PERIMETER GUIDANCE MANUAL (TRANSFER OF MiFID ORGANISATIONAL REGULATION) INSTRUMENT 2026

Powers exercised

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

Commencement

B. This instrument comes into force on 27 March 2026.

Amendments to the Handbook

C. The modules of the FCA'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).

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Product Intervention and Product Governance sourcebook (PROD)	Annex B
Supervision manual (SUP)	Annex C

Amendments to material outside the Handbook

D. The Perimeter Guidance manual (PERG) is amended in accordance with Annex D to this instrument.

Notes

E. In the Annexes to this instrument, the notes (indicated by "**Note:**" or "*Editor's note*:") are included for readers' convenience, but do not form part of the legislative text.

Citation

F. This instrument may be cited as the Perimeter Guidance Manual (Transfer of MiFID Organisational Regulation) Instrument 2026.

By order of the Executive Regulation and Policy Committee of the FCA
23 March 2026

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

1 Application

1.1 General application

…

Guidance

…

1.1.5 G *PERG* 13 contains general *guidance* on the ~~*persons* and businesses to which the *UK* provisions which implemented *MiFID* apply~~ meaning of *financial instrument*, *investment services and/or activities* and *MiFID investment firm* (and of certain other kinds of investment firm).

…

Annex B

Amendments to the Product Intervention and Product Governance sourcebook (PROD)

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

1 Product Intervention and Product Governance Sourcebook

…

1.3 Application of PROD 3

…

MiFID

1.3.11 G *PERG* 13 contains general *guidance* on the ~~*persons* and businesses to which the *UK* provisions which implemented *MiFID* apply~~ meaning of *financial instrument*, *investment services and/or activities* and *MiFID investment firm* (and of certain other kinds of investment firm).

…

Annex C

Amendments to the Supervision manual (SUP)

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

15 Notifications to the FCA

…

15.3 General notification requirements

…

Breaches of rules and other requirements in or under the Act or the CCA

…

15.3.11A G *SUP* 15.3.11R(1)(e) relates to the standard requirement in the *permission* of ~~those~~ certain *firms* ~~which fall outside *MiFID* because of the Treasury's implementation of Article 3 of *MiFID*~~ imposed under the *MiFI Regulations*. *Guidance* on ~~how the Treasury has exercised the Article 3 exemption for the *United Kingdom*~~ this requirement is given in Q48 and the following questions and answers in *PERG* 13.5 (Exemptions from ~~MiFID~~ the definition of investment firm).

…

Annex D

Amendments to the Perimeter Guidance manual (PERG)

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

1 Introduction to the Perimeter Guidance manual

…

1.4 General guidance to be found in PERG

…

1.4.2 G Table: list of general guidance to be found in *PERG*.

Chapter:	Applicable to:	About:
…		
PERG 13: Guidance on ~~the scope of the *UK* provisions which implemented MiFID~~ investment services and activities and investment firms	Any *UK person* who needs to know whether ~~*MiFID* applies~~ the terms and provisions in column (3) apply to them	~~the scope of the *UK* provisions which implemented *MiFID*~~ the override in article 4(4) of the *Regulated Activities Order*, which disapplies many *Regulated Activities Order* exclusions in the case of investment firms the definitions of *investment services and/or activities* and *financial instruments* the definitions of investment firm as used in article 4(4) of the *Regulated Activities Order*, of *MiFID investment firm* and of certain other kinds of investment firm
…		

…

2 Authorisation and regulated activities

…

2.5 Investments and activities: general

…

Modification of certain exclusions for investment firms and as a result of ~~MiFID,~~ the IDD and the Mortgage Credit Directive

2.5.3 G The application of certain of the exclusions considered in *PERG* 2.8 (Exclusions applicable to certain regulated activities) and *PERG* 2.9 (Regulated activities: exclusions applicable to certain circumstances) is modified in relation to *persons* who come within the definition of an investment firm in article 3 of the *Regulated Activities Order* and *persons* who are subject to the *UK* provisions which implemented ~~*MiFID*,~~ the *IDD* and the *MCD*. The reasons for this and the consequences of it are explained in *PERG* 2.5.4G for ~~*MiFID*~~ investment firms, *PERG* 5 (Guidance on insurance distribution activities) for the *IDD*, and *PERG* 4.10A for the *MCD*.

Investment services and activities

2.5.4 G ~~Certain *persons* subject to the requirements of the *UK* provisions which implemented *MiFID* must be brought within the scope of regulation under the *Act*. A core element of *MiFID* is the concept of investment firm. An *investment firm* is any *person* whose regular occupation or business is the provision of one or more *investment services* to third parties or the performance of one or more *investment activities* on a professional basis. An *investment firm* is not subject to the *UK* provisions which implemented *MiFID* requirements if~~ Article 4(4) of the *Regulated Activities Order* says that an investment firm that provides or performs *investment services and activities* on a professional basis is not entitled to the benefit of specified exclusions under the *Regulated Activities Order* unless it falls within one or more of the exemptions in Part 1 of Schedule 3 ~~of~~ to the *Regulated Activities Order*. Further information about the definition of investment firm and *investment services and activities* for these purposes is contained in *PERG* 13 and further information about these exemptions is contained in *PERG* 13.5. ~~To the extent that an *investment firm* falls within one of these exemptions, it will not be a *MiFID investment firm*.~~ Where a *firm* ~~is not a *MiFID investment firm* because~~ has the benefit of one or more of the exemptions in Part 1 of Schedule 3 ~~of~~ to the *Regulated Activities Order* ~~apply~~, it may still be carrying on *regulated activities* and therefore require *authorisation* unless it is an *exempt person*.

2.5.4A G ~~Prior to *IP completion day*, the *UK* exercised part of the optional exemption in article 3 of *MiFID*. This is now set out in regulation 8 of the *MiFI Regulations*. Further information about this exemption is contained~~

~~in Q48 to 53 in PERG 13.5. The investment services to which regulation 8 of the *MiFI Regulation* applies (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to regulated activities (see PERG 13 Annex 2 Tables 1 and 2).~~ [deleted]

2.5.5 G ~~For *persons* who are *MiFID investment firms*, the activities that must be caught by the *Regulated Activities Order* are those that are caught by the *UK* provisions which implemented *MiFID*. To achieve this result, some of the exclusions in the Order (that will apply to persons who are not caught by *MiFID*) have been made unavailable to *MiFID investment firms* when they provide or perform *investment services and activities*. A "MiFID investment firm", for these purposes, includes *credit institutions* to which the *UK* provisions which implemented *MiFID* applies (see *PERG* 13, Q5 and 9); *collective portfolio management investment firms* providing the services of *portfolio management* and *personal recommendations* in relation to *financial instruments* or the ancillary service of safekeeping and administration in relation to *units* of collective investment undertakings; and *AIFM investment firms* providing the ancillary service of reception and transmission of orders in relation to *financial instruments*. The same exclusions are also unavailable to *third country investment firms* when they provide *investment services and activities*. Article 4(4) of the *Regulated Activities Order* (Specified activities: general) lists a number of~~ The exclusions that must be disregarded~~. These relate to the exclusions~~ as referred to in *PERG* 2.5.4G are concerned with:

…

2.5.5A G

(1) In the *FCA's* view, article 4(4) of the *Regulated Activities Order* applies to a *credit institution* in the same way as it applies to other *persons*. Thus, it does not apply to a *credit institution* that does not perform *investment services and activities* and potentially applies to one that does perform them.

(2) However, article 4(4) expressly applies to certain *credit institutions* (referred to in the *Regulated Activities Order* as 'qualifying credit institutions'). This raises the question as to why article 4(4) mentions them at all.

(3) The *FCA* understands that it is a result of the origin of article 4(4) in the implementation of *MiFID*. Although the term 'investment firm' as defined in *MiFID* can, on the face of it, apply to a *credit institution*, *MiFID* does not treat a *credit institution* as an investment firm except for certain limited purposes, as they are primarily regulated under other *EU* legislation. Therefore, article 4(4) mentions *credit institutions* specifically to make it clear that article 4(4) is meant to cover such institutions as long as they would otherwise fall into the definition of investment firm as contained in the *Regulated Activities Order*, which in turn is based on the definition in *MiFID*.

2.5.5B G The original purpose of article 4(4) of the *Regulated Activities Order* was to ensure that anyone coming within *MiFID* would require *authorisation* and *permission* for the *regulated activities* affected by article 4(4) and could not take advantage of the *Regulated Activities Order* exclusions referred to in *PERG* 2.5.5G. In turn, the purpose of that was to enable the *UK* provisions which implemented *MiFID* to be applied to them.

…

Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business

2.5.7 G Some *specified investments* ~~are defined so that certain products only come within that *specified investment*~~ have a wider meaning when a *person* of a specified kind is providing ~~services under certain legislation~~ or performing *investment services and/or activities* in relation to ~~that product~~ them, as explained in *PERG* 2.5.8G. *PERG* 2.5.9G lists the provisions in *PERG* where such wider meanings are summarised.

2.5.8 G ~~When *PERG* 2.5.7G applies, the product is only treated as falling within the definition of the~~ A *specified investment* ~~concerned~~ in *PERG* 2.5.9G has a wider meaning if (in relation to that ~~product~~ *specified investment*):

…

…

2.5.10 G …

2.5.11 G For *guidance* on the meaning of *MiFID investment firm*, *third country investment firm* and *investment services and/or activities*, please see *PERG* 13 (Guidance on investment services and activities and investment firms).

2.6 Specified investments: a broad outline

…

Emission allowances

2.6.19D G …

(2) An *emission allowance* is only a *specified investment* if *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

…

Options

2.6.20 G The *specified investment* category of *options* comprises:

…

(2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see article 83(2) of the *Regulated Activities Order* and *PERG* 13, Q33A to Q34 for guidance about these instruments), but only where they are options to which *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies; and

…

…

Futures

…

2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only in limited circumstances. These are contracts as described in *PERG* 2.6.21G:

…

(3) to which *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

Contracts for differences

2.6.23 G The *specified investment* category of *contracts for differences* covers:

…

(3) derivative contracts for the transfer of credit risk (not within (1) or (2)) falling within paragraph 8 or 9 of Part 1 of Schedule 2 to the *Regulated Activities Order* (see *PERG* 13, Q31 for *guidance* about these instruments), but only where *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies.

…

…

2.6.24A G (1) A binary or other fixed outcomes bet is also treated as *contract for differences*. This is defined as something that meets the following conditions:

…

(e) one of the following requirements is met:

(i) *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~MiFID~~ investment business) applies; or

…

…

(5) A simple binary sporting bet is not a *contract for differences* as:

(a) it is not ~~covered by *MiFID*~~ a *financial instrument* and so it does not meet the condition in *PERG* 2.6.24AG(1)(d); and

…

…

2.6.24B G (1) Any derivative ~~under *MiFID*~~ that is a *financial instrument* will be an *option*, *future* or *contract for differences* where *PERG* 2.5.7G (Wider definition of certain specified investments when carrying on some kinds of ~~EU~~ investment business) applies.

…

…

2.7 Activities: a broad outline

…

Bidding in emission auctions

2.7.6B G The *RAO* and the *UK auctioning regulations* together generate three broad categories of *person* in relation to bidding for *emission allowances* on an *auction platform*:

…

(1A) The first category also consists of a *person* that is exempt from ~~*MiFID*~~ the definition of investment firm under ~~article 2(1)(j), as onshored by~~ paragraph 1(k) of Part 1 of Schedule 3 to the *RAO*, where it is bidding on behalf of a client of its main business or bidding on its own account (further information on the ~~article~~

~~2(1)(j)~~ paragraph 1(k) exemption ~~from *MiFID*~~ is in *PERG* 13.5, Q44).

…

2.7.6C G A *person* may fall into both the first and the second category. For example, a *person* might be both exempt from ~~*MiFID*~~ the definition of investment firm under ~~article 2(1)(j)~~ paragraph 1(k) of Part 1 of Schedule 3 to the *RAO* (within the first category) and be a group entity of an operator (within the second category). In this case, that *person* does not require *permission* for activities that cause that *person* to fall into the second category because those activities are excluded from the activity of *bidding in emissions auctions*.

…

Operating a ~~UK~~ multilateral trading facility

2.7.7D G *Guidance* on the ~~*MiFID*~~ *investment service* of *operating a multilateral trading facility* is given in *PERG* 13, Q24. An activity that comes within the *regulated activity* of *operating a multilateral trading facility* does not come within the *regulated activities* of *dealing in investments as agent*, *dealing in investments as principal* or *arranging deals in investments*.

2.7.7DA G The definition of a ~~*UK*~~ *multilateral trading facility* covers:

…

Operating ~~a UK~~ an organised trading facility

2.7.7DB G *Guidance* on the ~~*MiFID*~~ *investment service* of *operating an organised trading facility* is given in *PERG* 13, Q24A. An activity that comes within the *regulated activity* of *operating an organised trading facility* does not come within the *regulated activities* of *dealing in investments as agent*, *dealing in investments as principal* or *arranging deals in investments*.

2.7.7DC G The definition of ~~a *UK*~~ an *organised trading facility* covers:

(1) a *UK* organised trading facility as defined by article 2(1)(15A) of *MiFIR* (see *PERG* 13, Q24A) operated by an *investment firm*, a *credit institution* or a *market operator*; or

(2) a facility which:

…

(b) would come within ~~the *MiFID* definition~~ (1) if its operator was set up in the *United Kingdom*.

2.7.7DD G (1) The *regulated activity* of *operating an organised trading facility* only covers a trading facility on which non-equity ~~*MiFID*~~ MiFID instruments are traded. The term 'non-equity MiFID instruments'

is used in this paragraph even though *MiFID* no longer has effect in the *UK* as the relevant legislation uses that term.

(2) Subject to (3), a non-equity ~~*MiFID*~~ MiFID instrument means:

…

(3) However, a product in (2) is only a non-equity ~~*MiFID*~~ MiFID investment if it also falls into one of the following categories:

…

(d) an instrument falling within paragraphs 4 to 10 of ~~Section C of Annex 1 of *MiFID*~~ Part 1 of Schedule 2 to the *Regulated Activities Order* (these are described in *PERG* 13.4) if the instrument is a *transferable security*.

…

4 Guidance on regulated activities connected with mortgages

…

4.10A Activities within scope of the Mortgage Credit Directive

…

The effect of article 4(4B) on advisers

…

4.10A.23 G Giving personal recommendations is narrower than giving advice. The *guidance* on this point ~~in relation to *MiFID*~~ in Q18 to Q21 in *PERG* 13.3 (Investment Services and Activities) is relevant here.

…

7 Periodical publications, news services and broadcasts: applications for certification

…

7.3 Does the activity require authorisation?

…

Advice in publications and broadcasts ~~and MiFID~~

7.3.2A G Advice about *financial instruments* in a newspaper, journal, magazine, publication, internet communication or radio or television broadcast should not normally be a *personal recommendation* ~~under *MiFID*~~ (see ~~*PERG* 13, Q18 to Q21~~ *PERG* 8.30B.23G).

…

8 Financial promotion and related activities

…

8.30B Personal recommendations

…

Link to ~~MiFID~~ investment service or activity

8.30B.3 G (1) The definition of *personal recommendation* ~~in the *Regulated Activities Order*~~ for the purpose of the definition of the *regulated activity* of *advising on investments (except P2P agreements)* is based on the definition of the ~~*MiFID*~~ *investment service or activity* of making a personal recommendation.

(2) *Personal recommendation* should therefore be interpreted for the purpose of the *regulated activity* of *advising on investments (except P2P agreements)* consistently with ~~*MiFID*~~ that *investment service or activity*.

(3) However the types of *investments* to which the recommendation relates (as listed in *PERG* 8.30B.2G(2)) are not limited to ones covered by ~~*MiFID*~~ that *investment service or activity*.

…

Presenting a recommendation as suitable

…

8.30B.10 G An *investment* can be presented as suitable for an investor even if in fact the *investment* is not suitable or even if the *firm* does not think it is. While a recommendation of an *investment* that is unsuitable for the investor would be a breach of requirements under ~~*MiFID* and~~ the *Handbook*, it would not stop the recommendation from being presented as suitable.

…

10 Guidance on activities related to pension schemes

10.1 Background

Q1. What is the purpose of these questions and answers ("Q&As") and who should be reading them?

…

The Q&As complement the general *guidance* on regulated activities in Chapter 2 of our Perimeter Guidance Manual ("PERG"), the general guidance on insurance

distribution activities in Chapter 5 of *PERG* (*PERG* 5), the guidance about the ~~scope of the *Markets in Financial Instruments Directive*~~ definition of *investment services and/or activities* and investment firm in Chapter 13 of *PERG* (*PERG* 13) and the relevant legislation. In addition, Chapter 12 of *PERG* (*PERG* 12) has further guidance about the regulated activities relating to the operation and sale of personal pension schemes that came into force on 6 April 2007.

…

…

10.4 Pension scheme service providers other than trustees

…

Q32. What are the exclusions that might apply to me as a pensions administration service provider?

…

But none of these exclusions will apply to you if, in carrying on the relevant *regulated activity*, you are an *investment firm* and do not benefit from any of the exemptions ~~under *MiFID*~~ from the definition of investment firm in the *Regulated Activities Order* (see Chapter 13 of *PERG*, including Q42).

…

10.4A The application of the definition of investment firm and of requirements which implemented EU directives

Q41A. Are pension scheme trustees and administration service providers likely to be ~~subject to authorisation under the UK provisions which implemented the Markets in Financial Instruments Directive~~ an investment firm carrying on investment services and/or activities?

This is possible, but in many instances it is likely that pension scheme trustees and service providers will either not be providing an investment service ~~for the purposes,~~ or ~~otherwise~~ will be exempt under the exemptions ~~which were set out in article 2.1 of the *Markets in Financial Instruments Directive* but have been onshored~~ in Part 1 of Schedule 3 to the *Regulated Activities Order*. The following table expands on this in broad terms.

In the table below, 'investment firm' means an investment firm as defined in the *Regulated Activities Order*.

Detailed guidance on ~~the scope of the *UK* provisions which implemented the *MiFID*~~ *investment services and/or activities* and the definition of investment firm is in *PERG* 13.

~~In the table below, references to relevant paragraphs of Article 2.1 of *MIFID* should be read as the equivalent exemptions which have been onshored in Part 1~~

~~of Schedule 3 to the *Regulated Activities Order*, or, in respect of Article 3 of *MIFID*, which can now be found in regulation 8 of the *MiFI Regulations*.~~

Activity	Potential ~~MiFID~~ investment activity or service?	~~Potential application of MiFID or of a MiFID article 2.1 exemption?~~ **Is a trustee or provider an investment firm and is an exemption in Part 1 of Schedule 3 to the Regulated Activities Order available?**
Dealing in scheme assets as trustee	…	The trustees ~~MiFID~~ will not ~~apply~~ be an investment firm provided ~~the trustees~~ they are either not acting by way of business or otherwise are not holding themselves out as persons who provide a dealing service to third parties. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis In any event, the trustee should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager or depositary (or both) of a pension fund
Issuing rights under a stakeholder or personal pension scheme to members	None - the rights are not ~~MiFID~~ financial instruments	~~MiFID does not apply~~ Not an investment firm
Pension scheme service provider: …	…	~~MiFID will~~ Will potentially ~~apply~~ be an investment firm where the investments are ~~MiFID~~ financial instruments (such as shares, debt securities or units) However, many pension schemes will be employee participation schemes, the administration of which is exempt under ~~article 2.1(f)~~ paragraph 1(g) Where the service provider is providing services exclusively for the benefit of a corporate trustee who is a member of its group, the exemption in ~~article 2.1(b)~~ paragraph 1(c) should apply. And ~~article 2.1(g)~~ paragraph 1(h) will provide for the exclusions in ~~2.1(b) and 2.1(f)~~ paragraphs 1(c) and 1(g) to be combined

		where the service provider is both administering an employee participation scheme and providing services to a trustee who is a group member Where the activity is receiving and transmitting orders and the service provider is authorised, the optional intermediaries exemption in ~~article 3 of MiFID~~ regulation 8 of the *MiFI Regulations* may ~~apply~~ be available If the service provider is acting as the operator of a stakeholder or personal pension scheme (for example, as the scheme administrator), ~~he~~ they should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager of a pension fund
Managing the assets of the scheme	…	~~MiFID will not apply to~~ The trustees will not be an investment firm provided they are either not acting by way of business or otherwise are not holding themselves out as, or additionally remunerated for, providing investment management services. This is because the trustees would not be regarded as providing an investment service to third parties on a professional basis In any event, trustees should be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager or depositary (or both) of a pension fund If a service provider is acting as the operator of a stakeholder or personal pension scheme, ~~he~~ they should also be exempt under ~~article 2.1(i)~~ paragraph 1(j) as manager of a pension fund But a service provider who is merely managing the assets of a pension fund without being the manager or depositary of the scheme will not be exempt under ~~article 2.1(i)~~ paragraph 1(j). The manager and depositary are those persons charged with responsibility for managing the fund or safeguarding its assets and not persons to whom such functions may be delegated or outsourced

Safeguarding and administering the scheme assets	…	Safekeeping and administration of investments is ~~a MiFID ancillary service~~ an *ancillary service*
Establishing, operating or winding up a stakeholder or personal pension scheme	…	~~MiFID does not apply~~ Will not be an investment firm
a. Pension scheme trustee advising fellow trustees or members or prospective members …	…	~~MiFID will~~ Will potentially ~~apply~~ be an investment firm where the advice concerns ~~MiFID financial instruments~~ *financial instruments* (such as shares, debt securities or units) and so ~~may apply to~~ advice given to the trustees about scheme assets may be an investment service or activity. [*Editor's note*: insert paragraph break.] However, beneficial interests in financial instruments held under the trusts of a pension scheme will not themselves be financial instruments ~~under MiFID~~. And rights under a personal pension or stakeholder pension scheme are also not financial instruments. So, advice given to scheme members or prospective members about these should not be the investment service of investment advice ~~under MiFID~~ ~~MiFID will not apply to trustees~~ Trustees who are advising their fellow trustees for the purposes of the trust will not be an investment firm provided they are not additionally remunerated for providing investment advisory services Also, trustees will be exempt under ~~article 2.1(i)~~ paragraph 1(j) in respect of anything they do in the capacity of manager or depositary of a pension fund (including advising their fellow trustees) If a service provider is acting as the operator of a stakeholder or personal pension scheme, ~~he~~ they should also be exempt under ~~article 2.1(i)~~ paragraph 1(j)

		as manager of a pension fund if ~~he gives~~ they give advice to the trustees Where the service provider is providing advice to a corporate trustee who is a member of its group, the exemption in ~~article 2.1(b)~~ paragraph 1(c) may apply (and may be combined with the exemption for administration of an employee participation scheme under ~~article 2.1(g)~~ paragraph 1(h) where relevant)

…

…

12 Guidance for persons running or advising on personal pension schemes

…

12.4 The application of the definition of investment firm and of requirements which implemented EU directives

Do ~~the changes in the scope of regulated activities concerning pension schemes that took effect on 6 April 2007 have any implications for~~ pension scheme trustees or service providers ~~under the UK provisions which implemented the Investment Services Directive or~~ provide investment services and how do the UK provisions which implemented ~~the Markets in Financial Instruments Directive or~~ the Insurance Distribution Directive affect them?

~~In general terms, if a pension scheme trustee or service provider did not need to be authorised under the *Investment Services Directive* prior to 6 April 2007 he should not need to be authorised for carrying on the same activities after that date. This is because rights~~ Rights under a personal pension scheme are not a ~~financial instrument under that Directive~~ *financial instrument* and establishing, operating or winding up a personal pension scheme is not an ~~investment service under the Directive~~ *investment service and/or activity*. ~~This is also the case under the Markets in Financial Instruments Directive which replaced the Investment Services Directive in late 2007.~~ Therefore, a pension scheme trustee or service provider acting as such is not necessarily a *MiFID investment firm*. Guidance on ~~the scope of *MIFID* as implemented into *UK* law~~ *financial instruments*, *investment services and/or activities* and *MiFID investment firm* can be found in *PERG* 13. *PERG* 10.4A (The application of the definition of investment firm and of requirements which implemented EU directives) also has relevant material.

…

…

13 Guidance on ~~the scope of the UK provisions which implemented MiFID~~ investment services and activities and investment firms

13.1 Introduction

The purpose of this chapter is to help a UK ~~firms~~ *person* consider:

- ~~whether they fall within the scope of the *UK* provisions which implemented Markets in Financial Instruments Directive 2014/65/EU ('MiFID') and therefore are subject to the requirements derived from it, and~~ the meaning of *investment services and/or activities*;
- what a *financial instrument* is;
- the meaning of investment firm as defined in the *Regulated Activities Order*, which is the basis of the disapplication by article 4(4) of those regulations of various *Regulated Activities Order* exclusions in the case of investment firms and is used for various other purposes in those regulations;
- the definitions of investment firm in *MiFIR*, *investment firm*, *MIFIDPRU investment firm* and *MiFID investment firm*;
- whether it is carrying on an *ancillary service*; and
- how ~~their existing~~ a *firm's* *permissions* correspond to related ~~MiFID derived concepts;~~ *investment services and/or activities*.

~~This chapter is mostly aimed at questions that are relevant to someone who wants to know whether they need to be authorised under the *Act*. This means that this chapter does not cover those types of persons for whom MiFID or MIFIR requirements are applied outside the authorisation regime under the *Act*, such as:~~

- ~~a *data reporting service provider*;~~
- ~~those subject to position limit requirements in derivatives markets;~~
- ~~those subject to an obligation to trade in derivatives on a regulated market, OTF or MTF;~~
- ~~persons with a proprietary interest in benchmarks who are obliged to provide access to certain information; or~~
- ~~central counterparties subject to the requirements about non-discriminatory access for financial instruments.~~

Background

One of the main original purposes of this chapter was to explain whether a UK firm fell within the scope of the *UK* provisions which implemented the Markets in Financial Instruments Directive 2014/65/EU ('MiFID') and therefore was subject to the requirements derived from it. That Directive no longer applies in the *UK*

but its terminology remains relevant to an understanding of the application of the matters discussed in this chapter.

MiFID replaced the Markets in Financial Instruments Directive 2004/39/EC (MiFID 1), which in turn replaced the Investment Services Directive (ISD).

The definitions and statutory provisions discussed in this chapter are based on (but with changes) MiFID as supplemented and expanded by the *EU MiFID Org Regulation*, as implemented in the *UK* prior to *IP completion day*.

While these *EU* provisions no longer apply in the *UK*, we have retained the references in this chapter, and its annexes, to the provisions in MiFID and other relevant directives such as the *CRD*, the *UCITS Directive* and the *AIFMD* for ease of reference. As a result, where the context requires, any references to a directive, its articles or recitals, which could be read as having continuing effect, should be read as a reference to the *UK* provisions which implemented that directive or the relevant article.

In the *FCA's* view, the recitals to MiFID and other *EU* legislation discussed in this chapter can still be useful in interpreting a term defined in the *Regulated Activities Order* or other *UK* legislation where the drafting of that term in the *UK* legislation closely follows the drafting in MiFID or that other *EU* legislation. This chapter therefore refers to such recitals in appropriate places.

This chapter does not address the question of whether an investment firm providing *investment services and/or activities* is providing an investment service as opposed to carrying on an investment activity.

~~**MiFID onshoring in UK legislation and the FCA Handbook**~~

~~The *United Kingdom's* onshoring 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. "Onshoring", for these purposes, refers to the process by which law deriving from EU legislation at IP completion day is retained or adapted, post IP completion day.~~

~~The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations, in particular:~~

- ~~Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ('MiFI regulations'), SI 2017/701;~~
- ~~Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 2001 ('RAO Amendment Order'), SI 2017/488 2001/544.~~

~~The FCA Handbook complements the Treasury legislation, referred to above.~~

~~**Transitional onshoring provisions**~~

~~The effect of section 3 of the European Union (Withdrawal) Act 2018 is that "direct EU legislation" became part of *UK* law, as at IP completion day (and is now known as "assimilated law" by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023). As such, MiFIR and all directly applicable regulations made under MiFID and MiFIR including the MiFID Org Regulation (Commission Delegated Regulation 2017/565), the MiFIR Delegated Regulation (Commission Delegated Regulation 2017/567) and technical standards became part of *UK* law, as at IP completion day.~~

~~Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the *United Kingdom's* withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the 'Exit Regulations') to amend each of the following:~~

- ~~MiFIR~~
- ~~MiFID Org Regulation~~
- ~~MiFIR Delegated Regulation~~
- ~~Data Reporting Services Regulations~~
- ~~The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017~~

~~A reference to any of the above in the remaining text of this chapter is to the legislation as amended by the Exit Regulations.~~

~~MiFID scope~~

~~The scope aspects of MiFID are primarily addressed through the *Regulated Activities Order* ('RAO') and *PERG 2* focuses on the scope of *regulated activities* under the RAO and includes materials on the effect that the *UK* provision which implemented MiFID has had on the *RAO*. This chapter focuses more on the underlying MiFID investment services and activities, as well as the exemptions.~~

~~Where a firm's regular occupation or business is providing one or more *investment services* to third parties or performing investment activities in relation to MiFID financial instruments on a professional basis, it is a firm to which *UK* provisions which implemented MiFID applies unless it is exempt.~~

~~Broadly, the exemptions from MiFID are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders. The exemptions are subject to conditions and limitations described in more detail below (see *PERG* 13.5).~~

~~The Treasury's implementation of the article 3 MiFID exemption, onshored in regulation 8 of the *MiFI Regulations*, is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital firms. The Treasury legislation enables firms falling within the scope of the exemption to elect to be subject to the requirements derived from of MiFID (see Q52).~~

~~In each case, it will be for firms and individuals to consider their own circumstances and consider whether they fall within the relevant exemptions. A firm which takes the benefit of one or more of the exemptions in article 2 or 3 MiFID, onshored in Part 1 of Schedule 3 to the Regulated Activities Order and Regulation 8 of the MiFI Regulations, may nevertheless require authorisation under the *Act* (see *PERG* 2).~~

~~In addition to *investment firms*, the *UK* provisions which implemented *MiFID* are also relevant to *credit institutions* providing investment services or performing investment activities (see Q5), to *AIFMs* to which the *UK* provisions which implemented article 6.4 of *AIFMD* applies (in other words, *AIFM investment firms*) and to *UCITS management companies* to which the *UK* provisions which implemented article 6.4 of the *UCITS Directive* applies (in other words, *UCITS investment firms*).~~

~~This guidance is concerned with the scope of the *UK* provisions which implemented MiFID and does not address the question of whether an investment firm that falls within the scope of the *UK* provisions which implemented MiFID is providing a MiFID investment service as opposed to an investment activity.~~

…

How does this document work?

This document is made up of Q and As divided into the following sections:

…

- Exemptions from ~~MiFID derived provisions~~ the definition of investment firm (*PERG* 13.5); and

…

We have also included guidance in the form of flow charts to help ~~firms~~ a *firm* decide whether ~~the *UK* provisions which implemented MiFID apply to them~~ it is a *MiFID investment firm* and whether article 4(4) of the *Regulated Activities Order* applies, as well as permission maps indicating which regulated activities and *specified investments* correspond to ~~MiFID~~ investment services, activities and ~~MiFID~~ financial instruments (see *PERG* 13 Annex 1 and *PERG* 13 Annex 2~~.~~).

Article and recital references to *EU* legislation are to MiFID (Level 1 measures) unless otherwise stated. References to categories of ~~MiFID~~ investment services and activities and ~~MiFID~~ financial instruments ~~adopt the structure of~~ in *EU* legislation refer to Annex 1 MiFID: for example, A1 refers to "reception and

transmission of orders in relation to one or more financial instruments" and C1 relates to "transferable securities".

~~While these provisions have been "onshored", we have, unless otherwise stated, retained the references in this chapter, and its annexes, to the provisions in MiFID and other relevant directives such as CRD, UCITS directive and AIFMD for ease of reference. As a result, where the context requires, any references to a directive, its articles or recitals, which could be read as having continuing effect, should be read as a reference to 'the *UK* provisions which implemented' that directive or the relevant article. In addition, any reference which adopts the structure of Annex 1 of MiFID, for example by referring to A1 or C1, should be read as a reference to the relevant corresponding paragraph as onshored in Schedule 2 of the *Regulated Activities Order*.~~

13.2 General

Q-1. Are all the different types of investment firm mentioned at the start of this chapter basically the same?

They are very similar and the *guidance* in this chapter is applicable to them all. The following is a list of the factors that the definitions use:

- an investment firm is a *person* whose regular occupation or business is the provision or performance of investment services and activities on a professional basis (see Q4);
- a *person* exempt under Schedule 3 to the *Regulated Activities Order* is excluded (see *PERG* 13.5);
- a *person* whose home State is not the *United Kingdom* and who would be exempt under Schedule 3 if the *person's* registered office (or head office, in the case of a *person* that is not a body corporate or a *person* that is a body corporate but has no registered office) was in the *United Kingdom* is excluded; and
- a *person* who is exempt under the *MiFI Regulations* is excluded (see Q48).

However, the factors do not all appear in each definition. The following table explains this by reference to each factor listed above.

Table: Different kinds of investment firm

Elements of definition					
Type of investment firm	**Regular occupation (bullet point 1 in preceding list)**	**Investment services in relation to financial instruments (bullet point 1 in**	**Exempt under Schedule 3 of the Regulated Activities Order**	**Would have been exempt under Schedule 3 if in the United**	**Exempt under MiFI Regulations (bullet point 4 in**

		preceding list)	**(bullet point 2 in preceding list)**	**Kingdom (bullet point 3 in preceding list)**	**preceding list)**
MiFID investment firm	Yes	Yes	Yes	Not applicable as the definition only covers *UK firms*. An *overseas firm* that would otherwise have been a *MiFID investment firm* is a *third country investment firm*.	Yes
Investment firm as defined in the *Regulated Activities Order*	Yes	Yes	Yes	Yes	No
Investment firm as defined in *MiFIR*	Yes	Yes	No	No	No
Investment firm as defined in the *Glossary*	Same as *MiFIR*	Same as *MiFIR*	Same as *MiFIR*	Same as *MiFIR*	Same as *MiFIR*
Investment firm as defined in the *Act*	Yes	Yes	Yes	Yes	Yes

MIFIDPRU investment firm	Yes	Yes	Yes	Not applicable as the definition only covers *UK firms*.	Yes

The definition of a *MIFID investment firm* has some additional elements, which are covered in the answers to Q6 to Q7.

The definition of a *MIFIDPRU investment firm* also has additional elements, which are not covered in this chapter. They are set out in the *Glossary* definition.

Q1. Why does it matter whether or not we ~~fall within the scope of MiFID~~ are an investment firm?

Depending on whether or not you ~~fall within the scope of MiFID~~ are one of the kinds of investment firm referred to at the start of this chapter, you may be subject to:

- ~~domestic legislation implementing MiFID (for example, FCA rules);~~
- ~~"direct EU legislation", which became part of *UK* law as at IP completion day in accordance with section 3 of the European Union (Withdrawal) Act 2018, and is known as "assimilated law" by virtue of section 5 of the Retained EU Law (Revocation and Reform) Act 2023 (such as, *MiFIR* and all directly applicable regulations made under it or under MiFID)~~ *UK law on markets in financial instruments*; and
- other ~~FCA~~ *FCA* rules or legislation whose scope is drawn by reference to ~~MiFID~~ one of those kinds of investment firm (for example, the Prudential sourcebook for MiFID investment firms (*MIFIDPRU*)).

Whether or not you are an investment firm as defined in the *Regulated Activities Order* is an essential element of whether the override in the *Regulated Activities Order* described in *PERG* 2.5.4G to *PERG* 2.5.5BG (Investment services and activities) applies.

…

Q3. How much can we rely on these Q and As?

The answers given in these Q and As represent the ~~FCA's~~ *FCA's* views but the interpretation of financial services legislation is ultimately a matter for the courts. How the ~~scope of MiFID~~ matters discussed in this chapter affect the regulatory position of any particular person will depend on ~~his~~ their individual circumstances. If you have doubts about your position after reading these Q and As, you may wish to seek legal advice. The Q and As are not a substitute for

reading the ~~relevant the *UK*~~ legislative and *Handbook* provisions ~~which implemented MiFID~~ discussed in this chapter.

~~Moreover,~~ MiFID has been subject to guidance and communications by the European Commission, the European Securities and Markets Authority ('ESMA') and the European Banking Authority ('EBA')~~, we have now issued guidance on how this will be treated after IP completion day~~. This material can still be helpful in interpreting the provisions discussed in this chapter if there is no *FCA guidance* on the point and the drafting of the *UK* provision is close to the corresponding MiFID one. However, care should be taken as the legislative context is different and the provisions have effect under different legal systems.

~~[**Note:** link to the relevant guidance is to be inserted].~~

Q4. We provide investment services to our clients - ~~does MiFID apply to us~~ are we an investment firm?

~~Yes if you are:~~

- ~~an "investment firm" and the exemptions in MiFID do not apply to you; or~~
- ~~a "tied agent" as defined by MiFID.~~

~~If you are a non-*UK* firm, for example the UK branch of a US firm, MiFID does not apply to you. However, if MiFID would have applied to you if you had been incorporated or formed in the *United Kingdom*, you will be a *third country investment firm* under the FCA's rules. As a result, certain MiFID based requirements will apply to you.~~

If your regular occupation or business includes the provision of investment services in relation to financial instruments to others on a professional basis, you are an investment firm.

Where you are a firm with more than one business, you can still be an investment firm.

What amounts to a 'professional basis' depends on the individual circumstances and, in our view, relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.

However, you are not an investment firm if you have the benefit of an exemption in Schedule 3 to the *Regulated Activities Order*, except as otherwise shown in the table in the answer to Q-1 (Are all the different types of investment firm mentioned at the start of this chapter basically the same?).

See the flow charts in Annex 1 for further information and *PERG* 13.5 for guidance relating to exemptions. See ~~Q7 and 8~~ Q8 for further guidance on whether you are an investment firm ~~and Q11 for guidance relating to tied agents~~.

Q5. We are a credit institution. ~~How does MiFID apply~~ Is this chapter relevant to us?

If you are ~~an~~ a credit institution, ~~article 1.3 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article 1.3 MiFID is reflected in paragraph (2) of the Handbook definition of "MiFID investment firm"~~ you are an investment firm for the purpose of all the types of investment firm mentioned at the start of *PERG* 13.1 as long as you otherwise meet the definitions. However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you otherwise meet the definition, you are only a *MIFID investment firm* for certain purposes of the *Handbook*, as described in the *Glossary* definition of *MIFID investment firm*.

~~In addition, article 1.4 MiFID provides that various MiFID provisions apply when selling or advising clients about structured deposits (see Q34B). Article 1.4 MiFID is reflected in paragraph (2) of the *FCA Handbook* definition of "MiFID investment firm".~~ *PERG* 2.5.5AG (Investment services and activities) describes how the definition of investment firm in the *Regulated Activities Order* applies to credit institutions. The answer to Q9 in this section (We are a credit institution that does not provide investment services to customers but we do have a treasury function. Are we an investment firm?) also has further details about credit institutions.

Q6. We are a UCITS management company that, in addition to managing unit trusts, contractual schemes and investment companies, provides portfolio management services to third parties. ~~How does MiFID~~ Is this chapter relevant to us?

In general, the *management company* of a *UCITS scheme* is not an investment firm for the purpose of any of the types of investment firm mentioned at the start of this chapter (see *PERG* 13.5 (Exemptions from the definition of investment firm)). However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you are the *management company* of a *UCITS scheme* with a permission to manage investments including ~~MiFID~~ financial instruments pursuant to article 6.3 of the *UCITS Directive*, ~~certain MiFID provisions apply to you when you provide investment services to third parties (see article 6.4 *UCITS Directive*). These include initial capital endowment, organisational and conduct of business requirements. You~~ you are a *UCITS investment firm* for the purposes of the ~~Handbook~~ *Handbook*. ~~Article 6.4 of the *UCITS Directive* is~~ You are also a *MiFID investment firm* for certain purposes of the *Handbook*, as reflected in paragraph (3) of the *Handbook* definition of "*MiFID investment firm*".

When you carry out these additional activities, you will be carrying on a *regulated activity*.

Q6A. We are an AIFM that, in addition to managing AIFs, provides portfolio management services to third parties. ~~How does MiFID apply~~ Is this chapter relevant to us?

In general, an *AIFM* is not an investment firm for the purpose of any of the types of investment firm mentioned at the start of this chapter (see *PERG* 13.5 (Exemptions from the definition of investment firm)). However, the position is a bit different for the purpose of the definition of a *MIFID investment firm*. If you are the *AIFM* of an *AIF* with a *Part 4A permission* to *manage investments* including ~~*MiFID*~~ *financial instruments* pursuant to article 6.4 of *AIFMD*, ~~certain *MiFID* provisions apply to you when you provide *investment services* to third parties (see article 6.6 of AIFMD). These include initial capital endowment, organisational and conduct of business requirements. You~~ you are an *AIFM investment firm* for the purposes of the *Handbook*. ~~Article 6.6 of *AIFMD* is~~ You are also a *MiFID investment firm* for certain purposes of the *Handbook*, as reflected in paragraph (3) of the *Handbook* definition of "*MiFID investment firm*".

When you carry out these additional activities, you will be carrying on a *regulated activity*.

Q7. We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?

~~If your regular occupation or business includes the provision of investment services in relation to MiFID financial instruments to others on a professional basis, you are an investment firm and require *authorisation* unless you benefit from an exemption or are a tied agent (see Q11).~~

~~Where you are a firm with more than one business, you can still be an investment firm. What amounts to a "professional basis" depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.~~ [deleted]

Q8. We do not provide investment services to others but we do buy and sell financial instruments (for example, shares and derivatives) on a regular basis. Are we an investment firm ~~for the purposes of MiFID~~?

Yes, if you are trading in ~~MiFID~~ financial instruments for your own account as a regular occupation or business on a "professional basis". You can be an investment firm even if you are not providing investment services to others; this arises from the fact that you are also an investment firm ~~under MiFID~~ where you perform investment activities on a professional basis.

Even if you are an ~~investment firm~~ *investment firm* you may still be able to rely on one or more exemptions in ~~article 2 MiFID, in which case MiFID will not apply~~ Schedule 3 to the *Regulated Activities Order* (Exemptions from the definition of 'investment firm') for the purpose of the definition of investment firm in the *Regulated Activities Order* and of most of the other types of investment firm listed at the start of this chapter (see *PERG* 13.5 and in particular ~~article 2.1(d)~~ paragraph 1(d) of Part 1 of that schedule (see Q40 to Q41)~~)~~ and ~~2.1(j)~~ paragraph 1(k) of Part 1 of that schedule (see Q44 to Q45)).

Q9. We are a credit institution that does not provide investment services to customers but we do have a treasury function. Are we ~~subject to MiFID~~ an investment firm?

Not necessarily. Although you may be dealing on own account in relation to ~~MiFID~~ financial instruments, you may be able to rely upon the exemption in ~~article 2.1(d) MiFID~~ paragraph 1(e) of Part 1 of Schedule 3 to the *Regulated Activities Order* (Exemptions from the definition of 'investment firm') (see Q40). In our view, credit institutions can rely on exemptions in ~~article 2~~ Schedule 3 to the *Regulated Activities Order* where they meet the conditions of the exemptions.

Q10. Is there any change to the "by way of business" test in ~~domestic legislation~~ the definition of regulated activities?

~~There is no change to article 3 of the Financial Services and Markets Act 2000 (Carrying on Regulated Activities By Way of Business) Order 2001 as part of MiFID implementation by the Treasury, so the domestic~~ No. The test for whether you are carrying on 'regulated activities by way of business' and require *authorisation* ~~remains unchanged~~ is the same for a person who provides investment services in relation to financial instruments as it is for other people.

…

Q11. How will we know whether we are a tied agent (article 4.1(29))?

~~A tied agent under MiFID is a similar concept to an *appointed representative* under the *Act*. A tied agent does not require *authorisation* for the purposes of MiFID, just as an *appointed representative* does not require authorisation under the *Act*. In our view, you will only be a tied agent if your principal is an investment firm (including a credit institution) to which MiFID applies. So, if you act for a principal that is subject to an exemption in article 2 of MiFID, you are not a tied agent for the purposes of MiFID although you may be an *appointed representative* for domestic purposes. You will still not require authorisation under MiFID, either because you are not performing investment services and activities or, if you are, because you fall within an exemption in article 2 of MiFID.~~

~~MiFID says that firms exempt under article 3 should be subject to requirements which are at least analogous to the MiFID regime for tied agents of investment firms. This has been implemented in the UK through the *appointed representative* regime. If you are an *appointed representative* of a principal who is exempt under article 3 you will also be exempt under MiFID. Q48 to Q53 deal with the article 3 exemption.~~

~~Assuming your principal is an investment firm to which MiFID applies, if you are registered as an *appointed representative* on the *Financial Services Register* and carry on the activities of *arranging (bringing about) deals in investments* or *advising on investments*, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(29).~~

~~It is not possible for a tied agent to provide *investment services* on behalf of more than one investment firm to which MiFID applies.~~

~~Further material on *appointed representatives* and tied agents is contained in chapter 12 of our Supervision Manual ('SUP').~~ [deleted]

13.3 Investment Services and Activities

Introduction

Q12. Where do we find a list of ~~MiFID~~ investment services and activities?

~~The list in Section A of Annex 1 of MiFID has been onshored in~~ They are listed in Part 3 of Schedule 2 to the ~~Regulated Activities Order~~ *Regulated Activities Order*. ~~There are nine investment services and activities in Part 3 (A1 to A9 have now been onshored in paragraph 1 to paragraph 9). However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Article 4 MiFID defines some~~ Some of them are defined in more detail~~:~~

- ~~investment advice (article 4.1(4) MiFID;~~
- ~~execution of orders on behalf of clients (article 4.1(5) MiFID);~~
- ~~dealing on own account (article 4.1(6) MiFID); and~~
- ~~portfolio management (article 4.1(8) MiFID).~~

~~A further provision relating to investment advice is contained in article 9 of the *MiFID Org Regulation*.~~

~~As explained in PERG 13.1, this chapter only covers the MiFID activities dealt with through the authorisation regime under the Act. The other activities covered by MiFID and MiFIR are not dealt with in section A of Annex 1, as onshored in Part 3 of Schedule 2 of the *Regulated Activities Order*~~ elsewhere, as explained in the answers to the applicable questions in this section.

…

Reception and transmission

Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? ~~(A1 and recital 44)?~~

…

If you are party to a transaction as agent for your client or commit your client to it, you may be doing more than receiving and transmitting orders and will need to consider whether you are providing the investment service of executing orders on behalf of clients.

The investment service or activity of reception and transmission is set out in paragraph 1 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 1 of section A of MiFID, which is explained by recital 44 to that Directive.

Q14. We are introducers who merely put clients in touch with other investment firms - are we receiving and transmitting orders?

No. If all you do is introduce others to investment firms so that they can provide investment services to those clients, this in itself does not bring about a transaction and so will not amount to receiving and transmitting orders. But if you are a person who does more than merely introduce, for example an introducing broker, you are likely to be receiving orders on behalf of your clients and transmitting these to clearing firms and therefore may ~~fall within the scope of MiFID~~ be carrying on this investment service.

Executing orders

Q15. When might we be executing orders on behalf of clients ~~(A2, article 4.1(5) and recital 45)~~?

When you are acting to conclude agreements to buy or sell one or more ~~MiFID~~ financial instruments on behalf of clients. You will be providing this investment service if you participate in the execution of an order on behalf of a client, as opposed simply to arranging the relevant deal. In our view, you can execute orders on behalf of clients either when dealing in investments as agent (by entering into an agreement in the name of your client or in your own name, but on behalf of your client) or, in some cases, by dealing in investments as principal (for example by back-to-back or riskless principal trading).

This activity includes the issue of their own *financial instruments* by an ~~*investment firm*~~ investment firm or a credit institution.

The investment service or activity of executing orders on behalf of clients is set out in paragraph 2 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. It corresponds to the activity described in paragraph 2 of section A of MiFID, which is defined by article 4.1(5) and further explained by recital 45 to that Directive.

Q15A. Is every issue of financial instruments ~~a MiFID~~ an investment service?

No. Although the answer to Q15 says that executing client orders includes issuing your own *financial instruments*, not every issue of *financial instruments* amounts to the ~~MiFID~~ investment service of execution of orders on behalf of clients. This is explained in more detail in the rest of this answer.

…

Dealing on own account

Q16. What is dealing on own account ~~(A3, article 4.1(6)) and recital 24)~~?

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more ~~MiFID~~ financial instruments.

…

Dealing on own account may be relevant to firms with a *dealing in investments as principal* permission in relation to ~~MiFID~~ financial instruments, but only where they trade financial instruments on a regular basis for their own account, as part of their ~~MiFID~~ investment services business. We do not think that this activity is likely to be relevant in cases where a person acquires a long term stake in a company for strategic purposes or for most venture capital or private equity activity. Where a person invests in a venture capital fund with a view to selling its interests in the medium to long term only, in our view he is not dealing on own account ~~for the purposes of MiFID~~.

If a firm executes client orders by standing between clients on a matched principal basis (back-to-back trading), it is both dealing on own account and executing orders on behalf of clients.

The investment service or activity of dealing on own account is set out in paragraph 3 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. It corresponds to the activity described in paragraph 3 of section A of MiFID, which is defined by article 4.1(6) and further explained by recital 24 to that Directive.

Portfolio management

Q17. What is portfolio management under MiFID ~~(A4 and article 4.1(8))~~?

Portfolio management is managing portfolios in accordance with mandates given by *clients* on a discretionary client-by-client basis where such portfolios include one or more ~~*MiFID*~~ *financial instruments*. If there is only a single *financial instrument* in a portfolio, you may be carrying on portfolio management even if the rest of the portfolio consists of other types of assets, such as real estate. Portfolio management includes acting as a third party manager of the assets of a *fund*, where discretion has been delegated to the manager by the *operator* or manager of the *fund*. In the case of management of a collective investment undertaking, however, an exemption may be available to the operator (see Q43). The advisory agent who keeps clients' portfolios under review and provides advice to enable the client to make investment decisions (but does not exercise discretion to take investment decisions himself) is not carrying on portfolio management but may be providing other investment services such as investment advice ~~under MiFID~~.

The investment service or activity of portfolio management is set out in paragraph 4 of Part 3 of Schedule 2 to the *Regulated Activities Order* and defined in regulation 3 of those regulations. It corresponds to the activity described in paragraph 4 of section A of MiFID, which is defined by article 4.1(8) of that Directive.

Investment advice

Q18. What is investment advice ~~under MiFID (A5 and article 4.1(4))~~?

Investment advice means providing personal recommendations to a client, either at ~~his~~ their request or on your own initiative, in respect of one or more transactions relating to ~~MiFID~~ financial instruments.

The investment service or activity of investment advice is set out in paragraph 5 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 5 of section A of MiFID, which is defined by article 4.1(4) of that Directive.

Q19. What is a 'personal recommendation' ~~for the purposes of MiFID (article 9 of the MiFID Org Regulation)~~?

…

This is similar to the ~~UK~~ regulated activity of *advising on investments* but is narrower in scope insofar as it requires the recommendation to be of a personal nature. A personal recommendation does not include advice given to an issuer to issue securities, as the latter is not an "investor" for the purposes of ~~MiFID~~ the definition of personal recommendation or article 53 of the ~~*RAO*~~ *Regulated Activities Order*.

As explained in *PERG* 8.24.1AG, there are circumstances in which the ~~*UK*~~ regulated activity is also based on giving personal recommendations. *PERG* 8.30B (Personal recommendations) gives ~~guidance~~ *guidance* on the definition in the context of the ~~*UK*~~ regulated activity. In the *FCA's* view that *guidance* is also relevant to the meaning of 'personal recommendation' ~~under MiFID~~ in Schedule 2 to the *Regulated Activities Order*.

A personal recommendation is defined in Part 4 of Schedule 2 to the *Regulated Activities Order*. The definition corresponds to the one in article 9 of the *EU MiFID Org Regulation*.

Q20. Can you give us some other practical examples of what are not personal recommendations ~~under MiFID~~?

A recommendation is not a personal recommendation if it is issued exclusively to the public (~~article 9 of the *MiFID Org Regulation*~~ Part 4 of Schedule 2 to the *Regulated Activities Order*). Advice about financial instruments in a newspaper, journal, magazine, publication, internet communication addressed to the public in general or in a radio or television broadcast should not amount to a personal recommendation. However, use of the internet does not automatically mean that a communication is not a personal recommendation on the grounds that it is made to the public. Therefore, for instance, while advice through a generally accessible website is unlikely to be a personal recommendation, an email communication provided to a specific person, or to several persons, may amount to investment advice.

…

However, you should bear in mind that, where a person provides only selective information to a client, for example, when comparing one ~~MiFID~~ financial instrument against another, or when a client has indicated those benefits that ~~he seeks~~ they seek in a product, this could, depending on the circumstances, amount to an implied recommendation and hence the investment service of investment advice ~~for the purposes of MiFID~~.

If you provide an investment research service to your clients or otherwise provide recommendations intended for the public generally, this is not ~~MiFID~~ the investment service of investment advice ~~(A5)~~ although it may be an ancillary service ~~(B5) for the purposes of MiFID~~ under paragraph 5 of Part 3A of Schedule 2 to the *Regulated Activities Order* and may also amount to the regulated activity of *advising on investments* for which you are likely to require *authorisation*.

Q21. Is generic advice investment advice ~~for the purposes of MiFID (recitals 15 to 17 to the MiFID Org Regulation)~~?

No. Investment advice is limited to advice on particular ~~MiFID~~ financial instruments, for example "I recommend that you buy XYZ Company shares". If you only provide generic advice on ~~MiFID~~ financial instruments and do not provide advice on particular ~~MiFID~~ financial instruments, you are not ~~a firm to which MiFID applies and do not require *authorisation*~~ providing the investment service of investment advice.

If you are ~~an investment firm to which MiFID applies~~ a *firm*, however, the generic advice that you provide may be subject to ~~MiFID-based~~ conduct of business requirements. For example, if you recommend to a client that it should invest in equities rather than bonds and this advice is not in fact suitable, you are likely, depending on the circumstances of the case, to contravene ~~MiFID~~ requirements to:

…

Acts carried out by an investment firm that are preparatory to the provision of ~~a MiFID~~ an investment service or activity are an integral part of that service or activity. This would include the provision of generic advice. Therefore if a person provides generic advice to a client or a potential client prior to or in the course of the provision of investment advice or any other ~~MiFID~~ investment service or activity, that generic advice is part of that ~~MiFID~~ investment service or activity.

Providing a general recommendation about a transaction in a financial instrument or a type of financial instrument is an ancillary service within ~~Section B(5) of Annex I of MiFID~~ paragraph 5 of Part 3A of Schedule 2 to the *Regulated Activities Order*.

There is material on generic advice in recitals 15 to 17 to the *EU MiFID Org Regulation*, which is reflected in this section.

Underwriting and firm commitment placing

Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis ~~(A6)~~?

~~A6~~ This activity comprises two elements:

…

In our view, the 'firm commitment' aspect of the placing service relates to the person arranging the placing, as opposed to the person who has agreed to purchase any instruments as part of the placing. Accordingly, placing on a firm commitment basis occurs where a firm undertakes to arrange the placing of ~~MiFID~~ financial instruments and to purchase some or all the instruments that it may not succeed in placing with third parties. In other words, the placing element of ~~A6~~ the underwriting and/or placing activity requires the same person to arrange the placing and provide a firm commitment that some or all of the instruments will be purchased.

Where a person distributes units in a UCITS fund to investors, in our view this does not amount to placing although it is likely to involve the reception and transmission of orders.

The investment service or activity of underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis is set out in paragraph 6 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 6 of section A of MiFID.

Placing without a firm commitment

Q23. When might placing of financial instruments without a firm commitment basis arise ~~(A7)~~?

Where the person arranging the placing does not undertake to purchase those ~~MiFID~~ financial instruments ~~he fails~~ they fail to place with third parties.

The investment service or activity of placing without a firm commitment basis is set out in paragraph 7 of Part 3 of Schedule 2 to the *Regulated Activities Order*. It corresponds to the activity described in paragraph 7 of section A of MiFID.

Operating a multilateral trading facility

Q24. What is a multilateral trading facility ~~(A8, article 4.1(22) and recital 7 of MiFIR)~~?

…

For there to be an MTF, the buying and selling of ~~MiFID~~ financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and

orders (for example, their price and time of receipt in the system) that determine the resulting trades. An MTF may be contrasted with an OTF (see Q24A for OTFs) in this regard, because the operator of an OTF is required to carry out order execution on a discretionary basis.

The investment service or activity of operating a multilateral trading facility is set out in paragraph 8 of Part 3 of Schedule 2 to the *Regulated Activities Order* and is defined in *MiFIR*. It corresponds to the activity described in paragraph 8 of section A of MiFID, which is defined in article 4.1(22) of that Directive.

Operating an organised trading facility

Q24A. What is an organised trading facility ~~(A9, article 4.1(23) and recitals 8 and 9 of MiFIR)~~?

…

In exercising its discretion, the operator must comply with the requirement under ~~article 18 of MiFID~~ *MAR* 5A.4 (Trading process requirements) to establish objective criteria for the efficient execution of orders, and must also comply with the best execution requirements under ~~article 27 of MiFID~~ *COBS* 11.2A (Best execution – MiFID provisions).

The investment service or activity of operating an organised trading facility is set out in paragraph 9 of Part 3 of Schedule 2 to the *Regulated Activities Order* and is defined in *MiFIR*. It corresponds to the activity described in paragraph 9 of section A of MiFID, which is defined in article 4.1(23) of that Directive.

…

Ancillary services

Q25. What about ancillary services ~~(Annex 1, section B)~~? Do we need to be authorised if we wish to provide these services?

Yes, but only when providing these services is a *regulated activity*, for example, if you provide custody services which fall within the *regulated activity* of *safeguarding and administering investments*. You are not an investment firm ~~within the scope of MiFID~~, however, if you only perform ancillary services (regardless of whether these are *regulated activities* requiring *authorisation* under the Act).

Ancillary services are described in Part 3A of Schedule 2 to the *Regulated Activities Order*. They correspond to the activities described in section B of Annex 1 of MiFID.

…

13.4 Financial instruments

Introduction

Q27. Where do we find a list of ~~MiFID~~ financial instruments?

~~The list in Section C of Annex 1 to MiFID has been onshored in Part 1 of Schedule 2 to the Regulated Activities Order.~~ There are eleven categories of financial instruments ~~in Section C~~, which ~~have been onshored~~ are listed in Part 1 ~~(C1 to C11, which have been onshored in paragraph 1 to paragraph 11). However, as explained in *PERG* 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter. Transferable securities (C1) and money market instruments (C2) are defined in article 4. Some financial instruments are further defined in the *MiFID Org Regulation*~~ of Schedule 2 to the *Regulated Activities Order*. This list essentially corresponds to the list in Section C of Annex 1 to MiFID, where they are lettered and numbered C1 to C11.

Transferable securities

Q28. What are transferable securities? ~~(C1 and article 4.1(44))?~~

…

Examples of instruments which, in our view, do not amount to transferable securities include securities that are only capable of being sold to the issuer (as is the case with some industrial and provident society interests) and OTC derivatives concluded by a confirmation under an ISDA master agreement.

Transferable securities are set out in paragraph 1 of Part 1 of Schedule 2 to the *Regulated Activities Order* and defined in *MiFIR*. They correspond to the instruments set out in paragraph 1 of section C of Annex 1 to MiFID, which are defined in article 4.1(44) of that Directive.

Money market instruments

Q28A. What are money market instruments ~~(C2 and article 4.1(17) of MiFID and article 11 of the MiFID Org Regulation)~~?

This means those classes of instruments which are normally dealt in on the money market. Examples include treasury bills, certificates of deposit, ~~and~~ commercial paper and other instruments with substantively equivalent features. A money market instrument does not include an instrument of payment.

An instrument is only a money market instrument if it also meets the following conditions:

…

- it does not fall into ~~sections C4 to C10 of Annex 1 to MiFID~~ paragraphs 4 to 10 of Part 1 of Schedule 2 to the *Regulated Activities Order* (derivatives); and

…

Money market instruments are set out in paragraph 2 of Part 1 of Schedule 2 to the *Regulated Activities Order* and defined in paragraph 2 of Part 2 of Schedule 2 to the *Regulated Activities Order*. They correspond to the instruments set out in paragraph 2 of section C of Annex 1 to MiFID, which are defined in article 4.1(17) of that Directive and in article 11 of the *EU MiFID Org Regulation*.

Collective investment undertakings

Q29. What are units in collective investment undertakings ~~(C3)~~?

…

Units in collective investment undertakings are set out in paragraph 3 of Part 1 of Schedule 2 to the *Regulated Activities Order* and correspond to the financial instrument in paragraph 3 of Section C of Annex 1 to MiFID.

Derivatives: general

Q30. Which types of derivative ~~fall within MiFID scope~~ are financial instruments?

The following derivatives ~~fall under MiFID~~ are financial instruments:

…

- financial contracts for differences (these are included in paragraph 9 ~~of Section C of Annex 1 to MiFID, onshored in paragraph 10~~ of Part 1 of Schedule 2 ~~of~~ to the *Regulated Activities Order* and correspond to the financial instrument in paragraph 9 of Section C of Annex 1 to MiFID); and

…

Credit derivatives

Q31. What are derivative instruments for the transfer of credit risk ~~(C8)~~?

Derivative instruments that are designed for the purposes of transferring credit risk from one person to another. They include, for example, credit default products, synthetic collateralised debt obligations, total rate of return swaps, downgrade options and credit spread products.

This category of financial instrument is set out in paragraph 8 of Part 1 of Schedule 2 to the *Regulated Activities Order* and corresponds to the financial instrument in paragraph 8 of Section C of Annex 1 to MiFID.

General financial and emission derivatives ~~(C4)~~: General

Q31A. Which types of financial derivative fall within this heading?

~~The C4~~ This category of financial ~~instruments~~ instrument is set out in paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order* and corresponds to the financial instrument in paragraph 4 of Section C of Annex 1 to MiFID. It covers:

…

General financial and emission derivatives ~~(C4)~~: Treatment of foreign exchange contracts

Q31B. Is every foreign exchange contract ~~caught by MiFID (article 10 of the MiFID Org Regulation)~~ a financial derivative?

No. There are two exclusions:

…

- There is an exclusion for a foreign exchange transaction connected to a payment transaction (see the answer to Q31G).

These exclusions are set out in paragraph 3 of Part 2 of Schedule 2 to the *Regulated Activities Order*. They correspond to the exclusion in article 10 of the *EU MiFID Org Regulation*.

Technically these exclusions relate to the ~~other~~ "any other derivative contracts" type of ~~C4~~ derivative contract listed in the answer to Q31A. However, in the ~~FCA's~~ *FCA's* view, no contract that has the benefit of one of these exclusions could be a ~~C4~~ future under any of the other categories listed in that answer either.

~~These~~ Recital 13 to the *EU MiFID Org Regulation* says that these exclusions do not apply to an option or a swap on a currency, regardless of the duration of the swap or option and regardless of whether it is traded on a *trading venue* or not ~~(recital 13 to the *MiFID Org Regulation*)~~. The *FCA* believes that this statement also applies to the *Regulated Activities Order* exclusions discussed in this answer.

Q31C. What is the exclusion for foreign exchange spot contracts mentioned in Q31B?

…

If a foreign exchange contract falls into the third category (contract for the purpose of purchase of securities) it ~~may~~ does not also fall into one of the other two categories. ~~As a result there are potentially two maximum delivery periods. Where this is the case, the longer of the two delivery periods applies for the purpose of deciding whether the exclusion applies.~~

…

~~This~~ Recital 13 to the *EU MiFID Org Regulation* says that this exclusion only applies if there is a direct and unconditional exchange of the currencies being bought and sold ~~(recital (13) to the *MiFID Org Regulation*)~~. The *FCA* believes that that statement broadly also applies to the *Regulated Activities Order*

exclusion discussed in this answer. However, a contract may still benefit from the exclusion if the exchange of the currencies involves converting them through a third currency.

…

Q31D. How are contracts for multiple exchanges of currency treated under the exclusion for foreign exchange spot contracts mentioned in Q31C?

~~The~~ Recital 13 to the *EU MiFID Org Regulation* says that the exclusion can cover a single contract with multiple exchanges of currencies. In such a contract, each exchange of a currency should be treated separately for the purpose of the exclusion ~~(recital 13 to the *MiFID Org Regulation*)~~. The *FCA* believes that that statement also applies to the *Regulated Activities Order* exclusion discussed in this answer.

…

Q31H. What do identifiable and means of payment as referred to in the answer to Q31G mean?

The most straightforward example (Example ~~(1)~~ (X)) of what this means is a contract where one of the parties to the contract:

…

See Example (10) in Q31M (Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?) for an example of the second type of foreign exchange contract in Example ~~(1)~~ (X) (contract to achieve certainty about the level of payments).

…

~~*The MiFID Org Regulation* says that the~~ The foreign exchange contract must be a means of payment. Therefore, the exclusion requires that not only should the currency contract facilitate payment for identifiable goods, services or direct investment but that it should also be a means of payment. This combined requirement does not mean that there has to be a three-party arrangement between the buyer and seller of goods or services and the foreign exchange supplier. So, for example, if a UK company (A) is buying goods from an exporter in Germany (B) and is paying in euro and A buys the euro forward from a bank (C), there is no need for C to issue some sort of instrument to B (Example ~~(2)~~ (Y)).

Instead, this combined requirement means that the currency contract that is to be excluded should facilitate the payment in the way described in Example ~~(1)~~ (X) at the start of this answer or that there should be an equivalent close connection between the currency contract and the payment transaction.

Even though there is no requirement for a formal instrument of payment, the exclusion can cover such arrangements. So, in Example ~~(2)~~ (Y) in this answer, the

exclusion may apply to an arrangement that involves bank C issuing a euro letter of credit at the request of A for the benefit of B.

Q31I. What do goods, services and direct investment mean in the answer to Q31G?

…

However, in the ~~FCA's~~ *FCA's* view, ~~MiFID investments~~ financial instruments are only covered by the exclusion if they constitute a direct investment.

…

A foreign exchange contract connected to the purchase of a ~~MiFID investment~~ financial instrument may still be covered by the exclusion for spot contracts if the payment instrument exclusion does not apply. The spot exclusion makes particular provision for purchases of transferable securities and units in a collective investment undertaking (see the answer to Q31C). The result is that the means of payment exclusion does not undermine the specific provisions of the spot contract exclusion dealing with such transactions.

…

Q31K. How do I know whether the conditions for the means of payment exclusion described in the answer to Q31G are met?

A financial counterparty (A) selling currency to a client may want to know whether the client (B) is going to use the foreign currency in a way that meets the exclusion conditions. This may be relevant to whether ~~MiFID~~ conduct of business obligations that apply to *investment services* apply to the services provided by A.

…

Q31L. Can a flexible forward come within the means of payment exclusion described in the answer to Q31G?

…

An argument against the availability of the means of payment exclusion is that a flexible forward contract is an option and that the exclusion is not available for an option. However, in the ~~FCA's~~ *FCA's* view, the approach in the answer to Q31B applies. That is, a flexible forward contract that meets all the conditions of the exclusion is not a traditional option but rather a hybrid contract that is in the "any other derivative" contract category listed in the answer to Q31A (~~Types of C4 derivative contracts~~ Which types of financial derivative fall within this heading?), even in the example in which the unused balance is cancelled.

…

Q31M. Can you give me some more examples of how the means of payment exclusion referred to in the answer to Q31G works?

Examples of how the means of payment exclusion works	
Example	**Explanation**
…	…
(10) An exporter (A) sells goods to a French importer for payment on delivery in euros. A, before the due date for payment for the goods, sells the euro for the equivalent amount in sterling. The foreign exchange contract is made at the applicable forward rate on the date of the currency contract. Settlement of the currency contract is due on the same day as payment for the goods. A is thereby protected against adverse movements in sterling against the euro.	~~The exclusion is potentially available. Recital 10 to the *MiFID Org Regulation* says that a~~ A contract to achieve certainty about the level of payments for identified goods is covered by the exclusion. Recital 10 to the *EU MiFID Org Regulation* says that contracts to achieve such certainty are within the means of payment exemption corresponding to the *Regulated Activities Order* exclusion discussed in this example and the *FCA* considers that that is also the case for that *Regulated Activities Order* exclusion.
…	…
(15) A UK importer (A) has bought €100,000 worth of goods. The supplier has issued an invoice but the sum is not yet due from A. A buys €200,000 forward. A will use the other €100,000 for purposes that do not meet the exclusion conditions.	The exclusion is not available where A uses part of the currency it buys for purposes that do not meet the conditions of the exclusion. The contract should not be treated as partly excluded and partly as a ~~C4~~ currency derivative within paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*. If, however, A enters into two foreign exchange contracts, each for €100,000, the exclusion may apply to one of them. Also see example (16).
…	…
(19) ~~A farmer's farm payment under the EU basic payment scheme will be €10,000 and will be paid in sterling. The payment will be made in three months' time. In order to fix the sterling amount they will receive, the farmer wishes to book a forward with a currency provider to sell €10,000 and buy sterling in three months' time.~~ [deleted]	~~The issue here is whether the forward exchange contract relates to identifiable goods and services as referred to in the answer to Q31G (What is the second exclusion for foreign exchange contracts mentioned in Q31B?).~~ ~~The exclusion may not be available. This is because the payment may not be linked to any specific goods or services being sold or bought by the farmer.~~

	~~However it is possible that the farmer is going to use the payments under the scheme to purchase goods or stock for their farming business. If there is an identifiable payment transaction in accordance with the examples in this table the exclusion will potentially be available.~~ ~~If the exclusion is not available it is unlikely that the farmer will be carrying on MiFID business for the reasons described in the answer to Q7 (We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?).~~
…	…

…

Q31O. I am a payment services provider under the Payment Services Regulations. How do the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G apply to me?

…

The *Payment Services Regulations* allow you to provide foreign exchange services that are closely related and ancillary to your payment services. That right does not allow you to provide foreign exchange derivative services that would otherwise require ~~authorisation~~ *authorisation* as an investment firm under ~~MiFID~~ the *Act*. You therefore need to consider the availability of ~~MiFID~~ the foreign exchange exclusions discussed in this section for your foreign exchange business.

…

The foreign exchange part of this example may involve a ~~MiFID C4~~ derivative within paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order* if it has a forward element. However, in practice, it is likely that such foreign exchange transactions will ~~fall outside MiFID~~ not involve an *investment service* because the spot exclusion applies.

The following are examples of how the delivery period should be calculated for the ~~MiFID~~ spot exclusion. They are all based on a payment being made in one currency funded from a payment account in another currency.

…

Q31P. Can a non-deliverable forward come within the exclusion for spot foreign exchange contracts in the answer to Q31C or the means of payment exclusion in the answer to Q31G?

…

As settlement is for the difference between an exchange rate agreed before delivery and the actual spot rate at maturity, a non-deliverable forward is not a spot contract, regardless of the settlement period ~~(recital (12) of the *MiFID Org Regulation*)~~, and the means of payment exclusion is also not available. See the answer to Q31R about why settlement for a difference does not come within either exclusion.

This answer is consistent with recital 12 to the *EU MiFID Org Regulation*.

Q31Q. How is holiday spending money treated under the spot contract and means of payment exclusions referred to in the answers to Q31C and Q31G?

One way of buying holiday currency is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day of collection. This contract is not a ~~MiFID investment~~ financial instrument either because it ~~does not fall~~ ~~into the category C4 type of derivative~~ is not a derivative within paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order* in the first place or because the spot contract exclusion described in the answer to Q31C applies.

Another way of buying holiday ~~money~~ currency is for the holidaymaker to order currency to be collected, for example, a week after the order, to be paid for at the currency seller's spot rate on the day the currency is ordered. This type of contract is potentially a derivative within ~~the C4 type of derivative~~ paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*. However, the means of payment exclusion is potentially available. The holiday can be treated as identifiable goods or services even though the holidaymaker may not know what restaurant they are going to eat at or what tourist attractions they are going to visit.

…

These answers are relevant to whether the currency seller ~~requires authorisation under MiFID~~ is an investment firm. The holidaymaker will of course not ~~require authorisation~~ be an investment firm because a ~~holiday-maker~~ holidaymaker buying holiday money is not acting on a professional basis in the way described in the answer to ~~Q7~~ Q4.

…

Q31S. I enter into my foreign exchange contracts on a trading venue. What exclusions or exemption can I rely on?

…

If neither exclusion is available, and the contract is a ~~C4~~ derivative within paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*, you may find the own account exemption described in the answer to Q40 helpful. Although that exemption is usually unavailable to those who have direct electronic access to a ~~*trading venue*~~ UK trading venue, this is not the case where the contract is for hedging purposes.

Commodity derivatives

Q32. Which types of commodity derivative ~~fall within MiFID scope~~ are financial instruments?

Broadly speaking, the following commodity derivatives ~~fall within the scope of MiFID~~ are financial instruments:

- a derivative relating to a commodity derivative, for example, an option on a commodity future (~~C4~~ paragraph 4 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- cash-settled commodity derivatives (as explained in more detail in Q33A) (~~C5~~ paragraph 5 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- physically settled commodity derivatives traded on certain markets or facilities (as explained in more detail in Q33B) (~~C6~~ paragraph 6 of Part 1 of Schedule 2 to the *Regulated Activities Order*);
- other commodity derivatives capable of physical settlement and not for commercial purposes or wholesale energy products traded on an *EU OTF* that must be physically settled (as explained in more detail in Q33C) (~~C7~~ paragraph 7 of Part 1 of Schedule 2 to the *Regulated Activities Order*).

The definition of commodity derivative in ~~MiFIR~~ *MIFIR* also includes derivatives falling into ~~paragraph C10 of Section A of Annex 1 to MiFID, onshored in~~ paragraph 10 of Part 1 of Schedule 2 ~~of~~ to the *Regulated Activities Order* (see the answer to Q34 for this type of derivative).

Q33. What is a commodity ~~for the purposes of MiFID~~?

"Commodity" means any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products and energy such as electricity (~~article 2.6 of the *MiFID Org Regulation*~~ article 3 of the *Regulated Activities Order*). The fact that energy products, such as gas or electricity, may be "delivered" by way of a notification to an energy network (such as notifications under the Network Code or the Balancing and Settlement Code) does not prevent them being "capable of being delivered" for these purposes. If a good is freely replaceable by another of a similar nature or kind for the purposes of the relevant contract (or is normally regarded as such in the market), the two goods will be fungible in nature for these purposes. Gold bars are a classic example of fungible goods. In our view, the concept of commodity does

not include services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.

Q33A. Can you tell me more about ~~category C5~~ commodity derivatives within paragraph 5 of Part 1 of Schedule 2 to the Regulated Activities Order?

This type of commodity derivative is one that must be settled in cash or one that provides for settlement in cash at the option of one of the parties. A derivative that only allows a party to opt for cash in the event of default or termination is not included.

This type of derivative corresponds to the derivative in paragraph 5 of Section C of Annex 1 to MiFID.

Q33B. Can you tell me more about ~~category C6~~ commodity derivatives within paragraph 6 of Part 1 of Schedule 2 to the Regulated Activities Order?

…

~~The~~ This category ~~C6 type~~ of commodity derivative excludes a wholesale energy product traded on a *UK* OTF that must be physically settled. ~~The *MiFID Org Regulation*~~ Paragraph 4 of Part 2 of Schedule 2 to the *Regulated Activities Order* defines physical settlement in more detail.

~~Article 6 of the *MiFID Org Regulation* has special definitions for what types of oil, coal and wholesale energy products are included in the C6 category of commodity derivative.~~

A contract that can be physically settled but which is not traded on a regulated market, MTF or OTF might still fall within the ~~C5 or C7~~ paragraph 5 or 7 category of commodity derivative even though it falls outside the paragraph 6 category ~~C6~~.

The paragraph 6 type of commodity derivative corresponds to the derivative in paragraph 6 of Section C of Annex 1 to MiFID. There is further EU material about it in articles 5 and 6 of the *EU MiFID Org Regulation*.

Q33C. Can you tell me more about ~~category C7~~ commodity derivatives ~~(recital 5 to, and article 7 of, the MiFID Org Regulation)~~ within paragraph 7 of Part 1 of Schedule 2 to the Regulated Activities Order?

This type of commodity derivative is one that meets all the following conditions:

…

- It is not a ~~C6~~ commodity derivative within paragraph 6 of Part 1 of Schedule 2 to the *Regulated Activities Order*.

…

- It meets one of the following criteria:
  - it is traded on a ~~third country~~ trading venue other than a UK trading venue that performs a similar function to a regulated market, an MTF or an OTF (an "equivalent ~~third country~~ overseas trading venue"); or
  - it is expressly stated to be traded on, or is subject to the rules of, a *UK* regulated market, a *UK* MTF, a *UK* OTF or an equivalent ~~third country~~ overseas trading venue; or
  - it is equivalent to a contract traded on a *UK* regulated market, *UK* MTF, *UK* OTF or equivalent ~~third country~~ overseas trading venue. Equivalence in a contract is judged by reference to the price, the lot, the delivery date and other contractual terms such as quality of the commodity or place of delivery.
- It is standardised so that the price, the lot~~,~~ and the delivery date ~~and other terms~~ are determined principally by reference to regularly published prices, standard lots or standard delivery dates.

Certain contracts entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network are excluded from the ~~C7~~ paragraph 7 category of commodity derivative.

The ~~category C7~~ paragraph 7 type of commodity derivative also excludes a wholesale energy product traded on an EU OTF that must be physically settled. ~~The *MiFID Org Regulation*~~ Paragraph 4 of Part 2 of Schedule 2 to the *Regulated Activities Order* defines physical settlement in more detail.

The paragraph 7 type of derivative corresponds broadly to the derivative in paragraph 7 of Section C of Annex 1 to MiFID. There is further EU material about this kind of derivative in recital 5 to, and articles 5, 6 and 7 of, the *EU MiFID Org Regulation*.

Miscellaneous derivatives ~~(C10)~~

Q34. What types of derivatives fall into ~~the C10 category~~ paragraph 10 of Part 1 of Schedule 2 to the Regulated Activities Order?

There is a miscellaneous category of derivatives in ~~C10~~ paragraph 10 of Part 1 of Schedule 2 to the *Regulated Activities Order*, which is supplemented by ~~articles 7 and 8 of the *MiFID Org Regulation*~~ paragraphs 7 and 8 of Part 2 of Schedule 2 to the *Regulated Activities Order*. These relate to:

…

- an index or measure related to the price or value of, or volume of transactions in, any asset, right, service or obligation; or

…

~~C10~~ Paragraph 10 derivatives must also meet at least one of the following criteria:

…

- the contract is traded in a *regulated market*, an MTF, an OTF or a non-~~EEA~~ UK trading venue that performs a similar function; or

- the contract meets the following criteria in the answer to Q33C:

  …

  - it meets any of the requirements about trading on (or being stated to be traded on), being subject to the rules of or being equivalent to contracts traded on, certain trading venues;

  …

…

A contract of insurance or reinsurance is not a ~~C10~~ paragraph 10 commodity derivative ~~(recital 6 to the *MiFID Org Regulation*)~~. Neither is a contract falling under one of the other paragraphs of ~~section C of Annex 1 to MiFID, onshored in~~ part 1 of Schedule 2 ~~of~~ to the *Regulated Activities Order*.

The paragraph 10 type of derivative corresponds to the derivative defined in paragraph 10 of Part C of Annex 1 to MiFID, as supplemented by recital 6 to, and articles 7 and 8 of, the *EU MiFID Org Regulation*.

Emission allowances

Q34A. How are emission allowances treated?

…

- The *UK auctioning regulations* allow the following to bid:

  …

  - a person exempt under ~~article 2(1)(j) of MiFID as onshored~~ paragraph 1(k) in Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* (see Q44 to Q45 for more on this exemption).

- An *emission allowance* is itself a financial instrument ~~(C11)~~ under paragraph 11 of Part 1 of Schedule 2 to the *Regulated Activities Order*. It corresponds broadly to the financial instrument in paragraph 11 of Part C of Annex 1 to MiFID.

- An option, future, swap, forward rate agreement or any other derivative contract relating to *emission allowances* is included as a ~~C4~~ derivative under paragraph 4 of Part 1 to Schedule 2 to the *Regulated Activities Order*.

It is not always clear how all this overlapping legislation fits together but in the ~~FCA's~~ *FCA's* view, it works like this ~~(for ease of reference the phrase 'MiFID authorisation' is used to refer to UK requirements onshoring MiFID)~~:

…

(2) The five-day future auction product is a financial instrument ~~and is regulated under MiFID as onshored by~~ under paragraphs 4 and 11 of Part 1 of Schedule 2 to the *RAO*. ~~It is included under C4 and C11.~~

(3) The two-day spot contract product is also a financial instrument. It is included under ~~C11. It is therefore also regulated under MiFID as onshored by~~ paragraph 11 of Part 1 of Schedule 2 to the *RAO*.

(4) In the ~~FCA's~~ *FCA's* view, an *emission allowance* (including when auctioned under the *EU auction regulation* or the *UK auctioning regulations*) will not come within ~~C1~~ paragraph 1 of Part 1 to Schedule 2 of the *Regulated Activities Order*.

(5) The *UK auctioning regulations* provide certain exemptions for aircraft operators and operators of plant and other installations. These exemptions continue to apply whether or not ~~a MiFID~~ an exemption~~, as onshored~~ in Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* is available, but only for bidding activities covered by the *UK auctioning regulations*.

(6) Thus, for example, regulation 16 of the *UK auctioning regulations* ~~enable~~ enables business groupings of operators in (5) to be eligible to apply for admission to bid. The ~~MiFID~~ exemption in (12) below may not cover all such persons but they are still entitled to submit bids under the *UK auctioning regulations*.

(7) The mere fact of being exempt under ~~MiFID, as onshored in~~ Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* does not allow someone to bid under the *UK auctioning regulations*. The *UK auctioning regulations* regulate who can and cannot bid.

(8) The *UK auctioning regulations* cover the reception, transmission and submission of a bid. This corresponds to the investment services and ~~MiFID~~ activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.

(9) Therefore, the *UK auctioning regulations* activities of receiving, transmitting and submitting a bid are all also ~~covered by MiFID~~ *investment services*, whether the emission allowance is auctioned as a five-day future or a two-day spot contract. However, a person exempt under (5) is not ~~subject to MiFID~~ acting as an investment firm when bidding (subject to (10)).

(10) If a person who is allowed to bid under the *UK auctioning regulations* ~~or~~ is ~~authorised under MiFID~~ also *authorised* as an *investment firm* (because

for example it wants to carry out other ~~activities~~ *investment services* for which it needs ~~MiFID authorisation~~ *authorisation*), ~~MiFID will apply to~~ its bidding activities will be *investment services* and regulated as such.

(11) The ~~MiFID~~ investment services and activities that apply to a product covered by the *UK auctioning regulations* are not limited to the bidding activities listed in paragraph (8) of this list. All the ~~MiFID~~ investment services and activities apply to *emission allowances* auctioned as a financial instrument. Therefore, for example, giving personal recommendations about emission allowances (including bids) is ~~covered by MiFID~~ an *investment service*. Anyone ~~wishing to carry~~ carrying out such activities will ~~need to be authorised as a MiFID~~ be an investment firm, unless some other exemption is available.

(12) ~~Article 2.1(e) of MiFID as onshored in~~ Paragraph 1(f) of Part 1 of Schedule 3 to the ~~*RAO*~~ *Regulated Activities Order* exempts an operator with compliance obligations under the *trading scheme order 2020* from ~~*MiFID*~~ the definition of investment firm for the purposes of the *Regulated Activities Order*.

(a) The exemption covers some of the same ground as the exemption in the *UK auctioning regulations* described in (5) to (7) above. However, this overlap neither extends nor narrows the effect of the *UK auctioning regulations* exemption.

(b) The ~~article 2.1(e)~~ exemption also covers activities not covered by the *UK auctioning regulations*. So, for example, the ~~article 2.1(e)~~ exemption covers buying and selling the underlying *emission allowance* or the five-day future or two-day spot auction product in the secondary market.

…

…

Structured deposits

Q34B. How are structured deposits covered?

~~Article 1.4 of MiFID applies certain provisions of MiFID to an investment firm or credit institution that sells or advises on *structured deposits*.~~

A *structured deposit* is not a financial instrument. This means, for example, that a firm does not become ~~*a MiFID firm*~~ an investment firm by advising on or selling them.

However, certain conduct of business *rules* that apply to *investment services* also apply to *structured deposits*.

13.5 Exemptions from ~~MiFID~~ the definition of investment firm

Introduction

Q35. Where do we find a list of ~~MiFID~~ exemptions from the definition of investment firm?

The exemptions can be found in ~~articles 2 and 3 MiFID, have been onshored in~~ Part 1 of Schedule 3 to the ~~Regulated Activities Order~~ *Regulated Activities Order* and Regulation 8 of the ~~MiFI Regulations~~ *MiFI Regulations*. ~~However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this chapter.~~ They broadly correspond to the exemptions in articles 2 and 3 of MiFID.

Q35A. Can you give me a complete list of exemptions?

Description of exemption	Paragraph in Part 1 of Schedule 3 to the Regulated Activities Order	MiFID reference	Guidance in this chapter
Insurers	paragraphs 1(a), (b) and (ba)	article 2.1(a)	Q36
Intra-group services	paragraph 1(c)	article 2.1(b)	Q37 and Q38
Services complementary to other professional activities	paragraph 1(d)	article 2.1(c)	Q39
Own account dealing (except in commodities or emission allowances)	paragraph 1(e)	article 2.1(d)	Q40 to Q40C
An operator with compliance obligations under the UK trading scheme who, when dealing in emission allowances, does not: …	paragraph 1(f)	article 2.1(e)	Q34A
Employee share schemes and pension schemes	paragraphs 1(g) and (h)	article 2.1(f) and (g)	Q42
The following public financial institutions: • the Treasury;	paragraph 1(i)	article 2.1(h)	None

• the Bank of England; • other public bodies charged with or intervening in the management of the public debt in the *United Kingdom*; and • members of the European System of Central Banks~~;~~. ~~• other national bodies performing similar functions in the EU;~~ ~~• other public bodies charged with or intervening in the management of the public debt in the EU; or~~ ~~• international financial institutions established by two or more EU Member States which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems.~~			
Collective investment undertakings and pension funds	paragraph 1(j)	article 2.1(i)	Q43
Activities relating to commodity derivatives or emission allowances	paragraph 1(k)	article 2.1(j)	Q44 to Q45
Persons providing investment advice in the course of providing another professional activity ~~not covered by MiFID~~ that is not an investment service. This only applies if the provision of such advice is not specifically remunerated.	paragraph 1(l)	article 2.1(k)	None
Any of the following:	paragraph 1(o)	article 2.1(n)	None

• Transmission system operators as defined in article 2(4) of Directive 2009/72/EC or article 2(4) of Directive 2009/73/EC (Directives about common rules for the internal markets in electricity and natural gas) when carrying out their tasks under the law of the *United Kingdom* or part of the *United Kingdom* relied on by the *United Kingdom* immediately before *IP completion day* to implement Directive 2009/72/EC or 2009/73/EC, under Regulation (EC) No 714/2009, under Regulation (EC) No 715/2009 or under network codes or guidelines adopted pursuant to those Regulations; • any persons acting as service providers on their behalf to carry out their task under those legislative acts or under network codes or guidelines adopted pursuant to those Regulations; or • any operator or administrator of an energy balancing mechanism, pipeline network or system to keep in balance the supplies and uses of energy when carrying out such tasks. This exemption is subject to various detailed conditions.			
Central securities depositories as defined in *CSDR* when providing services explicitly listed in Sections A and B of ~~EU Regulation 909/2014 (Securities settlement and central securities depositories regulation)~~ that Regulation	paragraph 1(p)	article 2.1(o)	None

Optional ~~article 3~~ exemption (the MiFID optional exemption)	It is not dealt with in the *Regulated Activities Order*. It is dealt with in regulation 8 of the *MiFI Regulations*.	article 3	Q48 to Q53
Exemptions relevant to Italy, Denmark and Finland	paragraphs 1(m) and 1(n)	articles 2.1(l) and (m)	None

Q35B. How are the Schedule 3 exemptions relevant?

A *person* is not an investment firm as defined in the *Regulated Activities Order* or the *Act* and is not a *MiFID investment firm* or a *MIFIDPRU investment firm* if it has an exemption in Part 1 of Schedule 3 to the *Regulated Activities Order*. However, a *person* with such an exemption can still be an *investment firm* as defined in the *Glossary*. Please see the table in the answer to Q-1 (Are all the different types of investment firm mentioned at the start of this chapter basically the same?) for more details.

Q35C. Broadly speaking, who do the Schedule 3 exemptions cover?

They are likely to be relevant to insurers, group treasurers, professional firms to which Part XX of the *Act* applies, many *authorised professional firms*, professional investors who invest only for themselves, pension schemes, depositaries and operators of collective investment schemes or other collective investment undertakings (such as investment trusts), journalists, and commodity producers and traders.

Insurance

Q36. We are an insurer. ~~Does MiFID apply to us~~ Are we exempt?

~~No. Insurers are exempt from MiFID (article 2.1(a)).~~ Yes. More specifically, you are exempted from the definition of investment firm if you fall into one of the following categories:

- The *Society*.
- A *firm* with *permission* for:
  - *effecting contracts of insurance* or *carrying out contracts of insurance*);
  - *insurance risk transformation*; or

- *managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyd's.*

The exemption is available when carrying on those activities and any other activities permitted by *rules* made by the *FCA* or the *PRA*.

Intra-group activities

Q37. We are a non-financial services group company providing investment services to other companies in the same group. Are we exempt under the group exemption ~~in article 2.1(b)~~?

Yes, you are exempted from the definition of investment firm if you provide these services exclusively for your parent company, your subsidiaries and those of your parent company. The exemption is narrower than the corresponding exclusion in article 69 of the ~~Regulated Activities Order~~ *Regulated Activities Order* (groups and joint enterprises) insofar, for example, as it does not apply to investment services supplied to a joint venture participant (see *PERG* 2.9.10G).

Q38. We also buy and sell financial instruments for ourselves. Are we still able to use the group exemption?

Yes. As long as your own account dealing does not involve you providing an ~~investment service (to which MiFID applies)~~ *investment service* to non-group entities, you can still rely on the group exemption in respect of the services you provide solely to other group companies.

So far as your own account dealing is concerned, you may be able to rely upon the own account exemption ~~in article 2.1(d)~~ (see ~~Q39~~ Q40) or ~~2.1(j)~~ the commodities exemption (see Q44 to Q45) if you meet the relevant conditions. The ability to combine reliance on ~~article 2.1(b)~~ the group exemption and ~~articles 2.1(d) or 2.1(j)~~ the own account and commodities exemptions could be relevant to companies performing group treasury functions.

The answer to Q46 (Is it possible to combine ~~article 2~~ Schedule 3 exemptions?) explains why it is possible to combine exemptions.

Incidental services as part of a professional activity

Q39. We provide investment services as a complement to our main professional activity. Are we exempt ~~(article 2.1(c) of MiFID and article 4 of the MiFID Org Regulation)~~?

Yes, you ~~will be exempt under article 2.1(c) MiFID~~ are exempted from the definition of investment firm under paragraph 1(d) in Part 1 of Schedule 3 to the *Regulated Activities Order*. The exemption is further defined in Part 2 of that Schedule. The exemption is only available if:

…

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their professional activity. In our view, the criteria set out in *PROF* 2.1.14G in relation to section 327(4) of the *Act* are also relevant to considering whether a firm can rely on the ~~MiFID~~ Schedule 3 exemption (see further guidance in *PROF* 2.1.16G).

If an *authorised professional firm* has the standard requirement on its permission that it "...must not carry on the specified regulated activities otherwise than in an incidental manner in the course of the provision by it of professional services (that is, services which do not consist of regulated activities)", our assumption is that it is exempt ~~from MiFID~~ if it complies with this requirement.

If you are an *authorised professional firm* that does not ~~falling within article 2.1(c) MiFID~~ benefit from the exemption, you may also wish to consider whether you are ~~exempt or otherwise from MiFID requirements by virtue of the domestic implementation of the article 3 exemption~~ eligible to be treated as a *MiFID optional exemption firm* (see Q48 and Q49).

The ~~article 2.1(c) MiFID~~ exemption may also apply to journalists, broadcasters and publishers (where they are subject to regulation or a code of ethics), although in most cases the ~~FCA~~ *FCA* would not expect these persons to fall within the ~~MiFID~~ definition of investment firm (see ~~Q7 and Q8~~ Q4).

The exemption corresponds to the exemption in article 2.1(c) of MiFID as supplemented by article 4 of the *EU MiFID Org Regulation*.

Own account

Q40. We regularly buy and sell financial instruments ourselves but never as a service to third parties. Are there any exemptions which might apply to us?

Yes, you could ~~fall within the article 2.1(d) MiFID~~ be exempted from the definition of investment firm under paragraph 1(e) of Part 1 of Schedule 3 to the *Regulated Activities Order*. However, the exemption ~~but~~ does not apply if you:

…

- are a member of, or a participant in, a UK regulated market or ~~an~~ MTF (except that non-financial entities can be members or participants as described in the answer to Q40A);
- have direct electronic access to a ~~regulated market, an MTF or an OTF (except that~~ UK trading venue; and in relation to this condition, please note that:
    - non-financial entities can however have such access, as described in the answer to Q40A~~)~~; and

- ○ direct electronic access is defined in paragraph 7 of Schedule 3 to the *Regulated Activities Order*;

…

Article 2(1)(d) of MiFID says that persons exempt under the commodities exemption described in the answer to Q44 are not required to meet the conditions laid down in the MiFID own account exemption corresponding to the own account exemption described in this answer in order to be exempt. In the ~~FCA's~~ *FCA's* view, that does not mean that you can do business of the type covered by the article 2.1(d) exemption without meeting the exemption conditions described in this answer just because you qualify for the commodities exemption. Recital 22 to MiFID confirms that the two exemptions apply cumulatively. Another reason for this conclusion is that articles 2.1(d) and (j) apply to different asset classes and there does not seem to be any reason apparent from MiFID why exemption under article 2.1(j) should be relevant to the asset classes in article 2.1(d).

This is also the position for the *Regulated Activities Order* provisions discussed in this chapter: a person may rely on the commodities exemption even if they do not meet the conditions of the own account exemption but qualification for the commodities exemption does not mean that the person is exempt as respects the activities covered by the own account exemption.

See the answer to Q46 for more information about combining this exemption with other exemptions, particularly the exemption for commodity derivatives business.

The exemption corresponds to the exemption in article 2.1(d) of MiFID.

Q40A. When can a non-financial entity have direct electronic access to or be a participant in a trading venue without losing the benefit of the own account exemption described in the answer to Q40?

The ~~article 2.1(d)~~ paragraph 1(e) own account exemption can still be available if you are a member of, or a participant in, a regulated market or an MTF or you have direct electronic access to a UK regulated market, ~~an~~ MTF or ~~an~~ OTF, as long as:

…

Q40B. What does direct reduction of risk mean in the answer to Q40A?

The second condition described in the answer to Q40A (objectively measurable reduction of risks) is designed to allow a non-financial business to hedge without losing the exemption. The following points are relevant to whether hedging meets this second condition:

…

- A transaction may be treated as risk-reducing if it qualifies as a hedging contract pursuant to International Financial Reporting Standards ~~adopted in accordance with article 3 of Regulation (EC) No 1606/2002 of the~~

~~European Parliament and Council~~ as they have effect in the *United Kingdom*.

…

Q41. What is a market maker?

~~A~~ It has the same meaning as it does in *MiFIR*. Therefore, a market maker is "a natural or legal person ~~who holds himself~~ holding themselves out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against that person's proprietary capital at prices defined by that person" ~~(article 4.1(7) MiFID)~~. In our view, anyone who satisfies the definition will be a market maker for the purposes of ~~MiFID~~ the exemption, even if they have not entered into the agreement with the regulated market required by ~~article 48(2) of MiFID (Systems resilience, circuit breaker and electronic trading)~~ *MAR* 5A.5.3R (Market making agreements).

The definition corresponds to the definition of market maker in article 4.1(7) of MiFID.

Q41A. What is a high-frequency algorithmic trading technique?

…

~~A high-frequency *algorithmic trading* technique~~ The term is defined in paragraphs 8 and 9 of Schedule 3 to the *Regulated Activities Order*. It is a type of *algorithmic trading* technique~~. Article 4.1(40) of MiFID defines a high-frequency *algorithmic trading* technique as an *algorithmic trading* technique~~ characterised by:

…

- high message intraday rates which constitute orders, quotes or cancellations.

For the purposes of MIFID, the term is defined in article 4.1(40) of that Directive.

Employee share and company pension schemes

Q42. Is there an exemption relating to employee share schemes and company pension schemes?

Yes, there is an exemption from the definition of investment firm in ~~article 2(1)(f) MiFID~~ paragraph 1(g) of Part 1 of Schedule 3 to the *Regulated Activities Order* for persons providing investment services consisting exclusively in the administration of employee-participation schemes, for example employee share schemes and company pension schemes. In our view, whilst administration for these purposes could extend to services comprising reception and transmission or execution of orders on behalf of clients or placing, it would not include *personal recommendations* in relation to, or managing, the assets of employee share schemes or company pension schemes.

This exemption can also be combined with the "group exemption" in ~~article 2.1(b) of MiFID~~ paragraph 1(c) of Part 1 of Schedule 3 to the *Regulated Activities Order*, by virtue of ~~article 2.1(g) of MiFID~~ paragraph 1(h) of Part 1 of Schedule 3 to the *Regulated Activities Order*. See the answer to Q46 for more about combining exemptions.

The corresponding MiFID exemption is in article 2(1)(f) of that Directive.

Collective investment undertakings

Q43. Are we right in thinking that ~~MiFID does not apply to~~ there is an exemption for collective investment undertakings and their operators?

Yes, there is an exemption from the definition of investment firm under paragraph 1(j) of Part 1 of Schedule 3 to the *Regulated Activities Order*. Generally speaking, collective investment undertakings are specifically exempt, as are their *depositaries* and managers. For collective investment undertakings within the scope of the *UCITS Directive* or *AIFMD* the "manager" corresponds to the *management company* or *AIFM* of the undertaking. So far as *collective investment schemes* which are outside the scope of the *UCITS Directive* or *AIFMD* are concerned, the "manager" corresponds, in essence, to the *operator* of a *scheme* and not to a person who is managing the assets of the *scheme* (unless that person is also the *operator*). In our view, the manager of a collective investment undertaking only benefits from the exemption in respect of any investment services or activities it may carry on in that capacity. To the extent that it also provides investment services or performs investment activities in a different capacity, for example, if it provides investment advice to, or manages the assets of, an individual third party, these services and activities fall outside the scope of this exemption.

In the case of *UCITS management companies*, some ~~*MiFID* provisions~~ requirements applying to investment firms will apply to those who provide portfolio management services (other than *collective portfolio management*), investment advice or safekeeping and administration services in relation to *units* to third parties~~, by virtue of article 6.4 of the *UCITS Directive*~~ (see Q6). *UK AIFMs* will also be subject to ~~*MiFID*~~ some requirements applying to investment firms if they provide *investment services or activities* for an undertaking other than a *fund* for which they are appointed as manager or *operator*. *Full-scope UK AIFMs* are only able to provide a limited range of such activities~~, for which they are subject to specific *MiFID* provisions by virtue of article 6.6 of *AIFMD*~~ (see Q6A).

Exemption for commodity derivatives business

…

Q46. Is it possible to combine ~~article 2~~ Schedule 3 exemptions?

Various other answers to questions in this section deal with certain detailed combinations of exemptions:

- …

- It is possible to combine the exemption for own account dealing in ~~article 2.1(d)~~ paragraph 1(e) of Part 1 of Schedule 3 to the *Regulated Activities Order* and the exemption for commodity derivatives in ~~article 2.1(j)~~ paragraph 1(k) of Part 1 of that schedule. The answer to Q40 deals with the treatment of the commodity derivatives business of a firm relying on ~~article 2.1(d)~~ paragraph (1)(e). The answer to Q44C deals with the treatment of business within ~~article 2.1(d)~~ paragraph (1)(e) for a firm relying on the commodity derivatives exemption in ~~article 2.1(j)~~ paragraph (1)(k).

In certain cases, a firm will not need to combine exemptions. For example, an insurer relying on the exemption described in the answer to Q36 (We are an insurer. ~~Does MiFID apply to us~~ Are we exempt?) does not need to rely on any other exemption.

The answer to this question (Q46) is about whether there is a more general principle that ~~article 2~~ exemptions in paragraph 1 of Part 1 of Schedule 3 to the *Regulated Activities Order* can be combined.

There is an argument that the drafting of some of the exemptions does not allow this approach. For example, the group exemption (see the answer to Q37) says that the exemption is available to persons providing investment services exclusively for their fellow group members. However, in the ~~FCA's~~ *FCA's* view, it is generally possible to combine ~~article 2~~ exemptions~~.~~ in paragraph 1 of Part 1 of Schedule 3 to the *Regulated Activities Order*. There is no clear prohibition in Schedule 3. There is no reason apparent from the *Act*, the *Regulated Activities Order* or *UK law on markets in financial instrument* why combining exemptions should not be allowed. This approach has support from recital ~~Recital~~ 22 to MiFID, which says that exemptions apply cumulatively and that the ability to combine the exemptions in articles 2.1(d) (own account dealing) and 2.1(j) (commodity derivatives) is just an example of this principle. ~~This is consistent with the point that there is no reason apparent from MiFID why combining exemptions should not be allowed.~~

…

Treating an exempt activity as not being ~~a MiFID~~ an investment service or activity in this way only applies for the purpose of ~~article 2 of MiFID~~ paragraph 1 of Part 1 of Schedule 3 to the *Regulated Activities Order*, meaning that it is only relevant for deciding whether a person ~~is a MiFID~~ comes within any of the types of investment firm listed at the start of this chapter.

Q46A. Is it possible to combine the Schedule 3 and the MiFID optional ~~article 2 and article 3~~ exemptions?

The ~~FCA~~ *FCA* does not believe that it is generally possible to combine the Schedule 3 exemptions ~~in article 2~~ with the MiFID optional exemption ~~in article 3~~. However, in the ~~FCA's~~ *FCA's* view, a firm that relies on the ~~article 2(1)(i)~~ paragraph 1(j) collective investment undertaking exemption (see Q43) can

combine this with ~~article 3~~ the MiFID optional exemption in relation to business falling outside the ~~article 2(1)(i)~~ paragraph 1(j) exemption.

If, however, you are subject to the ~~UCITS Directive~~ *UCITS Directive* or the ~~AIFMD~~ *AIFMD* you may be restricted in your ability to carry out all the activities within the ~~article 3~~ MiFID optional exemption.

Locals

Q47. We traded on an investment exchange as a local firm and were exempt from MiFID 1. Are we exempt under MiFID?

~~The exemption for locals in MiFID 1 no longer applies. It is unlikely that the own account exemption in article 2.1(d) will be available as that exemption does not apply to members of, or participants in, a regulated market (see Q40).~~ [deleted]

The ~~article 3~~ MiFID optional exemption

Q48. ~~Article 3 is an optional exemption. Will the exemption apply to UK firms~~ What is this exemption?

~~Yes, in part. The~~ It is an exemption ~~in articles 3.1(a) to (c) has been exercised by The Treasury~~ provided for in regulations 6 to 8 of the *MiFI Regulations*. It applies to a *firm* whose permission permits it to carry on regulated activities as an exempt investment firm. The answers to Q49 to Q53 explain the exemption in more detail, including what the effect of the exemption is.

A *firm* with the benefit of this exemption is a *MiFID optional exemption firm* and the exemption is normally referred to as the MiFID optional exemption.

You will not benefit from this exemption unless you apply to the *appropriate regulator* for, and are granted, such permission. You will not be able receive such permission unless your business meets the conditions described in the answer to Q49.

The exemption corresponds to the optional exemption contained in article 3 of MiFID. Articles 3.1(d) and (e) of MiFID ~~provide~~ provided additional optional exemptions, but they ~~have not been~~ were never implemented in the UK and are not reflected in any of the UK provisions discussed in this chapter.

Q49. Which firms might fall within this exemption?

The exemption is likely to be relevant to many financial advisers (see Q50) including some corporate finance advisers. It may also be relevant to some venture capital *firms*.

~~The exemption applies to persons who meet~~ A *firm* with a permission described in the answer to Q48 is subject to a requirement under section 55L (Imposition of requirements by FCA) or 55M (Imposition of requirements by PRA) of the *Act* to comply with all the following ~~conditions~~:

- they ~~do~~ must not hold clients' funds or securities and ~~do~~ must not, for that reason, at any time, place themselves in debit with their clients;

- they ~~do~~ must not provide any investment service other than reception and transmission of orders or investment advice, or both, in relation to transferable securities and units in collective investment undertakings;

- they may (in the course of providing the investment services mentioned in the previous bullet point) transmit orders only to one or more of the following:

    - other ~~MiFID investment firms~~ *investment firms authorised* under the *Act* or authorised under MiFID;

    - UK credit institutions authorised under the ~~*CRD*~~ *Act*, excluding credit unions and friendly societies;

    - credit institutions authorised under the *CRD*;

    - branches of third country investment firms or credit institutions which are subject to, and comply with, prudential rules considered by the *appropriate regulator* to be at least as stringent as those laid down in *FCA rules* made under Part 9C of the *Act* (Prudential regulation of FCA investment firms), *PRA rules* that are CRR rules as defined in section 144A of the *Act* (CRR rules), MiFID, ~~MiFID, the *CRD* or~~ the ~~*UK*~~ *EU CRR* or the Solvency 2 Directive;

    - collective investment undertakings ~~or their managers~~ authorised under the law of the *United Kingdom* or of an *EEA State* to market units to the public, and managers of such undertakings;

    - ~~EU incorporated investment companies~~ a company that meets the following conditions (such as an investment trust company):

        - its exclusive object is to invest its funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving its shareholders the benefit of the results of the management of their assets; and

        - ~~the~~ its securities ~~of which~~ are listed or dealt in on a *United Kingdom regulated market*~~, for example investment trust companies~~ or a regulated market in an *EEA State*.

~~If you are a UK firm that meets these qualifying conditions, you will be exempt from regulations made by the European Commission under MiFID.~~

Where you provide *personal recommendations* or receive and transmit orders in relation to derivatives which are ~~MiFID~~ financial instruments but not transferable securities, you will fall outside the scope of this exemption. In our view, this would be the case, for example, if you provided either or both of these investment

services in relation to OTC derivatives concluded by a confirmation under an ISDA master agreement (see *PERG* 13 Annex 2 Table 2).

Q50. We are ~~(or previously were)~~ an IFA and have a permission which covers (i) arranging (bringing about) deals in investments; (ii) making arrangements with a view to transactions; and (iii) advising on investments, in each case in relation to securities but not derivatives. We are not permitted to hold client money or investments and do not have dealing or managing permissions in relation to ~~MiFID~~ financial instruments. ~~Are we exempt~~ Do we meet the eligibility conditions for the exemption?

The ~~FCA~~ *FCA* expects so, assuming you do not:

…

- place ~~MiFID~~ financial instruments without a firm commitment basis (see Q22 and Q23).

We would generally not expect IFAs to be placing ~~MiFID~~ financial instruments without a firm commitment basis as we associate placing of financial instruments with situations where a company or other business vehicle wishes to raise capital for commercial purposes, and in particular with primary market activity.

…

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You ~~are not a firm to which MiFID applies and so~~ are not a *MiFID investment firm* for the purposes of the ~~Handbook~~ *Handbook*. Nor are you a *MIFIDPRU investment firm* subject to the prudential requirements in *MIFIDPRU*. You are also not an investment firm as defined in the *Act*.

However, you are still an investment firm as defined in the *Regulated Activities Order* and an *investment firm* as defined in the *Glossary*.

~~Article 3.2 of~~ Certain MiFID ~~applies certain MiFID~~ requirements of the *UK law on markets in financial instruments* apply to firms making use of the ~~article 3~~ exemption but a *firm* with the benefit of the exemption is excluded from others. ~~These are implemented in the *Handbook* and the *Act*.~~

13.5A Child trust funds and MiFID

…

Q53B. Will the operator of a CTF be carrying on investment services or activities?

Possibly, but it is likely that ~~he~~ it will ~~be exempt from the scope of MiFID~~ not be an investment firm as defined in the *Regulated Activities Order* or any of the other kinds of investment firm listed at the start of this chapter. Where the CTF is invested wholly or partly in *financial instruments*, the operator may be providing

an *investment service* when ~~he~~ it executes the transaction or arranges to transfer funds to a new financial instrument (such as a security or collective investment scheme unit). However, in the ~~FCA's~~ *FCA's* opinion, the exemption in ~~article 2(1)(c) of MiFID~~ paragraph 1(d) of Part 1 of Schedule 3 to the *Regulated Activities Order* (see Q39) should be available to CTF operators ~~such that these activities will effectively be outside the scope of MiFID~~.

The key question in applying this exemption is whether the investment services are incidental to the other activities involved in operating a CTF when viewed on a global basis. In the ~~FCA's~~ *FCA's* view, this is likely to be the case as most CTFs do not involve active trading, such as day trading, by the account holder and, as a result, involve little or no ongoing investment service ~~within the scope of MiFID~~.

…

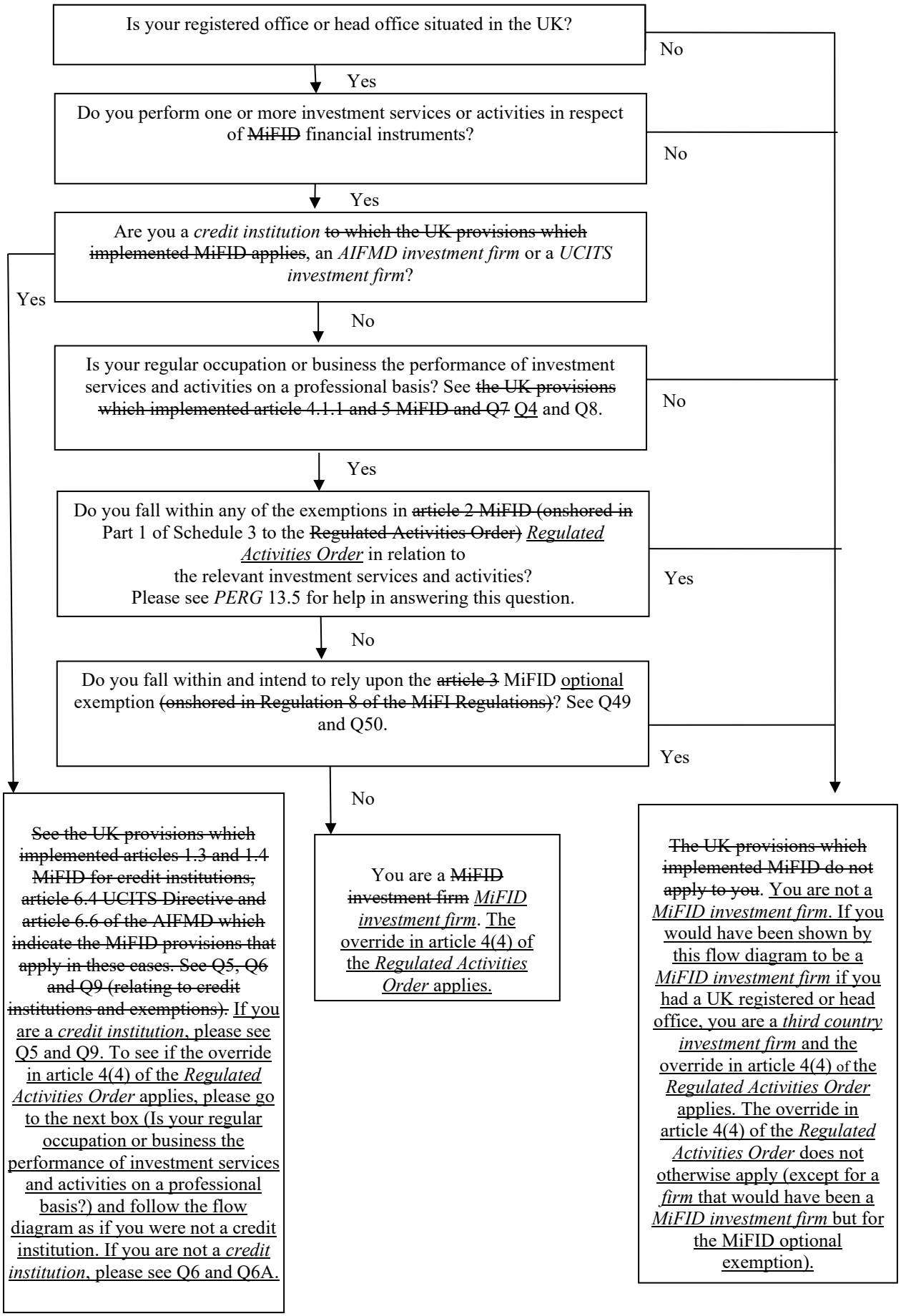
Q53C. Is a person who provides services relating to investments that underlie the CTF ~~within the scope of MiFID~~ an investment firm?

Possibly. Firms which provide *investment services* to the CTF operator in relation to financial instruments held within the CTF account (such as executing trades) will be ~~within the scope of MiFID~~ an investment firm unless an exemption applies to them.

Q53D. Does the same analysis apply to other types of schemes where financial instruments may be held for the benefit of investors such as an ISA or a pension scheme?

This depends on the nature of the scheme in question. CTFs have very particular product features. Other types of schemes such as ISA accounts may simply be tax efficient ways to hold the beneficial interest in financial instruments which may, at the behest of the account holder, be transferred into ~~his~~ their direct ownership. So, the beneficial interest that an investor acquires in a share, bond or collective investment scheme unit held under an ISA will be a financial instrument ~~for the purposes of MiFID~~. And the operation of an ISA will essentially be an investment service such that the exemption in ~~article 2.1(c) of MiFID~~ paragraph 1(d) of Part 1 of Schedule 3 to the *Regulated Activities Order* will not be relevant. Pension schemes, on the other hand, bear a closer similarity to CTFs in that they will have particular product features and the underlying investments are held for the purpose of providing or determining the value of the member's cash benefits. Generally speaking, a member of a pension scheme can only transfer the value of ~~his~~ their benefits and not transfer the underlying investments into ~~his~~ their direct ownership. For this reason, as explained in *PERG* 10.4A, the ~~FCA~~ *FCA* does not consider that a member of a pension scheme acquires a financial instrument purely as a result of having a financial instrument held for ~~his~~ their benefit under the trusts of an occupational or personal pension scheme.

13 Annex 1 ~~Do the UK provisions which implemented~~ Am I a MiFID investment firm and how does the override in article 4 of the RAO apply ~~to us~~?


Is your registered office or head office situated in the UK?
No
Yes
Do you perform one or more investment services or activities in respect of ~~MiFID~~ financial instruments?
No
Yes
Are you a *credit institution* ~~to which the UK provisions which implemented MiFID applies~~, an *AIFMD investment firm* or a *UCITS investment firm*?
Yes
No
Is your regular occupation or business the performance of investment services and activities on a professional basis? See ~~the UK provisions which implemented article 4.1.1 and 5 MiFID and Q7~~ Q4 and Q8.
No
Yes
Do you fall within any of the exemptions in ~~article 2 MiFID (onshored in~~ Part 1 of Schedule 3 to the ~~Regulated Activities Order)~~ *Regulated Activities Order* in relation to the relevant investment services and activities? Please see *PERG* 13.5 for help in answering this question.
Yes
No
Do you fall within and intend to rely upon the ~~article 3~~ MiFID optional exemption ~~(onshored in Regulation 8 of the MiFI Regulations)~~? See Q49 and Q50.
Yes
No
~~See the UK provisions which implemented articles 1.3 and 1.4 MiFID for credit institutions, article 6.4 UCITS Directive and article 6.6 of the AIFMD which indicate the MiFID provisions that apply in these cases. See Q5, Q6 and Q9 (relating to credit institutions and exemptions).~~ If you are a *credit institution*, please see Q5 and Q9. To see if the override in article 4(4) of the *Regulated Activities Order* applies, please go to the next box (Is your regular occupation or business the performance of investment services and activities on a professional basis?) and follow the flow diagram as if you were not a credit institution. If you are not a *credit institution*, please see Q6 and Q6A.
You are a ~~MiFID investment firm~~ *MiFID investment firm*. The override in article 4(4) of the *Regulated Activities Order* applies.
~~The UK provisions which implemented MiFID do not apply to you~~. You are not a *MiFID investment firm*. If you would have been shown by this flow diagram to be a *MiFID investment firm* if you had a UK registered or head office, you are a *third country investment firm* and the override in article 4(4) of the *Regulated Activities Order* applies. The override in article 4(4) of the *Regulated Activities Order* does not otherwise apply (except for a *firm* that would have been a *MiFID investment firm* but for the MiFID optional exemption).

13 Annex 2 The list of ~~MiFID~~ investment services ~~in Section A of Annex 1 of MiFID, has been onshored~~ is set out in Part 3 of Schedule 2 to the ~~Regulated Activities Order and the~~ ~~list of MiFID instruments in Section C of Annex 1 to MiFID has been onshored~~ *Regulated Activities Order*. It broadly corresponds to the list in Section A of Annex 1 of MiFID. The different kinds of financial instruments are listed in Part 1 of Schedule 2 to the ~~Regulated Activities Order~~ *Regulated Activities Order*. ~~However, as explained in PERG 13.1 above, for ease of reference we have retained the references to the relevant MiFID provisions in this Annex~~ The list of financial instruments broadly corresponds to the list of financial instruments in Section C of Annex 1 to MiFID.

Table 1 - ~~MiFID~~ Investment services and activities and the Part 4A permission regime

~~MiFID~~ Investment Services and Activities (references are to the applicable paragraph in Part 3 of Schedule 2 to the Regulated Activities Order and Section A of Annex 1 of MiFID)	**Part 4A permission**	**Comments**
Paragraph 1/A1- Reception and transmission of orders in relation to one or more financial instruments	…	… The activity of arranging (bringing about) deals in investments is wider than ~~A1~~ paragraph 1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders. …
Paragraph 2/A2- Execution of orders on behalf of clients	…	…
Paragraph 3/A3- Dealing on own account	…	…
Paragraph 4/A4- Portfolio management	…	…

Paragraph 5/A5- Investment advice	…	…
Paragraph 6/A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	…	…
Paragraph 7/A7- Placing of financial instruments without a firm commitment basis	…	…
Paragraph 8/A8- Operation of Multilateral Trading Facilities	…	…
Paragraph 9/A9- Operation of organised trading facilities	…	…
Note: The activity of *bidding in emissions auctions* can form part of ~~A1, A2 or A3~~ paragraph 1, 2 or 3. In terms of the *permission* ~~*regime*~~ regime, *bidding in emissions auctions* does not form part of any other *regulated activity* (see ~~PERG~~ *PERG* 2.7.7CG) and so a *firm* must have a separate *permission* to undertake that activity.		

Table 2: ~~MiFID financial~~ Financial instruments and the Part 4A permission regime

~~MiFID financial~~ Financial instrument (references are to the applicable paragraph in Part 1 of Schedule 2 to the Regulated Activities Order and Section C of	**Part 4A permission category**	**Commentary**

Annex 1 of MiFID)		
Paragraph 1/C1-Transferable securities	…	The permission investment categories in column (2) (Part 4A permission category) are wider than the ~~MiFID~~ definition of transferable securities, as they comprise both securitised and non-securitised instruments. An instrument is not a transferable security ~~under MIFID~~ if it is not negotiable on the capital market. Therefore, an investment listed in column (2) will not always be a transferable security. Firms with permissions containing any of the Part 4A permission investment categories in column (2) will fall outside the ~~article 3~~ MiFID optional exemption ~~as transposed in domestic legislation,~~ where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master agreement). It is possible in theory that options, futures and contracts for differences under the *RAO* that are not mentioned in column (2) could be a ~~MiFID~~ transferable security. However, column (2) includes the main *RAO* derivatives that the ~~FCA~~ *FCA* thinks may in practice be transferable securities. For further guidance on the ~~article 3~~ MiFID optional exemption see Q49; for further guidance on transferable securities see Q28.
Paragraph 2/C2-Money market instruments	…	…
Paragraph 3/C3-Units in a collective investment undertaking	…	~~C3~~ This type of financial instrument includes units in regulated and unregulated collective investment schemes. This category also includes closed-ended corporate schemes, such as investment trust companies (hence the

		reference to shares in the adjacent column). …
Paragraph 4/C4-Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash	…	~~C4~~ This type of financial instrument includes in our view derivatives relating to commodity derivatives, for example options on commodity futures. …
Paragraph 5/C5-Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event)	…	~~C5 instruments are~~ This type of financial instrument is generally a ~~contracts~~ contract for differences. Where ~~a C5~~ this type of financial instrument provides for the possibility of physical settlement, it may also be either a commodity future or commodity option, depending on its structure. …
Paragraph 6/C6-Options, futures, swaps, and any other derivative contracts relating to commodities that can be physically settled provided that they are traded on a *United*	…	~~C6 instruments~~ This type of financial instrument will generally be either a commodity ~~futures~~ future or a commodity ~~options~~ option, depending on ~~their~~ its structure. Those instruments with a cash settlement option may also be contracts for differences. …

Kingdom regulated market, a *UK* MTF or ~~an~~ a *UK* OTF		
Paragraph 7/C7-Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in ~~C.6~~ paragraph 6. This category does not include spot contracts or contracts that meet certain conditions that are designed to exclude contracts for commercial purposes	…	…
Paragraph 8/C8-Derivative instruments for the transfer of credit risk	…	~~C8 derivatives~~ Derivatives of this type are financial instruments designed to transfer credit risk, often referred to as credit derivatives. …
Paragraph 9/C9-Financial contracts for differences	…	In our view, ~~C9~~ derivatives of this type could include those contracts for differences with a financial underlying, for example the FTSE index.
Paragraph 10/C10-Options, futures, swaps, forward rate agreements and any other derivative contracts relating to various specified underlyings that must be settled in cash or may be settled in cash at the option of one of the parties	…	…

(otherwise than by reason of a default or other termination event) …		
Paragraph 11/C11- Emission allowances	…	…
Note: In our view, the categories of financial instrument ~~in C1 to C11~~ are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within ~~C1~~ paragraph 1 and ~~C3~~ paragraph 3.		

…

16 Scope of the Alternative Investment Fund Managers Regime

…

16.2 What types of funds and businesses are caught?

G …

Collective investment undertaking

…

Question 2.23: What are financial assets for the purpose of Question 2.22?

Financial assets include ~~investments under the *UK* provisions which implemented *MiFID*~~ *financial instruments* and investment life insurance contracts; real estate is not considered a financial asset.

…

Examples of schemes that are AIFs and of ones that are likely not to be AIFs

…

Question 2.57: Is a firm that deals in financial instruments on its own account caught?

As explained in the answer to Question 43 in *PERG* 13.5 (Exemptions from ~~MiFID~~ the definition of investment firm), *CIUs* are specifically exempt from the definition of investment firm. Hence, they are exempt

from the *UK* provisions which implemented *MiFID*, as are their depositaries and managers. An *AIF* is a *CIU* and an *AIFM* is a manager.

…

Other general points

Question 2.66: Does the interpretation of a CIU in PERG 16 apply ~~to MiFID~~ in other contexts?

PERG 16 is not intended to cover the meaning of a collective investment undertaking as used in the definition of *investment services and/or activities* and the exemptions from certain types of investment firm described in *PERG* 13 (Guidance on investment services and activities and investment firms) and the *UK* provisions which implemented other *EU* Directives. This reflects the fact that the *ESMA AIFMD key concepts guidelines* do not apply to the *UK* provisions that implemented *MiFID*.