

## FCA RULES APPLICABILITY ANALYSIS: CORPORATE FINANCE FIRMS

This table lists the main rules contained in the FCA handbook and the MiFID Org Regulation (Regulation (EU) 2017/565) that apply to an FCA authorised corporate finance firm.

It was prepared in October 2018 and is being provided as a precedent on an “as is” basis, i.e. for reference purposes only and without any guarantee of its suitability, accuracy, completeness or compliance with any applicable laws, rules and regulations.

The full version of this table can be purchased at <http://fsreg.com/category/products/>.

Please do not hesitate to contact our managing director (Giuseppe Giusti – DD: 020 7502 6621) if you wish us to prepare a similar table identifying the main FCA rules and regulations that apply to your organisation (additional fees apply).

**[FIRM NAME]**

**MIFID 2 ANALYSIS**

**DRAFT [...] /2018**

The table below lists the main rules contained in the FCA handbook and the MiFID Org Regulation (Regulation (EU) 2017/565) that apply to [FIRM NAME] (the “**Firm**”). It is not intended to be comprehensive and does not list any applicable FCA or European guidance.

For the purpose of the FCA Handbook, the Firm is categorised as follows:

- Exempt CAD firm;
- Securities and futures firm;
- Corporate finance advisory firm;
- Common platform firm;
- UK domestic firm;
- Regulated entity; and
- UK MiFID investment firm.

The Firm is not categorised as follows:

- Relevant authorised person;
- BIPRU firm;
- Investment management firm;
- Non-directive firm; and
- Full scope regulatory reference firm.

The table below has also been prepared on the basis that the Firm:

- is not authorised, and does not, hold or control any client money or assets;

- is not authorised, and does not, deal with any retail clients;
- only carries on corporate finance business;
- does not produce or disseminate investment research or non-independent research;
- does not deal with, and does not receive complaints from, eligible complainants;
- does not have any appointed representatives or tied agents; and
- does not have any branch outside the United Kingdom.

We have also assumed that the Firm conducts only MiFID business.

Of the Fees Manual, only FEES 4 (Periodic Fees) and FEES 6 (Financial Services Compensation Scheme Funding) relating to the period to 31 March 2018 have been considered.

In the following table, Directive 2014/65/EU is referred to as the “**MiFID 2 Directive**”.

	REF	RULE	COMMENTARY/ASSESSMENT OF COMPLIANCE
	<b>HIGH LEVEL STANDARDS – SYSC</b>		
1.	SYSC 4.1.1	<p>(1) A <i>firm</i> must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.</p> <p>(3) Without prejudice to the ability of the <i>FCA</i> or any other relevant <i>competent authority</i> to require access to communications in accordance with <i>MiFID</i> and <i>MiFIR</i>, a <i>common platform firm</i> must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:</p> <p>(a) to guarantee the security and authentication of the means of transfer of information;</p> <p>(b) to minimise the risk of data corruption and unauthorised access; and</p> <p>(c) to prevent information leakage.</p>	
2.	SYSC 4.1.2	For a <i>common platform firm</i> , the arrangements, processes and mechanisms referred to in SYSC 4.1.1 must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the <i>common platform firm's</i> activities and must take into account the specific technical criteria described in article 21(3) of the <i>MiFID Org Regulation</i> , SYSC 5.1.7 and SYSC 7.	
3.	SYSC 4.1.6	A <i>common platform firm</i> must take reasonable steps to ensure continuity and regularity in the performance of its <i>regulated activities</i> . To this end the <i>common platform firm</i> must employ appropriate and proportionate systems, resources and procedures.	

4.	SYSC 4.2.1	The <i>senior personnel</i> of a <i>common platform firm</i> must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the <i>firm</i> .	
5.	SYSC 4.2.2	A <i>common platform firm</i> must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1 and SYSC 4.3A.3.	
6.	SYSC 4.3A.1	<p>A <i>common platform firm</i> must ensure that the <i>management body</i> defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the <i>firm</i>, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of <i>clients</i>. The <i>firm</i> must ensure that the <i>management body</i>:</p> <ul style="list-style-type: none"> <li>(1) has overall responsibility for the <i>firm</i>;</li> <li>(2) approves and oversees implementation of the <i>firm's</i> strategic objectives, risk strategy and internal governance;</li> <li>(3) ensures the integrity of the <i>firm's</i> accounting and financial reporting systems, including financial and operational controls and compliance with the <i>regulatory system</i>;</li> <li>(4) oversees the process of disclosure and communications;</li> <li>(5) has responsibility for providing effective oversight of <i>senior management</i>;</li> <li>(6) monitors and periodically assesses: <ul style="list-style-type: none"> <li>(a) the adequacy and the implementation of the <i>firm's</i> strategic objectives in the provision of <i>investment services and/or activities</i> and <i>ancillary services</i>;</li> <li>(b) the effectiveness of the <i>firm's</i> governance arrangements; and</li> <li>(c) the adequacy of the policies relating to the provision of services to <i>clients</i>, and takes appropriate steps to address any deficiencies; and</li> </ul> </li> <li>(7) has adequate access to information and documents which are needed to oversee and monitor management decision-making.</li> </ul>	
7.	SYSC 4.3A.1A	<p>Without prejudice to SYSC 4.3A.1, a <i>common platform firm</i> must ensure that the <i>management body</i> defines, approves and oversees:</p> <ul style="list-style-type: none"> <li>(1) the organisation of the <i>firm</i> for the provision of <i>investment services and/or activities</i> and <i>ancillary services</i>, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the <i>firm</i> has to comply with;</li> <li>(2) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the <i>firm</i> and the characteristics and needs of the <i>firm's clients</i> to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and</li> <li>(3) a remuneration policy of persons involved in the provision of services to <i>clients</i> aiming to encourage responsible business conduct, fair treatment of <i>clients</i> as well as avoiding conflict of interest in the relationships with <i>clients</i>.</li> </ul>	

8.	SYSC 4.3A.2	A <i>common platform firm</i> must ensure that the chairman of the <i>firm's management body</i> does not exercise simultaneously the <i>PRA's</i> Chief Executive function ( <i>controlled function</i> SMF1) or <i>chief executive function</i> within the same <i>firm</i> .	
9.	SYSC 4.3A.3	A <i>common platform firm</i> must ensure that the members of the <i>management body</i> of the <i>firm</i> : (1) are of sufficiently good repute; (2) possess sufficient knowledge, skills and experience to perform their duties; (3) possess adequate collective knowledge, skills and experience to understand the <i>firm's</i> activities, including the main risks; (4) reflect an adequately broad range of experiences; (5) commit sufficient time to perform their functions in the <i>firm</i> ; and (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of <i>senior management</i> where necessary and to effectively oversee and monitor management decision-making.	
10.	SYSC 4.3A.4	A <i>common platform firm</i> must devote adequate human and financial resources to the induction and training of members of the <i>management body</i> .	
11.	SYSC 4.3A.5	A <i>common platform firm</i> must ensure that the members of the <i>management body</i> of the <i>firm</i> do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the <i>firm's</i> activities.	
12.	SYSC 4.3A.7	For the purposes of SYSC 4.3A.5 and SYSC 4.3A.6: (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and (2) the following shall count as a single directorship: (a) executive or non-executive directorships held within the same <i>group</i> ; or (b) executive or non-executive directorships held within: (i) <i>firms</i> that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the <i>EU CRR</i> are fulfilled; or (ii) <i>undertakings</i> (including non-financial entities) in which the <i>firm</i> holds a <i>qualifying holding</i> .	
13.	SYSC 4.3A.9	A <i>common platform firm</i> that has a nomination committee must ensure that the nomination committee: (1) engages a broad set of qualities and competences when recruiting members to the <i>management body</i> and for that purpose puts in place a policy promoting diversity on the <i>management body</i> ; (2) identifies and recommends for approval, by the <i>management body</i> or by general meeting, candidates to fill <i>management body</i> vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the <i>management body</i> ; (3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;	

		<p>(4) decides on a target for the representation of the underrepresented gender in the <i>management body</i> and prepares a policy on how to increase the number of the underrepresented gender in the <i>management body</i> in order to meet that target;</p> <p>(5) periodically, and at least annually, assesses the structure, size, composition and performance of the <i>management body</i> and makes recommendations to the <i>management body</i> with regard to any changes;</p> <p>(6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the <i>management body</i> and of the <i>management body</i> collectively, and reports this to the <i>management body</i>;</p> <p>(7) periodically reviews the policy of the <i>management body</i> for selection and appointment of <i>senior management</i> and makes recommendations to the <i>management body</i>; and</p> <p>(8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the <i>management body's</i> decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the <i>firm</i> as a whole.</p>	
14.	SYSC 4.3A.10	A <i>common platform firm</i> that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the <i>management body</i> . For that purpose a <i>common platform firm</i> that does not have a nomination committee must put in place a policy promoting diversity on the <i>management body</i> .	
15.	SYSC 5.1.5AA	SYSC 5.1.5AB applies to a <i>common platform firm</i> and a <i>third country firm</i> : (1) in relation to its <i>MiFID</i> or equivalent <i>third country business</i> ; (2) in respect of any natural persons (“relevant individuals”) who, on behalf of the <i>firm</i> : (a) make <i>personal recommendations</i> to <i>clients</i> in relation to <i>financial instruments</i> or <i>structured deposits</i> ; or (b) provide information to <i>retail clients</i> or <i>professional clients</i> about <i>financial instruments</i> , <i>structured deposits</i> , <i>investment services</i> or <i>ancillary services</i> ; or (c) who are otherwise responsible for the supervision of a relevant individual who has not acquired the necessary knowledge and competence to act in a capacity prescribed in (a) or (b).	
16.	SYSC 5.1.5AB	A <i>firm</i> must ensure, and be able to demonstrate to the <i>FCA</i> , at the <i>FCA's</i> request, that any relevant individuals possess the necessary knowledge and competence so as to ensure that the <i>firm</i> is able to meet its obligations under: (1) those <i>rules</i> which implement articles 24 and 25 of <i>MiFID</i> (including those <i>rules</i> which implement related provisions under the <i>MiFID Delegated Directive</i> ); and (2) related provisions of the <i>MiFID Org Regulation</i> .	
17.	SYSC 5.1.7	The <i>senior personnel</i> of a <i>common platform firm</i> must define arrangements concerning the segregation of duties within the <i>firm</i> and the prevention of conflicts of interest.	
18.	SYSC 6.1.1	A <i>firm</i> must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the <i>firm</i> including its managers, employees and <i>appointed representatives</i> (or where	