

CRD implementation – the FSA's approach to 'grandfathering'

1. Our recent Feedback Statement on our approach to CRD implementation explained that there will be no automatic rollover of existing waivers, concessions or individual guidance when the rules implementing the CRD come into force. The CRD will introduce significantly different requirements for credit risk, operational risk, securitisation, netting, collateral, guarantees and credit derivatives in the banking book. In some cases, such as operational risk, the requirements will be totally new and for investment firms, it will be the first time there will be any requirements in the area of securitisation. The baseline against which existing waivers were granted is thus being overtaken.
2. 'Grandfathering' will, however, be available in the following three areas:
 - The definition/composition of capital, as this area is not directly affected by the CRD. Our current treatment of instruments such as PIBS and TONS will therefore remain in place. The position will be reassessed in the light of the EU Own Funds Review which is due to be completed by the end of 2008.
 - The concentration risk regime, pending the outcome of the EU review expected in 2007.
 - CAD 1 and VaR model waivers.
3. In all other areas relating to capital requirements, firms' existing waivers, concessions and individual guidance will not be carried forward into the new regime. In the event that any firm believes it has a case for a waiver or individual guidance under the new rules, it must apply for a new waiver or fresh individual guidance as appropriate.
4. Implementation of the CRD in the FSA Handbook ('BIPRU') will impact different types of firm in different ways. For banks, subject to IPRU (Bank) drawn from the Bank of England's 'Banking Guide', it will mean implementing a rules-based regime for the first time. Since existing 'concessions' were granted under the 'Banking Guide' these cannot legally be transformed into waivers or individual guidance, so cannot be grandfathered.

The papers and meetings of the group are intended to encourage useful discussion of the issues rather than to present a comprehensive account of the matters concerned or a set of agreed conclusions. The minutes of the meetings report the discussions of the group, but neither the papers or minutes nor any reported remarks by anyone present at one of those meetings should be read as representing formal positions of the institutions represented or of the FSA. The FSA's Handbook proposals will be subject to consultation in the normal way.

5. For investment firms, the integration of ex-SRO requirements within BIPRU is also introducing fundamental change. While this change is primarily affecting the structure rather than the substance of the rules, it means that the actual requirements against which the previous waivers and individual guidance were issued will no longer exist. Consequently it will be necessary for firms to apply for new individual guidance as required and appropriate.
6. When firms are considering whether to apply for fresh waivers under the CRD rules, they should bear in mind our comments in paragraphs 1.24 – 1.25 of the Feedback Statement. Of particular importance is the fact that, as we are adopting a copy-out approach to substantial parts of the directive, there will be limited scope for us to grant new waivers.
7. Helpful by-products of not grandfathering past waivers, concessions and individual guidance include:
 - a) a level-playing field across all firms including removing any difference in approach between legacy organisations, e.g. ex-SFA firms and ex-IMRO firms; and
 - b) development of a clean, new database both for FSA and for firms.
8. Our approach to grandfathering is relevant to all firms within the scope of the CRD-based rules, not just to those firms seeking to use the advanced approaches under Pillar One. We encourage all firms to start identifying now where they are relying on waivers or individual guidance and to consider whether there might be a case for a new waiver or individual guidance in the new regime.
9. Under the new regime, firms should also be aware that they may need to apply for waivers where they did not need to do so under the current rules. For example, the exemption from consolidated supervision for some investment firms currently requires only a notification to FSA; this exemption will only be available by waiver under the new rules.
10. There are also some areas where waivers required under the current regime (for example, for the use of a subordinated debt agreement that is not exactly in the format prescribed in IPRU(Inv)) will not be required under the new regime.
11. FSA committed in the Feedback Statement to provide more information on how firms can begin to apply for new waivers in early 2006. We are currently looking at how best we can manage this process and will give more details in early 2006. We have set out an indicative timeline for firms overleaf.

Time	Firm activity	External Milestone
Q4 2005	Begin to analyse where firm is relying on waiver / IG under current prudential rules.	
Q1 2006	Review rules underpinning existing waivers and check whether the new rules as set out in the CP might warrant a continuation of that waiver treatment or IG.	Second 'Strengthening Capital Standards' CP is published. FSA puts out more information on how we will deal with CRD related waiver applications.
Q2 2006	Firms start to submit early applications for new waivers and IG, to take effect from 1/1/07.	FSA starts to consider waiver applications [timing to be confirmed in Q1 06]
Q3 2006	[Exact timing to be confirmed]	June/July: near final rules published
Q4 2006	Following formal rules being made, firms submit pro-forma request to formalise waivers / guidance.	October: formal rules are made. FSA issues formal waivers / IG
01/01/07	New rules come into force, plus new waivers as appropriate. Waiver applications submitted after rules are in force will be subject to normal FSA service standards.	