

Here are five key things to help ensure a smooth authorisation process for your Investment Application

1. Understand how your business model fits into the regulatory perimeter and what permissions are needed

It is important to understand how your business model fits into the regulator's permissions regime bearing in mind that a change in business model can lead to a change in regulatory permissions. For investment firms, it is important to think of your business model in three key aspects that will help guide the permissions needed:

- a. Core activity/activities (Dealing as agent, dealing as principal, dealing matched principal, managing discretionary client portfolios, managing a fund, acting as an introducer, operating a trading platform, etc)
- b. Type of financial instrument/instruments in question (for example derivatives such as futures, forwards, CFDs, cash equity, debt instruments, money market instruments, etc)
- c. Type of clients (will you do business with retail or professional clients)

See our summary on Authorisation Options for Investment Firms.

2. Have robust governance structure

No two firms are alike and the FCA will expect to see a suitable governance structure that suits the size and complexity of the firm. Most investment firms will be expected to have at least two full time directors to address key person risk. It is worth pointing out that the FCA not only approves your firm through the authorisation process but will also assess and approve Senior Managers of the firm. The following Senior Manager roles are likely to apply to most small and medium sized investment firms:

- SMF 1 (Chief Executive) (not mandatory)
- SMF3 (Executive Director) (at least two recommended)
- SMF 16 (Compliance Oversight) (mandatory)
- SMF 17 (Money Laundering Reporting Officer) (mandatory)
- SMF 9 (Chair of the governing body) if applicable

3. Find a skilled and competent SMF16 (Compliance Oversight) and SMF 17 (Money Laundering Reporting Officer)

Often at times the SMF16 and SMF 17 roles are assumed by the same person in small and medium sized firms. We have seen the FCA narrow down on these roles more recently, especially since the implementation of SM&CR in December 2019. It is important to have the right SMF16/SMF17 for your firm. Having someone who has prior experience and has been previously approved for similar roles by the FCA will increase your chances of SMF16/SMF17 approval.

4. Get your numbers right and know your regulatory capital requirements

It is important to prepare and submit at least three years of financial projections including Profit and Loss, Balance Sheet, and Cash Flow. The FCA will expect to see the first year on a monthly basis. Generally, the FCA will run checks on capital adequacy, profitability, and liquidity along with other considerations such as analysis of revenue and cost drivers.

Be pragmatic and ensure that revenue and costs are reflective of your business model. Most investment firms will have a minimum capital requirement along with some form of variable capital requirement that the firm must meet at all times.

The forecasts need to clearly display how the firm will meet these requirements. The type of investment activity undertaken will determine prudential classification and regulatory capital requirements of an investment firm. Generally, investment firms that hold client money or client assets will be classified as IFPRU125K firms. Firms that underwrite financial instruments or deal on own account on an unmatched proprietary basis will be classified as IFPRU730K firms. Firms that don't hold client money or client assets nor engage in placing activity can be classified as BIPRU50K. Most other firms will be classed as IFPRU50K or Exempt-CAD. Firms not in scope of the EU wide MiFID regulations, can be classed as Article 3 Exempt or another suitable classification. Note that special exemptions are available for commodities firms under the Exempt-IFPRU and Exempt-BIPRU Commodities classifications.

IFPRU and BIPRU firms are in scope of the detailed EU-wide capital regulations that also apply to Banks. IFPRU firms are in scope of CRDIV and the CRR regulations whilst BIPRU firms are in scope of the predecessor CRDIII. Firm should however note that the EBA in consultation with ESMA have developed a new prudential regime for investment firms under the IFR/IFD set to go live in June 2021. See our insight documents on IFD/IFR regulations.

5. Avoid bottlenecks that can delay your authorisation

Firms should be aware of the following bottlenecks that may slow down the authorisation process once an application has been submitting to the FCA:

- Changing your business model, governance structure, or any other significant aspects after submitting an application to the FCA and whilst it is 'in flight'
- Watch out for notice periods and any associated covenants for Senior managers that can delay the authorisation of the firm
- You should be in a position to capitalise the firm to at least the minimum regulatory capital level required just prior to authorisation
- Have a UK Bank account in place in the name of your business; sometimes obtaining a UK Bank account can pose a challenge to firms due to stringent AML rules
- Firms should have a UK registered address and principal place of business (rental lease or similar arrangement)