FSA* a notice of intention in the required form, then:~~

- (1) ~~if~~ the *UK firm's EEA right* derives from the *Investment Services Directive*, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the ~~notice of intention~~ notice of intention to the *Host State regulator* within one ~~month~~ month of receipt; ~~or.~~

- (2) (a) ~~if~~ the *UK firm's EEA right* derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the *Act* requires the *FSA*, within one ~~month~~ month of receiving the ~~notice of intention~~ notice of intention, to:

...

- (b) ~~...~~ ...

- (c) If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Consolidated Life Directive* or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a consent notice for so long as it considers that *policyholders' rights* are threatened within the meaning of those provisions.

- (2A) (a) ~~if~~ the *UK firm's EEA right* derives from the *Insurance Mediation Directive*, and the *EEA State* in which the *UK firm* is seeking to provide services has notified the European Commission of its wish to be informed of the intention of *persons* to provide *cross border services* in its territory in accordance with article 6(2) of that directive, paragraph 20(3B)(a) of Part III of Schedule 3 to the *Act* requires the *FSA* to send a copy of the ~~notice of intention~~ notice of intention to the *Host State regulator* within one month of receipt; ~~or~~. Otherwise, the *UK firm* may start providing *cross border services* as soon as it satisfies the relevant conditions (see *SUP 13.4.2G*).
- (b) The list of the *EEA States* that have notified the European Commission of their wish to be informed in accordance with article 6(2) of the *Insurance Mediation Directive* is published on the *FSA's* website at www.fsa.gov.uk.
- (3) ~~If the *FSA* has required of a *UK firm* a financial recovery plan of the kind mentioned in paragraph 1 of article 38 of the *Life Directive* (2002/83/EC) or paragraph 1 of article 20a of the *First Non-Life Directive*, the *FSA* will not give a *consent notice* for so long as it considers that *policyholders' rights* are threatened within the meaning of paragraph 1.~~

...

13.4.5 G When the *FSA* sends a copy of a ~~notice of intention~~ notice of intention, or if it gives a *consent notice* to the *Host State regulator*, it must inform the *UK firm* in writing that it has done so (paragraphs 20 (3B)(b) and (4) of Schedule 3 to the *Act*).

13.4.6 G (1) If the *UK firm* is passporting under the *Investment Services Directive* ~~or~~ *UCITS Directive*, then when the *Host State regulator* receives the ~~notice of intention~~ notice of intention, it should inform the *UK firm* of any *applicable provisions*.

...

...

13.5.1 R A *UK firm* wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right* must include in its ~~notice of intention~~ notice of intention given to the *FSA*:

...

- 13.5.2 R A *UK firm* wishing to provide *cross border services* into a particular *EEA State* for the first time under an *EEA right* must include, in its ~~notice of intention~~ notice of intention given to the *FSA*:
- ...
- ...
- Specified manner: form and delivery
- 13.5.3 R (1) The ~~notice of intention~~ notice of intention under *SUP* 13.5.1-R and *SUP* 13.5.2-R must be:
- ...
- (2) The ~~notice of intention~~ notice of intention may be delivered by:
- ...
- (c) hand delivery to a member of the Authorisation ~~Authorisation and Approvals (Authorisation teams)~~ department (if submitted with an application for *Part IV permission*) or to the Passport Notification Unit; or
- (d) electronic mail to the address in (4) if not submitted with an application for *Part IV Ppermission* and obtaining an electronic confirmation of receipt; or
- (e) fax to the Passport Notifications Unit on 020 7066 ~~xxxx~~ 9798 (if not submitted with an application for *Part IV Ppermission*) provided that the *FSA* receives a copy by one of the methods (a) to (d) above within five *business days* after the date of the faxed notification; or
- (f) online submission via the *FSA*'s website at www.fsa.gov.uk (when available).
- ...
- 13.5.4 G A standard form of ~~notice of intention~~ notice of intention that a *UK firm* may wish to use is available from the Passport Notifications Unit (see *SUP* 13.12 (Sources of further information)).
- Unregulated activities
- 13.5.5 G A ~~notice of intention~~ notice of intention may include activities within the scope of the relevant *Single Market Directive* which are not *regulated activities* (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the *Act*).
- ...

...

13.5.7 G If a *UK firm* wishes to establish *branches* in, or provide *cross border services* into, more than one *EEA State*, a single notification may be provided but the ~~requisite details~~ or relevant ~~details~~ information for each *EEA State* should be clearly identifiable.

...

13.6.2 G *UK firms* should note that if a *branch* in another *EEA State* ceases to provide services, this may represent a change in *requisite details* or, if the firm is passporting under the Insurance Directives, the relevant EEA details or relevant UK details ~~relevant details~~.

...

13.6.5 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 11(2) are that:

...

- (3) either the *Host State regulator* has informed the *UK firm* that it may make the change, or the period of one ~~month~~ month beginning with the day on which the *UK firm* gave the *Host State regulator* the notice in (1) has elapsed.

13.6.6 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 13(1) states that the *UK firm* must not make a change in the ~~relevant EEA details~~ relevant EEA details (see ~~SUP 13 Ann 1R~~), unless it has satisfied the requirements of regulation 13(2), or, where the change arises from circumstances beyond the *UK firm's* control, regulation 13(3) (see *SUP 13.6.10G*).

13.6.7 G Where the change arises from circumstances within the control of the *UK firm*, the requirements in regulation 13(2) are that:

...

- (3) the period of at least one ~~month~~ month beginning on the day on which the *UK firm* gave the *FSA* the notice in (1) has elapsed; and

(4) either:

- (a) a further period of one ~~month~~ month has elapsed; or

...

- 13.6.8 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and established a *branch* in another *EEA State*, regulation 15(1) states that the *UK firm* cannot make a change in any of the ~~UK relevant details~~ relevant UK details (see ~~SUP 13 Ann 21R~~) unless the *UK firm* has given a notice to the *FSA* stating the details of the proposed change at least one ~~month~~ month before the change is effected.
- 13.6.9 G Where a *UK firm* with *Part IV permission* to carry on both *long-term* and *general insurance business*, is passporting under the *Insurance Directives* and wishes to extend its *general insurance business* to include *long term insurance business* (or vice versa), it should complete a new ~~notice of intention~~ notice of intention (see ~~SUP 13.5 (Notices of intention)~~) and not a change in ~~requisite details notification~~ to details notice.
- 13.6.9A G A *UK firm* exercising its *EEA right* under the *Insurance Mediation Directive* to establish a *branch* in another *EEA State* is not required to supply a change to the details of ~~branches notice~~ requisite details or relevant details. Therefore there are no ~~requisite details or relevant details~~ for changes to a *branch* established in another *EEA State* under the *Insurance Mediation Directive*.
- 13.6.10 G (1) If the change arises from circumstances beyond the *UK firm's* control, the *UK firm*;
- (a) ...
- (b) may, if it is passporting under the *Insurance Directives*, make a change to its ~~UK relevant details~~ relevant UK details under regulation 15(1) if it has, as soon as practicable (whether before or after the change), given notice to the *FSA* stating the details of the change.
- (2) The *FSA* believes that for a change to arise from circumstances beyond the control of a *UK firm*, the circumstances should be outside the control of the ~~firm~~ firm as a whole and not just the ~~branch~~ branch in the *EEA State*.
- 13.6.11 G When the *FSA* receives a notice from a *UK firm* (see *SUP* 13.6.5G-(1) and *SUP* 13.6.7G-(1)) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one ~~month~~ month from the day on which it received the notice.
- ...
- 13.7.4 G If a *UK firm* has exercised an *EEA right* under the *Insurance Directives* and is providing *cross border services* into another *EEA State*, regulation 16(1) states that the *UK firm* must not make a change in the relevant details (as defined in regulation 17 – see also *SUP* 13 Ann 3R) unless the relevant requirements in regulation 16(3) or, where the change arises from circumstances beyond the *UK firm's* control, regulation 16(4), have been complied with.

...

13.7.6A G UK firms may wish to use the standard form available from the Passport Notifications Unit (see SUP 13.12 (Sources of further information)) to give the notices to the FSA as described in SUP 13.7.5G(1) and SUP 13.7.6G.

13.7.7 G When the FSA receives a notice from a UK firm (see SUP 13.7.3G(1), and SUP 13.7.5G(1) and SUP 13.7.6G), it is required by regulations 16(5) to either refuse or consent to the change within one ~~month~~ month of receipt.

...

13.7.10 G Where a UK firm with Part IV permission to carry on both long-term and general insurance business is passporting under the Insurance Directives - and wishes to extend its general insurance business to include long-term insurance business (or vice versa), it should complete a new ~~notice of intention~~ notice of intention (see SUP 13.5 (Notices of intention)) and not a change in ~~requisite details notification~~ details notice.

13.7.11 G A UK firm providing cross border services under the Banking Consolidation Directive or Insurance Mediation Directive is not required to supply a change to the details of cross border services notice ~~requisite details or relevant details~~. Therefore, there are no ~~requisite details or relevant details for changes to cross border services provided under the Banking Consolidation Directive or Insurance Mediation Directive~~.

...

13.8.1 R (1) A notice of a change to a branch referred to in ~~under~~ SUP 13.6.5G(1), SUP 13.6.7G(1), SUP 13.6.8G and SUP 13.6.10G(1) and a notice of a change to cross border services referred to in ~~under~~ SUP 13.7.3G(1), ~~SUP~~ SUP-13.7.5G(1) and SUP 13.7.6G must be:

...

(2) The notice ~~of intention~~ may be delivered by:

...

(c) hand delivery to a member of the ~~Corporate Authorisation department (if submitted with an application for Part IV permission)~~ or the Passport Notifications Unit; or

(d) electronic mail to the address in (4) ~~if not submitted with an application for Part IV permission~~ and obtaining an electronic confirmation of receipt; or

- (e) fax to the Passport Notifications Unit on 020 7066 ~~xxxx~~ 9798 (if not submitted with an application for *Part IV permission* provided that the *FSA* receives a copy by one of the methods (a) to (d) above within five *business days* after the date of the faxed notification-; or
 - (f) online submission via the *FSA's* website at www.fsa.gov.uk (when available).
- (3) The address for notices ~~of intention~~ is: The Financial Services Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- ...
- 13.8.2 G *UK firms* passporting under the *Banking Consolidation Directive* or the *Insurance Directives* may be required to submit the ~~changes to the requisite details or relevant details~~ change to details notice in the language of the *Host State* as well as in English. ~~See *SUP 13.5.6G*.~~
- ...
- 13.11.1 R (1) A *UK firm* which is exercising an *EEA right* must make and retain a record of:
- (a) ...
 - (b) the ~~requisite details or relevant~~ details relating to those services or activities (if applicable) (as set out in *SUP 13.6* and *SUP 13.7*).
- ...
- 13.11.2 G The record in *SUP 13.11.1R* need not relate to the level of business carried on. A *UK firm* may comply with *SUP 13.11.1R* by, for example, keeping copies of all notices of intention and ~~notices of changes of requisite details or relevant details~~ change to details notices.
- 13.11.3 G A *UK firm* should monitor the business carried on under an *EEA right* to ensure that any changes to ~~requisite details or relevant~~ details are notified as required by *SUP 13.6 (Changes to branches)* and *SUP 13.7 (Changes to cross border services)*.
- ...
- 13.12.1 G ...

- (2) An applicant for *Part IV permission* which is submitting a ~~notice of intention~~ notice of intention with its application for such *permission* (see *AUTH 3.20* (Specific obligations: applicants seeking to establish a branch in, or provide services, into another EEA State)) should contact the ~~Corporate~~ Authorisation department in the first instance (see *AUTH 1.9* (Next Steps)).

13.12.2 G To contact the Passport Notifications Unit, from which a standard form of ~~notice of intention~~ notice of intention can be obtained:

- (1) telephone on 020 7066 1000; fax on 020 7066 ~~xxxx~~9798; or

...

14.1.4 G This chapter gives *guidance* on the *Act* and the *EEA Passport Rights Regulations* made under the *Act*, for an *incoming EEA firm* which has established a *branch* in, or is providing *cross border services* into, the *United Kingdom* and wishes to change the details of the *branch* or *cross border services*. ~~These are known as requisite details, or for firms' passporting under the Insurance Directives relevant details.~~

...

Annex D

Amendments to the Professional Firms sourcebook (PROF)

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

- 7.2.3 G ...*SUP* 13.3.2G to *SUP* 13.3.5G detail the procedure to be followed once such a ~~notice of intention~~ notice of intention has been received by the *FSA*...

Annex E

Amendments to the Supervision manual (SUP) (MiFID-related changes)

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

Where entire sections of the text are being deleted or inserted, the place where the change will be made is indicated and the text is not struck through or underlined.

13.3.1 G What constitutes a branch

Guidance on what constitutes a *branch* is given in SUP App 3. Note that if a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State*, the rules in SUP 13 will apply as if that *firm* were seeking to establish a *branch* in that *EEA State* unless the *firm* has already established a *branch* in that *EEA State* (paragraph 20A of Schedule 3 to the Act).

13.3.2 G A *UK firm* cannot establish a *branch* in another *EEA State* for the first time under an *EEA right* unless the conditions in paragraphs 19(2), (4) and (5) of Part III of Schedule 3 to the Act are satisfied. It is an offence for a *UK firm* which is not an *authorised person* to contravene this prohibition (paragraph 21 of Part III of Schedule 3 to the Act). These conditions are that:

...

(3) (a) ...

(b) in any other case:

(i) the *Host State regulator* has notified the *UK firm* (or, where the *UK firm* is passporting under the *Insurance Directives*, the *FSA*) of the applicable provisions or, in the case of a *UK firm* passporting under *MiFID*, that the *branch* may be established; or

...

...

13.3.2D G A *tiered agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own passporting right to establish a *branch* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tiered agent* to do business in another *EEA State* and where it does so, the *tiered agent* will

benefit from its passport.

Issue of a consent notice to the Host State regulator

- 13.3.5 G (1) If the *UK firm's EEA right* derives from the *Banking Consolidation Directive*, ~~the *MiFID Investment Services Directive*~~, or the *UCITS Directive*, the *FSA* will give the *Host State regulator* a *consent notice* within three *months* unless it has reason to doubt the adequacy of a *UK firm's* resources or its administrative structure; The *Host State regulator* then has a further two *months* to notify the *applicable provisions* (if any) and prepare for the supervision, as appropriate, of the *UK firm*, or in the case of a *MiFID investment firm*, to inform the *UK firm* that a *branch* can be established.

...

...

- 13.4.2C G A *tiered agent* appointed by a *MiFID investment firm* to carry on *investment services and activities* (and *ancillary services* where relevant) does not have its own *passporting right* to provide *cross border services* in another *EEA State*. However, a *MiFID investment firm* remains free to appoint a *tiered agent* to do business in another *EEA State* and where it does so, the *tiered agent* will benefit from its passport.

- 13.4.2D G A *MiFID investment firm* that wishes to obtain a passport for the activity of *operating an MTF* should follow the procedures described in this chapter. A *UK market operator* that operates a *recognised investment exchange* or an *MTF* and wishes to provide *cross border services* into another *EEA State* should follow the procedure described in *REC 4.2BG*.

...

...

~~How long will the process take?~~

- 13.4.3 G [deleted]

- 13.4.3A G [deleted]

Issuing a consent notice or notifying the Host State regulator

13.4.4 G (1) ~~if~~ the UK firm's EEA right derives from the ~~MiFID Investment Services Directive~~, the *Banking Consolidation Directive* or the *UCITS Directive*, paragraph 20(3) of Part III of Schedule 3 to the Act requires the FSA to send a copy of the *notice of intention* to the *Host State regulator* within one month of receipt; ~~or~~. However, a UK firm passporting under the *Banking Consolidation Directive* or *MiFID Investment Services Directive* may start providing cross border services as soon as it satisfies the relevant conditions (see SUP 13.4.2G).

(2) (a) ~~if~~ the UK firm's EEA right derives from the *Insurance Directives*, paragraph 20(3A) of Part III of Schedule 3 to the Act requires the FSA, within one month of receiving the *notice of intention*, to:

...

13.4.6 G (1) If the UK firm is passporting under the ~~Investment Services Directive~~ ~~or~~ *UCITS Directive*, then when the *Host State regulator* receives the *notice of intention*, it should inform the UK firm of any applicable provisions.

...

...

13.5.2 R A UK firm wishing to provide *cross border services* into a particular EEA State for the first time under an EEA right must include in its *notice of intention* given to the FSA:

(1) if the UK firm is passporting under the ~~Investment Services Directive~~ MiFID or the *Insurance Directives*, the information specified in SUP 13 Ann 3;

...

...

Unregulated activities

13.5.5 G A *notice of intention* may include activities within the scope of the relevant *Single Market Directive* which are not *regulated activities* (paragraphs 19(3) and 20(2) of Part III of Schedule 3 to the Act), although in the case of a *MiFID investment firm* a notice of intention may only include *ancillary services which are to be carried on with one or more investment services and activities* (paragraphs 19(5B) and 20(2A) of Part III of Schedule 3 to the Act). Regulation 19 ...

...

Firms passporting under ~~the Investment Services Directive~~, the Banking Consolidation Directive and the UCITS Directive

- 13.6.4 G If a *UK firm* has exercised an *EEA right*, under ~~the Investment Services Directive~~, the *Banking Consolidation Directive* or the *UCITS Directive*, and established a *branch* in another *EEA State*, regulation 11(1) ...

...

Firms passporting under MiFID

- 13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see *SUP 13 Annex 1*), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see *SUP 13.6.5BG*).

- 13.6.5B G The requirements of regulation 11A(2) are that:

- (1) the *UK firm* has given a notice to the *FSA* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice has elapsed.

...

- 13.6.10 G (1) ...
- (3) Neither this *guidance* nor that set out at *SUP 13.6.4G* or *SUP 13.6.5G* is applicable to *MiFID investment firms*.

- 13.6.11 G When the *FSA* receives a notice from a *UK firm* other than a *MiFID investment firm* (see *SUP 13.6.5G*(-1) and *SUP 13.6.7G*(-1)) it is required by regulations 11(4) and 13(4) to either refuse, or consent to the change within a period of one *month* from the day on which it received the notice.

...

- 13.6.13 G If a *UK firm* is passporting under the ~~*Investment Service Directive*~~ or *Banking Consolidation Directive*, then ...

...

- 13.6.16 G *UK firms* may wish to use the standard form available from the Passport Notifications Unit (see *SUP 13.12* (Sources of further information)) to give the notices to the *FSA* described in *SUP 13.6.5G*(1), *SUP 13.6.5BG*, *SUP 13.6.7G*(1), *SUP 13.6.8G* and *SUP 13.6.10G*(1).

The process: MiFID investment firms

- 13.6.17 G When the FSA receives a notice from a UK MiFID investment firm (see SUP 13.6.5BG(1)), it is required by regulation 11A(3) to inform the relevant Host State regulator of the proposed change as soon as reasonably practicable. The firm in question may make the change once the period of one month beginning with the day on which it gave notice has elapsed.

Changes to cross border services

- 13.7.1 G Where a UK firm is exercising an EEA right under the UCITS Directive, Investment Services Directive MiFID or the Insurance Directives and is providing *cross border services* into another EEA State, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*. References to regulations in this section are to the *EEA Passport Rights Regulations*. A UK firm which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence. If it a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.

...

Firms passporting under ~~the Investment Services Directive~~ and the UCITS Directive

- 13.7.3 G If a UK firm is passporting under ~~the Investment Services Directive~~ or the *UCITS Directive*, regulation 12(1) states that ...
- ...
- (2) if the change arises as a result of circumstances beyond the UK firm's control, the UK firm has as soon as practicable (whether before or after the change) given a notice to the FSA and to the *Host State regulator*, stating the details of the change.

UK firms may wish to use the standard form available from the Passport Notifications Unit (see SUP 13.12 (Sources of further information)) to give the notices to the FSA required by SUP 13.7.3G(1) and SUP 13.7.3AG.

Firms passporting under MiFID

- 13.7.3A G If a UK firm is providing cross border services in a particular EEA State in exercise of an EEA right deriving from MiFID, the UK firm must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:
- (1) changing the activities to be carried on in exercise that EEA right;

- (2) using, for the first time, any *tied agent* to provide services in the territory of that *EEA State*; or
- (3) ceasing to use any *tied agent* to provide services in the territory of that *EEA State*.

13.7.3B G The requirements of regulation 12A(2) are that:

- (1) the *UK firm* has given notice to the *FSA* stating the details of the proposed change; and
- (2) the period of one *month* beginning with the day on which the *UK firm* gave the notice mentioned in (1) has elapsed.

...

13.7.6A G *UK firms* may wish to use the standard form available from the Passport Notifications Unit (see *SUP* 13.12 (Sources of further information)) to give the notices to the *FSA* required by *SUP* 13.7.3(1)G, *SUP* 13.7.3AG, *SUP* 13.7.3BG, *SUP* 13.7.5G(1) and *SUP* 13.7.6G.

13.7.7 G When the *FSA* receives a notice from a *UK firm* (see ~~*SUP* 13.7.3G(1)~~, *SUP* 13.7.5G(1) and *SUP* 13.7.6G), it is required by regulations 16(5) to either refuse or consent to the change within one *month* of receipt.

...

13.8.1 R (1) A notice of a change to a *branch* referred to in *SUP* 13.6.5G(1), *SUP* 13.6.5BG(1), *SUP* 13.6.7G(1), *SUP* 13.6.8G and *SUP* 13.6.10G(1) and a notice of a change to *cross border services* as described in *SUP* 13.7.3G(1), *SUP* 13.7.3AG(1), ~~or *SUP* 13.7.5G(1) and *SUP* 13.7.6G~~ must be:

...

...

13.11.1 R (1) ...

(2) The record in (1) must be kept for five years (for *firms* passporting under *MiFID*) or three years (for other *firms*)...

[Note: article 13(6) of *MiFID* and article 51(1) of the *MiFID* implementing Directive]

...

...

SUP 13 Annex 1R

	Type of firm	Requisite details (see notes 1 & 2)
--	--------------	-------------------------------------

1.	Credit institution Credit Institution or Investment Firm	(a)	particulars of the programme of operations carried on, or to be carried on, from the <i>branch</i> , including a description of the particular <i>EEA</i> activities to be carried on, and of the structural organisation of the <i>branch</i> ;
		(b)	the address in the <i>EEA State</i> in which the <i>branch</i> is, or is to be, established from which information about the business may be obtained; and
		(c)	the names of the managers of the branch <i>branch</i> .
1A.	<u>MiFID investment firm</u>	(a)	The <i>EEA States</i> within the territory of which the <i>UK firm</i> plans to establish a <i>branch</i> ;
	[Note: Article 32(2)]	(b)	the programme of operations to be carried on from the <i>branch</i> , including a description of the <i>investment services and activities</i> and <i>ancillary activities</i> to be carried on and of the structural organisation of the <i>branch</i> ;
		(c)	the address in the <i>EEA State</i> in which the <i>branch</i> is to be established from which information about the business may be obtained;
		(d)	the names of the managers of the <i>branch</i> ; and
		(e)	whether the <i>branch</i> intends to use <i>tied agents</i> .

...

"Note 1: The ~~requisite details~~ ~~requisite details~~ or relevant details specified in this annex are those in the *EEA Passport Rights Regulations*; that is, those in regulation 1 for *credit institutions* and *MiFID investment firms*, and those in regulation 14 for *insurance undertakings*."

...

SUP 13 Annex 3R

	Type of Firm		Specified Information
1.	<i>Investment firm</i>	1	Details of the programme of operations, stating in particular the service or services the <i>UK firm</i> intends to provide.

	Type of Firm		Specified Information
1.	<u>MiFID investment firm</u>	(a)	The <i>EEA State</i> in which the <i>UK firm</i> intends to operate.
		(b)	Details of the programme of operations, stating in particular the <i>investment services and activities</i> and the <i>ancillary services</i> which it intends to perform.
		(c)	Whether the <i>UK firm</i> intends to use <i>tied agents</i> in the territory of the <i>EEA State</i> in which the <i>UK firm</i> intends to operate.

...

4.	<u>MiFID investment firm wishing to operate an MTF</u>	(a)	The <i>EEA State</i> in which arrangements are to be made.
		(b)	A description of the arrangements the

			<u>firm wishes to make.</u>
--	--	--	-----------------------------

[Note: Article 31(2) and 31(6)]

...

13A.1.2 G This chapter does not apply to:

...

		(3)	a <i>Treaty firm</i> that wishes to provide <i>electronic commerce activities</i> into the <i>United Kingdom</i> ; or
		(4)	<u>a market operator that operates a regulated market or an MTF in an EEA State other than the UK and wishes to make appropriate arrangements so as to facilitate access to and use of its system by remote users or participants in the UK. See SUP App 3.6.25G for guidance.</u>

....

13A.3 Qualifications for authorisation under the Act

13A.3.1 G If an EEA MiFID investment firm seeks to use a tied agent established in the UK, the EEA MiFID investment firm will be treated as if it were seeking to establish a branch and must satisfy the establishment conditions (see SUP 13A.4.1-G).

....

13A.4.4 G The notification procedure

(1) When the *FSA* receives a consent notice from the *EEA firm's Home State regulator*, it will, under paragraphs 13(2)(b), (c) and 13(3) of Part II of Schedule 3 to the *Act*, notify the *applicable provisions* (if any) to:

- (a) the *EEA firm*; and
- (b) in the case of an *EEA firm* passporting under the *Insurance Directives*, the *Home State regulator*;

within two *months* of the notice date.

(1A) The notice date is:

- (a) for a MiFID investment firm, the date on which the Home State gave the consent notice; and
- (b) in any other case, the date on which the FSA received the consent notice.

...

- 13A.6.4 G Under the *EEA Passport Rights Regulations*, references in section 60 of the *Act* (applications for approval for persons to perform controlled functions) to "the authorised person concerned" include:
- (1) an EEA MiFID investment firm whose Home State regulator has given a consent notice under paragraph 13 of Schedule 3 to the Act (see SUP 13A.4.1G-(1) and SUP 13A.4.2-G) or a regulator's notice under paragraph 14 of that Schedule (see SUP 13A.5.3G-(1)), and which will be the authorised person concerned if the EEA firm qualifies for authorisation under that Schedule; and
 - (2) any other EEA firm with respect to which the FSA has received a consent notice or regulator's notice under paragraph 13 of Schedule 3 to the *Act* (see SUP 13A.4.1G-(1) and SUP 13A.4.2-G) or a regulator's notice under paragraph 14 of that Schedule (see SUP 13A.5.3G(1)), and which will be the *authorised person* concerned if the EEA firm qualifies for *authorisation* under that Schedule.

....

- 13A.7.3 G ~~Top up permission will be required, for example, for designated investment business activities carried on in relation to commodity derivatives. [deleted]~~

...

- 14.2.2 G Firms passporting under the ~~Investment Services Directive~~ and Banking Consolidation Directive and the UCITS Directive
- (1) Where an *incoming EEA firm* passporting under the ~~Investment Services Directive, Banking Consolidation Directive~~ or the *UCITS Directive* has established a *branch* in the *United Kingdom*, regulation 4 states that it must not make a change in the *requisite details* of the *branch* unless it has complied with the relevant requirements.
 - (2) The relevant requirements are set out in regulation 4(4) or, where the change arises from circumstances beyond the *incoming EEA firm's* control, in regulation 4(5) (see SUP 14.2.8-G).

...

Changes arising from circumstances beyond the control of an incoming EEA firm passporting under the Banking Consolidation Directive, UCITS Directive or Insurance Directive

- 14.2.8 G If the change arises from circumstances beyond the *incoming EEA firm's* control, the *firm* is required by regulation 4(5) (see SUP 14.2.2-G) or

regulation 6(5) (see SUP 14.2.5-G-(2)) to give a notice to the FSA (see SUP 14.4.1-G) and to its *Home State regulator* stating the details of the change as soon as reasonably practicable.

Firms passporting under MiFID

14.2.10 G Where an EEA MiFID investment firm has established a branch in the UK, regulation 4A states that it must not make a change in the requisite details of the branch unless it has complied with the relevant requirements.

14.2.11 G The relevant requirements in regulation 4A(3) are that:

(1) the EEA MiFID investment firm has given notice to its Home State regulator stating the details of the proposed change; and

(2) the period of one month beginning with the date on which the EEA MiFID investment firm gave the notice mentioned in (1) has elapsed.

14.2.12 G Changes to the requisite details may lead to changes to the applicable provisions to which the EEA MiFID investment firm is subject. The FSA will, as soon as practicable after receiving a notice in SUP 14.2.11-G inform the EEA MiFID investment firm of any consequential changes in the applicable provisions.

14.3 Changes to cross border services

14.3.1 G Where an *incoming EEA firm* passporting under the ~~Investment Services Directive~~ MiFID, *UCITS Directive* or *Insurance Directives* is exercising an *EEA right* and is providing cross border services into the *United Kingdom*, the *EEA Passport Rights Regulations* govern any changes to the details of those services. Where an *incoming EEA firm* has complied with the relevant requirements in the *EEA Passport Rights Regulations*, then the *firm's permission* given under Schedule 3 to the *Act* is to be treated as varied accordingly.

Firms passporting under the ~~Investment Services Directive~~ and *UCITS Directive*

14.3.2 G Where an *incoming EEA firm* passporting under the ~~Investment Services Directive~~ or *UCITS Directive* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1A) unless it has complied with the relevant requirements in regulation 5(3).

...

Firms passporting under MiFID

- 14.3.3B G The requirement in regulation 5(3A) is that the *incoming EEA firm* has.
- 14.3.4 G Under regulation 5(4), the *FSA* is required, as soon as practicable after receiving the notice in *SUP* 14.3.3G to inform the *incoming EEA firm* of any consequential changes in the *applicable provisions*.
- 14.3.4A G Where an *incoming EEA firm* passporting under *MiFID* is providing *cross border services* into the *United Kingdom*, it must not make a change in the details referred to in regulation 5(1) unless it has given at least one *month's* notice to its *Home State regulator* stating the details of the proposed change.

...

App 3.3 Background

...

- App 3.3.6 G (1) The European Commission has not produced an interpretative communication on *MiFID* ~~the *Investment Services Directive*~~. It is arguable, however, that the principles in the communication on the Second Banking Directive can be applied to *investment services and activities*. This is because Chapter II of Title II ~~article 11 of the *Investment Services Directive*~~ *MiFID* (containing provisions relating to ~~conduct of business rules~~ operating conditions for investment firms) also applies to the *investment services and activities* of firms operating under the *Banking Consolidation Directive*.

- (2) ...

...

- App 3.3.13 G Notification of establishing a branch or of providing cross border services
- The *Single Market Directives* require *credit institutions, insurance undertakings, MiFID investment firms, UCITS management companies* and *insurance intermediaries* to make a notification to the *Home State* before establishing a *branch* or providing *cross border services*.

...

...

- App 3.6.3 G Under the *Single Market Directives*, however, *EEA rights* for the provision of services are concerned only with services provided in one of the ways referred to in *SUP* App 3.6.2G-(1) and (2) (How services may be provided).

...

- App G The *FSA* is of the opinion that *UK firms* that are *credit institutions* and ~~*ISD*~~

3.6.8 *MiFID investment firms* should apply the 'characteristic performance' test (as referred to in SUP App 3.6.7-G, ~~SUP App 3.6.7 G,~~) when considering whether prior notification is required for services business. *Firms* should note that other *EEA States* may take a different view. Some *EEA States* may apply a solicitation test. This is a test as to whether it is the consumer or the provider that initiates the business relationship.

...

App
3.6.10

- G Where, however, a *credit institution* or ~~ISD~~ *MiFID investment firm*:
- (1) intends to send a member of staff or a temporarily authorised intermediary to the territory of another *EEA State* on a temporary basis to provide financial services; or
 - (2) provides advice, of the type that requires notification under either ~~the Investment Services Directive~~ *MiFID* or the *Banking Consolidation Directive* ~~Banking Coordination Directive~~, to *customers* in another *EEA State* ;

the *firm* should make a prior notification under the freedom to provide services.

...

App
3.6.25

- G Membership of regulated markets
- (1) The *FSA* is of the opinion that where a *UK firm* becomes a member of:
 - (a) a *regulated market* that has its registered office or, if it has no registered office, its head office, in another *EEA State*; or
 - (b) an *MTF* operated by a *MiFID investment firm* or a *market operator* in another *EEA State*,

the same principles as in the 'characteristic performance' test should apply. Under this test, the fact that a *UK firm* has a screen displaying the *regulated market's* or the *MTF's* prices in its *UK* office does not mean that it is *dealing* within the territory of the *Home State* of the *regulated market* or of the *MTF*.

- (2) In such a case, we would consider that:
 - (a) the *market operator* operating the *regulated market* or the *MTF* is providing a *cross-border service* into the *UK* and so, provided it has given notice to its *Home State regulator* in accordance with articles 42(6) or 31(5) *MiFID*, it will be exempt from the *general prohibition* in respect of any *regulated activity* carried on as part of the business of the

regulated market or of operating an MTF (see section 312A of the Act);

- (b) the MiFID investment firm operating the MTF is providing a cross-border service into the UK and so needs to comply with SUP 13A.

App 3.6.26 G Firms are reminded of their rights, under article 45(1)~~33~~ of ~~the Investment Services Directive~~ MiFID, to become members of, or have access to, the *regulated markets* in other Member States.

...

App 3.9	Mapping of <u>MiFID</u> , the Investment Services Directive , Banking Consolidation Directive, UCITS Directive and Insurance Mediation Directive, to the Regulated Activities Order	
App 3.9.1	G	The following Tables 1, 2, 2A and 2B, provide an outline of the <i>regulated activities</i> and <i>specified investments</i> that may be of relevance to <i>firms</i> considering undertaking <i>passport activities</i> under the <i>Banking Consolidation Directive</i> , the Investment Services Directive <u>MiFID</u> , the <i>UCITS Directive</i> and the <i>Insurance Mediation Directive</i> . The tables may be of assistance to <i>UK firms</i> that are thinking of offering financial services in another <i>EEA State</i> and to <i>EEA firms</i> that may offer those services in the <i>United Kingdom</i> .
App 3.9.2	G	The tables provide a general indication of the <i>investments</i> and activities specified in the <i>Regulated Activities Order</i> that may correspond to categories provided for in, the <i>Banking Consolidation Directive</i> , the Investment Services Directive <u>MiFID</u> , the <i>UCITS Directive</i> or the <i>Insurance Mediation Directive</i> . The tables do not provide definitive <i>guidance</i> as to whether a <i>firm</i> is carrying on an activity that is capable of being passported, nor do the tables take account of exceptions that remove the effect of articles. Whether a <i>firm</i> is carrying on a <i>passport activity</i> will depend on the particular circumstances of the <i>firm</i> . If a <i>firm's</i> activities give rise to potential passporting issues, it should obtain specialist advice on the relevant issues.
...		
App 3.9.4	G	... <u>Note 2: The services and activities provided for in Sections A and B of Annex I of MiFID when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to the BCD from 1 November 2007. Please refer to the table at SUP App 3.9.5 below for mapping of MiFID investment services and activities.</u>

App
3.9.5

G Services set out in Annex to the ~~ISD I~~ ISD I to MiFID

Delete the existing table and substitute it with the one below (which, although composed entirely of new text, is not underlined)

Table 2: <i>MiFID investment services and activities</i>		Part II RAO Activities	Part III RAO Investments
	<i>A MiFID investment services and activities</i>		
1.	Reception and transmission of orders in relation to one or more financial instruments	Article 25 (see Note 1)	Article 76-81, 83-85, 89
2.	Execution of orders on behalf of clients	Article 14, 21	A Article 76-81, 83-85, 89
3.	Dealing on own account	Article 14	Article 76-81, 83-85, 89
4.	Portfolio management	Article 37	Article 76-81, 83-85, 89
5.	Investment advice	Article 53	Article 76-81, 83-85, 89
6.	Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, 83-85, 89
7.	Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, 83-85, 89
8.	Operation of Multilateral Trading Facilities	Article 25B (see Note 2)	Article 76-81, 83-85, 89
	Ancillary services	Part II RAO Activities	Part III RAO Investments
1.	Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as	Article 40, 45, 64	Article 76-81, 83-85, 89

	cash/collateral management		
2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, 83-85, 89
4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64	Article 83-85, 89
5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53, 64	Article 76-81, 83-85, 89
6.	Services related to underwriting	Article 25, 53, 64	Article 76-81, 83-85, 89
7.	Investment services and activities as well as ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	Article 14, 21, 25, 25B, 37, 53, 64	Article 83 and 84

Note 1. The *MiFID* service of receiving and transmitting orders does not extend to the *regulated activity* of *making arrangements with a view to transactions in investments* under article 25(2) of the *Regulated Activities Order* unless the arrangements bring about or would bring about particular transactions. This is the case, whether or not the bringing about arises or would arise as a result of the *person* who makes the arrangements receiving and transmitting orders in relation to particular transactions or in any other way.

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

...

App G Activities set out in Article 5(2) and (3) of the UCITS Directive
3.9.6

Table 2A: UCITS Directive activities		Part II RAO Activities	Part III RAO Investments
1.	The management of UCITS in the form of unit trusts / common funds or of investment companies; this includes the function mentioned in Annex II of the <i>UCITS Directive</i> (see Note 2).	Articles 14, 21, 25, 37, 51, 53, 64	Articles 76-81, 83-85, 89
2.	Managing portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section <u>BC</u> of the Annex I to <i>MiFID</i> the ISD .	Articles 14, 21, 25, 37, 53, 64	Articles 76-81, 83-85, 89
3.	Investment advice concerning one or more of the instruments listed in Section <u>BC</u> of the Annex I to <i>MiFID</i> the ISD .	Articles 53, 64	Articles 76-81, 83-85, 89
4.	Safekeeping and administration services in relation to units of collective investment undertakings.	Articles 40, 45, 64	Articles 76-81, 83-85, 89
<p>Note 1. A <i>UCITS management company</i> can only exercise passport rights under the <i>UCITS Directive</i> (article 2(21)(h) of <i>MiFID</i> the ISD). A <i>UCITS management company</i> can only be authorised to carry on the non-core services set out in rows (3) and (4) of Table 2A if it is also authorised to carry on the activity set out in row (2) of the table.</p>			
<p>Note 2. The functions set out in Annex 2 to the <i>UCITS Directive</i> are:</p>			
1.	Investment management.		
2.	Administration:		
	a.	legal and fund management accounting services;	
	b.	customer inquiries;	
	c.	valuation and pricing (including tax returns);	
	d.	regulatory compliance monitoring;	

	e.	maintenance of unit-holder register;
	f.	distribution of income;
	g.	unit issues and redemptions;
	h.	contract settlements (including certificate dispatch);
	i.	record keeping.
3.	Marketing.	

...

SUP Schedule 1 Record keeping requirements

SUP Sch .1.2 G

Handbook Reference	Subject of record	Contents of record	When record must be made	Retention period
...				
SUP 13.11.1R	Exercise of passport rights by <i>UK firms</i>	(1) Services or activities carried on from a <i>branch</i> in, or <u>provided</u> cross-border into, another <i>EEA State</i> under an <i>EEA right</i> . (2) The requisite details or relevant details (if applicable). the <u>requisite details or relevant details relating to those services</u>	Not specified	<u>Five years (for <i>firms</i> passporting under <i>MiFID</i>) or three Three years (for other <i>firms</i>)</u> from earlier of: (1) record being superseded; (2) <i>firm</i> ceasing to have any <i>EEA branches</i> or <i>cross border services</i> .

		or activities (as set out in <i>SUP</i> 13.6 and <i>SUP</i> 13.7).		
...				

SUP Sch .2.2 G

Handbook Reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
<i>SUP</i> 13.6.5G(1)	Changes to <i>branches</i> (<i>Firms</i> passporting under the <i>Investment Services Directive</i> , the <i>UCITS Directive</i> and <i>Banking Consolidation Directive</i>)	Details of proposed change	Change in circumstances within control of <i>UK firm</i>	Before making change
<u><i>SUP</i> 13.6.5BG</u>	Changes to <u><i>branches</i></u> (<u><i>Firms</i></u> passporting under <u><i>MiFID</i></u>)	<u>Details of proposed change</u>	<u>Change in circumstances, including using for the first time or ceasing to use a <i>tiered agent</i> established in the <i>EEA State</i> in which the <i>branch</i> is established</u>	<u>Before making change</u>
...				
<i>SUP</i> 13.6.10G	Changes to <i>branches</i> <u>(not <i>firms</i> passporting</u>	Details of change	Changes to <i>branch</i> arising from circumstances	As soon as reasonably practicable

	<u>under MiFID)</u>		beyond control of a <i>UK firm</i>	
<i>SUP 13.7.3G</i>	<i>Firms</i> passporting under <u>the UCITS Directive Investment Services Directive</u> : Change in program of operations, or activities to be carried on under its <i>EEA right</i>	Details of proposed change	Change in programme of operations, or activities to be carried on under its <i>EEA right</i>	(a) change arises from circumstances within control of <i>firm</i> : before making change. (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as practicable (whether before or after change)
<u><i>SUP 13.7.3BG</i></u>	<u><i>Firms</i> passporting under <i>MiFID</i> (cross-border services): Change in program of operations, or activities to be carried on under its <i>EEA right</i></u>	<u>Details of proposed change</u>	<u>Change in activities to be carried on, using for the first time or ceasing to use a tied agent</u>	<u>Before making change.</u>
...				
<i>SUP 14.2.3 G</i>	Change to <i>branch</i> details in circumstances within control of the <i>firm</i> (<i>firms</i> passporting under <u>the Investment Services</u>)	Details of proposed change	Change to <i>branch</i> details	Before making the change

	<i>Directive, the UCITS Directive and Banking Consolidation Directive)</i>			
...				
<u>SUP 14.2.11 G</u>	<u>Changes to UK branch details for EEA MiFID investment firms</u>	<u>Details of proposed change</u>	<u>Changes to branch details</u>	<u>Before making the change</u>
<u>SUP 14.3.3 G</u>	Changes to <i>cross border services (firms</i> passporting under the <i>Investment Services UCITS Directive)</i>	Details of proposed change	Changes to <i>cross border services</i>	(a) change arises from circumstances within control of <i>firm</i> : before making change (b) change arises from circumstances beyond <i>UK firm's</i> control: as soon as reasonably practicable
<u>SUP 14.3.3BG</u>	<u>Incoming EEA firm passporting under MiFID</u>	<u>Details of the proposed change to cross-border services</u>	<u>Change in details</u>	<u>Before the change</u>

SUP Sch 6.1 G

e)	the following <i>rules</i> in SUP 13 (Exercise of passport rights by UK <i>firms</i>): SUP 13.5.1-R, SUP 13.5.2-R, <u>SUP 13.11.1R</u> , SUP 13 Annex 1, SUP 13 Annex 2 and SUP 13 Annex 3.
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