

MiFID 2 GUIDE INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on 3 January 2018.

Amendments to the Glossary

- C. The Glossary of definitions is amended in accordance with Annex A.

New regulatory guide

- D. The Financial Conduct Authority makes the 'MiFID 2 Guide' to form a new Regulatory Guide in accordance with the Annex B to this instrument. The Regulatory Guide does not form part of the Handbook.

Citation

- E. This instrument may be cited as the MiFID 2 Guide Instrument 2017.
- F. The guide in Annex B to this instrument may be cited as the MiFID 2 Guide (M2G).

By order of the Board
9 November 2017

Annex A

Amendment to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is new and not underlined.

M2G the MiFID 2 Guide

Annex B

The MiFID 2 Guide (M2G)

In this Annex, the text is new and not underlined.

1 Implementation For Trading Venues & Data Reporting Service Providers

1.1 Background

- 1.1.1 This guide sets out an overview of the FCA's approach to transposition of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks, by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level. This guide focuses on the regulatory regime in MiFID 2 for trading venues (as defined by article 4(1)(24) MiFID 2: this term comprises regulated markets, multilateral trading facilities and organised trading facilities but not systematic internalisers) and data reporting services providers (DRSPs).
- 1.1.2 MiFID 2 is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK has implemented the directive through a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention.
- 1.1.3 MiFID 2 enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MiFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID 2 are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID 2 provisions relating to trading venues and DRSPs.
- 1.1.4 You can be subject to a MiFID or MiFIR requirement, even if you are not an authorised financial institution. This is the effect of article 1 MiFID and article 1 of MiFIR. In the case of article 1 MiFID, this applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation ('EMIR') (Regulation 648/2012/EU. See our EMIR webpage (<https://www.fca.org.uk/markets/emir>) for further details about non-financial counterparties and the clearing threshold) to

comply with the obligations in Title V MiFIR. This means trading certain classes of derivatives on organised venues only, regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR).

1.2 MiFID implementation in UK legislation and the FCA Handbook

1.2.1 The UK's implementation of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

1.2.2 The Treasury legislation is set out in the following statutory instruments (links to statutory instruments relate to the instrument when made and users may need to update their searches of the relevant legislation):

- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ['MiFI regulations', SI 2017/701: <http://www.legislation.gov.uk/uksi/2017/701/contents/made>
- The Data Reporting Services Regulations 2017 ('DRS regulations'), SI 2017/699: <http://www.legislation.gov.uk/uksi/2017/699/made>
- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 ('RAO Amendment Order'), SI 2017/488: <http://www.legislation.gov.uk/uksi/2017/488/contents/made>
- **The MiFI regulations amend** Part XVIII FSMA and the Recognition Requirements Regulations ('RRR') applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to a market operator operating an organised trading facility and data reporting services, as well as obligations in regard to the management body and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities and position management requirements for trading venues on which commodity derivatives are traded. The Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013, SI 2013/419 is updated by the MiFI regulations so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.
- **The DRS regulations create** a self-standing regime for data reporting services providers including authorisation, operating conditions, reporting and enforcement.
- **The RAO Amendment Order imposes** scope changes arising out of MiFID, notably the new investment service of operating an organised trading facility and the extension of financial instruments to include emission allowances.

1.2.3 The amendments to the FCA Handbook complement the Treasury legislation, referred to above, so for example:

- REC contains, in REC 2, extracts of the RRRs as amended by the MiFI regulations and ‘Notes’ signposting further directly applicable technical standards made under MiFID or MiFIR which are relevant to recognised investment exchanges’ compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). Where REC 2 previously copied out EU legislation which has been repealed by MIFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent MiFID or MiFIR provision.
- REC 3, which contains existing FCA rules requiring certain notifications to be made by RIEs to the FCA, has been amended to include ‘Notes’ signposting further new notification requirements set out in the amended RRRs or directly applicable technical standards made under MIFID or MiFIR.
- MAR 5 is amended to apply the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It is also amended to align further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The rules concerning pre- and post- transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, while guidance on the ability to register an MTF as an SME Growth Market is new.
- MAR 5A introduces a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in bonds, structured finance products, emission allowances or derivatives. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.
- MAR 6 is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations – in particular, by Title III of MiFIR. The notification requirement for systematic internalisers remains, however, and the article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues) has been incorporated as a rule (see MAR 6.3A).
- MAR 7 concerning disclosure of over-the-counter trades conducted by systematic internalisers is deleted because this subject matter is now covered by Title III of MiFIR.
- MAR 7A transposes article 17 of the recast MiFID for authorised firms. It

imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are now also subject to new rules, of a similar nature.

- MAR 9 provides directions and guidance applicable to the operation of the new data reporting services regime, set out in the DRS regulations.
- MAR 10 comprises requirements and guidance relating to the setting of position limits in respect of commodity derivatives traded on trading venues, position management obligations relating to the venues themselves and position reporting by trading venues and investment firms.

1.2.4 More generally, where requirements in MiFID have been transposed in FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: -

5A.3.5 R A firm must not engage in:

- (1) *matched principal trading* on an *OTF* operated by it except in bonds, *structured finance products*, *emission allowances* and *derivatives* which have not been declared subject to the clearing obligation in accordance with article 5 of *EMIR*, where the *client* has consented; or
- (2) *dealing on own account* on an *OTF* operated by it, excluding *matched principal trading*, except in *sovereign debt instruments* for which there is not a liquid market.

[Note: article 20(2) and (3) of *MiFID*]

1.2.5 Amendments to the scope of MIFID are the subject of guidance in PERG 2 and 13.

1.3 Markets in Financial Instruments Regulation ('MiFIR')

1.3.1 Although MiFIR is a separate piece of legislation, recital 7 of the recast MiFID notes 'both instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation'.

1.3.2 As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5.

1.3.3 MiFIR also provides for delegated acts and technical standards on amongst other things:

- price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
- straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
- transaction reporting, see SUP 17A.

1.4 MIFID 2 technical standards and delegated acts

1.4.1 MiFID 2 also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature and according to articles 10 and 16 of the ESMA regulation (1093/2010/EU) (see <http://eur-lex.europa.eu/eli/reg/2010/1093/oj>) ‘... shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based’.

1.4.2 Where an FCA rule is amplified by a technical standard, the source is referred to below the relevant provision, for example, in MAR 5A.5.10

5A.5.10 R Where a firm permits colocation in relation to the OTF, its rules on colocation services must be transparent, fair and non-discriminatory.

[**Note:** article 48(8) of MiFID and MiFID RTS 10]

1.4.3 Given their directly applicable nature and length, we have not copied out the technical standards into the Handbook, but instead adopted the signposting convention illustrated above.

1.4.4 In addition to technical standards, MiFID II also contains delegated acts prepared by the Commission, itself, in the form of regulations (see, for example, references to the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565) and the MiFIR Delegated Regulation (EU) 2017/567).

1.5 ESMA Guidelines

1.5.1 In addition to being required to submit draft technical standards to the Commission, where required by MiFID and MIFIR, ESMA may be required to issue guidelines, for example, on the requirements for the management body of a market operator and a data reporting services provider.

1.5.2 ESMA guidelines are subject to the ‘comply or explain’ process in article 16 Regulation 1095/2010 (establishing ESMA) and are addressed to competent authorities or, as the case may be, market participants. Under article 16(3) Regulation 1095/2010 (establishing ESMA) competent authorities and financial market participants must make every effort to comply with these.

- 1.5.3 As a general practice, when the FCA decides to comply with the guidelines issued by ESMA it will signpost a reference to these by means of a note at the beginning of the relevant section of the Handbook. Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA (for notification of regulatory breaches by firms to the FCA, see, generally, SUP 15).

1.6 Third country firms

- 1.6.1 MiFIR and the EU regulations made under MiFID 2 apply to EU firms and EEA firms (when adopted by the EEA states). For the UK branches of non-EEA firms (third country firms), these regulations are not of general application and it is necessary to ensure, via domestic measures, that these branches do not receive more favourable treatment than their EU counterparts (see Recital 109 of the recast MiFID). A new rule, GEN 2.2.22A R, is included for this purpose.

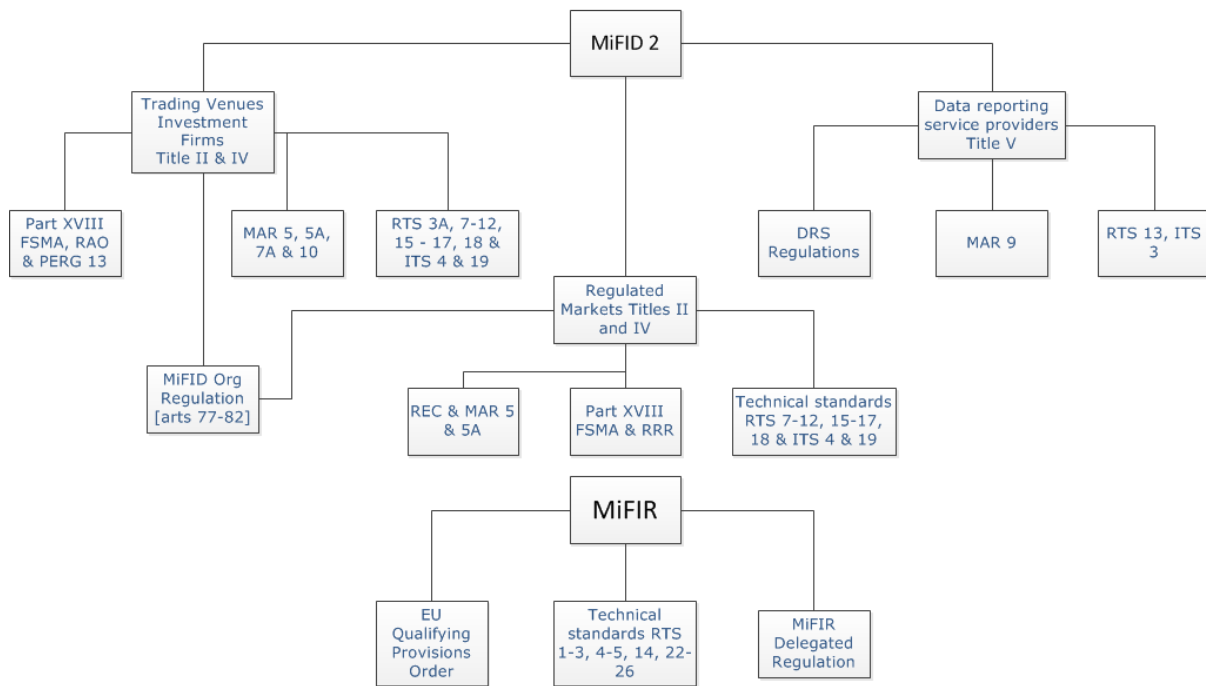
1.7 Overview

- 1.7.1 The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements deriving from MiFID 2 and the location of their implementation. The references to technical standards are to those described in the FCA Handbook Glossary. The technical standards can be accessed from the Commission website.
- 1.7.2 In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other MiFID requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.
- 1.7.3 SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refers to the relevant EU legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23 (see Glossary (MIFID 2) Instrument 2017 (FCA 2017/36) at https://www.handbook.fca.org.uk/instrument/2017/FCA_2017_36.pdf). It further confirms that we will allow operators of trading venues and investment firms to use third party technology providers when supplying financial instrument reference data to the FCA.

1 Annex 1 MiFID and Market Infrastructure: An Overview

An overview of MiFID and Market Infrastructure:

MiFID and Market Infrastructure: An Overview



2 Implementation for senior management arrangements and systems and controls obligations

2.1 Background

2.1.1 This guide sets out an overview of the FCA's approach to the transposition of the Markets in Financial Instruments Directive II (MiFID II) in the SYSC sourcebook. It explains how this fits within the context of the overall implementation of the legislation at EU and UK levels. The guide focuses on the regulatory regime for UK firms and is aimed at UK MiFID investment firms, that is investment firms authorised under MiFID and credit institutions carrying on MiFID business, and MiFID Optional exemption firms. The latter comprise advisers or arrangers who do not hold client money or assets and meet other conditions imposed under article 3 MiFID II, so as to be exempt from the Directive's full application. See PERG 13 Q49, as updated by the Conduct, Perimeter Guidance and Miscellaneous Provisions (MiFID 2) Instrument 2017, FCA 2017/39.

2.1.2 MiFID II (2014/65/EU) is addressed to all Member States and is binding as to the result to be achieved, albeit leaving the choice and method to national authorities. The UK has implemented the Directive via a combination of primary legislation, secondary legislation and regulatory rules.

2.1.3 MiFID II contains revised senior management and systems and controls obligations relating to firms. With the exception of one aspect of the implementation of the whistleblowing obligations in MiFID II by way of primary legislation, transposition takes the form of regulatory rules. The relevant FCA rules are mainly contained in SYSC but PRA-authorized firms will also be subject to rules in the General Organisational Requirements in the PRA Rulebook.

2.1.4 MiFID II also enables the European Commission to make secondary legislation which is of particular importance in the case of systems and controls. The Commission Delegated Regulation 2017/565 of 25 April 2016 (the MiFID Org Regulation (see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R0565>)) contains detailed organisational requirements for those firms to which it applies, including authorised MiFID investment firms and credit institutions. These 'Level 2' obligations supplement the more general systems and controls obligations in MiFID II itself. As an EU regulation, the MiFID Org Regulation is binding in its entirety and directly applicable, and it becomes law in the UK without the need for domestic legislation.

2.1.5 Many of the obligations in the MiFID Org Regulation feature in the MiFID implementing Directive (2006/73/EC) and so were implemented in SYSC by way of regulatory rules. The use of a regulation in MiFID II to impose many detailed requirements necessitates revisiting the corresponding rules in SYSC implementing MiFID and adapting the structure of SYSC.

2.2 MiFID I implementation and SYSC

2.2.1 The main Handbook sourcebook for implementing the MiFID requirements in relation to the management body, general organisational requirements, conflicts of interest and whistleblowing is SYSC. As regards the obligations on the management

body, general organisational requirements and conflicts of interest, the corresponding requirements in MiFID I were implemented using the ‘common platform’. The common platform requirements in SYSC 4 to 10 covered the following areas:

- SYSC 4 (General organisational requirements including persons who effectively direct the business and responsibility of senior personnel);
- SYSC 5 (Employees, agents and other relevant persons);
- SYSC 6 (Compliance, internal audit and financial crime);
- SYSC 7 (Risk control);
- SYSC 8 (Outsourcing);
- SYSC 9 (Record-keeping);
- SYSC 10 (Conflicts of interest).

2.2.2 The common platform was initially devised to ensure that a single set of requirements apply to firms subject to MiFID and CRD, as opposed to similar, but different, regulatory requirements arising from these Directives being imposed upon the same business functions. A unified set of requirements is simpler and more cohesive for firms, and was supported in consultation responses. The common platform requirements in SYSC 4-10 were then adapted and extended to non-MiFID firms, including investment advisers and arrangers subject to the article 3 MiFID exemption. The adaptation of the common platform requirements took the form of applying various rules as guidance to these firms, as set out in the application tables in SYSC 1 Annex 1 Part 3.

2.3 **Main types of senior management and organisational requirements in MiFID II**

2.3.1 MiFID II’s senior management and systems and controls requirements for firms fall into five broad categories:

- management body (article 9);
- general organisational requirements (article 16);
- conflicts of interest (article 23);
- remuneration and performance management of sales staff (article 24);
- whistleblowing (article 73).

Firms operating an MTF or an OTF are subject to additional systems and controls for algorithmic trading (see MAR 5 and 5A). Likewise, MAR 7A contains systems and controls requirements for other firms engaged in algorithmic trading or providing direct electronic access.

2.3.2 The general organisational requirements in article 16 are added to by detailed provisions in the MiFID Org Regulation including the following areas:

- compliance;
- risk management;
- internal audit;
- responsibility of senior management;
- complaints handling;
- remuneration policies and practices;
- personal transactions;
- outsourcing;
- conflicts of interest;
- record-keeping.

2.4 MiFID II implementation and SYSC

2.4.1 The combination of senior management and systems and controls requirements for firms in a directive and regulation means that FCA rules are still required in order to implement the provisions in the directive. As such, the approach to implementation of MiFID II retains the familiar approach of the common platform but adapts the existing structure of SYSC in the following principal ways:

- updates the application of common platform requirements in SYSC 1 Annex 1 Part 3 and creates a new Table B for MiFID optional exemption firms;
- creates a new rule which has the effect, amongst other things, of extending the application of certain parts of the MiFID Org Regulation to all of a UK MiFID investment firm's *designated investment business*, MiFID or otherwise (SYSC 1 Annex 1 2.8AR);
- creates a new rule which extends the application of the MiFID Org Regulation in relation to general organisational requirements, compliance, risk management, internal audit, responsibility of senior management, remuneration policies and practices and outsourcing to all of a MiFID optional exemption firm's *designated investment business*, by way of rule or guidance depending on the individual provision (SYSC 1 Annex 1 3.2CR discussed further in M2G 2.5);
- uses signposting references in the application provisions to individual SYSC chapters to identify the relevant articles of the MiFID Org Regulation which supplement the rules implementing the MiFID requirements. These are also listed in the new Table C in SYSC 1 Annex 1;

- creates a new chapter (SYSC 10A) on recording telephone conversations and electronic communications to implement new obligations imposed by MiFID II, supplemented by the MiFID Org Regulation;
- creates a new section (SYSC 18.6) on the whistleblowing obligations imposed upon MiFID investment firms and includes a signposting mechanism pointing firms to similar obligations in other single market legislation;
- creates a new section (SYSC 19F) to implement a new obligation in respect of remuneration and performance management of sales staff.

2.5 Navigating SYSC

2.5.1 In order to navigate SYSC material implementing MiFID II, it is essential to follow the relevant application provisions in the sourcebook.

2.5.2 SYSC 1.1A summarises the application of the sourcebook to different types of firms. UK MiFID investment firms and MiFID optional exemption firms fall into the category of ‘every other firm’ in SYSC 1.1A and so the applicable chapters are 4 to 12, 18, 19A, 19D and 21. The detailed application of the provisions in chapters 4-10 is cut back in SYSC 1 Annex 1 and it is this annex which provides the starting point for understanding and determining the application of the common platform requirements to your business. More specifically, SYSC 1 Annex 1 Part 3.1G provides a roadmap for individual categories of firms, including UK MiFID investment firms and MiFID optional exemption firms, in explaining how the common platform requirements and the MiFID Org Regulation apply to them.

2.6 UK MiFID investment firms

2.6.1 In the case of UK MiFID investment firms, these are common platform firms for the purposes of the Handbook so are subject to the following MiFID II related obligations:

- SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table A Column A. This table identifies whether individual provisions in these chapters apply:
 - either as rules or guidance;
 - only to certain sub-categories of common platform firms; or
 - are non-applicable.

These obligations apply to the firm’s regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.

- The MiFID Org Regulation.

Certain provisions of the MiFID Org Regulation are also adapted to apply to the firm’s non-MiFID business in accordance with SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR. The effect of SYSC 1 Annex 1.2.8AR is to adapt the MiFID Org Regulation so that a small number of its terms are to be read as if they were broader

corresponding Handbook terms. For example, references in the MiFID Org Regulation to ‘investment service’ and ‘investment services and activities’ are to be read as ‘designated investment business’. This helps maintain a common single standard of organisational requirements applying to all of a UK MiFID investment firm’s business.

- Other non-common platform requirements including recording telephone conversations and electronic communications (SYSC 10A), whistleblowing (SYSC 18) and remuneration and performance management of sales staff (SYSC 19F). These chapters apply to a firm’s MiFID and other business to the extent set out in the application provisions of each chapter.

2.7 MiFID optional exemption firms

2.7.1 MiFID optional exemption firms are subject to the following MiFID II related obligations:

- SYSC 4 to 10 in accordance with SYSC 1 Annex 1 Part 3 Table B Column A. This table identifies whether individual provisions in these chapters apply:
 - (i) either as rules or guidance; or
 - (ii) are non-applicable.

These obligations apply to the firm’s regulated activities and other activities identified in SYSC 1 Annex 1.2.8R.

- Articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation are applied to the business of a MiFID optional exemption firm in accordance with SYSC 1 Annex 1 3.2CR. The effect of SYSC 1 Annex 1 3.2CR is to apply these provisions of the MiFID Org Regulation:
 - (i) as either rules or guidance in accordance with SYSC 1 Annex 1 Part 3 Table C; and
 - (ii) to the firm’s regulated activities generally and other activities identified in SYSC 1 Annex 1.2.8R.

The effect of SYSC 1 Annex 1 3.2CR is to also to adapt articles 21 to 25, 27, 30 to 35 and 72 of the MiFID Org Regulation so that a small number of terms in the regulation are to be read as if they were broader corresponding Handbook terms, as set out in SYSC 1 Annex 1.2.8AR.

- Other non-common platform requirements applying MiFID optional exemption firms include recording telephone conversations and electronic communications (SYSC 10A) and remuneration and performance management of sales staff (SYSC 19F). The requirements in these chapters apply to a firm’s business to the extent set out in the application provisions in each chapter.

2.8 Other firms- Collective portfolio management firms and authorised

professional firms

This short summary focuses only on MiFID II transposition and not obligations arising under other single market legislation

- 2.8.1 A collective portfolio management investment firm ('CPMI') is a firm which is subject to authorisation under UCITS or MiFID which does MiFID business, in accordance with article 6 UCITS directive and article 6 AIFMD. A CPMI takes the forms of a 'UCITS investment firm' or 'AIFM investment firm', as defined in the FCA Handbook Glossary. A UCITS investment firm is subject to the common platform requirements as set out in Column A+ in SYSC 1 Annex 1 Table A. An AIFM investment firm is subject to the requirements listed in Column A in SYSC 1 Annex 1 Table A in relation to their MiFID business. More generally, both a UCITS investment firm and an AIFM investment firm fall within the Handbook definition of MiFID investment firm broadly when doing MiFID business - this is relevant as regards the application of SYSC 10A ('Recording telephone conversations and electronic communications'). By contrast, neither SYSC 18 ('Whistleblowing') nor SYSC 19.1 (MiFID remuneration incentives) apply to their MiFID business, as a result of the derogations in the application provisions in these chapters.
- 2.8.2 Authorised professional firms exempt from MiFID II under article 2(1)(c) of the directive will be subject to common platform requirements as set out in Column B in SYSC 1 Annex 1 Table A. If they satisfy the criteria of a MiFID optional exemption firm they will be subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A. If they fall within both the article 2(1)(c) and 3 exemptions, they are entitled to comply only with the common platform requirements relating to article 2(1)(c) exempt firms in Column B in SYSC 1 Annex 1 Table A. Where they are required to be authorised by MiFID II, they will be subject to common platform requirements in Column A in SYSC 1 Annex 1 Table A and other SYSC requirements as a UK MiFID investment firm, except to the extent indicated otherwise (including SYSC 1 Annex 1 2.5R).

For an authorised professional firm when carrying on non-mainstream regulated activities, the common platform requirements on financial crime, conflicts of interest and Chinese walls do not apply.

See the definition of authorised professional firms at <https://www.handbook.fca.org.uk/handbook/glossary/?starts-with=A>. In essence, the definition captures persons regulated by a designated professional body under Part XX FSMA, with a Part 4A permission.

2.9 Other organisational requirements

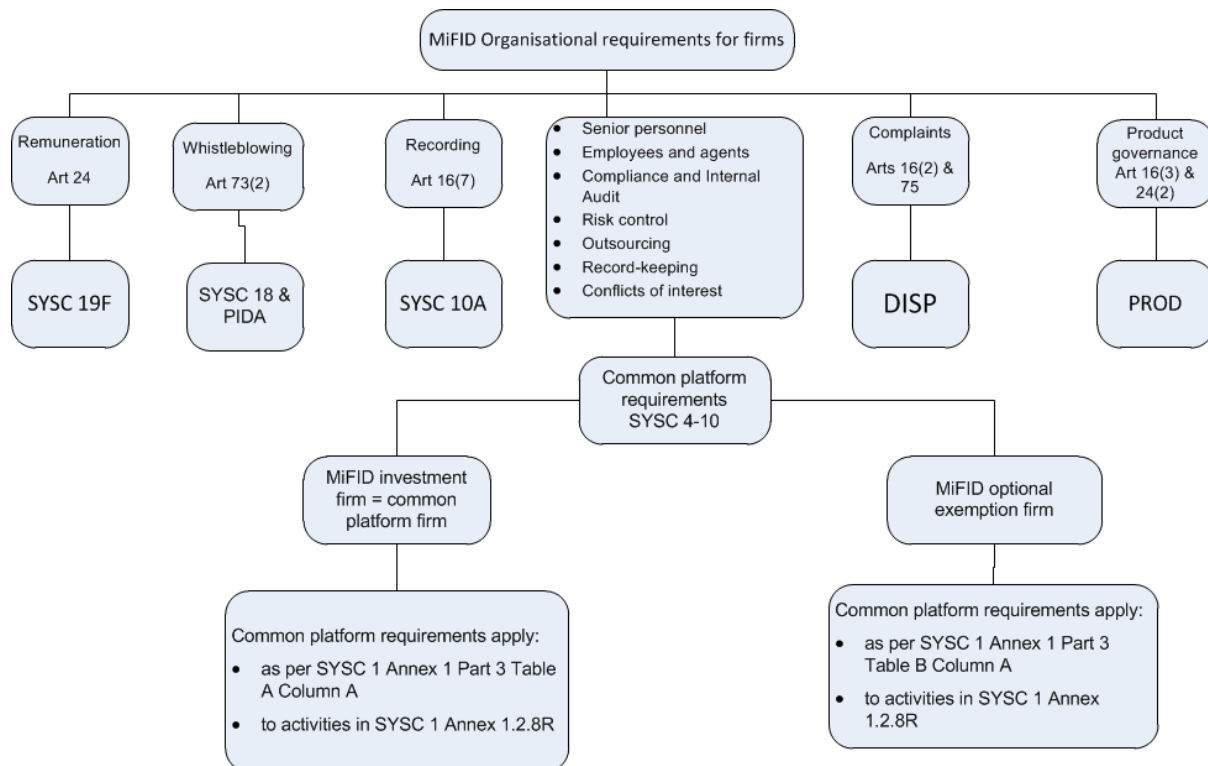
- 2.9.1 In addition to the SYSC obligations outlined above, firms will find MiFID II-related organisational requirements in respect of complaints handling in DISP, client money and assets (CASS) and product governance obligations in [PROD]. Firms will also remain subject to domestic obligations in the form of the relevant senior management, certification, COCON and approved persons requirements.

2 Annex 1 Overview

The diagrams in this Annex provide an overview of organisational requirements deriving from MiFID II and the location of their implementation, as well as the MiFID Org Regulation including its extension to non-MiFID II business in the case of UK MiFID investment firms and MiFID optional exemption firms.

The diagram focuses on the position of UK MiFID investment firms (other than CPMI and authorised professional firm) and MiFID optional exemption firms.

MiFID II Organisational requirements for firms



MiFID Org Regulation

