

[Link - Decision trees and standard limitations/requirements](#)

Introductory note

This link will help you understand how we have worked out your firm's prudential categorisation (Tables 1-4) and identify some standard limitations and requirements you may find helpful if you are applying for a variation of permission (Tables 5-6).

The analysis assumes that firms are acting in conformity with the limitations and requirements on their permission.

This is a working document only.

Tables 1-6 are derived from the draft perimeter guidance contained in Annex 5 to Consultation Paper 06/9: "Organizational systems and controls: common platform for firms", in relation to which the consultation process has closed. We are working through the responses received prior to finalising the guidance.

Table 1
Overview of CRD impact on non-investment managers

A. Are you a firm with a permission to:
 - *deal in investments as principal*; or
 - *deal in investments as agent* in relation to MiFID financial instruments
 - but not *managing investments* in relation to MiFID financial instruments?

Yes

B. Do you have a *dealing in investments as principal* permission in relation to MiFID financial instruments?

Yes

No

F. Do you have a limitation or requirement on your permission which prevents you from:
 (i) dealing on own account in relation to MiFID financial instruments; and
 (ii) underwriting and/or placing of financial instruments on a firm commitment basis?
(see Table 5: standard limitation I – limited licence firms)

No

C. Does your permission allow you to hold client money or *safeguard and administer* MiFID instruments? *(see Table 6: client money requirements)*

No

Yes

D. You are a *BIPRU 50k firm* and a *limited licence firm*

E. You are a *BIPRU 125k firm* and a *limited licence firm*

J. Do you deal as principal, but only hold positions as a result of the firm's failure to match investor's orders precisely; and (a) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question; and (b) the total market value of all such positions does not exceed 15% of the firm's initial capital?
(see Table 5: standard limitation II – 'matched principal brokers')

Yes

No

K. Do you have a limitation or requirement on your permission that only permits you to deal on own account in relation to MiFID financial instruments for the purpose of fulfilling or executing a client order or for the purpose of gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order? *(see Table 5: standard limitation III – limited activity firms)*

Yes

No

L. You are a *BIPRU 730k firm* and a *limited activity firm*

M. You are a *BIPRU 730k firm* and a *full scope BIPRU investment firm*

G. Does your permission allow you to hold client money or safeguard and administer MiFID financial instruments?
(see Table 6 :Client money requirements)

No

Yes

N. Does your permission allow you to hold client money or safeguard and administer MiFID financial instruments?
(see Table 6 :Client money requirements)

No

Yes

H. You are a *BIPRU 50k firm* and a *limited licence firm*

I. You are a *BIPRU 125k firm* and a *limited licence firm*

O. You are a *BIPRU 50k firm* and a *full scope firm*

P. You are a *BIPRU 125k firm* and a *full scope firm*

Table 2
Overview of CRD impact on portfolio managers who do not have an 'operating' permission

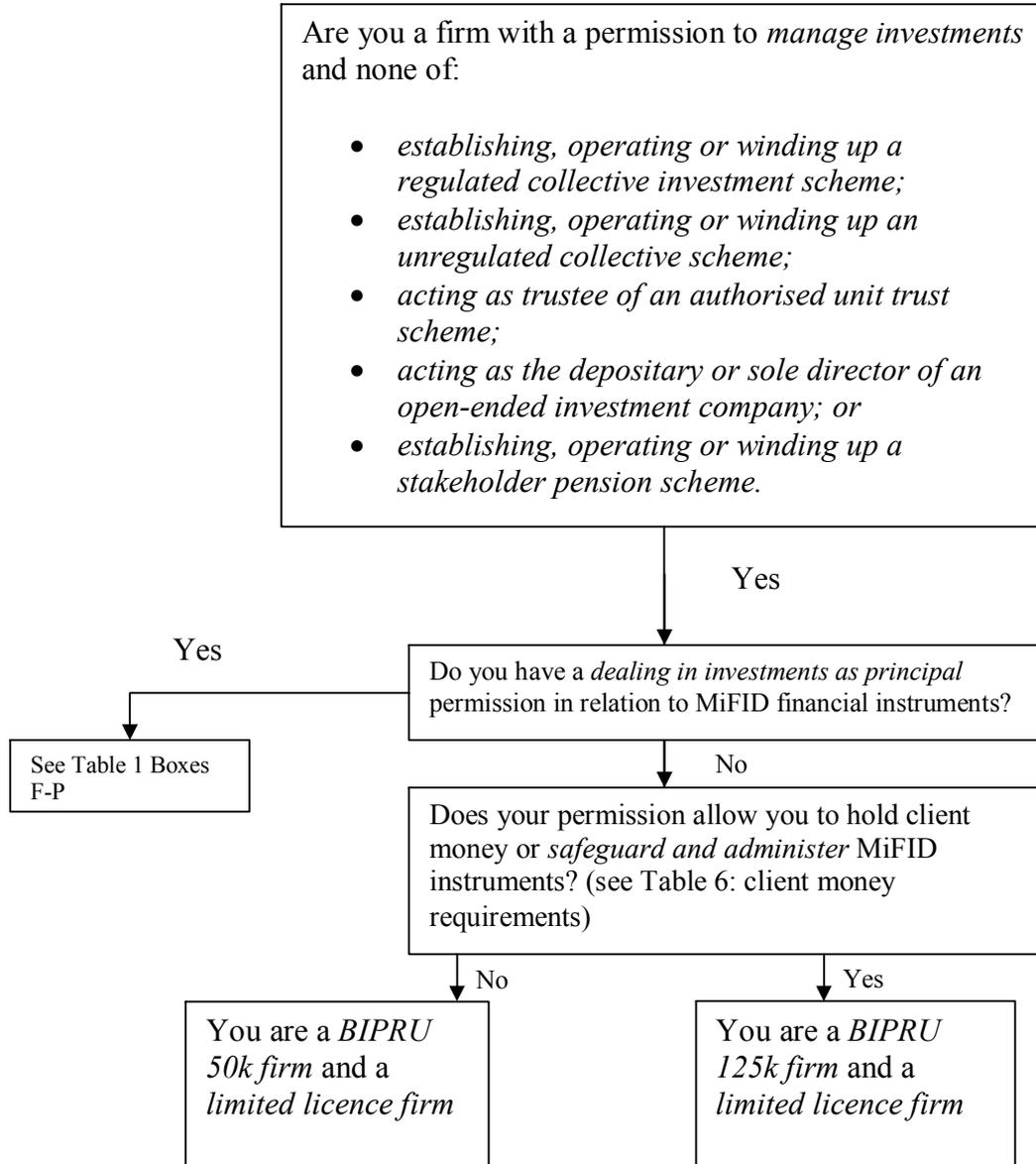


Table 3
Overview of CRD impact on portfolio managers who are also 'operators'

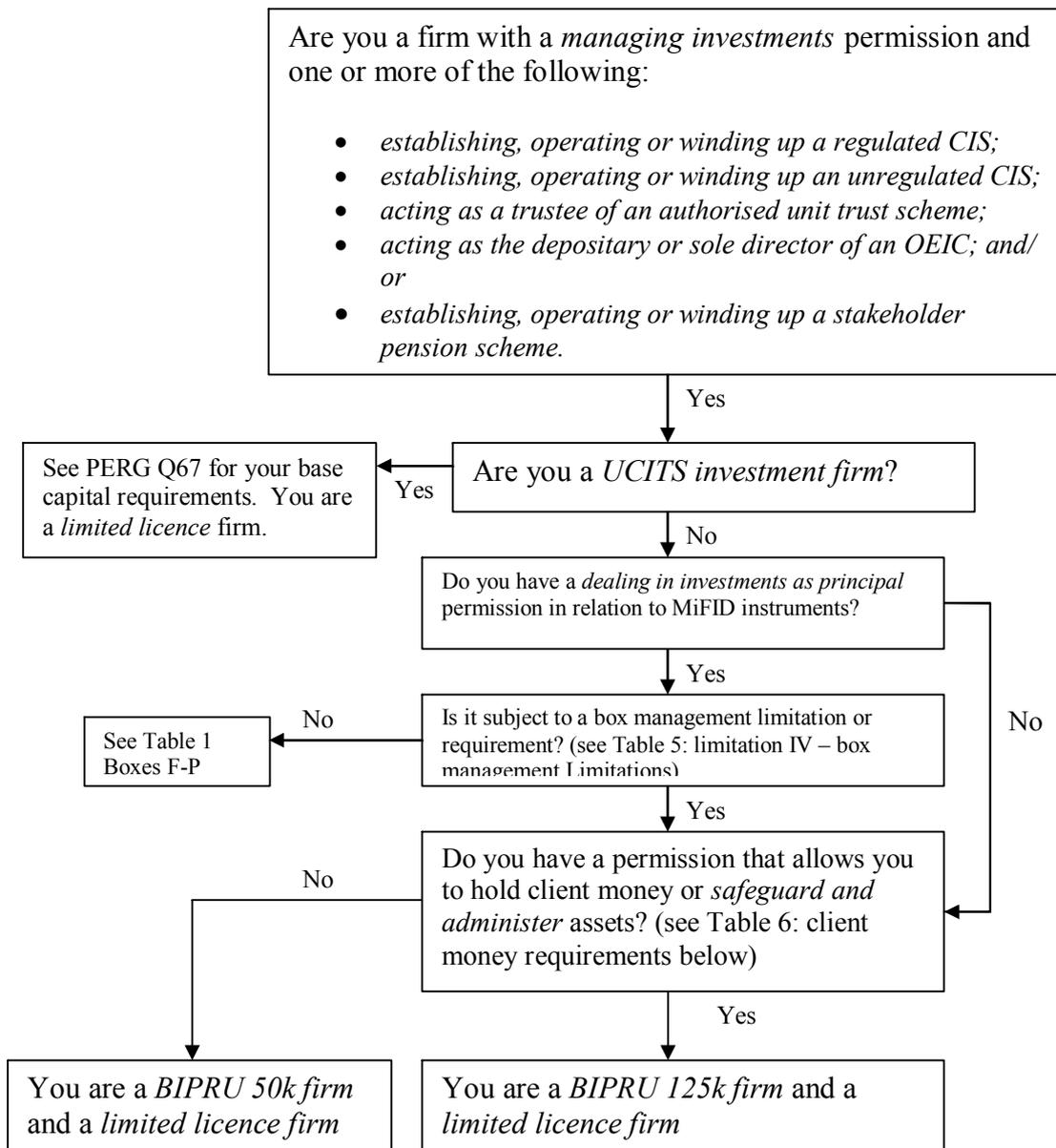
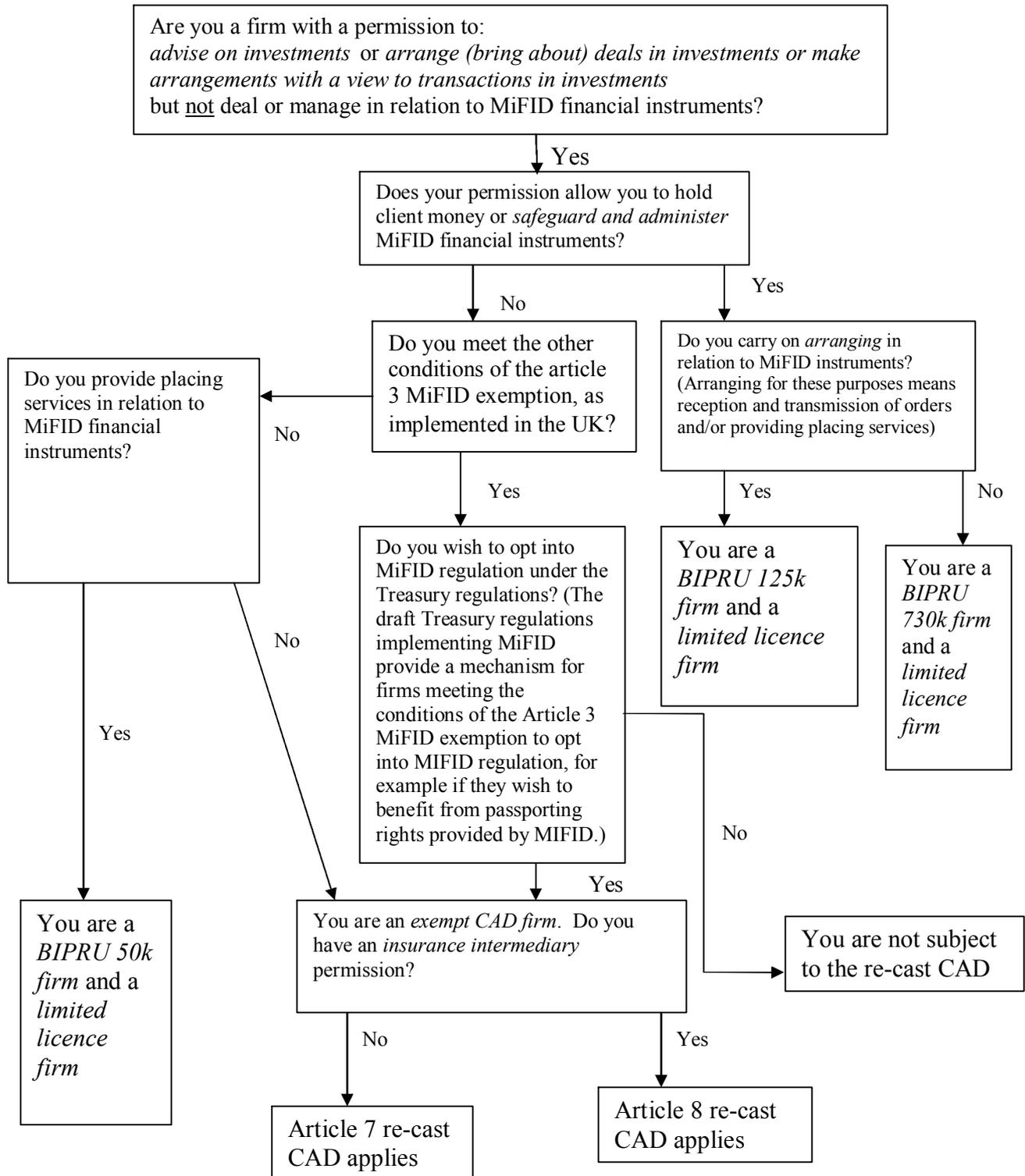


Table 4
Overview of CRD impact on arrangers and advisers



Standard limitations/requirements and their effects

The purpose of Tables 5 and 6 is to identify some standard limitations and requirements to help you if you are applying for a variation of permission. For instance, they set out new standard limitations that are relevant if you wish to be a *limited licence firm* or a *limited activity firm*. Where existing standard limitations have similar effect to the new ones, you will generally not have to apply for the relevant new standard limitation (see, for example, commentary relating to box management and matched principal broker limitations below).

You should read the table below in conjunction with Tables 1-3 - which give you an overview of CRD impact on non-investment managers and portfolio managers (with or without 'operating' permissions).

Table 5

Limitations applying to the regulated activity of *dealing in investments as principal* in relation to *MiFID* instruments

What limitations apply?	What is the effect?
<p><u>I. Limited licence firms</u></p> <p>Current Standard Limitation No prior equivalent limitation exists</p> <p>New Standard Limitation Unable to (i) hold financial instruments for own account unless it meets the 'matched principal exemption conditions' as defined in the FSA's Glossary of defined expressions used in the FSA's Handbook and (ii) underwrite MiFID financial instruments and/or place MiFID financial instruments on a firm commitment basis.</p>	<p>Firm becomes a <i>limited licence</i> firm.</p> <p>Firm becomes a <i>BIPRU 125k</i> firm if it is able to hold client money and/or its permission comprises <i>safeguarding and administering assets</i> (in relation to MiFID financial instruments); otherwise, the firm becomes a <i>BIPRU 50k</i> firm.</p>
<p><u>II. 'Matched principal brokers'</u></p> <p>Current Standard Limitation There are various standard limitations whereby a firm is limited to acting as a "matched principal broker" including, for example: 'Dealing as principal, but only holding positions as a result of its failure to match investors' orders precisely; and a) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question; and b) the total market value of all such positions does not exceed 15% of the firm's initial capital.'</p> <p>New Standard Limitation Unable to hold financial instruments for own account unless it meets the "matched principal exemption conditions" in the FSA's Glossary of defined expressions used in the FSA's Handbook.</p>	<p>The effect of the current standard limitations and new standard limitation is that a firm becomes a <i>BIPRU 125k</i> firm if it is able to hold client money and/or its permission comprises <i>safeguarding and administering assets</i> (in relation to MiFID financial instruments); otherwise, the firm becomes a <i>BIPRU 50k</i> firm.</p> <p>If the firm wishes to be a <i>limited licence</i> firm, it also needs to apply for new Standard Limitation I above. So, while a firm with a current 'matched principal brokers' limitation won't need to apply for new Standard Limitation II, it will need to apply for Standard Limitation I if it wishes to be a <i>limited licence</i> firm.</p>

<p>III. <u>Limited activity firms</u></p> <p>Current Standard Limitation No prior equivalent limitation exists.</p> <p>New Standard Limitation “May only deal on own account in MiFID financial instruments for the purpose of (i) fulfilling or executing a client order or (ii) gaining entrance to a clearing and settlement system or a recognised exchange when acting in an agency capacity or executing a client order.”</p>	<p>Firm becomes a <i>BIPRU 730k firm</i> and a <i>limited activity firm</i>.</p>
<p>IV. <u>Box management</u></p> <p>Current Standard Limitation</p> <ul style="list-style-type: none"> - Limited to authorised unit trust box management - Limited to Investment Company with Variable Capital (ICVC) box management - Limited to recognised Collective Investment Scheme (CIS) box management operations - Limited to unregulated CIS box operations <p>New Standard Limitation No new standard limitation envisaged</p>	<p>Firm becomes <i>limited licence</i> firm (without the need to apply for New Standard Limitation I).</p> <p>This is based on the assumption that the firm’s permission is not subject to other limitations and requirements which permit it to carry on the relevant MiFID investment services and activities, i.e. dealing on own account or underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.</p> <p>For example, if a firm’s <i>dealing in investments as principal</i> permission also enables it to carry on corporate finance business because of a separate limitation to this effect, it will not automatically follow that the firm will be a <i>limited licence firm</i>.</p> <p>Firm becomes a <i>BIPRU 125k firm</i> if it is able to hold client money and/or if its permission comprises <i>safeguarding and administering assets</i> (in relation to MiFID financial instruments); otherwise firm becomes a <i>BIPRU 50k firm</i>.</p>
<p>V. <u>Other Standard Limitations</u></p> <p>There are other standard limitations and requirements relating to firms such as <i>corporate finance advisory firms, locals, venture capital firms</i> and 'pure' collective scheme operators (i.e. firms who are only cis operators and which do not provide other</p>	

investment services).

If you are one of these firms and have received this letter, it may be because you do not currently have the appropriate limitations or requirements in place on your permission.

Table 6

Client Money requirements

Present status of firm	Effect
1.Firm has a requirement not to hold client money.	Firm will not be authorised to hold client money for purposes of CRD.
2.Firm has a requirement allowing it to control but not hold client money	Firm will not be authorised to hold client money for purposes of CRD.
3. Firm has a requirement as follows: "The general requirement not to hold or control client money does not restrict the firm from controlling client money if it arises from an agreement under which the firm effects settlement through a mandate or otherwise."	Firm will not be authorised to hold client money for purposes of CRD.
4.The firm receives money from clients under the 'opt-out' from the client money rules for intermediate customers and market counterparties (see CASS 4.1.8 to 14).	<p>Even if its permission contains a limitation of the type in 1, 2 or 3 above, in a limited number of cases the firm's base capital resources requirement may still be affected. This is because MiFID will prevent us from maintaining the opt-out for MiFID related business after 31 October 2007.</p> <p>This does not necessarily mean the firm will be holding client money in the future, although it may have this effect in some cases.</p> <p>Firms should carefully consider the proposals in consultation paper 'Implementing MiFID for firms and markets' (CP06/14).¹ From this, they should ascertain whether the proposals will affect their base capital and capital resources requirements.</p> <p>This issue will be of particular relevance to a firm whose a permission:</p> <ul style="list-style-type: none"> • does not allow it to hold client money or safeguard and administer financial instruments; • enables it to carry on business with professional customers; and <p>which makes use of the opt-out from our client money rules for intermediate customers and market counterparties.</p> <p>If the above applies to your firm and having reviewed our proposals your firm plans to hold client money after 31 October 2007, you should apply before then for a variation of permission.</p>

¹ www.fsa.gov.uk/Pages/Library/Policy/CP/2006/06.

	<p>This application would be to remove the existing client money requirement from your permission so as to take effect as of 1 November 2007.</p> <p>You will be able to benefit from the client money 'opt out' regime until then, assuming you comply with the relevant Handbook provisions and FSMA requirements.</p>
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