

Policy Statement | PS31/17

Responses to CP18/17 Occasional Consultation Paper – Chapters 7 and 8

May 2018

(Updating February 2018)



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY



29 June 2018: This policy statement has been updated, and is available at:
<https://www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8>



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1 Overview

Update 11 May 2018: Since the MiFID II Passporting Amendment Instrument 2017 was published in December 2017, the Official Journal of the European Union has published a relevant Implementing Technical Standard (ITS). The PRA has updated the reference to this ITS and published a new instrument, the MiFID II Passporting Amendment Instrument 2018 (see Appendix 7). This is an administrative update and does not change the policy as consulted on in Consultation Paper (CP) 17/18.

Update 22 February 2018: Since the MiFID II and IDD Consequential Amendments Instrument 2017 was published on 15 December 2017, the European Commission has announced a proposal to postpone the application date of the IDD from 23 February 2018 to 1 October 2018. As a result the PRA has published a new instrument, the CRR Firms, Non CRR Firms, Solvency II Firms, Non Solvency II Firms: MIFID II Passporting and IDD Consequential Amendments Instrument 2018, and updated this policy statement (PS). The new Rule Instrument makes the necessary change to the PRA Rulebook to delay implementation of the Insurance Distribution Directive (IDD) to 1 October 2018. This delay was consulted on in Consultation Paper (CP) 4/18.¹ There is no change in policy.

1.1 This Prudential Regulation Authority (PRA) policy statement (PS) provides final policy as part of changes to the PRA Rulebook as outlined in Chapter 7 of Consultation Paper (CP) 18/17 ‘Occasional Consultation Paper’.² These changes relate to the second Markets in Financial Instruments Directive (MiFID II),³ Insurance Distribution Directive (IDD)⁴ forms; and European Union Benchmarks Regulation (BMR).⁵ This PS also includes a consequential amendment to Short Form A, as outlined in Chapter 8 of CP18/17.

1.2 This PS provides the majority of final rules and form changes associated with MiFID II and IDD. The PRA will update this PS in due course to include the reference to the final MiFID II Passporting Implementing Technical Standard which was published in the Official Journal of the European Union on 20 December 2017.⁶

1.3 Following completion of the relevant legislative procedure by Parliament, this PS will also be updated to include the final BMR instrument and associated form changes.

1.4 This PS is relevant to:

- MiFID II: PRA designated investment firms and Financial Conduct Authority (FCA) regulated MiFID firms, all PRA regulated firms and all common platform firms;

1 PRA CP4/18 ‘Insurance Distribution Directive: change to commencement date’, February 2018: www.bankofengland.co.uk/prudential-regulation/publication/2018/insurance-distribution-directive-change-to-commencement-date.

2 October 2017: www.bankofengland.co.uk/prudential-regulation/publication/2017/occasional-consultation-paper-18-2017.

3 MiFID II is part of a legislative package, comprising the Directive, MiFID II (2014/65/EU) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>); the Markets in Financial Instruments Regulation (2014/600/EU) (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0600>); and the Commission Delegated Regulation on organisational requirements and operating conditions (MODR) (2017/565/EU) (<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32017R0565>).

4 The IDD comprises the Directive (2016/97/EU) on insurance distribution (recast): <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32016L0097>.

5 The BMR comprises the Regulation (2016/1011/EU) on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directive 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1011>.

6 Commission Implementing Regulation (EU) 2017/2382 of 14 December 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU of the European Parliament and of the Council

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- IDD: UK Relevant Authorised Persons (RAPs), third-country RAPs, Solvency II firms, small non-directive insurers and large non-directive insurers, as well as all firms completing the authorisation form for banks, the supplements for insurance companies and Lloyd’s managing partners, the controller appendices for corporates and partnerships, the owners and influencers appendix, and the waiver application form;
- Consequential Amendments to Short Form A: Banks, building societies, credit unions, PRA designated investment firms, RAPs and third-country branches; and
- BMR: All firms completing the Senior Management Regime: Statements of Responsibilities form.

1.5 Appendix 1 contains the final rules that make amendments to the following Parts of the Rulebook: Senior Managers Regime – Applications and Notifications Part; Fitness and Propriety Part; Change in Control Part; Senior Insurance Managers Regime – Applications and Notifications Part; Large Non-Solvency II Firms – Senior Insurance Managers Regime – Applications and Notifications Part; Non-Solvency II Firms - Senior Insurance Managers Regime – Applications and Notifications Part; and the Glossary.

1.6 Appendix 2 contains the final rules that make amendments to the following Parts of the Rulebook: Algorithmic Trading Part; General Organisational Requirements Part; Compliance and Internal Audit Part; Glossary; Outsourcing Part; General Provision Part; and Risk Control Part.

1.7 Appendix 3 contains the final rules that make amendments to the Internal Governance of Third Country Branches Part of the Rulebook.

1.8 Appendix 4 contains the amended forms.

1.9 Appendix 5 contains amendments to the Passporting Part of the Rulebook.

1.9A Appendix 6 contains amendments to the Applications and Notifications; Passporting; and Change in Control Parts of the Rulebook which will apply from 23 February 2018 until 1 October 2018

1.9B Appendix 7 contains the MiFID Passporting Amendment Instrument 2018 as referenced in ‘Update 11 May 2018’.

1.10 In CP18/17 the PRA proposed:

- **MiFID II:** That relevant firms submit additional information on individuals taking up management body positions at PRA-designated investment firms and FCA regulated MiFID firms. MiFID II extends the deadline for firms to notify the PRA and FCA about changes to the membership of their management board. In addition, the PRA and FCA proposed to extend the deadline for submitting notifications for individuals ceasing to perform controlled functions via Form C from no more than seven days after an individual ceases to perform a controlled function to no more than ten days after an individual ceases to perform a controlled function. Additional amendments relate to minor formatting and grammatical issues and ensure that the correct article of MiFID II or other Part of the Rulebook is correctly referenced. There has also been a deletion of the definition of ‘MTF’ in General Provisions, due to the movement of the definition of this word to the Glossary.

- **IDD:** Amending the PRA Rulebook and the following forms to change references to ‘insurance mediation’ or the ‘Insurance Mediation Directive’ (IMD) to refer instead to ‘insurance distribution’ or the ‘IDD’:
 - Long Form A, which is applicable to UK RAPs and third-country RAPs, small non-directive insurers, large non-directive insurers, and Solvency II firms;
 - Short Form A, which is applicable to UK RAPs and third-country RAPs, small non-directive insurers, large non-directive insurers, and Solvency II firms;
 - versions of Form E on internal transfer of an approved person applicable to Solvency II firms, small non-directive firms, and large non-directive firms;
 - The Branch Notification Form and the Cross Border Services Notification Form;
 - The authorisation form for banks, as well as the supplements for insurance companies and Lloyd’s managing partners, the controllers appendices for partnerships and corporates, and the owners and influencers appendix; and
 - The Waiver Application Form.
- **Short Form A:** To include in Short Form A for RAPs Section 5 (Fitness and Propriety) the criminal records check question found in 5.05.4 of Short Form A for insurers and 5.05.3 in Long Form A for RAPs: ‘Has the firm undertaken a criminal records check in accordance with the requirements of the FCA or PRA?’.
- **BMR:** To amend Senior Management Regime: Statement of Responsibilities forms to replace the description of activities 26 and 27 with the specific benchmarking activities prescribed by the BMR; and amend certain Parts of the Rulebook.

1.11 There were no responses to CP18/17. No significant changes have been made to the rules and forms following consultation.

1.12 The PRA is required by the Financial Services and Markets Act 2000 (FSMA) to publish a cost benefit analysis and a statement on the impact of rules on mutuals where the final rule differs significantly from the draft of the proposed rule.¹ In the PRA’s opinion, the rules as made are not significantly different from the proposed rules.

Next steps

1.13 The policy contained in this PS has been designed in the context of the current UK and EU regulatory framework. The PRA will keep the policy under review to assess whether any changes would be required due to changes in the UK regulatory framework, including those arising once any new arrangements with the European Union take effect.

1.14 Updates to this PS, as outlined in paragraphs 1.2 to 1.3 of this PS, will be made accordingly. Firms should check the dedicated webpage for PS31/17² for further updates and the PRA will communicate updates to firms as appropriate.

¹ Section 138K of FSMA.

² www.bankofengland.co.uk/prudential-regulation/publication/2017/occasional-consultation-paper-18-2017.

1.15 BMR will apply from 1 January 2018. The PRA consulted on this in CP17/18. The PRA has not yet published final rules, as the legislative framework for the Rulebook changes is not yet in place. Once the necessary legislative processes are complete, the PRA intends to make these as final rules, and update this PS. MiFID II changes will apply from 3 January 2018. IDD changes will now apply from 1 October 2018. Short Form A amendments will be effective as of 23 February 2018.

Appendices

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- 1 **PRA RULEBOOK: CRR FIRMS, NON CRR FIRMS, SOLVENCY II FIRMS, NON SOLVENCY II FIRMS: MIFID II AND IDD CONSEQUENTIAL AMENDMENTS INSTRUMENT 2017, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 2 **PRA RULEBOOK: CRR FIRMS: MIFID II AMENDMENT (NO. 1) INSTRUMENT 2017, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 3 **PRA RULEBOOK: NON-CRR FIRMS: MiFID II AMENDMENT INSTRUMENT 2017, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 4 **Amended forms directory, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 5 **PRA RULEBOOK: MIFID II PASSPORTING AMENDMENT INSTRUMENT 2017, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 6 **PRA RULEBOOK: CRR Firms, Non CRR Firms, Solvency II Firms, Non Solvency II Firms: MIFID II Passporting and IDD Consequential Amendments Instrument 2018, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**

 - 7 **PRA RULEBOOK: MIFID II PASSPORTING AMENDMENT INSTRUMENT 2018, available at: www.bankofengland.co.uk/prudential-regulation/publication/2017/responses-to-cp-18-17-chapters-7-and-8**