# Market conduct

# **Market conduct**

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# **Market conduct**

# Chapter 1 Market Abuse



#### 1.1 **Application and interpretation**

# Application and purpose

- 1.1.1 G This chapter is relevant to all persons seeking guidance on the market abuse regime.
- G [deleted] 1.1.1A
- G 1.1.2 This chapter provides guidance on the Market Abuse Regulation. It is therefore likely to be helpful to persons who:
  - (1) want to avoid engaging in market abuse; or
  - (2) want to determine whether they are required by article 16 of the Market Abuse Regulation to report a transaction or order to the FCA as a suspicious one.
- 1.1.3 G The FCA's statement of policy about the imposition, duration and amount of penalties in cases of market abuse (required by section 124 of the Act) is in ■ DEPP 6.

# Using MAR 1

G 1.1.4 (1) Assistance in the interpretation of ■ MAR 1 (and the remainder of the Handbook) is given in the Readers' Guide to the Handbook and in ■ GEN 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the Handbook).

- (2) [deleted]
- 1.1.5 **G** [deleted]
- 1.1.6 This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:
  - (1) the elements specified by the *Market Abuse Regulation* as making up the relevant type of *market abuse*; and
  - (2) any relevant descriptions of behaviour specified by the *Market Abuse Regulation* which do not amount to *market abuse*; and
  - (3) any provisions in the MAR Level 2 Regulations, and any applicable guidelines made by ESMA in force before IP completion day.
- 1.1.7 G This chapter does not exhaustively describe all the factors to be taken into account in determining whether behaviour amounts to *market abuse*. The absence of a factor mentioned does not, of itself, amount to a contrary indication.
- 1.1.8 G For the avoidance of doubt, it should be noted that any reference in this chapter to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.



#### 1.2 Market Abuse: general

- 1.2.1 G Provisions in this section are relevant to more than one of the types of behaviour which may amount to market abuse.
- [deleted] 1.2.2 UK
- 1.2.2-A UK [article 2, article 14 and article 15 of the Market Abuse Regulation]
- 1.2.2A UK [deleted]
- G 1.2.3 The Market Abuse Regulation does not require the person engaging in the behaviour in question to have intended to commit market abuse.
- G 1.2.4 [deleted]

Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a recognised auction platform

1.2.5 G

The following factors may be taken into account in determining whether or not behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a recognised auction platform contravenes prohibitions and obligations in the Market Abuse Regulation and are indications that it does:

if it is in relation to financial instruments:

in respect of which a request for admission to trading on a regulated market or MTF is subsequently made; and

if it continues to have an effect once an application has been made for the *financial instrument* to be admitted for trading, or it has been admitted to trading on a *regulated market* or *MTF*, respectively; or

if it is in relation to financial instruments:

which are subsequently offered for sale on a recognised auction platform; and

if it continues to have an effect once the *financial instruments* are offered for sale on a *recognised auction platform*.

1.2.6 **G** 

The following factors may be taken into account in determining whether or not refraining from action indicates behaviourwhich falls under the scope of the *Market Abuse Regulation*, and are indications that it does:

if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or

if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

## Insiders: factors to be taken into account

1.2.7 UK

[deleted]

1.2.7-A UK

[article 8(4) of the Market Abuse Regulation]

1.2.7A UK

[deleted]

1.2.8

The following factors may be taken into account in determining whether or not a *person* who possesses *inside information* ought to know that it is *inside information* for the purposes of the final indent of article 8(4) of the *Market Abuse Regulation*:

G

- (1) if a normal and reasonable person in the position of the person who has inside information would know or should have known that the person from whom he received it is an insider; and
- (2) if a normal and reasonable person in the position of the person who has inside information would know or should have known that it is inside information.
- 1.2.9 For the purposes of being categorised as an insider in article 8(4) of the Market Abuse Regulation, the person concerned does not need to know that the information concerned is inside information.

## Inside information: factors to be taken into account

- [deleted] 1.2.10 UK
- 1.2.10A UK [article 7 of the Market Abuse Regulation]
- G [deleted] 1.2.11

- 1.2.12 The following factors may be taken into account in determining whether or not information has been made public, and are indications that it has (and therefore is not *inside information*):
  - whether the information has been disclosed to a prescribed market or a prescribed auction platform through a regulatory information service or RIS or otherwise in accordance with the rules of that market;
  - (2) whether the information is contained in records which are open to inspection by the public;
  - (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public; and
  - (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality.
  - (5) [deleted]
- 1.2.13 G (1) In relation to the factors in MAR 1.2.12G it is not relevant that the information is only generally available outside the *UK*.
  - (2) In relation to the factors in MAR 1.2.12G it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.
- 1.2.14 G For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be usinginformation which has been made public, since it is information which has been obtained by legitimate means through observation of a public event.
- 1.2.15 **UK** [deleted]
- 1.2.15A UK [deleted]
- 1.2.15B UK [article 7(1)(d) of the Market Abuse Regulation]
- 1.2.16 G In determining whether there is a pending order for a client in relation to article 7(1)(d) of the *Market Abuse Regulation*, a factor that may be taken into account is if a *person* is approached by another in relation to a transaction, and:
  - (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
  - (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

	Inside information: commodity derivatives
1.2.17 G	[deleted] [Note: article 7(1)(b) of the Market Abuse Regulation]
	[Note: article 7(1)(b) or the market house negatiation]
1.2.18 UK	[deleted]
1.2.18A UK	[article 7(1)(b) of the Market Abuse Regulation]
1.2.19 UK	[deleted]
1.2.19A <b>G</b>	ESMA has issued guidelines under article 7(5) of the Market Abuse Regulation which relate to the definition of inside information in the context of commodity derivatives.
	[Note: ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)]
1.2.20 <b>G</b>	[deleted]
1.2.21 <b>G</b>	[deleted]

# Recommending or inducing

1.2.22 UK

[deleted]

1.2.23 G

The following are examples of behaviour that might fall within the scope of article 14(b) of the *Market Abuse Regulation*:

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *sell* a *financial instrument* in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in behaviour which, if he himself engaged in it, would amount to *market abuse*.



#### 1.3 **Insider dealing**

- 1.3.1 UK [deleted]
- 1.3.1A UK [article 8 of the Market Abuse Regulation]

# Descriptions of behaviour that amount to insider dealing

1.3.2 The following are examples of behaviour that may amount to insider dealing under the Market Abuse Regulation, but are not intended to form an exhaustive list:

- (1) [deleted]
- (2) front running/pre-positioning that is, a transaction for a person's own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside* information), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an offeror or potential offeror entering into a transaction in a financial instrument, using inside information concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a spread bet on the target company's share price); and
- (4) in the context of a takeover, a person who acts for the offeror or potential offeror dealing for his own benefit in a financial instrument using information concerning the proposed bid.

1.3.3	E	Factors to be taken into account: "on the basis of"  [deleted] [Note: article 9 of the Market Abuse Regulation]	
1.3.4	E	[deleted]	
1.3.5	E	[deleted] [Note: article 9(1)(a) of the <i>Market Abuse Regulation</i> ]	
1.3.6	С	Relevant factors: legitimate business of market makers  [deleted] [Note: article 9(5) of the Market Abuse Regulation]	
1.3.7	G	For market makers and <i>persons</i> that may lawfully <i>deal</i> in <i>financial instruments</i> on their own account, pursuing their legitimate business of such <i>dealing</i> (including entering into an agreement for the underwriting of an issue of <i>financial instruments</i> ) may not in itself amount to <i>market abuse</i> .	
1.3.8	G	[deleted]	
1.3.9	E	[deleted]	
1.3.10	G	The following factors maybe taken into account in determining whether or not a <i>person</i> 'sbehaviour is in pursuit of legitimate business, and are indications that it is:	
		(1) the extent to which the relevant trading by the <i>person</i> is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the <i>person's</i> legitimate business; or	
		(2) whether, in the case of a transaction on the basis of <i>inside</i> information about a client's transaction which has been executed, the reason for it being inside information is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or trading venue obligations; or	
		(3) whether, if the relevant trading by that <i>person</i> is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or	
		(4) the extent to which the <i>person's</i> behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.	

1.3.11 Ε [deleted]

[Note: article 9 of the Market Abuse Regulation]

Relevant factors: execution of client orders

C 1.3.12 [deleted]

[Note: article 9 of the Market Abuse Regulation]

G [deleted] 1.3.13

[Note: article 9 of the Market Abuse Regulation]

## 1.3.14 **E** [deleted]

# 1.3.15 G

Thefollowing factors may be taken into account in determining whether or not a *person*'sbehaviour in executing an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COBS*, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person*'sbehaviour was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person*'sbehaviour was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him: or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

#### 1.3.16 **G** [deleted]

# Descriptions of behaviour that do not indicate insider dealing and relevant factors: takeover and merger activity

# 1.3.17 G

With reference to article 9(4) of the *Market Abuse Regulation*, examples of using *inside information* solely for the purpose of proceeding with a merger or public takeover may include:

- (1) seeking from holders of *securities*, issued by the target, irrevocable undertakings or expressions of support to accept an *offer* to acquire those *securities* (or not to accept such an *offer*);
- (2) making arrangements in connection with an issue of *securities* that are to be offered as consideration for the takeover or merger *offer* or to be issued in order to fund the takeover or merger *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or places which are proportionate to the risks assumed; and
- (3) making arrangements to offer cash as consideration for the takeover or merger offer as an alternative to securities consideration.

1.3.18 Categories of *inside information* relevant to ■ MAR 1.3.17 G:

- (1) information that an offeror or potential offeror is going to make, or is considering making, an offer for the target; and
- (2) information that an offeror or potential offeror may obtain through due diligence.
- 1.3.19 Thefollowing factor maybe taken into account in determining whether or not a *person*'sbehaviouris for the purpose of him proceeding witha merger with the target company or a public takeover of the target company, and is an indication that it is:
  - (1) whether the transactions concerned are in the target company's shares.
  - (2) [deleted]

# **Examples of insider dealing**

- 1.3.20 G The following descriptions are intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concern the definition of inside information relating to financial instruments other than commodity derivatives or emissions allowances or auctioned products based thereon:
  - (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the takeoveroffer is announced.
  - (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the regulatory information service the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.
- 1.3.21 The following description is intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concerns the definition of inside information relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns (from an insider) that there has been a significant decrease in the level of LME aluminium stocks. This information is reasonably expected to be disclosed in accordance with market practice or custom on the LME. The trader buys a substantial number of futures in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.

G 1.3.22 The following description is intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concerns the definition of inside information relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client*'s order. Both trades could constitute *insider dealing*.

### 1.3.23 G

The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A *person* deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a trading venue, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national, EU or Member State level, market rules, contract, practice or custom, onthe relevant commodity futures market.

# 1.3.24 G

ESMA has issued guidelines under article 7(5) of the Market Abuse Regulation which relate to the definition of inside information in the context of commodity derivatives.

[Note: ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN).]



#### 1.4 Unlawful disclosure

- [deleted] 1.4.1 UK
- UK 1.4.1A [article 10 of the Market Abuse Regulation]

# Descriptions of behaviour that indicate unlawful disclosure

- 1.4.2 G The following behavioursare indications of *unlawful disclosure*:
  - (1) disclosure of inside information by the director of an issuer to another in a social context; and
  - (2) selective briefing of analysts by directors of issuers or others who are persons discharging managerial responsibilities.

#### Descriptions of behaviour that does not indicate unlawful disclosure .....

1.4.3 G

The following behaviour indicates that a *person* is acting in the normal exercise of their employment, profession or duties, if a person makes a disclosure of *inside information*:

- (1) to a government department, the Bank of England, the Competition Commission, the Takeover Panel or any other regulatory body or authority for the purposes of fulfilling a legal or regulatory obligation; or
- (2) otherwise to such a body in connection with the performance of the functions of that body.

- 1.4.4 Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) maynot amount to *unlawful disclosure*.
- Disclosure of inside information by a broker to a potential buyer regarding the fact that the seller of financial instruments is a person discharging managerial responsibilities or the identity of the person discharging managerial responsibilities or the purpose of the sale by the person discharging managerial responsibilities where:

the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;

- (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- (3) the transaction could not be otherwise completed without creating a disorderly market;

may not, of itself, amount to unlawful disclosure.

# Factors to be taken into account in determining whether or not behaviour amounts to unlawful disclosure

1.4.5 G

The following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

- (1) whether the disclosure is permitted by the rules of a *trading venue* a *prescribed auction platform*, of the *FCA* or the *Takeover Code*; or
- (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
  - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
  - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
  - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
  - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
  - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf.
- (3) [deleted]
- 1.4.5A G
- [deleted]

# **Examples of unlawful disclosure**

1.4.6

G

The following descriptions are intended to assist in understanding certain behaviours which may constitute unlawful disclosure under the Market Abuse Regulation:

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a person discharging managerial responsibilities in B PLC, asks C, a broker, to sell some or all of As shares in B PLC. C discloses to a potential buyer that A is a person discharging managerial responsibilities or discloses the identity of A, in circumstances where the fact that A is a person discharging managerial responsibilities or the identity of A, is inside information.

1.4.7 G [deleted]



# 1.6 Manipulating transactions

- 1.6.1 UK [deleted]
- 1.6.1-A UK | [article 12(1)(b) of the Market Abuse Regulation]
- 1.6.1A UK [deleted]

# **Giving false or misleading impressions**

1.6.2 **E** [deleted]

[Note: Annex 1A of the Market Abuse Regulation.]

- 1.6.3 Entering into a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, does not of itself indicate behaviour described in Annex IA(c) of the *Market Abuse Regulation*.
- 1.6.4 **E** [deleted]

[Note: Annex 1A of the Market Abuse Regulation.]

# Factors to be taken into account: legitimate reasons

- 1.6.5 G The following factors are to be taken into account when considering whether behaviouris for legitimate reasons in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is not:
  - (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a *financial instrument*;
  - (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; and
  - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 1.6.6 The following factors are to be taken into account when considering whether behaviouris for legitimate reasons in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
- (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
- (4) if the transaction complied with the rules of the relevant trading venue about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).
- 1.6.7 It is unlikely that the behaviour of trading venue users when dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to manipulation. Such behaviour, generally speaking, improves the liquidity and efficiency of trading venues.
- G 1.6.8 It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

Factors to be taken into account: behaviour giving a false or misleading impression

E 1.6.9 [deleted]

[Note: Annex 1A of the Market Abuse Regulation]

Factors to be taken into account: behaviour securing an abnormal or artificial price level

- 1.6.10 Thefollowing factors are to be taken into account in determining whether or not a person'sbehaviouramounts to manipulating transactions as described in article 12(1)(a)(ii) of the Market Abuse Regulation:
  - (1) the extent to which the person had a direct or indirect interest in the price or value of the financial instrument;
  - (2) the extent to which price, rate or option volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and

(3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *financial* instrument:

# Factors to be taken into account: abusive squeezes

# 1.6.11 G

Thefollowing factors are to be taken into account when determining whether a *person* has engaged in behaviour referred to in Annex IA(a) or (b) of the *Market Abuse Regulation*, commonly known as an "abusive squeeze":

- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, behaviouris less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
- (2) the extent to which the *person*'s activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
- (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
- (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.
- 1.6.12 G

Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself likely to beabusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself likely to beabusive.

1.6.13 G

The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.

1.6.14 E [deleted]

# **Examples of manipulating transactions**

1.6.15 G

The following are examples of behaviour that may amount to manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:

- (1) [deleted]
- (2) [deleted]
- (3) a trader holds a short position that will show a profit if a particular financial instrument, which is currently a component of an index, falls out of that index. The question of whether the financial instrument will fall out of the index depends on the closing price of the financial instrument. He places a large sell order in this financial instrument just before the close of trading. His purpose is to position the price of the financial instrument at a false, misleading, abnormal or artificial level so that the financial instrument will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to buy relatively illiquid shares, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the shares at a false, misleading, abnormal or artificial level.
- 1.6.16 G The following is an example of an abusive squeeze:

A trader with a long position in bond futuresbuys or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit from his original position.



# 1.7 Manipulating devices

- 1.7.1 **UK** [deleted]
- 1.7.1-A UK | [article 12(1)(b) of the Market Abuse Regulation]
- 1.7.1A UK [deleted]
  - Descriptions of behaviour that amount to manipulating devices
- 1.7.2 **E** [deleted]

[Note: Article 12(2)(d) Market Abuse Regulation]

Factors to be taken into account in determining whether or not behaviour amounts to manipulating devices

1.7.3 **E** [deleted]

[Note: Annex 1B of the Market Abuse Regulation]



#### 1.8 **Dissemination**

- 1.8.1 UK [deleted]
- 1.8.1A UK [article 12(1)(c) of the Market Abuse Regulation]
- 1.8.2 UK [deleted]

# Descriptions of behaviour that amount to dissemination

1.8.3 E [deleted]

[Note: article 12(1)(c) of the Market Abuse Regulation]

## Factors to be taken into account in determining whether or not behaviour amounts to dissemination

- 1.8.4 G If a normal and reasonable person would know or ought tohave known in all the circumstances that the information was false or misleading, that indicates that the person disseminating the information knew or ought to have known that it was false or misleading.
- 1.8.5 G If the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese* wall or similarly effective arrangements, that indicates that the person disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

# **Example of dissemination**

- 1.8.6 The following is an example of behaviourwhich may amount to a contravention of article 12(1)(c) of the Market Abuse Regulation:
  - (1) a person posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a company whose shares are financial instruments and the person knows that the information is false or misleading.

[Note: article 12(1)(c) of the Market Abuse Regulation.]



# 1.9 Misleading behaviour **&** distortion

- 1.9.1 **UK** [deleted]
- 1.9.1-A UK [article 12(1)(c) of the Market Abuse Regulation]
- 1.9.1A UK [deleted]
- 1.9.2 **E** [deleted]
- 1.9.2A **E** (1) [deleted]
  - (2) [deleted]

[deleted]

- 1.9.2B R [deleted]
  - Short selling in relation to financial sector companies
- 1.9.2C E
- (1) [deleted]
- (2) [deleted]
- (3) [deleted]
- (4) [deleted]
- 1.9.2D E
- (1) [deleted]
- (2) [deleted]
  - (a) [deleted]
  - (b) [deleted]
- (2A) [deleted]
  - (3) [deleted]

(4) [deleted]

(5) [deleted]

- G [deleted] 1.9.2E
- C [deleted] 1.9.3
- 1.9.4 Ε [deleted]
- [deleted] Ε 1.9.5



# 1.10 Statutory exceptions

# Behaviour that does not amount to market abuse

- 1.10.1 G
- (1) Behaviour which conforms with article 5 of the Market Abuse Regulation or with the Buy-back and Stabilisation Regulation will not amount to market abuse.

......

- (2) [deleted]
- (3) [deleted]

# FCA rules

- 1.10.2 **G**
- There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*.
  - (1) [deleted]
  - (2) [deleted]

#### **Takeover Code**

- 1.10.3 G
- There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 G
- Behaviourconforming with any of the rules of the *Takeover Code*about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, is unlikely to, of itself, amount to *market abuse*, if:
  - (1) the rule is one of those specified in the table in MAR 1.10.5G;
  - (2) the behaviour expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule for these purposes); and
  - (3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.
- 1.10.5
- Table: Provisions of the Takeover Code conformity with which will be unlikely to, of itself, amount to market abuse (This table belongs to ■MAR 1.10.4G):

Takeover Code provisions:

G

Disclosure of information	1(a)
which is not generally available	2.1 , 2.7,
	2.11,
	8
	20.1
	21.3, 21.4
	28.1
	30.1, 30.5
Standards of care	2.8 first sentence and note 4
	19.1, 19.7
	20.6 second sentence
	23.1 plus notes
	28.1
Timing of announcements,	2.2, 2.6
documentation and dealings	5.4
	6.2(b)
	7.1
	11.1 note 6 only
	17.1
	21.2 note 4 only
	24.1(a)
	25.1(a)
	31.6(d), 31.9
	33 (in so far as it refers to 31.6(d) and 31.9 only)
Content of announcements	2.4 (a) and (b)
	19.3

# 1.10.6

Behaviourconforming with Rule 4.2 of the Takeover Code (in relation to restrictions on dealings by offerors and concert parties) will be unlikely to, of itself, amount to market abuse, if:

- (1) the behaviour is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified in the Takeover Code are treated as part of the rule for these purposes); and
- (2) it conforms to any General Principle set out at Section B of the Takeover Code relevant to the rule.

# Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

1.1.1	G	[deleted]
1.1.2	G	[deleted]
1.1.3	EU	[deleted]
1.1.4	EU	[deleted]
1.1.5	EU	[deleted]
1.1.6	G	[deleted]
1.1.7	G	[deleted]
1.1.8	G	The FCA accepts as " adequate public disclosure":  (1) disclosure through a regulatory information service or otherwise in accordance with Part 6 rules; or  (2) the equivalent disclosure mechanism required to be used in relation to the relevant trading venue.
1.1.9	EU	[deleted]
1.1.10	EU	[deleted]
1.1.10	EU	[deleted]
1.1.11	G	[deleted]
1.1.12	EU	
		[deleted]
1.1.13	G	[deleted]

[deleted] 1.1.14 G

# **Accepted Market Practices**

[article 13 of the Market Abuse Regulation.]

## **Market conduct**

Chapter 2

Stabilisation

■ Release 49 ● Jul 2025

**Application and Purpose [deleted]** 2.1

2.1



2.2 Stabilisation: general [deleted]

2.2



Stabilisation under the Buy-back 2.3 and Stabilisation Regulation [deleted]

2.3

EU 2.3.1

[deleted]

- 2.3.2 G [deleted]
- 2.3.3 R [deleted]
- EU 2.3.4
- 2.3.5 EU [deleted]
- G [deleted] 2.3.6
- G 2.3.7 [deleted]
- 2.3.8 G [deleted]

2.3.11 **EU** [deleted]

- 2.3.12 **G** [deleted]
- **2.3.13 G** [deleted]



**Stabilisation when the Buy-back and Stabilisation Regulation does not** 2.4 apply [deleted]

2.4



# 2.5 The Price Stabilising Rules: overseas provisions

#### 2.5.1 R

- (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
  - (a) for the purposes of stabilising the price of *investments*;
  - (b) in conformity with the provisions specified in (2), (3) or (4); and
  - (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;

is to be treated for the purposes of section 89(3)(a) and section 90 (9)(b) of the Financial Services Act 2012 as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.

- (2) In relation to the United States of America, the specified provisions are:
  - (a) Regulation M made by the Securities and Exchange Commission (17 CFR 242, # 100-105).
- (3) In relation to Japan, the specified provisions are
  - (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
  - (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;
  - (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
  - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) In relation to Hong Kong, the specified provisions are:
  - (a) The Securities and Futures (Price Stabilizing) Rules, Cap. 571 W made by the Hong Kong Securities and Futures Commission.
- (5) The provisions in (2), (3) and (4) are specified as they have effect from time to time, so long as this paragraph has effect.

2.5.2



A *person* who is treated under ■ MAR 2.5.1R (1) as acting or engaging in conduct in conformity with the price stabilising rules is also to be treated to an equivalent extent as so acting or engaging for the purposes of:

- (1) [deleted]
- (2) Part XIV (Disciplinary measures); and
- (3) Part XXV (Injunctions and Restitution) of the Act.

List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1R(2)) [deleted]

# Chapter 4

# Support of the Takeover Panel's Functions



#### 4.1 **Application and Purpose**

# **Application**

- 4.1.1 R This chapter applies to every firm whose permission includes, or ought to include, any designated investment business, except as set out in ■ MAR 4.4.1 R.
- G 4.1.2 ■ MAR 4.1.1 R applies regardless of whether the *firm*'s activity:
  - (1) is a regulated activity;
  - (2) is carried on from an office of the firm in the United Kingdom; or
  - (3) is in respect of a client in the United Kingdom.

#### Purpose

- 4.1.3 G [deleted]
- 4.1.4 G [deleted]



# 4.3 Support of the *Takeover Panel's* Functions

- 4.3.1 R
- A firm must not act, or continue to act, for any person in connection with a transaction to which the Takeover Code applies (including a transaction subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the Takeover Code) if the firm has reasonable grounds for believing that the person in question, or his principal, is not complying or is not likely to comply with the Takeover Code.
- 4.3.2 G
- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code*. It may also, from time to time, name in those notices *persons* as *persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code*. Any notices of this type will be available on the *Takeover Panel's* website (www.thetakeoverpanel.org.uk).
- (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with MAR 4.3.1 R. If the *Takeover Panel* were to name such a *person* in such a notice, the *FCA* would expect a *firm* to comply with MAR 4.3.1 R by not acting or continuing to act for that *person*.
- (3) The FCA would not regard a firm as in breach of MAR 4.3.1 R where the Takeover Panel has indicated that it is content for the firm to act in relation to that transaction.
- 4.3.3 G
- (1) Where a restriction under ■MAR 4.3.1 R applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* applies.
- (2) Where a restriction under MAR 4.3.1 R applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* applies.
- 4.3.4 G
- (1) Where a restriction under MAR 4.3.1 R applies, an authorised professional firm is not prevented from providing professional advice or representation in any proceedings to the person where that falls within section 327(8) of the Act. This means that the person can obtain legal advice or representation in any proceedings from a law

firm and accounting advice from an accounting firm: see ■ MAR 4.4.1 R (2).

- (2) While the FCA recognises the duty of authorised professional firms to act in the best interests of their clients, the duty cannot override the provisions of the Takeover Code so as to require the authorised professional firm to provide services in breach of, or enable breach of, the Takeover Code.
- 4.3.5 R A firm must provide to the Takeover Panel:
  - (1) any information and documents in its possession or under its control which the Takeover Panel requests to enable the Takeover Panel to perform its functions; and
  - (2) such assistance as the Takeover Panel requests and as the firm is reasonably able to provide to enable the Takeover Panel to perform its functions.
- 4.3.6 G In ■ MAR 4.3.5 R, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.
- G 4.3.7 As a result of section 413 of the Act (Limitation on powers to require documents), ■ MAR 4.3.5 R does not require a firm or an authorised professional firm to produce, disclose or permit the inspection of protected items.

**MAR 4/4** 



# 4.4 Exceptions

- **4.4.1** R This chapter is subject to the following exceptions:
  - (1) this chapter does not require an authorised professional firm to contravene any rule or principle of, or requirement of a published guidance note relating to, professional conduct applying generally to members of the profession regulated by its designated professional body;
  - (2) this chapter does not prevent an *authorised professional firm* from providing professional advice, that is, in accordance with section 327(8) of the *Act*, advice:
    - (a) which does not constitute carrying on a regulated activity; and
    - (b) the provision of which is supervised and regulated by a designated professional body;
  - (3) this chapter does not have effect in relation to an *authorised* professional firm in respect of non-mainstream regulated activity; and
  - (4) [deleted]

■ Release 49 ● Jul 2025

#### Market conduct

# Chapter 5

# Multilateral trading facilities (MTFs)

■ Release 49 ● Jul 2025 ww



#### 5.1 **Application**

## Who and what?

- 5.1.1 This chapter applies to:
  - a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or (1)
  - an overseas firm which operates an MTF from an establishment in (2) the *United Kingdom*.

## Status of EU provisions as rules in certain instances

- 5.1.2 R [deleted]
- 5.1.3 G ■ GEN 2.2.22AR applies to ensure that a third country investment firm should not be treated in a more favourable way than an EEA firm.

MAR 5/2



The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTF*s, specifically articles 18, 19, 31, 32, 33, 48, 49 and 50 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition.



#### 5.3 **Trading process requirements**

### Rules, procedures and arrangements

#### 5.3.1 R

A firm must have:

(1) transparent rules and procedures for fair and orderly trading;

[Note: articles 18(1) and 19(1)

of MiFID

(2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[Note: articles 18(1) and 19(1) of MiFID]

(2A) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[Note: article 18(1) of MiFID]

(3) transparent rules regarding the criteria for determining the financial instruments that can be traded under its systems;

[Note: subparagraph 1 of article 18(2) of MiFID]

- (4) published, transparent and non-discriminatory rules, based on objective criteria, governing access to its facility and which must provide that its members or participants are investment firms, CRD credit institutions or other persons who:
  - (a) are of sufficient good repute;
  - (b) have a sufficient level of trading ability, competence and experience;
  - (c) where applicable, have adequate organisational arrangements;
  - (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the firm operating the MTF may have established in order to guarantee the adequate settlement of transactions;

[Note: articles 18(3), 19(2) and 53(3) of MiFID]

(5) arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instrument traded; and

[Note: subparagraph 2 of article 18(2) of MiFID]

- (6) (as between the interests of the *MTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly and to manage any conflict with adverse consequences for:
  - (a) the operation of the *trading venue* for the members and participants or users; or
  - (b) the members and participants or users otherwise.

[Note: article 18(4) of MiFID]

#### **Functioning of an MTF**

#### 5.3.1A R

A firm must:

(1) ensure the *MTF* has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[Note: article 18(7) of MiFID]

(2) have arrangements to ensure it is adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation and put in place effective measures to mitigate those risks;

[Note: article 19(3)(a) of MiFID]

(3) have available at the time of *authorisation* and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the venue and the range and degree of the risks to which it is exposed;

[Note: article 19(3)(c) of MiFID]

(4) not execute orders against proprietary capital, or engage in *matched principal trading*;

[Note: article 19(5) of MiFID]

- (5) [deleted]
- (6) provide the following to the FCA:
  - (a) a detailed description of the functioning of the MTF, including any links to or participation by a regulated market, an MTF, OTF or systematic internaliser owned by the same firm; and
  - (b) a list of its members, participants and users.

[Note: article 18(10) of *MiFID* and *MiFID ITS 19* with regard to the content and format of the description of the functioning of *MTFs*]

#### 5.3.1B G

The requirement in ■ MAR 5.3.1AR(4) does not prevent a *firm*, with the appropriate *permission*, from executing orders against its proprietary capital or engaging in *matched principal trading* outside the *MTF* it operates.

5.3.2	G	[deleted]
5.3.3	G	[deleted]
5.3.4	G	[deleted]
5.3.5	G	[deleted]
5.3.6	G	[deleted]
5.3.7	G	Operation of a primary market in financial instruments not admitted to trading on a regulated market  The FCA will be minded to impose a variation on the Part 4A permission of an MTF operator that operates a primary market in financial instruments not admitted to trading on a regulated market in order to ensure its fulfilment of the requirements in MAR 5.3.1 R as regards fair and orderly trading.
5.3.8	R	Transferable securities traded without issuer consent  Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an MTF without the consent of the issuer, the firm operating the MTF must not make the issuer subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF.  [Note: article 18(8) of MiFID]
		[1.0.0.0.0.0.0.0.0.0.0.0.0.0.0.0.0.0.0.0



# 5.3A Systems and controls for algorithmic trading

#### Systems and controls

- 5.3A.1 R
- A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5.3A.2 R
- MAR 5.3A.1R applies in particular to systems and controls concerning:
  - (1) the resilience of the firm's trading systems;
  - (2) its capacity to deal with peak order and message volumes;
  - (3) the ability to ensure orderly trading under conditions of severe market stress;
  - (4) the effectiveness of business continuity arrangements to ensure the continuity of the *MTF's* services if there is any failure of its trading systems, including the testing of the *MTF's* systems and controls;
  - (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
  - (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
  - (7) the ability to ensure any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being managed, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the *MTF*'s trading system by a member or participant;
  - (8) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
  - (9) the ability to limit and enforce the minimum tick size which may be executed on the *MTF*; and
  - (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[Note: article 48(1),(4) and (6) of MiFID, MiFID RTS 7, MiFID RTS 9, and MiFID RTS 11]

#### Market making agreements

#### 5.3A.3

R

A firm must:

- (1) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into market making agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the FCA of the content of its market making agreements; and
- (5) provide the FCA with any information it requests which the FCA reasonably requires to be satisfied that the market making agreements comply with this rule.

[Note: article 48(2) and (3) of MiFID, and MiFID RTS 8]

#### 5.3A.4

R

A market making agreement in ■ MAR 5.3A.3R(1) must specify:

- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
- (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme mentioned in ■ MAR 5.3A.3R(2); and
- (3) any incentives in terms of rebates or otherwise offered by the firm to the *investment firm* in order for it to provide liquidity to the *MTF* on a regular and predictable basis and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[Note: article 48(3) of MiFID and MiFID RTS 8]

#### Measures to prevent disorderly markets

#### 5.3A.5

A firm must have the ability to:

- (1) temporarily halt or constrain trading on the MTF if there is a significant price movement in a financial instrument on the MTF or a related trading venue during a short period; and
- (2) in exceptional cases, cancel, vary or correct any transaction.

[Note: article 48(5) of MiFID]

#### 5.3A.6

For the purposes of ■ MAR 5.3A.5R and to avoid significant disruptions to the orderliness of trading, a firm must calibrate the parameters for halting trading in a way which takes into account the following:

- (1) the liquidity of different asset classes and subclasses;
- (2) the nature of the trading venue market model; and
- (3) the types of users.

[Note: article 48(5) of MiFID]

The *firm* must report the parameters mentioned in ■ MAR 5.3A.6R to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[Note: article 48(5) of MiFID]

**5.3A.8** R A *firm* must have systems and procedures to notify the *FCA* if:

- (1) an MTF operated by the firm is material in terms of the liquidity of trading of a financial instrument; and
- (2) trading is halted in that instrument.

[Note: article 48(5) of MiFID]

#### Direct electronic access

**5.3A.9** R A firm which permits direct electronic access to an MTF it operates must:

- (1) not permit members or participants of the *MTF* to provide such services unless they are:
  - (a) MiFID investment firms; or
  - (b) CRD credit institutions; or
  - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
  - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
  - (e) third country firms providing the *direct electronic access* in accordance with the; exclusion in article 72 of the *RAO* or
  - (f) a third country firm which does not come within

     MAR 5.3A.9R(1)(d) to (f) but is otherwise permitted to provide the direct electronic access under the Act; or
  - (g) firms that come within regulation 30(1A) of the MiFI Regulations and have a Part 4A permission relating to investment services or activities:
- (2) set, and apply, criteria for the suitability of *persons* to whom *direct* electronic access services may be provided;
- (3) ensure that the member or participant of the MTF retains responsibility for adherence to the requirements of MiFID in respect of orders and trades executed using the direct electronic access service;

- (4) set standards for risk controls and thresholds on trading through direct electronic access:
- (5) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately
  - (a) other orders; and
  - (b) trading by the member or participant providing the direct electronic access; and
- (6) have arrangements to suspend or terminate the provision of direct electronic access on that market by a member or participant in the case of any non-compliance with this rule.

[Note: article 48(7) of MiFID]

## **Co-location**

5.3A.10

R

Where a firm permits co-location in relation to the MTF, its rules on colocation services must be transparent, fair and non-discriminatory.

[Note: article 48(8) of MiFID and MiFID RTS 10]

#### Fee structures

5.3A.11

A firm's fee structure, for all fees it charges and rebates it grants in relation to the MTF, must:

- (1) be transparent, fair and non-discriminatory;
- (2) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading or market abuse; and
- (3) impose market making obligations in individual financial instruments or suitable baskets of financial instruments for any rebates that are aranted.

[Note: article 48(9) of MiFID and MiFID RTS 10]

5.3A.12 G

Nothing in ■ MAR 5.3A.11R prevents a *firm*:

- (1) adjusting its fees for cancelled orders according to the length of time the order was maintained;
- (2) calibrating its fees to each *financial instrument* to which they apply;
- (3) imposing a higher fee:
  - (a) for placing an order which is cancelled than for an order which is executed:
  - (b) on participants placing a high ratio of cancelled orders to executed orders; and
  - (c) on a person operating a high-frequency algorithmic trading technique,

in order to reflect the additional burden on system capacity.

[Note: article 48(9) of MiFID]

#### Flagging orders, tick sizes and clock synchronisation

#### 5.3A.13 R

A *firm* must require members and participants of an *MTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:

- (1) different algorithms used for the creation of orders; and
- (2) the persons initiating those orders.

[Note: article 48(10) of MiFID]

#### 5.3A.14 R

A firm must adopt tick size regimes in:

- (1) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on the MTF; and
- (2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under powers conferred by *MiFIR*.

[Note: article 49 of MiFID and MiFID RTS 11]

#### 5.3A.14A R

A *firm* adopting tick sizes in accordance with ■MAR 5.3A.14R may match orders large in scale at mid-point within the current bid and offer prices.

[Note: article 49 of MiFID and MiFID RTS 11]

#### 5.3A.15 R

The tick size regime referred to in ■ MAR 5.3A.14R must:

- (1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
- (2) adapt the tick size for each *financial instrument* appropriately.

[Note: article 49 of MiFID and MiFID RTS 11]

## 5.3A.16 G

Nothing in ■ MAR 5.3A.14R or ■ MAR 5.3A.15R requires a *firm* to act inconsistently with *MiFID RTS 11* or any regulatory technical standards made under powers conferred by *MiFIR*.

[Note: article 49 of MiFID]

#### 5.3A.17 R

A *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.

[Note: article 50 of MiFID and MiFID RTS 25]

5.3A.18 For the purpose of ■ MAR 5.3A.17R, *MiFID RTS 25* provides further requirements.



## **5.4** Finalisation of transactions

#### 5.4.1

R A

#### A firm must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in its *MTF*; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: articles 18(6) and 19(3)(b) of MiFID]

[Note: in relation to derivative transactions, MiFID RTS 26 contains requirements on the systems for the clearing of such transactions]



# Monitoring compliance with the rules of the MTF 5.5

#### 5.5.1 R A firm must:

- (1) have effective arrangements and procedures, relevant to its MTF, for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions, system disruptions in relation to a financial instrument, or conduct that may involve market abuse.

[Note: article 31(1) of MiFID]

MAR 5/14



# 5.6 Reporting requirements

#### **5.6.1** R A *firm* must:

- (1) report to the FCA any:
  - (a) significant breaches of the firm's rules;
  - (b) disorderly trading conditions;
  - (c) conduct that may involve market abuse; and
  - (d) system disruptions in relation to a financial instrument;
- (2) supply the information required under this *rule* without delay to the *FCA* and any other authority competent for the investigation and prosecution of *market abuse*; and
- (3) provide full assistance to the FCA, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the firm's systems.

[Note: article 31(2) of *MiFID* and articles 81 and 82 of the *MiFID Org Regulation*]

## 5.6.2 R A firm operating an MTF must give the FCA a summary of:

- any proposal to introduce, amend or renew a scheme for rebating or waiving fees or charges levied on its members or participants (or any group or class of them), at the same time as the proposal is communicated to those members or participants; and
- (2) any such change, no later than the date when it is published or notified to the members or participants.

# The summary referred to in ■ MAR 5.6.2R(1) must be given in the form specified in ■ MAR 5 Annex 2R.



5.6A Suspension and removal of financial instruments

5.6A.1

R

#### A firm must:

- (1) not exercise any power under its rules to suspend or remove from trading any financial instrument which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the trading venue:
- (2) where it does suspend or remove from trading a financial instrument, also suspend or remove derivatives that relate, or are referenced, to that financial instrument, where necessary to support the objectives of the suspension or removal of the underlying; and
- (3) make public any decision in (2) and notify the FCA of it.

[Note: article 32 of MiFID, article 80 of the MiFID Org Regulation, MiFID RTS 18 and MiFID ITS 2]

MAR 5/16



5.7 Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

- **5.7.1** R [deleted]
- A firm that makes an application to the FCA for a waiver in accordance with articles 4 or 9 of MiFIR (in relation to pre-trade transparency for equity or non-equity instruments) must make it in the form set out in MAR 5 Annex 1D.

[Note: articles 4 and 9 of MiFIR, MiFID RTS 1 and MiFID RTS 2]

- **5.7.1B G** [deleted]
- A *firm* intending to apply to the *FCA* for deferral in accordance with articles 7 or 11 of *MiFIR* in relation to post-trade transparency for equity or non-equity instruments must apply in writing to the *FCA*.

[Note: articles 7 and 11 of MiFIR, MiFID RTS 1 and MiFID RTS 2]

- 5.7.1D G A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting a written application. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.
- **5.7.2 EU** [deleted]
- **5.7.3 EU** [deleted]
- **5.7.4 EU** [deleted]
- **5.7.5 EU** [deleted]

5.7.6	G	[deleted]
5.7.7	EU	[deleted]
5.7.8	EU	[deleted]
5.7.9	EU	[deleted]
5.7.10	EU	[deleted]

EU

[deleted]

5.7.11

5





Post-trade transparency requirements for shares [deleted] 5.9

5.9



# 5.10 Operation of an SME growth market

# Registering an MTF as an SME growth market

**5.10.1** R A firm may apply to the FCA to have an MTF registered as an SME growth market.

[Note: article 33(1) of MiFID]

- 5.10.2 R For an *MTF* to be eligible for registration as an *SME growth market*, the *firm* must have effective rules, systems and procedures which ensure that:
  - (1) at least 50% of the *issuers* whose *financial instruments* are admitted to trading on the *MTF* are *small and medium-sized enterprises* at the time when the *MTF* is registered as an *SME growth market*, and in any calendar year thereafter;
  - (2) appropriate criteria are set for initial and ongoing admission to trading of *financial instruments* of *issuers* on the market;
  - (3) on initial admission to trading of *financial instruments* on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the *financial instruments* published in either:
    - (a) an appropriate admission document; or
    - (b) a prospectus, if the *Prospectus Regulation* is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the *financial instrument* on the *MTF*;
  - (4) there is appropriate ongoing periodic financial reporting by, or on behalf of, an *issuer* on the market, for example through audited annual reports;
  - (5) the following comply with the *Market Abuse Regulation* as applicable to each of them:
    - (a) issuers on the market as defined in point (21) of article 3(1) of the Market Abuse Regulation;
    - (b) persons discharging managerial responsibilities as defined in point (25) of article 3(1); and
    - (c) persons closely associated with them as defined in point (26) of article 3(1);

- (6) regulatory information concerning the issuers on the market is stored and disseminated to the public; and
- (7) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under the Market Abuse Regulation.

[Note: articles 33(2) and 33(3) of MiFID]

# The contents of an application for registration as an SME growth market

5.10.3

The requirements specified in ■ MAR 5.10.2R:

- (1) are subject to the provisions of the MiFID Org Regulation, further specifying the requirements laid down in article 33(3) of MiFID; and
- (2) do not detract from other obligations relevant to an MTF under this chapter, but a *firm* may impose additional requirements to those specified in ■ MAR 5.10.2R.

[Note: articles 33(4) and 33(8) of MiFID, and articles 78 and 79 of the MiFID Org Regulation]

5.10.4 G

- (1) The FCA expects an application for registration as an SME growth market to be accompanied by:
  - (a) a copy of the rules, systems and procedures supporting the applicant's compliance with the requirements specified in ■ MAR 5.10.2R; and
  - (b) such other information as the FCA may reasonably require to determine the application in accordance with ■ MAR 5.10.2R and ■ MAR 5.10.3R.
- (2) A firm intending to apply for registration as an SME growth market may wish to contact the Infrastructure and Trading Firms Department at the FCA for further advice on the preparation, timing and practical aspects of an application to register.

5.10.5 R

- (1) Where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument must not be traded on another SME growth market unless the issuer has been informed and has not objected.
- (2) In the case of (1), the issuer shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

[Note: article 33(7) of *MiFID*]

5.10.6

The issuer of the financial instrument referred to in ■ MAR 5.10.5R should be informed by notice in writing that another SME growth market wishes to admit the instrument to trading, and should generally be given no less than 28 days to object.

# Deregistering an MTF as an SME growth market

5.10.7



An MTF registered as an SME growth market may be deregistered by the FCA in the following cases:

- (1) the firm operating the market applies for its deregistration; or
- (2) the requirements in MAR 5.10.2R are (subject to MAR 5.10.3G(1)) no longer complied with.

[Note: article 33(5) of MiFID and article 79 of the MiFID Org Regulation]

# Form in relation to pre-trade transparency

[Editor's note: The form can be found at this address:

https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx ]

# Form for reporting incentive scheme proposals (MAR 5.6.3R(1))

Annex 1 - Incentive Schemes (MAR 5.6.3R)

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**Organised trading facilities (OTFs)** 

Chapter 5A

Organised trading facilities (OTFs)

■ Release 49 ● Jul 2025 www.handbook.fca.org.uk



# **5A.1** Application

## Who and what?

## 5A.1.1

This chapter applies to:

- (1) a UK domestic firm which operates an OTF from an establishment in the United Kingdom or elsewhere; or
- (2) an overseas firm which operates an OTF from an establishment in the United Kingdom.

#### G 5A.1.2

In addition:

- (1) In accordance with paragraph 15(9) of the Schedule to the Recognition Requirement Regulations and ■ REC 2.16A.1GR, ■ MAR 5A.3.9R applies to a *UK RIE* as though it was an *investment* firm.
- (2) GEN 2.2.22AR applies to ensure that a third country investment firm should not be treated in a more favourable way than an EEA firm.



# 5A.2 Purpose

- **5A.2.1** G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *OTFs*, specifically articles 18, 20, 31, 32, 48, 49 and 50 of *MiFID*.
- **5A.2.2** MAR 5A.3.9R also sets out how the obligations of an *investment firm* under articles 16, 24, 25, 27 and 28 (as transposed in the *FCA Handbook*) apply to a *firm* operating an *OTF* in respect of that operation.
- **5A.2.3 G** This chapter does not apply to bilateral systems, which are excluded from the *OTF* definition.



#### 5A.3 **Specific requirements for OTFs**

# **Executing orders**

#### 5A.3.1 R

A firm must:

- (1) execute orders on a discretionary basis in accordance with ■ MAR 5A.3.2R;
- (2) unless permitted in MAR 5A.3.5R, not execute any *client* orders against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the firm; and
- (3) ensure that the operation of an OTF and of a systematic internaliser does not take place within the same legal entity, and that the OTF does not connect with another OTF or with a systematic internaliser in a way which enables orders in the different OTFs or systematic internaliser to interact.

[Note: article 20(1) to (4) and 20(6) of MiFID]

#### 5A.3.2 R

The discretion which the firm must exercise in executing a client order must be either, or both, of the following:

- (1) the first discretion is whether to place or retract an order on the OTF;
- (2) the second discretion is whether to match a specific *client* order with other orders available on the OTF at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the *client* and in accordance with the *firm's* obligations under ■ COBS 11.2A (Best execution – *MiFID* provisions).

[Note: article 20(6) of MiFID]

#### G 5A.3.3

Where the OTF crosses client orders, the firm may decide if, when and how much of two or more orders it wants to match. In addition, subject to the requirements of this section, the *firm* may facilitate negotiation between clients so as to bring together two or more potentially comparable trading interests in a transaction.

[Note: article 20(6) of MiFID]

5A.3.4

G

■ MAR 5A.3 does not prevent a *firm* from engaging another *investment firm* to carry out market making on an independent basis on an *OTF* operated by it provided the *investment firm* does not have *close links* with the *firm*.

[Note: article 20(5) of MiFID]

# **Proprietary trading**

5A.3.5 R

A firm must not engage in:

- (1) matched principal trading on an OTF operated by it except in bonds, structured finance products, emission allowances and derivatives which have not been declared subject to the clearing obligation in accordance with article 5 of EMIR, and where the client has consented; or
- (2) dealing on own account on an OTF operated by it, excluding matched principal trading, except in sovereign debt instruments for which there is not a liquid market.

[Note: article 20(2) and (3) of MiFID]

5A.3.6 R

For the purposes of MAR 5A.3.5R(2), a "liquid market" means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:

- (1) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of *financial instrument*;
- (2) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product; and
- (3) the average size of spreads, where available.

[Note: article 4(1)(25) of MiFID]

5A.3.7

A firm engaging in matched principal trading in accordance with MAR 5A.3.5R(1) must establish arrangements to ensure compliance with the definition of matched principal trading.

[Note: article 20(1) and (7) of MiFID]

5A.3.8 G

Matched principal trading does not exclude the possibility of settlement risk, and, accordingly, firms should take appropriate steps to minimise this risk.

# Other MiFID obligations

5A.3.9 R

A *firm* must comply with the obligations under the following provisions of *MiFID*, in the course of operating an *OTF*:

- (1) articles 16(2), 16(3) (first subparagraph), 16(4), 16(5), 16(6), 16(7), 16(8), 16(9), and 16(10);
- (2) articles 24(1), (3), (4), (5), (9), (10) and (11);
- (3) articles 25(3) (except to the extent that article 25(4) applies), 25(5), and 25(6) (to the extent applicable);
- (4) article 27; and
- (5) article 28.

[Note: article 20(8) of MiFID. The above MiFID provisions are transposed as follows in the FCA Handbook:

```
(1) ■ SYSC 6.1.1, ■ SYSC 10.1.7, ■ SYSC 4.1.6, ■ SYSC 8.1.1, ■ SYSC 4.1.1(1),
■ SYSC 4.1.1(3), ■ SYSC 9.1.1A, ■ SYSC 10A, ■ CASS 6.2.1 and ■ CASS 7.12.1;
```

(2) ■ COBS 2.1.1, ■ COBS 4.2.1, ■ COBS 4.3.1, ■ COBS 2.2A.2, ■ COBS 2.2A.3, ■ COBS 2.3A.5, ■ SYSC 19F.1.2 and ■ COBS 6.1ZA.16;

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(3) COBS 10A.2.1, COBS 10A.2.2, COBS 10A.3.1, COBS 10A.3.2,
■ COBS 10A.4.1, ■ COBS 8A, ■ COBS 16A.2.1 and ■ COBS 9A.3.2;
```

- (4) COBS 11.2A; and
- (5) COBS 11.3.]

## Reporting to the FCA

## 5A.3.10

A firm must:

- (1) in respect of an OTF operated by it, or such a facility it proposes to operate, provide to the FCA a detailed explanation of:
  - (a) why the OTF does not correspond to, and cannot operate as, an MTF, a regulated market or a systematic internaliser;
  - (b) how discretion will be exercised in executing *client* orders; and
  - (c) its use of matched principal trading; and
- (2) supply the information in (1) to the FCA in writing, by electronic mail to an address for the usual supervisory contact of the firm at the FCA, and obtain an electronic confirmation of receipt.

[Note: article 20(7) of MiFID]

# 5A.3.11

A person operating an organised trading facility cannot also provide the service of a systematic internaliser, irrespective of whether the systematic internaliser trades different financial instruments or types of financial instruments to those traded on the OTF.



# **5A.4** Trading process requirements

# Rules, procedures and arrangements

### 5A.4.1

A firm must have:

(1) transparent rules and procedures for fair and orderly trading;

[Note: article 18(1) of MiFID]

(2) objective criteria for the efficient execution of orders;

[Note: article 18(1) of MiFID]

(3) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[Note: article 18(1) of MiFID]

(4) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[Note: subparagraph (1) of article 18(2) of MiFID]

(5) arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement, taking into account both the nature of the users and the types of instrument traded;

[Note: subparagraph (2) of article 18(2) of MiFID]

(6) transparent and non-discriminatory rules, based on objective criteria, governing access to its facility and which must be published, maintained and implemented; and

[Note: article 18(3) of MiFID]

- (7) (as between the interests of the *OTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly and to manage any conflict with adverse consequences for:
  - (a) the operation of the *trading venue* for the members and participants or users; or
  - (b) the members and participants or users otherwise.

[Note: article 18(4) of MiFID]

# **Functioning of an OTF**

### 5A.4.2

A firm must:

(1) ensure the OTF has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[Note: article 18(7) of MiFID]

- (2) provide the following to the FCA:
  - (a) a detailed description of the functioning of the OTF, including any links to or participation by a regulated market, an MTF or OTF or systematic internaliser owned by the same firm; and
  - (b) a list of its members, participants and users; and

[Note: article 18(10) of MiFID and MiFID ITS 19 with regard to the content and format of the description of the functioning of MTFs and OTFs]

(3) [deleted]

# Transferable securities traded without issuer consent

### 5A.4.3

R

Where a transferable security, which has been admitted to trading on a regulated market, is also traded on an OTF without the consent of the issuer, the firm operating the OTF must not make the issuer subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that OTF.

[Note: article 18(8) of MiFID]



# 5A.5 Systems and controls for algorithmic trading

# Systems and controls

- 5A.5.1 R
- A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5A.5.2 R
- MAR 5A.5.1R applies in particular to systems and controls concerning:
  - (1) the resilience of the firm's trading systems;
  - (2) its capacity to deal with peak order and message volumes;
  - (3) the ability to ensure orderly trading under conditions of severe market stress;
  - (4) the effectiveness of business continuity arrangements to ensure the continuity of the *OTF's* services if there is any failure of its trading systems, including the testing of the *OTF's* systems and controls;
  - (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
  - (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
  - (7) the ability to ensure that any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being managed, including systems to limit the ratio of unexecuted orders to *transactions* that may be entered into the *OTF's* trading system by a member or participant;
  - (8) the ability to ensure that the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
  - (9) the ability to limit and enforce the minimum tick size which may be executed on the *OTF*; and
  - (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[Note: article 48(1), (4) and (6) of MiFID, MiFID RTS 7, MiFID RTS 9, and MiFID RTS 11]

# Market making agreements

#### 5A.5.3

R

A firm must:

- (1) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into market making agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the FCA of the content of its market making agreements; and
- (5) provide the FCA with any information it requests which the FCA reasonably requires to be satisfied that the market making agreements comply with this rule.

[Note: article 48(2) and (3) of MiFID and MiFID RTS 8]

#### 5A.5.4 R

A market making agreement in ■ MAR 5A.5.3R(1) must specify:

- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
- (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme mentioned in ■ MAR 5A.5.3R(2); and
- (3) any incentives in terms of rebates or otherwise offered by the firm to the *investment firm* in order for it to provide liquidity to the *OTF* on a regular and predictable basis and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[Note: article 48(3) of MiFID and MiFID RTS 8]

# Measures to prevent disorderly markets

### 5A.5.5

A firm must have the ability to:

- (1) temporarily halt or constrain trading on the OTF if there is a significant price movement in a financial instrument on the OTF or a related trading venue during a short period; and
- (2) in exceptional cases, cancel, vary, or correct, any transaction.

[Note: article 48(5) of MiFID]

#### 5A.5.6

For the purposes of ■ MAR 5A.5.5R, and to avoid significant disruptions to the orderliness of trading, a firm must calibrate the parameters for halting trading in a way which takes into account the following:

MAR 5A/10

- (1) the liquidity of different asset classes and subclasses;
- (2) the nature of the trading venue market model; and
- (3) the types of users.

[Note: article 48(5) of MiFID]

5A.5.7 R

The firm must report the parameters mentioned in  $\blacksquare$  MAR 5A.5.6R to the FCA in writing, by electronic mail to an address for the usual supervisory contact of the firm at the FCA, and obtain an electronic confirmation of receipt.

[Note: article 48(5) of MiFID]

5A.5.8 R

A firm must have systems and procedures to notify the FCA if:

- (1) an *OTF* operated by it is material in terms of the liquidity of the trading of a *financial instrument*; and
- (2) trading is halted in that instrument.

[Note: article 48(5) of MiFID]

## Direct electronic access

5A.5.9 R

A firm which permits direct electronic access to an OTF it operates must:

- (1) not permit members or participants of the *OTF* to provide such services unless they are:
  - (a) MiFID investment firms; or
  - (b) CRD credit institutions; or
  - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
  - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
  - (e) third country firms providing the *direct electronic access* in accordance with the exclusion in article 72 of the *RAO*; or
  - (f) third country firms which do not come within MAR 5A.5.9R(1)(d) to (f) but are otherwise permitted to provide the *direct electronic access* under the *Act*; or
  - (g) firms that come within regulation 30(1A) of the MiFI Regulations and have a Part 4A permission relating to investment services or activities;
- (2) set and apply criteria for the suitability of *persons* to whom *direct* electronic access services may be provided;
- (3) ensure that the member or participant of the *OTF* retains responsibility for adherence to the requirements of *MiFID* in respect of orders and trades executed using the *direct electronic access* service;

- (4) set standards for risk controls and thresholds on trading through direct electronic access:
- (5) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately
  - (a) other orders; and
  - (b) trading by the member or participant providing the direct electronic access; and
- (6) have arrangements to suspend or terminate the provision of direct electronic access on that market by a member or participant in the case of any non-compliance with this rule.

[Note: article 48(7) of MiFID]

## **Co-location**

5A.5.10 R Where a firm permits co-location in relation to the OTF, its rules on colocation services must be transparent, fair and non-discriminatory.

[Note: article 48(8) of MiFID and MiFID RTS 10]

# Fee structures

5A.5.11

A firm's fee structure, for all fees it charges and rebates it grants in relation to the OTF, must:

- (1) be transparent, fair and non-discriminatory;
- (2) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading or market abuse; and
- (3) impose market making obligations in individual financial instruments or suitable baskets of *financial instruments* for any rebates that are granted.

[Note: article 48(9) of MiFID and MiFID RTS 10]

#### 5A.5.12 G

Nothing in ■ MAR 5A.5.11R prevents a *firm*:

- (1) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
- (2) calibrating its fees to each financial instrument to which they apply;
- (3) imposing a higher fee:
  - (a) for placing an order which is cancelled than an order which is executed:
  - (b) on participants placing a high ratio of cancelled orders to executed orders; and
  - (c) on a person operating a high-frequency algorithmic trading technique,

in order to reflect the additional burden on system capacity.

[Note: article 48(9) of MiFID]

# Flagging orders, tick sizes and clock synchronisation

### 5A.5.13 R

A *firm* must require members and participants of an *OTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:

- (1) different algorithms used for the creation of orders; and
- (2) the persons initiating those orders.

[Note: article 48(10) of MiFID]

5A.5.14 R

The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under powers conferred by *MiFIR*.

[Note: article 49 of MiFID and MiFID RTS 11]

5A.5.14A R

A *firm* adopting tick sizes in accordance with ■MAR 5A.5.14R may match orders large in scale at mid-point within the current bid and offer prices.

[Note: article 49 of MiFID and MiFID RTS 11]

5A.5.15 R

The tick size regime referred to in ■ MAR 5A.5.14R must:

- (1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
- (2) adapt the tick size for each *financial instrument* appropriately.

[Note: article 49 of MiFID and MiFID RTS 11]

5A.5.16 G

Nothing in ■ MAR 5A.5.14R or ■ MAR 5A.5.15R requires a *firm* to act inconsistently with any regulatory technical standards made under powers conferred by *MiFIR*.

[Note: article 49 of MiFID]

5A.5.17 R

The *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.

[Note: article 50 of MiFID and MiFID RTS 25]

5A.5.18 G

For the purpose of ■ MAR 5A.5.17R, *MiFID RTS 25* provides further requirements.



#### 5A.6 **Finalisation of transactions**

5A.6.1

### A firm must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in its OTF; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: article 18(6) of MiFID]

[Note: in relation to derivative transactions, MiFID RTS 26 contains requirements on the systems for clearing of such transactions]



# 5A.7 Monitoring compliance with the rules of the OTF

# **5A.7.1 R** A *firm* must:

- (1) have effective arrangements and procedures relevant to its *OTF* for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions, system disruptions in relation to a *financial instrument*, or conduct that may involve *market abuse*.

[Note: article 31(1) of MiFID]



#### 5A.8 Reporting requirements

5A.8.1

A firm must:

- (1) report to the FCA any:
  - (a) significant breaches of the firm's rules;
  - (b) disorderly trading conditions;
  - (c) conduct that may involve market abuse; and
  - (d) system disruptions in relation to a financial instrument;
- (2) supply the information required under this *rule* without delay to the FCA and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the FCA, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the firm's systems.

[Note: article 31(2) of MiFID, articles 81 and 82 of the MiFID Org Regulation, MiFID RTS 18 and MiFID ITS 2]



# **5A.9** Suspension and removal of financial instruments

## **5A.9.1** R A *firm* must:

not exercise any power under its rules to suspend or remove from trading any *financial instrument* which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the *trading venue*;

where it does suspend or remove from trading a *financial instrument*, also suspend or remove derivatives that relate or are referenced to that *financial instrument*, where necessary to support the objectives of the suspension or removal of the underlying; and

make public any decision in (2) and notify the FCA of it.

[Note: article 32 of MiFID, article 80 of the MiFID Org Regulation and MiFID RTS 18]



5A.10

**Pre-trade transparency** requirements for non-equity instruments: form of waiver

5A.10.1

A firm that makes an application to the FCA for a waiver in accordance with article 9 of MiFIR (in relation to pre-trade transparency for non-equity instruments) must make it in the form set out in ■ MAR 5A Annex 1D.

[Note: article 9 of MiFIR and MiFID RTS 2]



5A.11 Post-trade transparency requirements for non-equity instruments: form of deferral

A firm intending to apply to the FCA for deferral in accordance with article 11 of MiFIR (in relation to post-trade transparency for non-equity instruments) must apply in writing to the FCA.

[Note: article 11 of MiFIR and MiFID RTS 2]

A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone by other prompt means of communication, before submitting written application. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

# Form in relation to pre-trade transparency

[Editor's note: The form can be found at this address:https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx ]

# **Organised trading facilities (OTFs)**

# Chapter 5AA

# Multilateral systems



### 5AA.1 Operation of a multilateral system as an MTF or OTF

5AA.1.1

Where a firm operates a multilateral system from an establishment in the United Kingdom it must operate it as a multilateral trading facility or an organised trading facility.

[Note: article 1(7) of MiFID]

5AA.1.2 G In our view, any system that merely receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices should not be considered a multilateral system. This means that a bulletin board should not be considered a multilateral system. The reason is that there is no reaction of one trading interest to another other within these types of facilities. However, operating such a facility may amount to performing the activity of making arrangements with a view to transactions in investments (see ■ PERG 2.7.7BG).

**Organised trading facilities (OTFs)** 

# Chapter 5AB

# Digital securities depositories



#### **Purpose and application** 5AB.1

# **Purpose**

5AB.1.1 G

The purpose of this chapter is to disapply the *Handbook* requirements which would otherwise apply to a DSD acting in that capacity.

# Application

5AB.1.2

This chapter applies to a DSD.



### 5AB.2 Activities of a DSD

- A DSD firm, when carrying on core DSD functions or category 1 ancillary FMI activities, is not carrying on regulated activity, including, where applicable, designated investment business or MiFID business, for the purposes of the Handbook.
- **5AB.2.2** MAR 5AC contains *guidance* on how the *FCA* classifies the activities of a *DSD firm*.

5AB

### **Organised trading facilities (OTFs)**

## Chapter 5AC

## Digital securities sandbox

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#### 5AC.1 **Purpose and application**

.....

- 5AC.1.1 G The purpose of this chapter is to set out how the Handbook applies to a DSD and implications for its Part 4A permission arising out of FMI sandbox arrangements.
- G 5AC.1.2 This chapter outlines how activities of a DSD firm will be categorised by the FCA.

### **Application**

5AC.1.3 G This chapter applies to DSD firms and sandbox entrants.



### 5AC.2 Regulatory status of a DSD firm

5AC.2.1 G

Under regulation 3(2) of the *DSS Regulations*, the following *authorised* persons and exempt persons are eligible to apply to participate in the *FMI* sandbox arrangements to carry on one or more *FMI* activities as a sandbox entrant:

- (1) a UK operator of a trading venue; or
- (2) a CSD in relation to which a recognition order is in force, in accordance with section 285(1)(e) of the Act.
- 5AC.2.2 G

In accordance with regulation 3(3) of the *DSS Regulations*, the Bank of England or the *FCA* may determine that other *persons* established in the *United Kingdom* are also permitted to apply to participate in the *FMI sandbox arrangements* as a *sandbox entrant*.

5AC.2.3 G

No requirements relating to the operation of a *trading venue* have been modified by the *DSS Regulations*. The *FCA* considers it unlikely that a *person* only wishing to operate a standalone *trading venue* and settle transactions using a *CSD* or a *DSD* operated by another *sandbox entrant* would be accepted as a *sandbox entrant*.

#### Excluded regulated activities

5AC.2.4 G

The DSS Regulations modify the Act so that references to regulated activity in section 20 of the Act are to be treated in relation to a DSD as excluding such regulated activity that the DSD carries on in connection with any of the core DSD functions or ancillary FMI activities for which it has approval under its SAN.

5A0





#### 5AC.3 Categorisation of activities of a **DSD** firm

5AC.3.1 A person applying to be a DSD firm should discuss with the FCA and the Bank of England the activities it currently undertakes and the new activities it would undertake if it were to be successful in its application to be a DSD firm. 5AC.3.2 G Activities carried out for the purposes of enabling the DSD to carry out its core DSD functions may be listed as category 1 ancillary FMI activities in the DSD's SAN, if it passes to gate 2. 5AC.3.3 A sandbox entrant's activities not carried on for the purposes of enabling a DSD to carry out its core DSD functions may be listed as category 2 ancillary FMI activities, if it passes to gate 2. Core DSD functions and category 1 ancillary FMI activities 5AC.3.4 G Category 1 ancillary FMI activities may include the CSDR non-banking type ancillary services where these are carried on for the purposes of enabling the DSD to discharge its core DSD functions. Category 1 ancillary FMI activities exclude CSDR banking-type ancillary services. 5AC.3.5 G Core DSD functions and category 1 ancillary FMI activities included in a SAN are not regulated activities for the purposes of the Handbook. Category 2 ancillary FMI activities 5AC.3.6 G Category 2 ancillary FMI activities include activities ancillary to, but not carried on for the purpose of, enabling the DSD to act as such. This could include activities that have some connection to the core DSD functions but go beyond the scope of what would generally be considered core DSD functions. G 5AC.3.7 Category 2 ancillary FMI activities may include any CSDR banking type ancillary services relating to the DSD. The Bank of England does not expect to permit these to be conducted by any person other than a CRD credit institution with the appropriate authorisation.

5AC.3.8

G

No requirements relating to the operation of a trading venue have been modified as part of the DSS Regulations. The FCA considers that operators of trading venues will continue to need to satisfy the relevant regulatory requirements that exist in the *Handbook* or otherwise within the *regulatory system*. A *DSD* can therefore expect any operation of a *trading venue* to form part of *category 2 ancillary FMI activities*, if it passes to *gate 2*.

## Authorisation and exemption

#### 5AC.3.9 G

A sandbox entrant is required to have any necessary Part 4A permission for category 2 ancillary FMI activities before such activities can be included in its SAN and to maintain such permission for the duration of its participation in the digital securities sandbox. Similarly, where a sandbox entrant wishes to carry out activity, as a firm – ancillary to operating a trading venue – itself, as opposed to activity ancillary to the core DSD functions, it will require authorisation for these activities.

### 5AC.3.10 G

A DSD firm requires authorisation or exemption, as appropriate, in relation to regulated activities it carries on by way of business in the United Kingdom, other than those which are treated as excluded as described in MAR 5AC.2.4G.

#### Handbook

#### 5AC.3.11 G

Any core DSD functions, and any ancillary FMI activities which have been classified as category 1 ancillary FMI activities in a DSD's SAN, are treated as unregulated activities for the purposes of the Handbook. As such, they may also be capable of being an ancillary activity, where there is a sufficient degree of connection to the firm's regulated activities. In such a case, the corresponding Handbook requirements apply to the relevant activity.

.....

#### 5AC.3.12 G

- (1) A DSD, when carrying on category 2 ancillary FMI activities as a firm, may be carrying on:
  - (a) regulated activities including MiFID business or designated investment business; or
  - (b) unregulated activities including ancillary activity.
- (2) In either case, corresponding *Handbook* requirements apply to the relevant activity.

### **Market Conduct**

## Chapter 6

# Systematic internalisers



#### 6.1 **Application**

### Who and what?

6.1.1

- MAR 6.3A (Quality of execution) and MAR 6.4A (Quotes in respect of nonequity instruments) apply to the following firms when dealing in the United Kingdom:
  - (1) a MiFID investment firm which is a systematic internaliser; or
  - (2) a third country investment firm which is a systematic internaliser.

[Note: article 35(8) of MiFID]

6.1.2 R The systematic internaliser reporting requirement in ■ MAR 6.4.1 R applies to an investment firm which is authorised by the FCA.

[Note: articles 15(1) and 18(4) of MiFIR]

### Status of EU provisions as rules in certain instances

- 6.1.3 R [deleted]
- 6.1.4 R ■ GEN 2.2.22AR applies to ensure that a third country investment firm should not be treated in a more favourable way than an EEA firm.

MAR 6/2



The purpose of this chapter is to implement article 27(3)of *MiFID*, which deals with the requirements on *systematic internalisers*to make available to the public data relating to the quality of execution of transactions. It also provides a *rule* (■ MAR 6.4.1R)requiring *investment firms* to notify the *FCA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to articles 15(1) and 18(4) of *MiFIR*. Finally, ■ MAR 6.4A.1R makes clear that a *firm* is not subject to the publication obligations of article 18 of *MiFIR* if it satisfies the conditions set out in that *rule*.

6.3

EU

Criteria for determining whether an investment firm is a systematic 6.3 internaliser [deleted]

MAR 6/4





#### 6.4 Systematic internaliser reporting requirement

- 6.4.1 An investment firmmust promptly notify the FCA in writing of its status as a systematic internaliser:
  - (1) when it gains that status; or
  - (2) if it ceases to have that status.

[Note:articles 15(1) and 18(4) of MiFIR]

6.4.2 G The notification under ■ MAR 6.4.1 R can be addressed to the *firm's* usual supervisory contact at the FCA.

**MAR 6/6** 



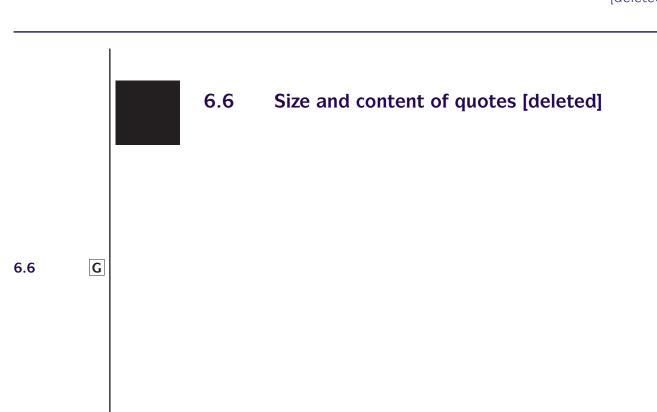
## 6.4A Quotes in respect of non-equity instruments

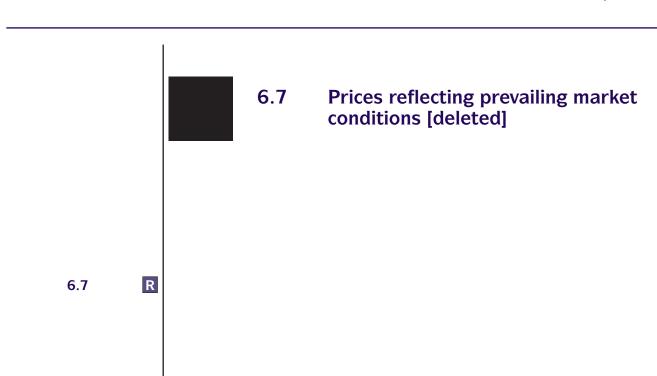
- 6.4A.1 R An *investment firm* is not subject to the publication obligations of article 18 of *MiFIR* if:
  - (1) it makes an assessment in writing certifying that it meets the conditions specified and measures adopted under article 9 of *MiFIR* for the waiver; and
  - (2) the FCA has not objected to the assessment.

6.5

R

Obligations on systematic internalisers in shares to make 6.5 public firm quotes [deleted]

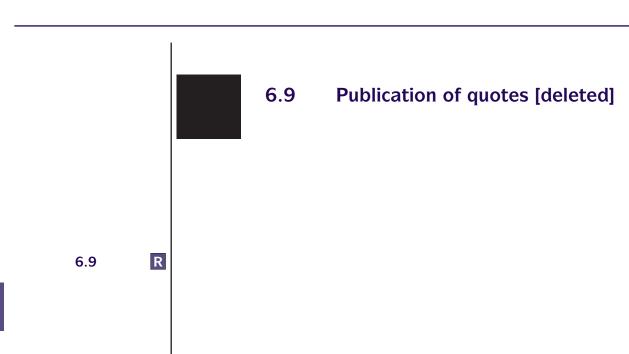


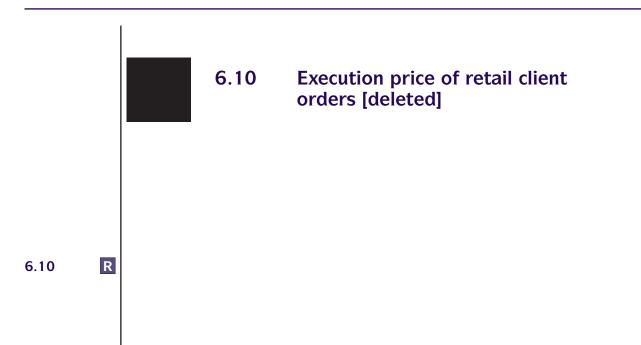


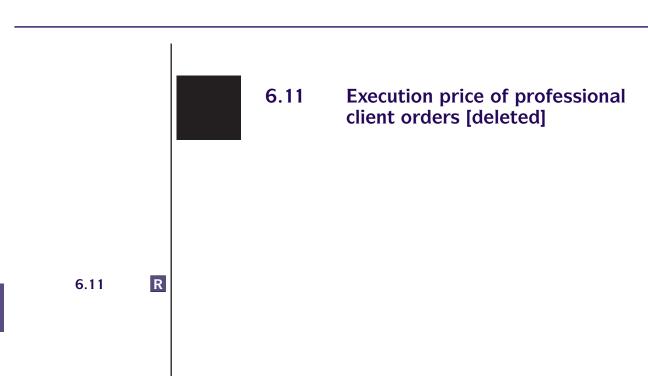
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6.8 Liquid market for shares, share class, standard market size and relevant market [deleted]

6.8 G

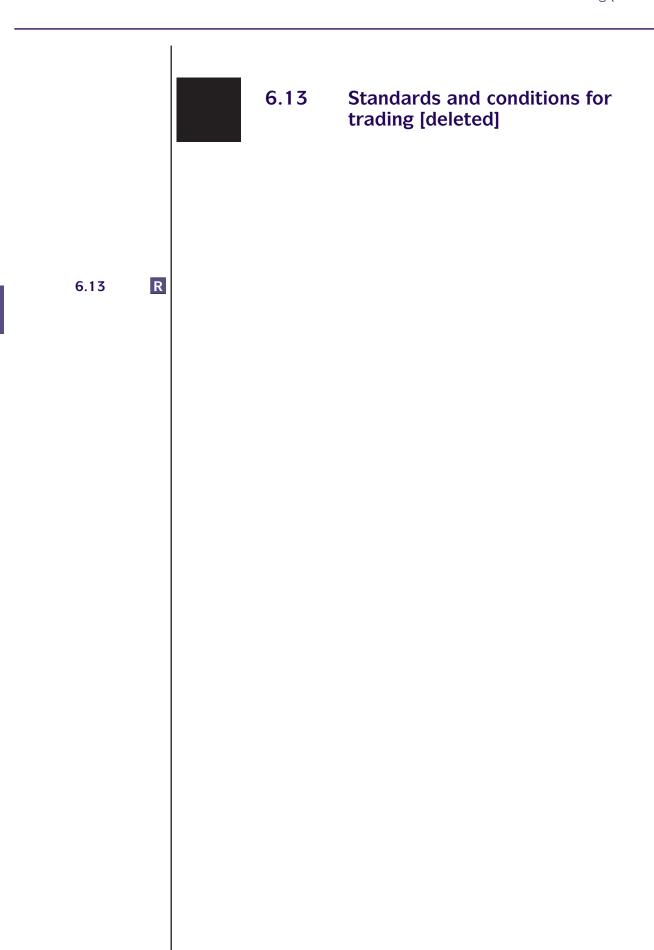


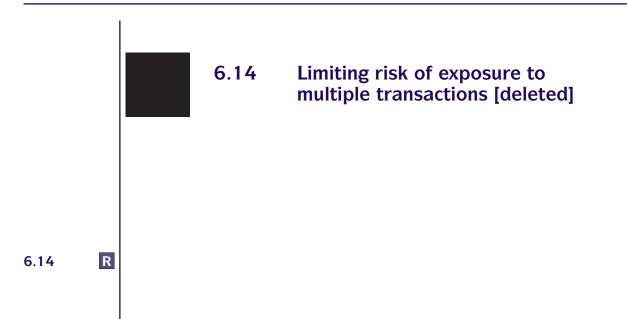




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6.12 Execution price of client orders not matching quotation sizes [deleted]





## Chapter 7

Disclosure of information on certain trades undertaken outside a regulated market or MTF [deleted]



7.1 **Application [deleted]** 

7.1 R



7.2 Making post-trade information public [deleted]

7.2

R

Deferred publication thresholds and delays [deleted]

#### Market conduct

# Chapter 7A

# Algorithmic trading



## 7A.1 Application

#### Who?

7A.1.1

This chapter applies to:

- (1) a UK MiFID investment firm; and
- (2) a third country investment firm, with an establishment in the United Kingdom.

.....

.....

#### What?

7A.1.2

This chapter applies to a *firm* in relation to the following activities:

- (1) algorithmic trading (■ MAR 7A.3);
- (2) providing the service of *DEA* to a trading venue (■ MAR 7A.4); and
- (3) providing the service of acting as a general clearing member for another person ( MAR 7A.5).

[Note: this chapter transposes article 17 of MiFID, in respect of the types of firms referred to above. Parts 4 of the MiFI Regulations sets out equivalent requirements in respect of persons exempt under article 2(1)(a), (e), (i) and (j) of MiFID, which are required to comply with article 17(1) to (6) of MiFID due to article 1(5) of MiFID.]

## Status of EU provisions as rules in certain instances

7A.1.3

■ GEN 2.2.22AR applies to ensure that a third country investment firm should not be treated in a more favourable way than an EEA firm.



### 7A.2 Purpose

- **7A.2.1** G The purpose of this chapter is to implement article 17 of *MiFID*, which imposes requirements on *investment firms* which are:
  - (1) engaging in algorithmic trading; or
  - (2) providing the service of DEA to a trading venue; or
  - (3) providing the service of acting as a general clearing member for another *person*.

[Note: related requirements imposed under article 48 of *MiFID* upon *trading venues*, in respect of members and participants engaging in *algorithmic trading* and providing the service of *DEA*, are transposed in ■ REC 2, ■ MAR 5 and ■ MAR 5A]



#### 7A.3 Requirements for algorithmic trading

......

### Application

This section applies to a firm which engages in algorithmic trading. 7A.3.1 R

## Systems and controls

- 7A.3.2 R A firm must have in place effective systems and controls, suitable to the business it operates, to ensure that its trading systems:
  - (1) are resilient and have sufficient capacity;
  - (2) are subject to appropriate trading thresholds and limits;
  - (3) prevent the sending of erroneous orders, or the systems otherwise functioning in a way that may create or contribute to a disorderly market: and
  - (4) cannot be used for any purpose that is contrary to:
    - (a) the Market Abuse Regulation; or
    - (b) the rules of a trading venue to which it is connected.

[Note: article 17(1) of MiFID and MiFID RTS 6 specifying the organisational requirements of investment firms engaged in algorithmic trading]

- 7A.3.3 A firm must:
  - (1) have in place effective business continuity arrangements to deal with any failure of its trading systems; and
  - (2) ensure that its systems are fully tested and properly monitored to ensure that it meets the requirements of (1) and of ■ MAR 7A.3.2R.

[Note: article 17(1) of MiFID and MiFID RTS 6 specifying the organisational requirements of investment firms engaged in algorithmic trading]

#### Market making

7A.3.4 Where a firm engages in algorithmic trading to pursue a market making strategy, it must:

- (1) carry out market making continuously during a specified proportion of the *trading venue's* trading hours so that it provides liquidity on a regular and predictable basis to that *trading venue*, except in exceptional circumstances;
- (2) enter into a binding written agreement with the *trading venue* which must specify the requirements for the purpose of (1); and
- (3) have in place effective systems and controls to ensure that it meets the obligations under the agreement in (2).

[Note: article 17(3) of MiFID, MiFID RTS 8 specifying the circumstances in which a person would be obliged to enter into the market making agreement referred to in ■ MAR 7A.3.4R(2) and the content of such an agreement, including the specified proportion of the trading venue's trading hours, and the situations constituting exceptional circumstances, referred to in ■ MAR 7A.3.4R(1)]

### 7A.3.5 R

For the purpose of ■ MAR 7A.3.4R, the *firm* must take into account:

- (1) the liquidity, scale and nature of the specific market; and
- (2) the characteristics of the instrument traded.

[Note: article 17(3) of MiFID]

### **Notifications**

### 7A.3.6

A firm which is a member or participant of a trading venue must immediately notify the FCA if it is engaging in algorithmic trading in the UK or in an EEA State.[Note: article 17(2) of MiFID]

### 7A.3.7 R

A *firm* must provide the following, at the *FCA's* request, within 14 days from receipt of the request:

- (1) a description of the nature of its algorithmic trading strategies;
- (2) details of the trading parameters or limits to which the *firm's* system is subject;
- (3) evidence that MAR 7A.3.2R (systems and controls) and MAR 7A.3.3R (business continuity and system tests) are met;
- (4) details of the testing of the firm's systems;
- (5) the records in MAR 7A.3.8R(2) (accurate and time-sequenced records of all its placed orders); and
- (6) any further information about the *firm's algorithmic trading* and systems used for that trading.

[Note: article 17(2) of MiFID]

# Record keeping

### 7A.3.8



A firm must:

- (1) arrange for records to be kept to enable it to meet MAR 7A.3.7R;
- (2) (where it engages in a high-frequency algorithmic trading technique) store, in the approved form, accurate and time-sequenced records of all its placed orders, including:
  - (a) cancelled orders;
  - (b) executed orders; and
  - (c) quotations on trading venues.

[Note: article 17(2) of MiFID and MiFID RTS 6 specifying the format and content of the approved form referred to in ■ MAR 7A.3.8R(2), and the length of time for which records must be kept by the firm]



### Requirements when providing 7A.4 direct electronic access

### **Application**

7A.4.1  $\mathbf{R}$ 

This section applies to a firm which provides the services of DEA to a trading venue.

.....

### **Systems and controls**

7A.4.2 R

A firm must have in place systems and controls which:

- (1) ensure it conducts an assessment and review of the suitability of clients using the service;
- (2) prevent clients using the service from exceeding appropriate pre-set trading and credit thresholds;
- (3) prevent trading by *clients* which:
  - (a) may create risks to the firm;
  - (b) or may create, or contribute to, a disorderly market; or
  - (c) could be contrary to the Market Abuse Regulation or the rules of the trading venue.

[Note: article 17(5) of MiFID]

7A.4.3 R

- Client dealings (1) A firm must monitor the transactions made by clients using the service to identify:
  - (a) infringements of the rules of the trading venue; or
  - (b) disorderly trading conditions; or
  - (c) conduct which may involve market abuse and which is to be reported to the FCA.
  - (2) A firm must have a binding written agreement with each client which:
    - (a) details the essential rights and obligations of both parties arising from the provision of the service; and

(b) states that the firm is responsible for ensuring the client complies with the requirements of MiFID and the rules of the trading venue.

[Note: article 17(5) of MiFID] Notifications

### **Notifications**

7A.4.4 A firm must immediately notify the FCA if it is providing DEA services. [Note: article 17(5) of MiFID and MiFID RTS 6 specifying the organisational requirements of *investment firms* providing *direct electronic access*]

7A.4.5 A firm must provide the following, at the FCA's request, within 14 days from receipt of the request:

- (1) a description of the systems mentioned in MAR 7A.4.2R(1);
- (2) evidence that those systems have been applied; and
- (3) information stored in accordance with MAR 7A.4.6R.

[Note: article 17(5) of MiFID]

# Record keeping

7A.4.6 A firm must arrange for records to be kept:

- (1) on the matters referred to in MAR 7A.4.2R in relation to its systems and controls; and
- (2) in order to enable it to meet any requirement imposed on it under ■ MAR 7A.4.5R.

[Note: article 17(5) of MiFID]

**MAR 7A/8** 



# 7A.5 Requirements when acting as a general clearing member

.....

## **Application**

7A.5.1 R

This section applies to a *firm* which provides the service of acting as a general clearing member.

### Requirements

7A.5.2 R

A firm must:

- (1) have clear criteria as to the suitability requirements of *persons* to whom clearing services will be provided;
- (2) apply those criteria;
- (3) impose requirements on the *persons* to whom clearing services are being provided to reduce risks to the *firm* and to the market; and
- (4) have a binding written agreement with any *person* to whom it is providing clearing services, detailing the essential rights and obligations of both parties arising from the provision of the services.

[Note: article 17(6) of *MiFID* and *MiFID RTS 6* specifying the organisational requirements of *investment firms* acting as general clearing members]

■ Release 49 ● Jul 2025

### **Market Conduct**

Chapter 8

Benchmarks

■ Release 49 ● Jul 2025



### 8.1 **Application and purpose**

# Application

8.1.1 ■ MAR 8.4 to ■ MAR 8.7 apply in accordance with the application provisions set out in those sections.

## Purpose

8.1.2 The purpose of this chapter is to set out the requirements that apply to firms involved in the provision of, or contribution to, benchmarks, as follows:

> (1) MAR 8.4 (Third country benchmark contributors) sets out the requirements that apply to third country benchmark contributors that are not supervised entities, but would be if they were located in the UK. These rules apply requirements mirroring those which apply to benchmark contributors that are in scope of the benchmarks regulation.

.....

- (2) MAR 8.5 (Regulated benchmark administrators) sets out some Handbook requirements that apply to regulated benchmark administrators (who have been authorised under the benchmarks regulation for the activity of administering a benchmark).
- (3) MAR 8.6 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for contributing input data to a BMR benchmark administrator.
- (4) MAR 8.7 (Procedures for exercising powers in relation to critical benchmarks) sets out the procedure for imposing requirements under articles 21 and 23 of the benchmarks regulation in relation to critical benchmarks.

[Note: articles 2(2) and 12 of the Market Abuse Regulation and article 15 of the Market Abuse Regulation, regarding the ongoing market abuse provisions applicable to firms carrying out the activities specified in ■ MAR 8.1.2G, and the *benchmarks regulation* setting out the requirements applicable to firms administering, contributing to and using a benchmark.]

# Actions for damages

8.1.3 A contravention of a rule in MAR 8 does not give rise to a right of action by a private person under section 138D(2) of the Act (and each rule in ■ MAR 8 is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).



8.2 Requirements for benchmark submitters [deleted]

8.2 G

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8.3

G



# 8.4 Third country benchmark contributors

### **Application**

- 8.4.1 R
- (1) Subject to (2), this section applies to a *third country benchmark* contributor that:

- (a) is not a supervised entity; and
- (b) would be a *supervised entity* if it were *located* in the *UK*.
- (2) This section does not apply to a *third country benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark*, the provision of which is governed by Annex II of the *benchmarks regulation* (in accordance with article 19 of that regulation).

### Application of the benchmarks regulation

- 8.4.2 R
- A third country benchmark contributor in MAR 8.4.1R must comply with the following requirements applicable to supervised contributors (as defined in the benchmarks regulation) as if they were rules:
  - (1) article 16 of the *benchmarks regulation*, as amended or supplemented as relevant by article 26 and Annex 1 of the *benchmarks regulation*; and
  - (2) article 23(3) of the benchmarks regulation.



### 8.5 Regulated benchmark administrators

### **Application**

8.5.1 R This section applies to a regulated benchmark administrator.

### Responsibility for benchmark activities: regulated benchmark administrators

.....

- 8.5.2 R (1) This rule applies to a regulated benchmark administrator other than:
  - (a) an Annex II benchmark administrator;
  - (b) a PRA-authorised person.
  - (2) A regulated benchmark administrator must allocate the responsibility described in (3) to a director or senior manager other than a nonexecutive director.
  - (2A) In the case of a limited scope SMCR benchmark firm, the director or senior manager in (2) must be sufficiently senior for the function of performing that responsibility to meet the definition of a senior management function.
    - (3) The responsibility referred to in (2) is responsibility for the firm's implementation of the applicable requirements of the regulatory system (including the benchmarks regulation) in relation to its activities as a regulated benchmark administrator.
    - (4) A regulated benchmark administrator must promptly notify the FCA of the identity of the person who is allocated the responsibility under (2).
- G 8.5.3 (1) A *firm* may allocate the responsibility in ■ MAR 8.5.2R to more than one person.
  - (2) If the *firm* does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.
  - (3) For example, the role could be allocated to more than one person:
    - (a) as part of a job share; or
    - (b) where departing and incoming senior managers work together temporarily as part of a handover.

### 8.5.3A G

The FCA expects that a person who has the responsibility in MAR 8.5.2R will:

- (a) be sufficiently senior and credible; and
- (b) have sufficient resources and authority;

to be able to exercise their management and oversight responsibilities effectively.

One element of a manager's seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.

### 8.5.4 R

- (1) This rule applies to an Annex II benchmark administrator.
- (2) An Annex II benchmark administrator must promptly notify the FCA of the identity of the most senior manager(s) responsible for ensuring that the firm satisfactorily implements the requirements of the benchmarks regulation (in accordance with paragraph 14(a) of Annex II to that regulation).

### 8.5.5 G

- (1) Article 19 of the *benchmarks regulation* states that Annex II to that regulation applies to the provision of a *commodity benchmark* instead of Title II to the regulation (save where Annex II is disapplied by article 19).
- (2) Paragraph 14(a) of Annex II to the *benchmarks regulation* requires an *Annex II benchmark administrator* to ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:
  - (a) that the administrator satisfactorily implements the requirements of the *benchmarks regulation*; and
  - (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.

### 8.5.6 G

A firm may comply with the requirement in  $\blacksquare$  MAR 8.5.2R(4) or  $\blacksquare$  MAR 8.5.4R(2) to notify the FCA of the identity of the manager(s) concerned by including that responsibility in that person's statement of responsibilities.

### Notifications about suspected benchmark manipulation

### 8.5.7 G

- (1) The guidance in (2) and (3) applies to regulated benchmark administrators other than Annex II benchmark administrators.
- (2) Article 14(1) of the benchmarks regulation requires a regulated benchmark administrator to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the FCA any conduct that may involve manipulation or attempted manipulation of a benchmark, under the Market Abuse Regulation.
- (3) For the avoidance of doubt, the FCA expects a regulated benchmark administrator to notify the FCA without delay of any notification it

receives from a contributor about conduct that may involve manipulation or attempted manipulation of a benchmark under the Market Abuse Regulation.

### Adequate financial resources for administrators of critical benchmarks

- 8.5.8 R
- Notwithstanding any other financial resource requirements that may apply, a regulated benchmark administrator that administers a critical benchmark must:
  - (1) be able to meet its liabilities as they fall due; and
  - (2) maintain, at all times, sufficient financial resources to cover the operating costs of administering the critical benchmark for a period of at least six months.
- 8.5.9 G A regulated benchmark administrator that administers more than one critical benchmark may comply with its financial resources requirements under ■ MAR 8.5.8R(2) by holding sufficient financial resources to cover the combined operating costs for all critical benchmarks it administers.
- G 8.5.10
- (1) MAR 8.5.8R sets out the minimum amount of financial resources a regulated benchmark administrator must hold to carry out administering a benchmark in relation to a critical benchmark.
- (2) The FCA expects regulated benchmark administrators administering a critical benchmark to:
  - (a) normally hold sufficient financial resources to cover the operating costs of administering the critical benchmark(s) for a period of nine months: and
  - (b) notify the FCA where a regulated benchmark administrator's financial resources fall below these levels (required by ■ MAR 8.5.13R and ■ SUP 15.3.11R).
- 8.5.11

To meet the financial resources requirement in ■ MAR 8.5.8R(2), the FCA expects a regulated benchmark administrator to hold both sufficient liquid financial assets and net capital to cover the operating costs of administering the critical benchmark(s). In particular:

- (1) net capital can include common stock, retained earnings, disclosed reserves, or other instruments generally classified as common equity tier one capital or additional tier one capital, and may include interim earnings that have been independently verified by an auditor.
- (2) net capital should be calculated after deductions for:
  - (a) holdings of the regulated benchmark administrator's own securities or those of any undertakings in the regulated benchmark administrator's group;
  - (b) any amount owed to the regulated benchmark administrator by an undertaking in its group under any loan or credit arrangement; and
  - (c) any exposure arising under any guarantee, charge or contingent liability.

- (3) liquid financial assets can include cash or liquid financial instruments held on the balance sheet of the *regulated benchmark administrator* where the financial instruments:
  - (a) have minimal market and credit risk; and
  - (b) are capable of being liquidated with minimal adverse price effect.

### **Notifications for breaches**

- 8.5.13 R A regulated benchmark administrator subject to ■MAR 8.5.8R must notify the FCA, as soon as practicable, where it identifies a reasonable possibility of not being able to hold sufficient financial resources to cover the operating costs of administering the critical benchmark(s) for a period of nine months.
- 8.5.14 G Regulated benchmark administrators are reminded of their obligation under SUP 15.3.11R to notify the FCA of any significant breaches of rules.



### 8.6 Responsibility for benchmark activities: benchmark contributors

### Application

- 8.6.1 R
- (1) This section applies to benchmark contributors save as provided for in (2).

\*\*\*\*\*\*

(2) This section does not apply to a benchmark contributor to the extent that it is contributing input data in relation to a commodity benchmark the provision of which is governed by Annex II to the benchmarks regulation (in accordance with article 19 of that regulation).

### Responsibility for contributing input data

- 8.6.2 R
- A benchmark contributor must promptly notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator.
- G 8.6.3
- (1) The FCA expects a benchmark contributor to ensure a member of its senior personnel is responsible for the process of contributing input data to a BMR benchmark administrator regardless of whether the contribution is provided from the UK or from elsewhere.
- (2) The requirement in ■MAR 8.6.2R applies regardless of whether the benchmark contributor contributes input data from the UK or from elsewhere.
- 8.6.4
- A UK benchmark contributor or third country benchmark contributor which is an SMCR firm may comply with the requirement in ■ MAR 8.6.2R to notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator by including that responsibility in that person's statement of responsibilities.



# 8.7 Procedures for exercising powers in relation to critical benchmarks

## Application and purpose

- 8.7.1 G This section applies to authorised persons and to unauthorised persons.
- 8.7.2 (1) The purpose of this section is to set out the procedures which the FCA will follow when exercising its powers under articles 21 and 23 of the benchmarks regulation.
  - (1) MAR 8.7.9G contains a table of definitions for the purpose of this section. Those defined terms are not shown in italics.

### Compulsion powers under the benchmarks regulation

- 8.7.3 G
- (1) The FCA has been designated as the UK competent authority for the purpose of the benchmarks regulation.
- (2) The benchmarks regulation confers various directly applicable powers on the FCA in relation to critical benchmarks. In particular:
  - (a) article 21(3) of the *benchmarks regulation* gives a the *FCA* the power to compel the administrator of a *critical benchmark* to continue publishing the critical benchmark for up to 24 *months*; and
  - (b) article 23(6) of the benchmarks regulation gives a the FCA the power to take various steps where it considers that the representativeness of a critical benchmark is put at risk. That includes the power to require supervised entities to contribute input data to the administrator of a critical benchmark for up to 24 months.
- (3) The two powers in (a) and (b) above are referred to in this section as the "compulsion powers".

### Exercise of compulsion powers: general

- 8.7.4 G
- (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which the *FCA* may exercise the compulsion powers.
- (2) In some cases, the FCA may only have a short period in which to decide whether to exercise a compulsion power.

- (3) Where the FCA considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.
- (4) The benchmarks regulation does not require the FCA to consult on the use of compulsion powers.
- (5) Given that the compulsion powers may need to be exercised within short timescales, the FCA does not expect to consult on the use of its compulsion powers (other than consulting other regulatory bodies where required by the Act or the benchmarks regulation).
- (6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one person. In those circumstances, it may be necessary to address a written notice under this section to more than one *person*.
- (7) The FCA will review a decision to exercise a compulsion power in the circumstances described in this section.

### Decision to exercise a compulsion power

8.7.5 G If the FCA decides to exercise a compulsion power in respect of a person (P) (whether a supervised entity or an administrator), the FCA will give P a written notice which:

- (1) gives details of the decision ("the First Decision");
- (2) states the FCA's reasons for the First Decision;
- (3) states the date on which the First Decision takes effect: and
- (4) states that P may make representations to the FCA in relation to the First Decision within a period specified in the written notice.
- G 8.7.6

In some cases, the decision in ■ MAR 8.7.5G may take effect immediately. This means that in some cases:

- (1) P will be required to comply with the decision from the date of the written notice: and
- (2) the decision will continue to have effect pending consideration of any representations made by P.

### **Review of the First Decision**

G 8.7.7

- (1) Where P makes written representations to the FCA in relation to the First Decision in accordance with ■ MAR 8.7.5G(4), the FCA will review that decision and will decide whether to maintain, vary or revoke it.
- (2) In conducting the review in (1), the matters which the FCA may have regard to include:

- (a) the written representations made by P in relation to the First Decision; and
- (b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).
- (3) The review in (1) will be carried out by:
  - (a) a senior FCA staff member who did not participate in making the First Decision; or
  - (b) two or more senior FCA staff members including at least one person who did not participate in making the First Decision.
- (4) When the FCA has completed the review in (1), the FCA will give P a written notice which:
  - (a) gives details of the decision in response to the review ("the Second Decision");
  - (b) states the FCA's reasons for the Second Decision; and
  - (c) states the date on which the Second Decision takes effect.

### Own initiative review of the exercise of compulsion powers

8.7.8 G

- (1) The FCA may, on its own initiative, decide to vary or revoke a requirement imposed under a compulsion power (an Own Initiative Variation or Own Initiative Revocation).
- (2) For instance, the *FCA* may decide to vary or revoke a requirement imposed under a compulsion power:
  - (a) where the FCA becomes aware of new information which is material to that requirement; or
  - (b) to extend the duration of the requirement in accordance with article 21(3) or article 23(6)(b) of the benchmarks regulation; or
  - (c) as result of a review under article 21(3) or article 23(9) of the benchmarks regulation.
- (3) The FCA will treat an Own Initiative Variation as a new First Decision and will follow the procedures in MAR 8.7.5G and MAR 8.7.7G for the purpose of that decision.

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### Table of defined terms

8.7.9 G

For the purpose of this section, the terms in the first column of the table below have the meanings in the second column of that table.

Table: glossary of bespoke terms used in this section

administrator	has the meaning in article 3.1(6) of the benchmarks regulation;
compulsion powers	means the <i>competent authority's</i> powers under articles 21(3) and 23(6) of the <i>benchmarks regulation</i> ;
First Decision	the FCA's decision in MAR 8.7.5G(1);
Own Initiative Revocation	has the meaning in MAR 8.7.8G(1);

Own Initiative Variation has the meaning in MAR 8.7.8G(1); Second Decision the FCA's decision in MAR 8.7.7G(4).

### Market conduct

# Chapter 9

# Data reporting service



### 9.1 Application, approach and structure

## **Application**

9.1.1 G

This chapter applies to:

- (1) a UK person (that is a person whose registered office or head office is located in the UK) seeking authorisation to provide a data reporting service;
- (2) A UK branch of a third country person seeking authorisation to provide a data reporting service as an ARM or APA;
- (3) a MiFID investment firm operating a trading venue seeking verification of its rights to provide a data reporting service under regulation 5(b) or (c) of the DRS Regulations;
- (4) a UK RIE seeking verification of its rights to provide a data reporting service under regulation 5(d) of the DRS Regulations; and
- (5) a data reporting services provider.

This chapter is not limited to operators of trading venues and firms.

[Note: article 59 of MiFID]

9.1.2 G [deleted]

Approach

- 9.1.3 G [deleted]
- 9.1.3A G [deleted]
- 9.1.3B G This regulatory framework enables the authorisation and supervision of data reporting service providers whose services form a key component of transparency in wholesale markets and, in the case of approved reporting mechanisms, a reporting service that assists in the detection and prevention of market abuse.

### Structure

9.1.4

The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
MAR 9.1	Application, approach and structure
MAR 9.2	Authorisation and verification
MAR 9.2A	Consolidated tape providers
MAR 9.2B	Operating requirements
MAR 9.2C	Financial resources requirements for consolidated tape providers
MAR 9.3	Notification and information
MAR 9.4	Supervisory regime
MAR 9.5	Frequently Asked Questions
MAR 9 Annex 1D to MAR Annex 10D	Forms



#### 9.2 **Authorisation and verification**

### Application form and notification form for members of the management body

- 9.2.1 D
- (1) Each of the following must complete the forms in (2):
  - (a) an applicant for a data reporting service authorisation;
  - (b) a MiFID investment firm operating a trading venue seeking verification of its rights to provide a data reporting service under regulation 3(1)(b) and (c) of the DRS Regulations; and
  - (x) a UK RIE operating a trading venue seeking verification of its rights to provide a data reporting service under regulation 3(1)(d) of the DRS Regulations.
- (2) The forms in (1) are:
  - (a) the application form at MAR 9 Annex 1D; and
  - (b) the notification form for the list of members of the management body at ■ MAR 9 Annex 2D.
- 9.2.2 G [deleted]

### Variation of authorisation form

- 9.2.3 D If a data reporting services provider wishes to extend or otherwise vary its data reporting service authorisation it must complete the variation of authorisation form at ■ MAR 9 Annex 3D.
- 9.2.4 G [deleted]

### **Cancellation of authorisation form**

- 9.2.5A G When the data reporting services provider wishes to vary or cancel all of its data reporting service authorisation, it should engage with the FCA as early as possible. As part of its supervisory approach set out in ■ MAR 9.4.1G, the FCA expects to continue to have an open, cooperative and constructive relationship with the data reporting services provider for the whole duration of the cancellation process.
- 9.2.5B G As set out in the form at MAR 9 Annex 4D, the data reporting services provider must provide in its request for cancellation a plan which sets out how it will cease all of its data reporting services in an orderly manner

(wind-down plan). The wind-down plan should promote and protect the integrity of the financial markets and the interests of the *data reporting services provider's* clients. The *FCA* expects at the minimum the wind-down plan to:

- (1) set out the governance arrangements and identify a *person* or group within its *management body* to ensure the effective and prudent management, oversight and implementation of the wind-down plan;
- (2) set out the arrangements for the retention of key *individuals* of the data reporting services provider in relation to the management, oversight and implementation of the wind-down plan;
- (3) set out communications plans that consider the content, timing and methods of communications to stakeholders and relevant regulators (FCA, overseas regulators etc.);
- (4) identify clients who will be affected by the cancellation of the *data* reporting services provider's authorisation and set out the arrangements to support the transfer of such clients to a new *data* reporting services provider; and
- (5) demonstrate that the timings in the wind-down plan are reasonable.
- 9.2.5C G

Where a data reporting services provider wishes to cancel all of its data reporting service authorisation, it must continue to comply with the rules in this chapter and other regulatory obligations up until its authorisation is cancelled, in particular in relation to publishing trade reports or submitting details of transactions to the FCA. The FCA expects the data reporting services provider to provide a written confirmation at the end of the cancellation process confirming compliance with the rules in this chapter and other regulatory obligations.

9.2.5 D

If a data reporting services provider wishes to cancel all of its data reporting service authorisation it must complete the cancellation of authorisation form at MAR 9 Annex 4D.

# Provision of the forms in MAR 9 Annexes 1D, 2D, 3D and 4D to the FCA

- 9.2.6 D
- A *person* must provide MAR 9 Annexes 1D, 2D, 3D and 4D together with supporting documentation to the *FCA* by:
  - (1) emailing MiFiDII.Applications@fca.org.uk; or
  - (2) posting to the FCA addressed to:

The Financial Conduct Authority
FAO The Authorisations Support Team
12 Endeavour Square
London

E20 1JN.

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### 9.2A **Consolidated tape providers**

### Selection of a consolidated tape provider

- 9.2A.1 G The FCA will organise a selection procedure for a single consolidated tape provider for the asset class of bonds, excluding exchange traded commodities and exchange traded notes.
- G 9.2A.2 The FCA will give a direction to tender for the provision of the service of a consolidated tape for bonds by placing a notice on the FCA's website inviting tenders, and providing details of the tender specification and process to be followed. As well as providing additional information to be set out in the direction to tender, tenders should include the information set out in ■ MAR 9.2A.3 and ■ MAR 9.2A.4.
- 9.2A.3 G (1) Tenders should include a programme of operations. The programme of operations should include:
  - (a) information on the organisational structure of the bidder, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;
  - (b) information on the compliance policies and procedures of the bidder, including:
    - (i) the name of the person or persons responsible for the approval and maintenance of those policies;
    - (ii) the arrangements to monitor and enforce the compliance policies and procedures;
    - (iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation: and
    - (iv) a description of the procedure for reporting to the FCA any breach which may result in a failure to meet the conditions for initial authorisation; and
  - (c) a list of all outsourced functions and resources allocated to the control of the outsourced functions.
  - (2) A bidder offering services other than data reporting services must describe those services in the organisational chart.

### **9.2A.4 G** A bidder should include in its tender:

- (1) a description of the processes for selection, appointment, performance evaluation and removal of *senior management* and members of the *management body*;
- (2) a description of the reporting lines and the frequency of reporting to the *senior management* and the *management body*; and
- (3) a description of the policies and procedures on access to documents by members of the *management body*.
- 9.2A.5 G After assessing each tender, the FCA will select a single winning bidder by applying the selection criteria in the tender documentation.
- 9.2A.6 (1) The appointment of a *CTP* for bonds will commence on the date that an authorisation by the *FCA* of the selected bidder as the *CTP* for bonds takes effect under regulation 9(4) of the *DRS Regulations*.
  - (2) The tender contract is awarded for a maximum of 5 years, commencing from a date to be determined by the FCA. The tender contract term is renewable in limited circumstances for a period of no more than 2 years in accordance with regulation 6 of the DRS Regulations.
  - (3) Within 6 months before either the expiry of the tender contract term or the FCA cancelling an authorisation to provide a data reporting service as a CTP under regulation 10 of the DRS Regulations, the FCA will begin the process to re-tender for a CTP for bonds.
- 9.2A.7 R A CTP must publish information relating to its costs for establishing, maintaining and operating the consolidated tape for bonds in such a way as to be accessible to potential bidders in a re-tender process.
- 9.2A.8 R A CTP for bonds must take all reasonable steps to transfer without delay to a successor CTP the assets, data and operational information necessary to enable it to operate the consolidated tape effectively. It must also have in place agreements with its clients which enable those clients who decide to do so to transfer to a successor CTP.



### 9.2B **Operating requirements**

### Requirements for the management body of a data reporting service provider

9.2B.1

The following requirements apply in respect of the management body of a data reporting service provider:

- (1) The management body must possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting service provider.
- (2) The members of the management body must:
  - (a) be of sufficiently good repute;
  - (b) possess sufficient knowledge, skill and experience, and be able to commit sufficient time, to perform their duties; and
  - (c) act with honesty, integrity and independence of mind:
    - (i) to challenge effectively the decisions of the senior management where necessary; and
    - (ii) to oversee and effectively monitor management decisionmaking where necessary.
- (3) The management body must:
  - (a) define and oversee the implementation of governance arrangements of the data reporting service provider to ensure the effective and prudent management of the provider, including the segregation of duties in the provider and the prevention of conflicts of interest; and
  - (b) when doing so, act in a manner that promotes the integrity of the financial markets and the interests of its clients.
- (4) Where:
  - (a) an applicant for verification under regulation 7 of the DRS Regulations is a recognised investment exchange; and
  - (b) the management body of the applicant is the same as the management body of the exchange,
    - the requirements in (1) and (2) are deemed to be met.

### Conflicts of interest

9.2B.2

(1) A data reporting services provider must operate and maintain effective administrative arrangements, designed to prevent conflicts of interest with clients using its services to meet their regulatory obligations, and other entities purchasing data from *data reporting services providers*. Such arrangements must include policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest and must contain:

- (a) an inventory of existing and potential conflicts of interest, setting out their description, identification, prevention, management and disclosure;
- (b) the separation of duties and business functions within the *data* reporting services provider, including:
  - (i) measures to prevent or control the exchange of information where a risk of conflicts of interest may arise; and
  - (ii) the separate supervision of relevant *persons* whose main functions involve interests that are potentially in conflict with those of a client;
- (c) a description of the fee policy for determining fees charged by the data reporting services provider and undertakings to which the data reporting services provider has close links;
- (d) a description of the remuneration policy for the members of the management body and senior management; and
- (e) the rules regarding the acceptance of money, gifts or favours by staff of the *data reporting services provider* and its *management body*.
- (2) The inventory of conflicts of interest referred to in (1)(a) must include conflicts of interest arising from situations where the *data reporting services provider*:
  - (a) may realise a financial gain or avoid a financial loss, to the detriment of a client:
  - (b) may have an interest in the outcome of a service provided to a client, which is distinct from the client's interest in that outcome;
  - (c) may have an incentive to prioritise its own interests or the interests of another client or group of clients rather than the interests of a client to whom the service is provided; and
  - (d) receive or may receive from any *person* other than a client, in relation to the service provided to a client, an incentive in the form of money, goods or services, other than commission or fees received for the service.

### Organisational requirements regarding outsourcing

- 9.2B.3 R
- (1) Where a data reporting services provider arranges for activities to be performed on its behalf by third parties, including undertakings with which it has close links, it must ensure that the third-party service provider has the ability and the capacity to perform the activities reliably and professionally.
- (2) A data reporting services provider must specify which of the activities are to be outsourced, including a specification of the level of human and technical resources needed to carry out each of those activities.

- (3) A data reporting services provider that outsources activities must ensure that the outsourcing does not reduce its ability or power to perform senior management or management body functions.
- (4) A data reporting services provider must remain responsible for any outsourced activity and must adopt organisational measures to ensure:
  - (a) that it assesses whether the third-party service provider is carrying out outsourced activities effectively, and in compliance with applicable laws and regulatory requirements, and adequately addresses identified failures;
  - (b) the identification of the risks in relation to outsourced activities and adequate periodic monitoring;
  - (c) adequate control procedures with respect to outsourced activities, including effectively supervising the activities and their risks within the data reporting services provider; and
  - (d) adequate business continuity of outsourced activities.
- (5) For the purposes of (4)(d), the data reporting services provider must obtain information on the business continuity arrangements of the third-party service provider, assess its quality and, where needed, request improvements.
- (6) A data reporting services provider must ensure that the third-party service provider cooperates with the FCA in connection with outsourced activities.
- (7) Where a data reporting services provider outsources any critical function, it must provide the FCA with:
  - (a) the identification of the third-party services provider;
  - (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in (4); and
  - (c) internal or external reports on the outsourced activities.
- (8) For the purpose of MAR 9.2B.3R(7), a function will be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the data reporting services provider with the conditions and obligations of its authorisation or its other obligations under the DRS Regulations and this chapter.

### **Business continuity and back-up facilities**

- 9.2B.4
- R
- (1) A data reporting services provider must use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided as referred to in this chapter.
- (2) A data reporting services provider must conduct periodic reviews, at least annually, evaluating its technical infrastructures and associated policies and procedures, including business continuity arrangements. A data reporting services provider must remedy any deficiencies identified during the review.

- (3) A data reporting services provider must have effective business continuity arrangements in place to address disruptive incidents, including:
  - (a) the processes which are critical to ensuring the services of the data reporting services provider, including escalation procedures, relevant outsourced activities and dependencies on external providers;
  - (b) specific continuity arrangements, covering an adequate range of possible scenarios, in the short and medium term, including system failures, natural disasters, communication disruptions, loss of key staff and an inability to use the premises regularly used;
  - (c) duplication of hardware components, allowing for failover to a back-up infrastructure, including network connectivity and communication channels;
  - (d) back-up of business-critical data and up-to-date information of the necessary contacts, ensuring communication within the *data* reporting services provider and with clients;
  - (3) the procedures for moving to and operating *data reporting* services from a back-up site;
  - (f) the target maximum recovery time for critical functions, which must be as short as possible and, in any case, no longer than 6 hours in the case of approved publication arrangements (APAs) and consolidated tape providers (CTPs) and until the close of business of the next working day in the case of approved reporting mechanisms (ARMs); and
  - (g) staff training on the operation of the business continuity arrangements, individuals' roles, including specific security operations personnel ready to react immediately to a disruption of services.
- (4) A data reporting services provider must set up a programme for periodically testing, reviewing and, where needed, modifying the business continuity arrangements.
- (5) A data reporting services provider must publish on its website and promptly inform its clients and the FCA of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

### **Testing and capacity**

9.2B.5 R

- (1) A data reporting services provider must implement clearly delineated development and testing methodologies, ensuring that:
  - (a) the operation of the IT systems satisfies the *data reporting* services provider's regulatory obligations;
  - (b) compliance and risk management controls embedded in IT systems work as intended; and
  - (c) the IT systems can continue to work effectively at all times.
- (2) A data reporting services provider must also use the methodologies referred to in (1) prior to and following the deployment of any updates of the IT systems.

- (3) A data reporting services provider must promptly notify the FCA of any planned significant changes to the IT systems prior to their implementation.
- (4) A data reporting services provider must set up an ongoing programme for periodically reviewing and, where needed, modifying the development and testing methodologies.
- (5) A data reporting services provider must run stress tests periodically and at least on an annual basis. A data reporting services provider must include in the adverse scenarios of the stress test unexpected behaviour of critical constituent elements of its systems and communications lines. The stress testing must identify how hardware, software and communications respond to potential threats, specifying systems unable to cope with adverse scenarios. A data reporting services provider must take measures to address identified shortcomings in those systems.
- (6) A data reporting services provider must:
  - (a) have sufficient capacity to perform its functions without outages or failures, including missing or incorrect data; and
  - (b) have sufficient scalability to accommodate without undue delay any increase in the amount of information to be processed and in the number of access requests from its clients.

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### Security

#### 9.2B.6 R

- (1) A data reporting services provider must set up and maintain procedures and arrangements for physical and electronic security designed to:
  - (a) protect its IT systems from misuse or unauthorised access;
  - (b) minimise the risks of attacks against information systems;
  - (c) prevent unauthorised disclosure of confidential information; and
  - (d) ensure the security and integrity of the data.
- (2) Where a MiFIR investment firm ('reporting firm') uses a third party to submit information to an ARM on its behalf ('submitting firm'), the ARM must have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about, or submitted by, the reporting firm to the ARM which may have been sent by the reporting firm directly to the ARM or through another submitting firm.
- (3) A data reporting services provider must set up and maintain measures and arrangements to promptly identify and manage the risks identified in (1).
- (4) In respect of breaches in the physical and electronic security measures referred to in (1) to (3), a data reporting services provider must promptly notify:

- (a) the FCA and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents; and
- (b) its clients that have been affected by the security breach.

### **Record keeping**

### 9.2B.7 R

- (1) A data reporting service provider must maintain records, in retrievable and legible form, of information that could be relevant to demonstrating its compliance or non-compliance with any requirement imposed by the *rules* in this chapter.
- (2) A data reporting service provider must retain the records for no less than 5 years from the date on which the records were created.

### **Reporting of infringements**

### 9.2B.8 R

A data reporting service provider must have in place effective procedures for its employees to report potential or actual infringements of:

- (1) the rules;
- (2) MiFIR, and any onshored regulations previously deriving from MiFIR or MiFID; and
- (3) the *DRS Regulations*, internally through a specific, independent and autonomous channel.

### **Conditions for an ARM**

### 9.2B.9 R

- (1) An ARM must have adequate policies and arrangements in place to enable it to report the information required from a MiFIR investment firm under article 26 of MiFIR as quickly as possible and no later than 11:59pm on the working day following the day on which the transaction took place.
- (2) The information mentioned in (1) must be reported in accordance with article 26 of *MiFIR*.
- (3) An ARM must:
  - (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
  - (b) have sound security mechanisms in place designed to:
    - (i) guarantee the security and authentication of the means of the transfer of information;
    - (ii) minimise the risk of data corruption and unauthorised access;
    - (iii) prevent information leakage; and
    - (iv) maintain the confidentiality of the data at all times;
  - (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
  - (d) have systems which:

- (i) effectively check transaction reports for completeness;
- (ii) identify omissions and obvious errors caused by the MiFIR investment firm;
- (iii) communicate details of such omissions or errors to the MiFIR investment firm and request re-transmission of erroneous reports;
- (iv) detect omissions or errors caused by the ARM itself; and
- (v) enable the ARM to correct and transmit, or retransmit, correct and complete transaction reports to the FCA.
- (4) An ARM which is also a recognised investment exchange or a MiFID investment firm must treat all information collected in a nondiscriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

## Management of incomplete or potentially erroneous information by ARMs

9.2B.10

- R
- (1) An ARM must set up and maintain appropriate arrangements to identify transaction reports that are incomplete or contain obvious errors caused by clients. An ARM must perform validation of the transaction reports against the requirements established under article 26 of MiFIR for field, format and content of fields in accordance with Table 1 of Annex I to MiFID RTS 22.
- (2) An ARM must set up and maintain appropriate arrangements to identify transaction reports which contain errors or omissions caused by that ARM itself and to correct, including deleting or amending, such errors or omissions. An ARM must perform validation for field, format and content of fields in accordance with Table 1 of Annex I to MiFID RTS 22.
- (3) An ARM must continuously monitor in real time the performance of its systems, ensuring that a transaction report it has received has been successfully reported to the FCA in accordance with article 26 of MiFIR.
- (4) An ARM must perform periodic reconciliations at the request of the FCA between the information that the ARM receives from its client or generates on the client's behalf for transaction reports purposes and data samples of the information provided by the FCA.
- (5) Any corrections, including cancellations or amendments of transaction reports that are not correcting errors or omissions caused by an ARM, must only be made at the request of a client and per transaction report. Where an ARM cancels or amends a transaction report at the request of a client, it must provide this updated transaction report to the client.
- (6) Where an ARM, before submitting the transaction report, identifies an error or omission caused by a client, it must not submit that transaction report and must promptly notify the MiFIR investment firm of the details of the error or omission to enable the client to submit a corrected set of information.

- (7) Where an ARM becomes aware of errors or omissions caused by the ARM itself, it must promptly submit a correct and complete report.
- (8) An ARM must promptly notify the client of the details of the error or omission and provide an updated *transaction report* to the client. An ARM must also promptly notify the FCA about the error or omission.
- (9) The requirement to correct or cancel erroneous *transaction reports* or report omitted transactions must not extend to errors or omissions which occurred more than 5 years before the date that the *ARM* became aware of such errors or omissions.

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### **Connectivity of ARMs**

### 9.2B.11 R

- (1) An ARM must have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the FCA.
- (2) An ARM must have in place adequate policies, arrangements and technical capabilities to receive transaction reports from clients and to transmit information back to clients. The ARM must provide the client with a copy of the transaction report which the ARM submitted to the FCA on the client's behalf.

### **Conditions for an APA – organisational requirements**

### 9.2B.12 R

- (1) An APA must:
  - (a) have sound security mechanisms in place designed to:
    - (i) guarantee the security of the means of the transfer of information;
    - (ii) minimise the risk of data corruption and unauthorised access; and
    - (iii) prevent information leakage before publications;
  - (b) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
  - (c) have systems which can effectively:
    - (i) check trade reports for completeness;
    - (ii) identify omissions and obvious errors; and
    - (iii) request re-transmission of any erroneous reports.
- (2) An APA which is also a recognised investment exchange or a MiFID investment firm must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

### Conditions for a CTP – organisational requirements

### 9.2B.13 R

A CTP must:

(1) have sound security mechanisms in place designed to:

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- (a) guarantee the security of the means of the transfer of information; and
- (b) minimise the risk of data corruption and unauthorised access; and
- (2) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times.

### Other services provided by CTPs

#### 9.2B.14 R

- (1) A CTP for bonds must not provide any additional service which utilises the information it receives from UK trading venues and APAs in its capacity as a CTP.
- (2) Where a CTP for bonds is a member of a group, a member of that group may provide an additional service utilising information from the consolidated tape for bonds, provided it has paid for that information in accordance with ■ MAR 9.2B.36R(1).

### Management of incomplete or potentially erroneous information by APAs

#### 9.2B.15 R

- (1) APAs must set up and maintain appropriate arrangements to ensure that they accurately publish the trade reports received from MiFIR investment firms without themselves introducing any errors or omitting information and must correct information where they have themselves caused the error or omission.
- (2) APAs must continuously monitor in real-time the performance of their IT systems ensuring that the trade reports they have received have been successfully published.
- (3) APAs must perform periodic reconciliations between the trade reports that they receive and the trade reports that they publish, verifying the correct publication of the information.
- (4) An APA must confirm the receipt of a trade report to the reporting MiFIR investment firm, including the transaction identification code assigned by the APA. An APA must refer to the transaction identification code in any subsequent communication with the reporting firm in relation to a specific trade report.
- (5) An APA must set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous. These arrangements must include automated price and volume alerts, taking into account:
  - (a) the sector and the segment in which the *financial instrument* is traded;
  - (b) liquidity levels, including historical trading levels;
  - (c) appropriate price and volume benchmarks; and
  - (d) if needed, other parameters according to the characteristics of the financial instrument.
- (6) Where an APA determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it must not

- publish that trade report and must promptly alert the *MiFIR* investment firm submitting the trade report.
- (7) In exceptional circumstances, APAs must delete and amend information in a trade report on request from the entity providing the information when that entity cannot delete or amend its own information for technical reasons. APAs are not otherwise responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information.
- (8) APAs must publish non-discretionary policies on information cancellation and amendments in trade reports which set out the penalties that APAs may impose on MiFIR investment firms providing trade reports where the incomplete or erroneous information has led to the cancellation or amendment of trade reports.

# Conditions for an APA – policies and arrangements for publication of information

#### 9.2B.16 R

- (1) An APA must have adequate policies and arrangements in place to make public the information required under articles 20 and 21 of MiFIR in as close to real time as is technically possible on a reasonable commercial basis.
- (2) The information referred to in (1) must be made available by the APA free of charge 15 minutes after the APA has first published it.
- (3) The APA must be able to disseminate efficiently and consistently the information referred to in (1):
  - (a) in a way which ensures fast access to the information on a non-discriminatory basis; and
  - (b) in a format that facilitates the consolidation of the information with similar data from other sources.
- (4) The information referred to in (1) must include the following details:
  - (a) the identifier of the financial instrument;
  - (b) the price at which the transaction was concluded;
  - (c) the volume of the transaction:
  - (d) the time of the transaction;
  - (e) the time the transaction was reported;
  - (f) the price notation of the transaction;
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a *systematic internaliser*, the code 'SI' or, otherwise, 'OTC'; and
  - (h) if applicable, an indicator that the transaction was subject to specific conditions.

#### Machine readability – APAs

9.2B.17

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(1) APAs must publish the information which has to be made public in accordance with ■ MAR 9.2B.16R(1) in a machine-readable way.

- (2) Information is published in a machine-readable way where all of the following conditions are met:
  - (a) it is in an electronic format designed to be directly and automatically read by a computer;
  - (b) it is stored in an appropriate IT architecture, in accordance with ■ MAR 9.2B.5R(6), that enables automatic access;
  - (c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed; and
  - (d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.
- (3) For the purposes of (2)(a), the electronic format must:
  - (a) be specified by free, non-proprietary and open standards; and
  - (b) include the type of files of messages, the rules to identify them, and the name and data type of the fields they contain.
- (4) APAs must:
  - (a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;
  - (b) make public any changes to the instructions referred to in (4)(a) at least 3 months before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly; and
  - (c) include a link to the instructions referred to in (4)(a) on the homepage of their website.

#### Certification requirement

9.2B.18 R

An APA must require each MiFIR investment firm to certify that it only reports transactions in a particular financial instrument through that APA.

### Details to be published by the APA

9.2B.19 R

- (1) An APA must make public:
  - (a) for transactions executed in respect of shares, depositary receipts, exchange-traded funds (ETFs), certificates and other similar financial instruments, the details of a transaction specified in Table 2 of Annex I to MiFID RTS 1 and use the appropriate flags listed in Table 3 of Annex I to MiFID RTS 1; and
  - (b) for transactions executed in respect of bonds, structured finance products, emission allowances and derivatives, the details of a transaction specified in Table 1 of Annex II to MiFID RTS 2 and use the appropriate flags listed in Table 2 of Annex II to MiFID RTS 2.
- (2) Where publishing information on when the transaction was reported, an APA must include the date and time, up to the second, it publishes the transaction.

- (3) By way of derogation from ■MAR 9.2B.19R(2), an *APA* that publishes information regarding a transaction executed on an electronic system must include the date and time, up to the millisecond, of the publication of that transaction in its trade report.
- (4) For the purposes of (3), an 'electronic system' means a system where orders are electronically tradable or where orders are tradable outside the system, provided that they are advertised through the given system.
- (5) The timestamps referred to in (2) and (3) must, respectively, not diverge by more than one second or millisecond from the Coordinated Universal Time (UTC) issued and maintained by one of the timing centres listed in the latest Bureau International des Poids et Mesures (BIPM) Annual Report on Time Activities.

## Non-discrimination requirements for APAs

9.2B.20 R

APAs must ensure that the information which must be made public is sent through all distribution channels at the same time, including when the information is made public, as close to real time as technically possible or 15 minutes after the first publication.

## Obligation on APAs to provide market data on a reasonable commercial basis

9.2B.21 R

- (1) For the purposes of making market data containing the information set out in articles 6, 20 and 21 of *MiFIR* available to the public on a reasonable commercial basis and in accordance with MAR 9.2B.16R(1), *APAs* must comply with the obligations set out in MAR 9.2B.22R to MAR 9.2B.26R.
- (2) The obligations set out in MAR 9.2B.22R, MAR 9.2B.23R(2), MAR 9.2B.24R, MAR 9.2B.25R(2) and MAR 9.2B.26R do not apply to *APAs* that make market data available to the public free of charge.

### Provision of market data based on cost – APAs

9.2B.22 R

- (1) The price of market data must be based on the cost of producing and disseminating such data and may include a reasonable margin.
- (2) The costs of producing and disseminating market data may include an appropriate share of joint costs for other services provided by *APAs*.

# Obligation to provide market data on a non-discriminatory basis – APAs

9.2B.23 R

- (1) APAs must make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.
- (2) Any differentials in prices charged to different categories of customers must be proportionate to the value which the market data represent to those customers, taking into account:

- (a) the scope and scale of the market data, including the number of financial instruments covered and trading volume; and
- (b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.
- (3) For the purposes of MAR 9.2B.23R(1), APAs must have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

## Per user fees – APAs

#### 9.2B.24 R

- (1) APAs must charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'). APAs must have arrangements in place to ensure that each individual use of market data is charged only once.
- (2) By way of derogation from MAR 9.2B.24R(1), APAs may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.
- (3) APAs must provide grounds for the refusal to make market data available on a per user basis and must publish those grounds on their webpage.

#### **Unbundling and disaggregating market data – APAs**

#### 9.2B.25 R

- (1) APAs must make market data available without being bundled with other services.
- (2) Prices for market data must be charged on the basis of the level of market data disaggregation provided for in article 12(1) of MiFIR as further specified in articles of MiFID RTS 14.

### Transparency obligation – APAs

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- (1) APAs must disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible.
- (2) The disclosure must include the following:
  - (a) current price lists and other contractual terms and conditions; and
  - (b) advance disclosure with a minimum of 90 days' notice of future price changes.

#### Conflicts of interest obligations for CTPs

#### 9.2B.27

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(1) Where a CTP is a member of a group, the arrangements it establishes to prevent or manage conflicts of interest in accordance with ■ MAR 9.2B.2R(1) must also take into account any circumstances, of which the CTP is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

- (2) A CTP must assess and periodically review, on an at least annual basis, the conflicts of interest policies and procedures established in accordance with MAR 9.2B.2R(1) and must take all appropriate measures to address any deficiencies.
- (3) A CTP must keep and regularly update a record of the kinds of services or activity it carries on in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen, or in the case of an ongoing service or activity, may arise. Senior management of the CTP must receive on a frequent basis, and at least annually, written reports on these records and how any conflicts have been managed.

### Obligations for CTPs on apportionment of responsibilities

- A CTP must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its senior management in such a way that:
  - (1) it is clear who has which of those responsibilities; and
  - (2) the business and affairs of the *CTP* can be adequately monitored and controlled by its directors, senior managers and *management body* of the *CTP*.

#### **Outsourcing obligations for CTPs**

- 9.2B.29 R
- (1) In addition to complying with its obligations under MAR 9.2B.3R(6), a CTP must provide the FCA with a written agreement in respect of any arrangement it enters into with a third-party provider to outsource a critical function. The agreement must contain a clear allocation of the respective rights and obligations of the CTP and the third-party provider.
- (2) In relation to the arrangement referred to in (1), the CTP must take the necessary steps to ensure it is able to:
  - (a) terminate that arrangement where necessary, with immediate effect, without detriment to the continuity and quality of its provision of services; and
  - (b) cooperate with the FCA, including providing information to the FCA on request, and putting in place arrangements enabling the FCA to seek information from the third-party provider.

#### Non-discrimination obligations for CTPs

- 9.2B.30
- Any of the following *persons* who are also a *CTP* must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions:
  - (1) a recognised investment exchange;
  - (2) an *APA*;
  - (3) an investment firm;

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- (4) a data vendor; or
- (5) a firm whose shares or voting rights are at least 20% owned by a person referred to in (1) to (4) or who shares a business function with such a person.

#### Management of incomplete or potentially erroneous information by CTPs .....

- 9.2B.31 R
- (1) A CTP must set up and maintain appropriate arrangements to ensure that it accurately publishes the trade reports received from MiFIR investment firms, regulated markets and APAs without itself either:
  - (a) introducing any errors that would affect the accuracy and completeness of the data contained in those reports; or
  - (b) omitting any information from those reports, except where such omission is a deliberate one in accordance with the CTP's regulatory and contractual obligations.
- (2) A CTP must correct information where it has itself introduced an error or made a non-deliberate omission as referred to in (1).
- (3) A CTP must perform periodic reconciliations between the trade reports it receives and the trade reports it publishes, verifying the correct publication of the information.

#### Obligations of CTPs to ensure data quality and report information

- 9.2B.32 R
- (1) A CTP must continuously monitor in real time the performance of its IT systems and ensure that the trade reports it has received have been successfully published.
- (2) A CTP must set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous, and must inform the provider of the trade report in each instance.
- (3) In exceptional circumstances, a CTP must delete and amend information in a trade report on request from the entity providing the information when that entity cannot delete or amend its own information for technical reasons. CTPs are not otherwise responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information.
- (4) The CTP must submit a report to the FCA every 6 months on the quality of the data that it has received during that period. The report must include at least the following information:
  - (a) the timeliness of the receipt of data from data contributors;
  - (b) the timeliness of publication of information by the CTP;
  - (c) details of the trade reports that are incomplete or contain information that is likely to be erroneous that have been identified;

- (d) whether the *CTP* has correctly published the information it has received:
- (e) the performance of the CTP's IT systems; and
- (f) the usage of the consolidated tape.

#### **Consolidation of data by CTPs**

#### 9.2B.33

A CTP must:

- (1) ensure that the data it makes available publicly is consolidated from all *UK trading venues* and *APAs* into a continuous electronic data stream;
- (2) ensure that the information which must be made public is sent through all distribution channels at the same time, including when the information is made public, as close to real time as technically possible or 15 minutes after the first publication; and
- (3) provide the FCA with direct and immediate access to the consolidated tape for bonds.

# Scope of the consolidated tape for bonds and publication of information

#### 9.2B.34 R

- (1) The CTP for bonds must have adequate policies and arrangements in place to:
  - (a) receive the information made public in accordance with articles 10 and 21 of *MiFIR* by all *UK trading venues* and *APAs* in respect of bonds excluding exchange traded commodities and exchange traded notes; and
  - (b) make that information available to the public in as close to real time as is technically possible or 15 minutes after the first publication.
- (2) The CTP for bonds must have adequate policies and arrangements in place to make historical data available in response to a request for it in accordance with MAR 9.2B.35R(2).
- (3) The information referred to in (1) must include the details of a transaction specified in Table 1 of Annex II to MiFID RTS 2 and use the appropriate flags listed in Table 2 of Annex II to MiFID RTS 2.
- (4) Following the appointment of a provider of a consolidated tape for bonds, UK trading venues and APAs must:
  - (a) connect to the *CTP* for bonds before commencing or continuing operations; and
  - (b) send to the *CTP* for bonds, in as close to real time as is technically possible using the means established in MAR 9.2B.34R(5) by the *CTP*, the information referred to in (1)(a).
- (5) The CTP for bonds must operate an open-source Application Programming Interface (API) in order to receive the information referred to in (1)(a) from UK trading venues and APAs.

- (6) The CTP for bonds must be able to disseminate the information referred to in (1)(a) efficiently, consistently and in way that:
  - (a) ensures fast access to the information on a non-discriminatory basis; and
  - (b) is in a generally accepted format that is interoperable, easily accessible and utilisable for market participants.
- (7) When a new UK trading venue or APA starts operating, the CTP for bonds must include the information referred to in (1)(a) made public by that UK trading venue or APA in the electronic data stream of its consolidated tape as soon as possible after the start of the operations of the UK trading venue or APA.
- (8) The CTP for bonds must not consolidate trade reports with the code "DUPL" in the reprint field.

#### Machine readability and required formats for CTPs for bonds

#### 9.2B.35

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- (1) The CTP for bonds must publish the information referred to in ■ MAR 9.2B.34R(1) in Graphical User Interface (GUI) and at least 2 machine-readable formats: Application Programming Interface (API) and Comma Separated Value (CSV).
- (2) The CTP for bonds must make historical data available in response to a request for it in GUI and one machine-readable format.
- (3) Information is published in a machine-readable format where all of the following conditions are met:
  - (a) it is in an electronic format designed to be directly and automatically read by a computer;
  - (b) it is stored in an appropriate IT architecture, in accordance with ■ MAR 9.2B.5R(6), that enables automatic access;
  - (c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed; and
  - (d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.
- (4) For the purposes of MAR 9.2B.35R(3)(a), the electronic format must be specified by free, non-proprietary and open standards, and include the type of files or messages, the rules to identify them, and the name and data type of the fields they contain.
- (5) The CTP for bonds must:
  - (a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;
  - (b) make public any changes to the instructions referred to in (5)(a) at least 3 months before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly; and
  - (c) include a link to the instructions referred to in (5)(a) on the homepage of their website.

# Obligation for the CTP for bonds to provide market data on a non-discriminatory basis

#### 9.2B.36 R

- (1) The *CTP* for bonds must make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.
- (2) The *CTP* for bonds must charge for the use of *historical data* when it is requested separately from the use of market data, except where it is provided in a machine-readable form through an API.
- (3) For the purposes of MAR 9.2B.36R(1), the *CTP* for bonds must have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

#### **9.2B.37** R [deleted]

### **Unbundling market data for the CTP for bonds**

9.2B.38 R The CTP for bonds must make market data available without being bundled with other services.

#### **Transparency obligations for the CTP for bonds**

#### 9.2B.39 R

- (1) The *CTP* for bonds must disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible.
- (2) The disclosure must include the following:
  - (a) current price lists and other contractual terms and conditions; and
  - (b) advance disclosure with a minimum of 90 days' notice of future price changes.

#### **Governance obligations for the CTP**

#### 9.2B.40 R

- (1) The CTP must establish a consultative committee composed of a representative range of its users and data producers. CTP users and data producers may apply to the CTP to be members of the committee.
- (2) The membership of the committee established in (1) must be renewed at least once during the period of tender for the *CTP*. At all times, users must comprise the majority of members on the committee.
- (3) The committee must meet at least every 6 *months*, and its chair must make the meeting agenda and minutes public.
- (4) The *CTP* must share with the committee, at a minimum, information on the following:
  - (a) its operating costs, including providing regular updates about those costs;
  - (b) its operational performance;

- (c) its fee and user policies, including any changes to those policies usage of its services;
- (d) usage of its services;
- (e) any data quality issues; and
- (f) any technology updates.
- (5) The committee may make recommendations to the CTP. The chair must make public information on how the CTP is taking forward the recommendations of the committee, including on its performance and operation. If the CTP decides not to take forward a recommendation, it must provide the committee with reasons for its decision.



# 9.2C Financial resources requirements for consolidated tape providers

- 9.2C.1 R A CTP must at all times have sufficient financial resources for the proper performance of its obligations as a CTP.
- 9.2C.2 In assessing whether a *CTP* has at all times sufficient financial resources for the proper performance of its obligations as a *CTP*, the *FCA* may have regard to:
  - (1) the operational and other risks to which the CTP is exposed;
  - (2) the amount and composition of the *CTP's* capital, liquid financial assets and other financial resources (such as insurance policies and guarantees, where appropriate);
  - (3) the financial benefits, liabilities, risks and exposures arising from the *CTP's* connection with any *person*, including but not limited to, its connection with:
    - (a) any undertaking in the same group as the CTP;
    - (b) any other *person* with a significant shareholding or stake in the *CTP*;
    - (c) any other *person* with whom the *CTP* has made a significant investment, whether in the form of equity, debt, or by means of any guarantee or other form of commitment; and
    - (d) any *person* with whom the *CTP* has a significant contractual relationship;
  - (4) the extent to which the *CTP's* ability to fulfil its obligations as a *CTP* under this chapter may be impacted by any *regulated activities* and other *unregulated activities* it undertakes; and
  - (5) the extent to which, after allowing for the financial resources necessary to cover operational and other risks to which the CTP is exposed, the CTP's financial resources are sufficient and sufficiently liquid to ensure that it would be able to complete an orderly closure or transfer of the services it provides as a CTP without being prevented from doing so by insolvency or lack of available funds.
- 9.2C.3 G The obligation set out in MAR 9.2C.1R applies in addition to any other requirements in respect of regulated activities undertaken by the CTP.

9.2C.4 The CTP may find it useful to refer to the FCA's guidance in FG 20/1 (Our framework: assessing financial resources) and the Wind-down Planning Guide when considering how it meets the obligation set out in MAR 9.2C.1R.



# 9.2D Complaints concerning the performance of a CTP

#### 9.2D.1 R

- (1) A CTP must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its functions as a CTP under the rules in this chapter and other regulatory obligations. A CTP must make public how such a complaint may be raised.
- (2) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a *complaints investigator* independent of the *CTP*, and for the *complaints investigator* to report the result of the investigation to the *CTP* and to the complainant.
- (3) The arrangements must confer on the *complaints investigator* the power to recommend, if the *complaints investigator* thinks appropriate, that the *CTP* remedies the matter complained of.
- (4) ■MAR 9.2D.1R(3) is not to be taken as preventing the *CTP* from making arrangements for the initial investigation of a complaint to be conducted by the *CTP*.
- (5) Where a CTP has investigated a complaint arising in connection with the performance of, or failure to perform, any of its functions as a CTP under the rules in this chapter and other regulatory obligations, and the complaints investigator has made a recommendation in respect of that complaint that the CTP should remedy the matter which was the subject of that complaint, the CTP must immediately:
  - (a) notify the FCA of that event; and
  - (b) give the FCA a copy of the complaints investigator's report and particulars of the complaints investigator's recommendation as soon as that report or the recommendation is available to it.

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#### 9.3 **Notification and information**

#### Notification to the FCA of material changes in information provided at the time of authorisation

9.3.1 A data reporting services provider must promptly complete the material change in information form at ■ MAR 9 Annex 5R to inform the FCA of any material change to the information provided at the time of its authorisation.

#### Notification to the FCA of change to membership of management body

- A data reporting services provider must promptly complete the notification 9.3.2 form for changes to the membership of the management body form at ■ MAR 9 Annex 6R to inform the FCA of any change to the membership of its management body before any change to the membership of its management body or when this is impossible within 10 working days after the change.
- 9.3.3 G [deleted]

#### Notification to the FCA by an APA or a CTP of compliance with connectivity requirements

- 9.3.4 R As soon as possible and within 2 weeks of being authorised as an APA or a CTP, an APA or a CTP seeking a connection to the FCA's market data processor system must:
  - (1) sign the MIS confidentiality agreement at MAR 9 Annex 10R; and
  - (2) email it to MDP.onboarding@fca.org.uk or post an original signed copy to the FCA addressed to:

The Financial Conduct Authority

FAO The Markets Reporting Team

12 Endeavour Square

London

E20 1JN.

9.3.5 G (1) To ensure the security of the FCA's systems, the FCA requires an APA or a CTP to sign the MIS confidentiality agreement before receiving the FCA's Market Interface Specification (MIS).

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- (2) Once the FCA receives the MIS confidentiality agreement from the APA or the CTP, the FCA will provide the APA or the CTP with Market Interface Specification (MIS).
- 9.3.6 R An APA or a CTP seeking a connection to the FCA's market data processor system must complete the form at MAR 9 Annex 7R as soon as possible and no later than 4 weeks following authorisation as an APA or a CTP.
- 9.3.7 G The FCA expects an APA or a CTP to deal with it in an open and co-operative way in order to establish a technology connection for the provision of data to the FCA as required by article 22 of MiFIR.

## Yearly notifications to the FCA

- 9.3.8 R | A data reporting services provider must complete the yearly notification form in MAR 9 Annex 8R:
  - (1) A data reporting services provider must complete the yearly notification form in MAR 9 Annex 8D:
  - (2) then every year within 3 months of the same date.
- 9.3.9 G For example, if a data reporting services provider's authorisation commences on 8 April 2024, the data reporting services provider must provide the information in MAR 9 Annex 8R on or before 8 July 2025 and then every year thereafter on or before 8 July of that particular year.

#### Ad hoc notifications to the FCA

- - (2) A data reporting services provider must notify the FCA as soon as reasonably practicable if it considers that it is unable to comply with any rule in this chapter or other regulatory obligation, explaining the reasons why it is unable to comply.
- 9.3.11 G Information to be provided in MAR 9 Annex 9R includes information relating to breaches in physical and electronic security measures and service interruptions or connection disruptions.

# Provision of the forms in MAR 9 Annexes 5R, 6R, 7R, 8R and 9R to the FCA

- - (1) at MRT@fca.org.uk; or

(2) by posting it to the FCA, addressed to:

The Financial Conduct Authority The Markets Reporting Team 12 Endeavour Square

London

E20 1JN.



### 9.4 Supervisory regime

#### Overview of supervisory approach

9.4.1 G

The FCA expects to have an open, cooperative and constructive relationship with data reporting services providers to enable it to understand and evaluate data reporting services providers' activities and their ability to meet the requirements in the DRS Regulations. As part of that relationship the FCA expects a data reporting services provider to provide it with information about any proposed restructuring, reorganisation or business expansion which could have a significant impact on the data reporting services provider's risk profile or resources.

The FCA will, when necessary, arrange meetings between the FCA and key individuals of the data reporting services provider for this purpose.

The FCA expects the data reporting services provider to take its own steps to assure itself that it will continue to satisfy the data reporting services provider organisational requirements when considering any changes to its business operations.

### Overview of supervisory tools

9.4.2 G

The FCA will use a variety of tools to monitor whether a data reporting services provider complies with its regulatory requirements. These tools include (but are not limited to):

- (1) desk-based reviews;
- (2) liaison with other regulators;
- (3) meetings with management and other representatives of a *data* reporting services provider;
- (4) on-site visits;
- (5) use of auditors;
- (6) use of a skilled person;
- (7) reviews and analysis of periodic returns and notifications;
- (8) transaction monitoring;
- (9) making recommendations for preventative or remedial action;

- (10) giving individual guidance;
- (11) restrictions on permission to carry on a data reporting service; and
- (12) imposing individual requirements.



### 9.5 Frequently Asked Questions

- **9.5.1 G** [deleted]
- **Q.**We are a *trading venue* operator. Can you please clarify how we can provide a *data reporting service* under the derogation from needing authorisation in regulation 5(b) to (d) of the *DRS Regulations*?

A

- (1) The derogation (or exception) in article 59(2) of *MiFID* allowed Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator verified that they complied with Title V of *MiFID*.
- (2) The *United Kingdom* adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.
- (3) As a result a *trading venue* operator must apply for verification of its rights to provide a *data reporting service* using the form in MAR 9 Annex 1D.
- (4) The application process for a trading venue operator to become a data reporting services provider is the same as for a person to become a data reporting services provider, except for the requirements for the management body of a market operator addressed in MAR 9.5.3G below.
- (5) Successful applicants will become data reporting services providers and will be required to comply with the regulatory framework in MAR 9.1.3G. They will be subject to fees charged by the FCA in MAR 9.5.4G.
- **9.5.3 Q.**We are a *market operator.* Can we use the same members of our *management body*?

A.Yes. Where the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market you will be deemed to have complied with the management body requirement in regulation 13(1)(a) and (b) of the DRS Regulations. You will only be required to complete the full name and personal national identification number or equivalent thereof fields of MAR 9 Annex 2D for each of these members of the management body. For any additional members of the management body of the APA, the CTP or the ARM that are not the same as the members of the management body of the regulated market, you must notify us of these persons by completing all

fields of ■ MAR 9 Annex 2D. You must notify us of any change in membership using MAR 9 Annex 6D.

9.5.4 G Q.Where can I find out information about fees to be charged in respect of data reporting services providers?

A.See ■ FEES 3.2.7R and ■ FEES 4 Annex 11R.

9.5.5 G Q.How do we go about applying to be an ARM? A.In summary:

- (1) You should complete:
  - (a) all of the questions in the application form at MAR 9 Annex 1D;
  - (b) the notification form for the list of members of the management body at ■ MAR 9 Annex 2D.
- (2) You should sign the MIS confidentiality agreement at MAR 9 Annex 10D.
- (3) You should provide the documents referred to in:
  - (a) (1)(a) and (b) together with supporting documentation to the FCA as set out in ■ MAR 9.2.6D; and
  - (b) (2) to the FCA as set out in MAR 9.3.4D.
- (4) After receiving the documents referred to in (3) and subject to our review of them, we will provide you with a copy of our *Market* Interface Specification (MIS).
- (5) If you consider that you can meet our specifications you should obtain the FCA MDP on-boarding application form at ■ MAR 9 Annex 7D and provide the completed form and any relevant documents to us together with the associated fee in ■ FEES 3.2.7R and ■ FEES 4 Annex 11R. Our consideration of your application for authorisation as an ARM is dependent on us reviewing a completed FCA MDP on-boarding application form.
- (6) We may at any time request additional information to proceed with the assessment of the application.
- (7) During our consideration of your application for authorisation or verification, we will normally invite you to work with us to undertake the appropriate testing required for you to establish connection to us.
- (8) Having obtained and examined the necessary information we require from you, we will do one of three things in relation to your application for authorisation:
  - (a) authorise you as an ARM; or
  - (b) issue a warning notice that we propose to authorise you as an ARM with the imposition of a requirement on your authorisation;

- (c) issue a warning notice that we propose to refuse the application for authorisation.
- (9) If we issue a warning notice, the procedure in DEPP applies.
- (10) If we approve your application for authorisation or verification, we will confirm your authorised status.
- 9.5.6 Q.Does an *investment firm* need to be authorised as an *ARM* to send transaction reports to the FCA?

**A.**No. If you are a *MiFID investment firm* that wishes to send *transaction reports* to us to satisfy your own transaction reporting obligations under *MiFIR* or a *third country investment firm* subject to a similar obligation pursuant to ■ GEN 2.2.22AR,

you do not need to become authorised as an *ARM*. You are permitted to connect directly to us although there will be a requirement to sign a *MIS* confidentiality agreement with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see ■ FEES 3.2.7R for relevant on-boarding costs. If you want to connect to us to send reports on behalf of other *investment firms* then you must become authorised as an *ARM*.

9.5.7 **G** Q.Where can I find a list of data reporting services providers?

**A.**Regulation 6 of the *DRS Regulations* requires the *FCA* to maintain a register of *data reporting services providers*.

9.5.8 **G** Q.I am a *data reporting services* provider and am experiencing technical issues. What do I do?

**A.**In the first instance please contact Market Data Processor support at MDP.technicalOnboarding@soprasteria.com and copy DRSP supervision at MRT@fca.org.uk with a succinct summary of the technical issue(s) encountered.

9.5.9 Q.Can any *trading venue* report *transactions* for the purposes of article 26 of *MiFIR* to the *FCA* using an *ARM*?

**A.**Yes. The ability of a *trading venue* to submit data to an *ARM* is consistent with the definition of an *ARM* which enables a *trading venue* to submit information, on its own behalf, to an *ARM*. It is also consistent with paragraph 2 of article 9 [Security] of *MiFID RTS 13*, which enables a third party to submit information to an *ARM* on behalf of others. More generally, it supports the purpose underlying *MiFIR* and *MiFID* of facilitating the detection of cases of *market abuse*.

9.5.10 **Q**.Can a group of *investment firms* aggregate their reporting via an internal hub?

**A.**Yes. A group of *investment firms* may use a hub to assist with aggregating transaction reporting data for each legal entity that is an *investment firm* in the group for the purposes of article 26 of *MiFIR* provided that the hub is either an *ARM* or the hub uses an *ARM* to report the transaction data to the *FCA*. Paragraph 2 of article 9 [Security] of *MiFID RTS 13* confirms that an

investment firm ('reporting firm') may use a third party ('submitting firm') to submit information to an ARM.

9.5.11 G Q.Which form should I use if I wish to cancel some, but not all, of my data reporting service?

> **A.**You should use the form at ■ MAR 9 Annex 3D. If you expect the wind-down (run-off) of the service that you wish to cancel to take longer than six months you should discuss this with your usual supervisory contact.

G 9.5.12 Q.I intend to apply to be authorised to provide the data reporting service of an APA. May I establish connectivity requirements while my application for authorisation is being considered?

> A. Yes. The MIS confidentiality agreement is available on our website at www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp together with instructions on how to obtain the Market Interface Specification (MIS) for connectivity.

## Application form to provide the service of ARM and/or APA and/or CTP

The form can be found at this address: https://www.fca.org.uk/publication/forms/mifid-data-reporting-services-form.docx

## Notification form for list of members of a management body

The form can be found at this address: https://www.fca.org.uk/publication/forms/mifid-management-body-members-form.docx

# Variation of Authorisation of a Data Reporting Services Provider (DRSP)

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-variation-authorisation-form.docx

# Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-cancellation-form.docx

# Material Change in information for a Data Reporting Services Provider (DRSP)

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-material-change-notification.docx

# Notification form for changes to the membership of the management body

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-changes-to-management-body-members.docx

## FCA MDP on-boarding application form

The form can be found at this address: https://www.fca.org.uk/publication/forms/mdp\_on-boarding\_application\_form.doc

# **Yearly Notification Form for a Data Reporting Service Provider (DRSP)**

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-yearly-notification-form.docx

# Data Reporting Services Provider (DRSP) Ad hoc notification

The form can be found at this address: https://www.fca.org.uk/publication/forms/drsp-ad-hoc-change-notification.docx

# MIS confidentiality agreement

[Editor's note: The form can be found at this address: https://www.fca.org.uk/publication/forms/misconfidentiality-agreement.docx]

# **Market conduct**

Chapter 9A

Trade data

■ Release 49 ● Jul 2025



9A.1 Application

- This chapter applies to: 9A.1.1
  - (1) a trading venue operator; and
  - (2) a systematic internaliser.



# 9A.2 Trade data requirements

# Making trade data available on a reasonable commercial basis

# 9A.2.1

- (1) A *trading venue operator* must make the information published in accordance with articles 3, 4 and 6 to 11 of *MiFIR* available to the public on a reasonable commercial basis and ensure non-discriminatory access to the information.
- (2) A trading venue operator must make available the information in (1) free of charge 15 minutes after publication.
- (3) Paragraph (2) does not apply to a *trading venue operator* when making market data available to the public free of charge.

# 9A.2.2

- (1) A systematic internaliser must ensure that the quotes published in accordance with article 15(1) of MiFIR are accessible to other market participants on a reasonable commercial basis.
- (2) A *systematic internaliser* must ensure that the quotes published in accordance with article 18 of *MiFIR* are made public in a manner which is easily accessible to other market participants on a reasonable commercial basis.
- (3) Paragraph (2) does not apply to a *systematic internaliser* when making market data available to the public free of charge.

# Providing market data on the basis of cost

# 9A.2.3

- (1) The price of market data must be based on the cost of producing and disseminating such data and may include a reasonable margin.
- (2) The cost of producing and disseminating market data may include an appropriate share of joint costs for other services provided by a *trading venue operator* or a *systematic internaliser*.

# Providing market data on a non-discriminatory basis

### 9A.2.4 R

(1) A trading venue operator or systematic internaliser must make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.

- (2) Any differentials in prices charged to different categories of customers must be proportionate to the value which the market data represents to those customers, taking into account:
  - (a) the scope and scale of the market data, including the number of financial instruments covered and their trading volume; and
  - (b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.
- (3) For the purposes of (1), a trading venue operator or systematic internaliser must have scalable capacities in place to ensure that customers obtain timely access to market data at all times on a nondiscriminatory basis.
- 9A.2.5 R
- (1) A trading venue operator or a systematic internaliser must:
  - (a) charge for the use of market data according to the use made by the individual end-users of the market data; and
  - (b) put arrangements in place to ensure that each individual use of market data is charged only once.
- (2) A trading venue operator or a systematic internaliser may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making that data available, having regard to the scale and scope of the data.
- (3) A trading venue operator or a systematic internaliser must provide grounds for the refusal to make market data available on a per user basis and publish those grounds on their webpage.

## Unbundling and disaggregating market data

- 9A.2.6
- A trading venue operator or a systematic internaliser must:
  - (1) make market data available without being bundled with other services: and
  - (2) offer pre-trade and post-trade transparency data separately.

# Transparency

- 9A.2.7 R
- (1) A trading venue operator or a systematic internaliser must disclose the price and other terms and conditions for the provision of the market data in a manner which is easily accessible to the public.
- (2) The disclosure for the purposes of (1) must include:
  - (a) current price lists, including:
    - (i) fees per display user;
    - (ii) non-display fees;
    - (iii) discount policies;
    - (iv) fees associated with licence conditions;
    - (v) fees for pre-trade and for post-trade market data;

- (vi) fees for other subsets of information, including those required in accordance with MiFID RTS 14; and
- (vii) other contractual terms and conditions regarding the current price list;
- (b) advance disclosure with a minimum of 90 days' notice of future price changes;
- (c) information on the content of the market data, including:
  - (i) the number of instruments covered;
  - (ii) the total turnover of instruments covered;
  - (iii) pre-trade and post-trade market data ratio;
  - (iv) information on any data provided in addition to market data; and
  - (v) the date of the last licence fee adaption for market data provided;
- (d) revenue obtained from making market data available and the proportion of that revenue compared with the total revenue of the *trading venue operator* or *systematic internaliser*; and
- (e) information on how the price was set, including the cost accounting methodologies used and the specific principles according to which direct and variable joint costs are allocated and fixed joint costs are apportioned, between the production and dissemination of market data and other services provided by the trading venue operator or systematic internaliser.

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# Chapter 10

Commodity derivative position limits and controls, and position reporting



#### 10.1 **Application**

# Introduction

#### 10.1.1 G

- (1) The purpose of this chapter is to implement articles 57 and 58 of MiFID by setting out the necessary directions, rules and guidance.
- (2) In particular, this chapter sets out the FCA's requirements in respect of provisions derived from:
  - (a) articles 57(1) and 57(6) of MiFID, which require it to establish limits, on the basis of a methodology determined by ESMA, on the size of a net position which a person can hold, together with those held on the person's behalf at an aggregate group level, at all times, in commodity derivatives traded on trading venues and economically equivalent OTC contracts to those commodity derivatives:

[Note: articles 3 and 4 of MiFID RTS 21]

- (b) article 57(8) of MiFID, which requires MiFID investment firms and market operators operating a trading venue which trades commodity derivatives to apply position management controls;
- (c) article 58(1) of MiFID, which requires MiFID investment firms and market operators operating a trading venue which trades commodity derivatives or emission allowances to provide the competent authority with reports in respect of such positions held: and
- (d) article 58(2) of MiFID, which requires investment firms trading in commodity derivatives or emission allowances outside a trading venue to provide the competent authority with reports containing a complete breakdown of their positions held through such contracts traded on a trading venue and economically equivalent OTC contracts, as well as of those of their clients and the clients of those clients until the end client is reached.
- (3) The position limit requirements apply to both authorised persons and unauthorised persons. As such, the MiFI Regulations provide for a separate regulatory framework in relation to such persons. This framework is set out in:
  - (a) Part 3 of the MiFI Regulations ('Position limits and position management controls in commodity derivatives'); and
  - (b) Schedule 1 to the MiFI Regulations ('Administration and enforcement of Part 3, 4 and 5'), which provides for the administration and enforcement of position limits established by

the FCA, and of the reporting of positions in commodity derivatives, emission allowances and economically equivalent OTC contracts.

.....

This chapter complements and adds to the regulatory framework in the *MiFl Regulations* by establishing the applicable position limits.

# Scope and territoriality

# 10.1.2 G

(1) The scope of this chapter is as follows: In respect of position limit requirements in ■ MAR 10.2, a commodity derivative position limit established by the FCA in accordance with ■ MAR 10.2.2D(1) applies regardless of the location of the person at the time of entering into the position and the location of execution.

[Note: article 57(14)(a) of MiFID]

- (2) In respect of position management controls requirements:
  - (a) the requirements contained or referred to in ■MAR 10.3 apply to persons operating a trading venue which trades commodity derivatives in respect of which the FCA is the competent authority; and
  - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, MAR 10.3 applies in the same way as it does to a *UK firm operating a multilateral trading facility* or an *OTF*.
- (3) In respect of position reporting requirements:
  - (a) the position reporting requirements in MAR 10.4 apply to:
    - (i) a regulated market; and
    - (ii) a UK firm or a UK branch of a third country investment firm operating a multilateral trading facility or an OTF,

when operating a trading venue which trades commodity derivatives or emission allowances; and

(b) the position reporting requirements in ■ MAR 10.4 apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

### Structure

#### 10.1.3 G

This chapter is structured as follows:

- (1) MAR 10.1 sets out an introduction to MAR 10, a description of the application of MAR 10 to different categories of person, an explanation of the approach taken to the UK transposition of articles 57 and 58 of MiFID, the scope and territoriality of this chapter, and the structure of this chapter.
- (2) MAR 10.2 sets out the position limit requirements.
- (3) MAR 10.3 sets out the position management controls requirements.
- (4) MAR 10.4 sets out the position reporting requirements.

(5) ■ MAR 10.5 sets out other reporting, notification and information requirements.



# 10.2 Position limit requirements

# Establishing, applying and resetting position limits

### 10.2.1 G

- (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
  - (a) Regulation 16(1) imposes an obligation on the FCA to establish position limits in respect of commodity derivatives traded on trading venues in the United Kingdom and economically equivalent OTC contracts;
  - (b) Regulation 16(2) imposes an obligation on the FCA to establish position limits on the basis of all positions held by a person in the contract to which the limit relates and those held on the person's behalf at an aggregate group level;
  - (c) Regulation 16(4) imposes an obligation on the FCA to publish the position limits it establishes in a manner which the FCA considers appropriate;
  - (d) Regulation 18 imposes an obligation on the FCA to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a commodity derivative that a person can hold;
  - (e) Regulation 19(1) imposes an obligation on the FCA to establish position limits in accordance with ESMA's methodology, unless an exceptional case exists under Regulation 25 of the MiFI Regulations;
  - (f) Regulation 19(2) imposes an obligation on the FCA to review position limits it has established in the presence of certain factors;
  - (g) Regulation 19(3) imposes an obligation on the FCA to establish a new position limit following its review if it believes that the limit should be reset;
  - (h) [deleted]
  - (i) [deleted]
  - (j) Regulation 23 imposes general obligations on the FCA in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to persons, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading;
  - (k) Regulation 25(1) prohibits the FCA from establishing position limits which are more restrictive than permitted under MiFID RTS 21 unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

- (I) Regulation 25(2) to Regulation 25(5) impose obligations on the FCA where it establishes position limits which are more restrictive than permitted under MiFID RTS 21in accordance with Regulation 25(1) of the MiFI Regulations. The obligations are that the FCA must publish that position limit on its website, and not apply that position limit for more than six months from the date of publication unless further subsequent six-month application periods for that limit are objectively justified and proportionate;
- (m) [deleted]
- (n) Regulation 27 empowers the FCA to require a person to provide information on, or concerning, a position the person holds, or trades the person has undertaken, or intends to undertake, in a contract to which a position limit relates.
- (2) MiFID RTS 21 provides a methodology for the calculation of position limits on commodity derivatives, and rules for the calculation of the net position held by a person in a commodity derivative.
- (a) MiFID RTS 21 provides that the FCA can establish different position limits for different times within the spot month period or other months' period of a commodity derivative, and for the spot month period, those position limits shall decrease towards the maturity of the commodity derivative, and shall take into account the position management controls of trading venues.

[Note: article 57 of MiFID]

## **Application of position limits**

10.2.2 D

- (1) A person must comply at all times with commodity derivative position limits established by the FCA, published at www.fca.org.uk.
- (2) A direction made under (1) applies where a commodity derivative is traded on a trading venue in the United Kingdom.
- (3) Position limits established under (1) shall apply to the positions held by a person together with those held on its behalf at an aggregate

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- group level (subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*).
- (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.
- (5) Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.

[Note: articles 57(1) and 57(14) of MiFID; and MiFID RTS 21 in respect of ESMA's methodology for competent authorities to calculate position limits]

# Non-financial entity exemption

10.2.3 G

- (1) Regulation 17 of the MiFI Regulations regulates the position limit exemption applicable to positions in a commodity derivative held by or on behalf of a non-financial entity which are objectively measurable as reducing risks directly relating to the commercial activity of that non-financial entity, and which is approved by the FCA in accordance with the relevant criteria and procedures. Regulation 17(1) imposes an obligation on the FCA to disregard such positions, when calculating the position held by such entities in respect of a commodity derivative to which a position limit applies.
- (2) Regulation 17(2) of the *MiFI Regulations* enables the *FCA* to receive applications from *non-financial entities* for the purposes of obtaining an exemption from the position limits which it sets and in such form as the *FCA* may direct.
- (3) MiFID RTS 21 stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.
- (4) MiFID RTS 21 clarifies that a non-financial entity shall notify the FCA if there is a significant change to the nature or value of that non-financial entity's commercial activities, or its trading activities in commodity derivatives. The obligation arises where the change is relevant to the description of the nature and value of the non-financial entity's trading and positions held in commodity derivatives and their economically equivalent OTC contracts in a position limit exemption application it has already submitted. In this case, a non-financial entity must submit a new application if it intends to continue to make use of the exemption.

[Note: article 57(1) of MiFID]

10.2.3A G

A trading venue operator can receive applications from non-financial entities and financial entities for the purposes of obtaining an exemption from the position limits it sets. The different types of exemptions and relevant criteria and procedures are set out in MAR 10.2.6R to MAR 10.2.28G.

Non-financial entity exemption application

10.2.4 D

[deleted]

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- 10.2.5 G [deleted]
- R 10.2.6 A trading venue operator may determine that a non-financial entity's position for the purposes of a position limit does not include a position it holds, or one held on its behalf, which is:
  - (1) objectively measurable as reducing risks directly relating to its commercial activity; and
  - (2) approved by the trading venue operator setting the position limit in accordance with:
    - (a) the relevant criteria and methods in MAR 10.2.7R; and
    - (b) the relevant procedure in MAR 10.2.9R to MAR 10.2.10R.
- A trading venue operator may make the determination in MAR 10.2.6R 10.2.7 where it is satisfied that the following criteria are met:
  - (1) a position held by a non-financial entity:
    - (a) reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial entity or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business: or
    - (b) qualifies as a hedging contract pursuant to UK-adopted IFRS; and
  - (2) the position held by the non-financial entity is capable of being unwound in an orderly way.
- 10.2.8 For the purposes of discharging the obligation in ■ MAR 10.2.7R(2), a trading venue operator should consider its own rules and appropriate metrics, such as the size of the position relative to the open interest in the relevant market and market conditions, including liquidity.
- 10.2.9 When making a determination in accordance with ■ MAR 10.2.6R, a trading venue operator must require a non-financial entity to submit to it at least the following information, at the time of its application and in relation to the following 12 months, which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:
  - (1) a description of the nature and value of the non-financial entity's commercial activities in the *commodity* underlying the *commodity* derivative for which an exemption is sought;
  - (2) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in related OTC contracts;

# MAR 10 : Commodity derivative position limits and controls, and position reporting

- (3) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives; and
- (4) an explanation of how the *non-financial entity's* use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

# 10.2.10 R

A qualifying risk-reducing position taken on its own or in combination with other derivatives is one, for the purposes of ■ MAR 10.2.6R, for which the non-financial entity:

- (1) describes the following in its internal policies:
  - (a) the types of commodity derivative contract included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;
  - (b) the link between the portfolio and the risks that the portfolio is mitigating; and
  - (c) the measures adopted to ensure that the positions concerning those contracts serve no other purpose than covering risks directly related to the commercial activities of the *non-financial entity*, and that any position serving a different purpose can be clearly identified; and
- (2) is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying *commodity*, time horizon and any other relevant factors.

#### 10.2.11 R

A trading venue operator must require a non-financial entity to notify it:

- (1) promptly if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives, and the change is relevant to the information required in MAR 10.2.9R;
- (2) promptly of a breach of any condition relating to an exemption; and
- (3) in any event, on an annual basis, of its intention to rely on the exemption or otherwise, and supplying any changes to the information previously submitted in accordance with MAR 10.2.9R.

#### 10.2.12 R

A trading venue operator must notify the FCA:

- (1) promptly of an exemption granted to a *non-financial entity* in accordance with MAR 10.2.6R, including any conditions such as an *exemption ceiling* attached to the exemption; and
- (2) on an annual basis of all exemptions from position limits, granted by it to *non-financial entities*, including:
  - (a) any exemption ceilings;

- (b) positions that exceeded those exemption ceilings; and
- (c) steps taken to address resulting risks.
- 10.2.13 A trading venue operator must review exemptions from position limits granted to non-financial entities:
  - (1) at least on an annual basis; and
  - (2) whenever it receives a notification as described in MAR 10.2.11R.

# Pass-through hedging exemption

- A trading venue operator may determine that a financial entity's position for 10.2.14 the purposes of a position limit does not include a position it holds or one held on its behalf for the purposes of enabling a non-financial entity to benefit from the hedging exemption.
- 10.2.15 A trading venue operator may determine that a financial entity's (A's) position for the purposes of a position limit does not include a position it holds or one held on its behalf when it:
  - (1) arises under a commodity derivative traded on a trading venue; and
  - (2) is entered into by A on a trading venue for the purpose of off-setting the risk arising from a contract with a non-financial entity (B) facilitating hedging activity by B.
- 10.2.16 Positions for the purposes of ■ MAR 10.2.14R may include a position in a contract a financial entity (A) enters into on a trading venue with a nonfinancial entity (B) to enable B to benefit from the hedging exemption. For the purposes of ■ MAR 10.2.15R, they may also include a position in a contract entered into on a trading venue by A to offset an OTC position it has entered into with B, when B conducts hedging activity.
- 10.2.17 R A trading venue operator may only make the determination with regard to ■ MAR 10.2.15R when a *financial entity* has obtained written confirmation from a non-financial entity that the position entered into facilitates hedging activity.
- 10.2.18 When making a determination in accordance with ■ MAR 10.2.14R or ■ MAR 10.2.15R, a trading venue operator must require a financial entity to submit to it at least the following information at the time of its application and where possible in relation to the following 12 months:
  - (1) a description of the financial entity's risk-mitigation services in the commodity underlying the commodity derivative for which an exemption is applied; and
  - (2) a description of the financial entity's trading activity and positions in commodity derivatives for which an exemption is applied, including in OTC commodity derivatives that relate to providing risk-mitigation services.

# MAR 10 : Commodity derivative position limits and controls, and position reporting

#### 10.2.19

R

A trading venue operator must require a financial entity to notify it:

- (1) promptly if there is a significant change relevant to the information set out in MAR 10.2.18R; and
- (2) on an annual basis of its intention to rely on the exemption or otherwise, and supplying any changes to the information previously submitted in accordance with MAR 10.2.18R, including information relating to the period for the next 12 months.

### 10.2.20 R

A trading venue operator must notify the FCA:

- (1) promptly of an exemption granted to a *financial entity* in accordance with MAR 10.2.14R or MAR 10.2.15R, including any conditions such as an exemption ceiling attached to the exemption; and
- (2) on an annual basis of all exemptions from position limits granted by it to *financial entities*, including:
  - (a) exemption ceilings;
  - (b) positions that exceeded those exemption ceilings; and
  - (c) steps taken to address resulting risks.

# 10.2.21 R

A trading venue operator must review all exemptions from position limits granted to financial entities:

- (1) at least on an annual basis; and
- (2) whenever it receives a notification as described in MAR 10.2.19R(1).

## Liquidity provider exemption

#### 10.2.22 R

A trading venue operator may determine that a position limit does not apply to a position held by a person for a position that is objectively measurable as resulting from a transaction consistent with obligations to provide liquidity on a trading venue.

#### 10.2.23 R

A *trading venue operator* may make the determination in ■ MAR 10.2.22R where:

- (1) it receives an application from a *person* for these purposes;
- (2) the obligations to provide liquidity are clearly defined and relate to observable metrics of market quality, including depth and tightness of the spread;
- (3) the position arises from discharge of the *person's* obligation as a liquidity provider; and
- (4) the exemption is temporary in duration and the *person* reduces its position as soon as reasonably practicable prior to the expiry of the contract.

A trading venue operator must ensure that an application for the purposes of MAR 10.2.22R provide as a minimum a description of the liquidity the applicant provides in respect of the commodity derivatives for which an exemption from a position limit is being requested.

10.2.25

10.2.24

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A trading venue operator must notify the FCA;

- (1) promptly of an exemption granted to it in accordance with ■ MAR 10.2.22R, including any conditions such as an exemption ceiling attached to the exemption; and
- (2) on an annual basis of all exemptions from position limits granted by it to in accordance with ■ MAR 10.2.22R, including:
  - (a) any exemption ceilings;
  - (b) positions that exceeded those exemption ceilings; and
  - (c) steps taken to address resulting risks.

# All exemptions

10.2.26

A trading venue operator must:

- (1) provide the FCA, upon request, with such information as the FCA may reasonably require to enable a fuller understanding of the basis for granting an exemption to which ■ MAR 10.2 applies;
- (2) store information in an easily retrievable way that is accessible for future reference by the FCA for the purposes of (1); and
- (3) ensure that its systems can identify:
  - (a) when an exemption under MAR 10.2 is being used in relation to a market participant's position in a commodity derivative; and
  - (b) which exemption is being used.

10.2.27

- (1) A trading venue operator may establish an exemption ceiling for the purposes of any of the exemptions in ■ MAR 10.2 where to do so would mitigate the risk that large positions otherwise pose to the orderly pricing and settlement of a critical contract.
- (2) A trading venue operator must explain in its rules how it will apply and determine an exemption ceiling, including how and when it may be amended.

10.2.28

G

The use of an exemption ceiling can enable a trading venue operator to ensure that exempt positions are subject to appropriate management and oversight, to mitigate risks to orderly trading and settlement.



# **10.3** Position management controls

# **Application**

10.3.1 G

The application of this section is set out in the following table:

Type of firm	Applicable provisions
a UK market operator operating a trading venue	MAR 10.3.2G and MAR 10.3.4G
a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF	MAR 10.3.3R to MAR 10.3.5G

# Position management controls applicable to UK market operators operating a trading venue

10.3.2 G

A *UK market operator* operating a *trading venue* which trades *commodity derivatives* must apply position management controls on that *trading venue*, in accordance with paragraph 7BA of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[Note: article 57(8) to 57(10) of MiFID]

Position management controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF

10.3.3 R

This rule applies to a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.

A *firm* must apply position management controls which enable an *MTF* or *OTF* at least to:

monitor the open interest positions of persons;

access information, including all relevant documentation, from *persons* about:

the size and purpose of a position or exposure entered into;

any beneficial or underlying owners;

any concert arrangements; and

any related assets or liabilities in the underlying market;

require a person to terminate or reduce a position on a temporary or permanent basis and unilaterally to take appropriate action to ensure the termination or reduction if the person does not comply; and

require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large and dominant position.

The position management controls in paragraph (2) must take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading and must:

be transparent;

be non-discriminatory; and

specify how the controls apply to persons.

A firm must inform the FCA of the details of the position management controls in relation to each MTF or OTF it operates which trades commodity derivatives.

[Note: article 57(8) to 57(10) of MiFID]

# Supervision of position management controls

10.3.4 G An operator of a trading venue referred to in ■ MAR 10.3.1G may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of compliance with its position management controls obligations.

# Position management controls: Procedure for informing the

10.3.5 G A firm must comply with the obligation in ■ MAR 10.3.3R(4) by completing the form available at www.fca.org.uk.



# 10.4 Position reporting

# **Application**

10.4.1 G

The application of this section is set out in the following table:

Type of firm	Applicable provisions
Regulated market	MAR 10.4.2G
UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF	MAR 10.4.3R to MAR 10.4.6G
MiFID investment firm	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
UK branch of a third country invest- ment firm when not operating a mul- tilateral trading facility or an OTF	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
Member, participant or a <i>client</i> of a <i>UK trading venue</i>	MAR 10.4.7D

# Position reporting by UK regulated markets

10.4.2 G

A regulated market which trades commodity derivatives or emission allowances must provide position reports in accordance with paragraph 7BB of the Schedule to the Recognition Requirements Regulations, as inserted by the MiFI Regulations.

[Note: article 58(1) of MiFID]

# Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports

10.4.3 R

- (1) This rule applies to a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.
- (2) A *firm* must make public and provide to the *FCA* a weekly report with the aggregate positions held by the different categories of *persons* for the different *commodity derivatives* or *emission allowances* traded on the *trading venue*, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:
  - (a) the number of long and short positions held by such categories;
  - (b) changes in those positions since the previous report;

- (c) the percentage of the total open interest represented by each category; and
- (d) the number of persons holding a position in each category, as specified in ■ MAR 10.4.4R.
- (3) The firm must provide the FCA with a complete breakdown of the positions held by all persons, including the members or participants and clients, as well as those of their clients until the end client is reached, on the trading venue on a daily basis.
- (4) For the weekly report mentioned in (2) above, the firm must differentiate between:
  - (a) positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
  - (b) other positions.

[Note: article 58(1) of MiFID, MiFID ITS 4 on position reporting and MiFID ITS 5 on the format and timing of weekly position reports]

Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances

10.4.4

A firm must classify persons holding positions in commodity derivatives or emission allowances according to the nature of their main business, taking account of any applicable authorisation or registration, as:

- (1) investment firms or credit institutions; or
- (2) investment funds, either as a UCITS, or an AIF or an AIFM; or
- (3) other financial institutions, including:
  - (a) insurance undertakings and reinsurance undertakings as defined in the Solvency II Directive; and
  - (b) institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement; or
- (4) commercial undertakings; or
- (5) in the case of emission allowances, operators with compliance obligations under the Emission Allowance Trading Directive or the trading scheme order 2020.

[Note: article 58(4) of MiFID]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA

D 10.4.5

- (1) This direction applies to:
  - (a) a UK firm operating a multilateral trading facility or an OTF; and

- (b) a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.
- (2) A firm shall report to the FCA:
  - (a) (where it meets the minimum threshold as specified in article 83 of the MiFID Org Regulation) the weekly report referred to in
     MAR 10.4.3R(2), by using the form set out in Annex I of MiFID ITS 4, and publish it on its website; and
  - (b) in respect of the daily report referred to in MAR 10.4.3R(3):
    - (i) by using the form set out in Annex II of *MiFID ITS 4* available at https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives; and
    - (ii) in each case, the report must be provided to the FCA by 21:00 GMT the following business day.

[Note: MiFID ITS 4 on position reporting]

# Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

10.4.6 G

For the purposes of making the weekly report referred to under MAR 10.4.3R(2), the FCA will accept an email containing a link to the report, as published on the firm's website. Emails should be sent to the FCA at COT\_reports@fca.org.uk.

# Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

10.4.7 D

- (1) This direction applies to a member, participant or a *client* of a *trading* venue.
- (2) A person in (1) must report to the relevant operator of a trading venue the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.
- (3) [deleted]

[Note: article 58(3) of MiFID]

# MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA

10.4.8 D

- (1) This direction applies to:
  - (a) a MiFID investment firm; and
  - (b) a UK branch of a third country investment firm.
- (2) An investment firm in (1) trading in a commodity derivative or emission allowance outside a trading venue must, where the FCA is the competent authority of the trading venue where that commodity derivative or emission allowance is traded, provide the FCA with a report containing a complete breakdown of:

- (a) their positions taken in those commodity derivatives or emission allowances traded on a trading venue;
- (b) economically equivalent OTC contracts; and
- (c) the positions of their clients and the clients of those clients until the end client is reached, in accordance with article 26 of MiFIR.
- (3) The report in (2) must be submitted to the FCA, for each business day, by 21:00 GMT the following business day, using the form set out in Annex II of MiFID ITS 4 available at https://www.fca.org.uk/markets/ mifid-ii/commodity-derivatives.
- (4) The obligation in (2) does not apply where there is a central competent authority for the commodity derivative other than the FCA.

[Note: 58(2) of MiFID, and MiFID ITS 4 on position reporting]

10.4.9 D [deleted]

> EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA

10.4.10 D [deleted]

10.4.11 G

- (1) This guidance applies to persons subject to MAR 10.4.8D(2).
- (2) A firm subject to MAR 10.4.8D(2)may use a third party technology provider to submit to the FCA the report referred to in ■ MAR 10.4.8 D(2) provided that it does so in a manner consistent with MiFID. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the FCA MDP onboarding application form.
- (3) MAR 10.4.11.G(2) applies to a trading venue subject to MAR 10.4.
- (4) A firm subject to MAR 10.4.8D(2) may arrange for the trading venue where that commodity derivative or emission allowance is traded to provide the FCA with the report provided that it does so in a manner consistent with MiFID. The firm will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The firm should populate field 5 of MiFID ITS 4 Annex II with its own reporting entity identification.

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#### 10.5 Other reporting, notifications and information requirements

# Information requirement

10.5.1 G Regulation 27 of the MiFI Regulations provides the FCA with the power to:

- (1) require a person to provide information including all relevant documentation, on, or concerning:
  - (a) a position the person holds in a contract to which a position limit relates: and
  - (b) trades the person has undertaken, or intends to undertake, in a contract to which a position limit relates; and
- (2) require an operator of a *trading venue* to provide information including all relevant documentation on, or concerning, trades a person has undertaken, or intends to undertake in a contract to which a position limit relates.

[Note: article 69(2)(j) of MiFID]

G 10.5.2

Power to intervene The following provisions of the MiFI Regulations regulate the power of the FCA to intervene in respect of position limits:

- (1) Regulation 28 provides that the FCA may, if it considers necessary, limit the ability of any person to enter into a contract for a commodity derivative, restrict the size of positions a person may hold in such a contract, or require any person to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the FCA in accordance with article 57 of MiFID to which the contract relates; and
- (2) Paragraph 5 of Schedule 1 provides that the FCA must maintain arrangements designed to enable it to determine whether persons on whom the FCA imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such persons.

[Note: article 69(2)(o) and 69(2)(p) of MiFID]

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# Reporting requirements

G 10.5.3

The following provisions of the MiFI Regulations regulate the power of the FCA to impose reporting requirements in respect of positions taken in commodity derivatives and emission allowances:

- (1) Paragraph 8 of Schedule 1 provides that a person must provide the FCA with information in respect of its compliance or non-compliance with position limit requirements, as the FCA may direct; and
- (2) Paragraph 5 of Schedule 1 provides that the FCA must maintain arrangements designed to enable it to determine whether persons on whom the FCA imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such persons.

[Note: article 69(2)(j) of MiFID]

# Breaches of MAR 10 by unauthorised persons

10.5.4 D

- (1) An unauthorised person to which this chapter applies must notify the FCA of:
  - (a) a breach of a direction in this chapter;
  - (b) a breach of a directly applicable provision imposed by MiFIR or any onshored regulation adopted under MiFID or MiFIR; and
  - (c) a breach of any requirement imposed by or under the MiFI Regulations which relates to this chapter.
- (2) Notifications under (1) must be made immediately if the person becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur in the foreseeable future.

# Notifications by unauthorised persons: non-financial entity exemption applications

10.5.5

■ SUP 15.3.13G and ■ SUP 15.3.14G apply to notifications of an application by an unauthorised person for the non-financial entity exemption under regulation 17 of the MiFI Regulations as if the person is a firm to which ■ SUP 15.3.11R applies.

# Breaches of MAR 10 by authorised persons

G 10.5.6

Firms should refer to ■ SUP 15.3 (General notification requirements) generally, and in particular ■ SUP 15.3.11R, in respect of the following:

- (1) a breach of a rule or direction in this chapter;
- (2) a breach of a directly applicable provision imposed by MiFIR or any onshored regulation adopted under MiFID or MiFIR; and
- (3) a breach of any requirement imposed by or under the MiFI Regulations which relates to this chapter.

# Territoriality

10.5.7 G

The powers of the FCA referred to in MAR 10.5.1G to MAR 10.5.3G can be applied to a person regardless of whether the person is situated or operating in the UK or abroad, where the relevant position relates to a commodity derivative or emission allowance for which the FCA is responsible for setting a position limit, or economically equivalent OTC contracts.

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# **Decision and appeal procedures**

10.5.8 G

The power of the FCA referred to in ■ MAR 10.5.2G is exercisable subject to the decision-making procedures in ■ DEPP 2 Annex 2G (Supervisory notices) (and other provisions in DEPP, as appropriate).

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Application form for a non-financial entity for an exemption from compliance with position limits

[Editor's Note: To follow]

## Chapter 12

# Post-trade risk reduction services



#### 12.1 **Purpose and application**

#### Purpose

- ..... The purpose of this chapter is to specify the eligible post-trade risk reduction 12.1.1 G services giving rise to exemptions to one or more relevant obligations and transparency obligations.
- G 12.1.2 The *rules* in this chapter also set out applicable conditions for activities or transactions carried out as part of a post-trade risk reduction service to be exempt from one or more of the relevant obligations or transparency obligations.

#### **Application**

- 12.1.3 This chapter applies to:
  - (1) post-trade risk reduction service providers;
  - (2) relevant financial counterparties;
  - (3) relevant non-financial counterparties;
  - (4) third country investment firms;
  - (5) firms subject to COBS 11.2A; and
  - (6) transparency investment firms and trading venue operators subject to transparency obligations.

.....

12



12.2 Exemption from the relevant obligations

12.2.1 R A relevant obligation does not apply in respect of a transaction carried out as part of an eligible post-trade risk reduction service.

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12.3 **Exemption from transparency** obligations

The *transparency obligations* do not apply in respect of a transaction carried out as part of an *eligible post-trade risk reduction service*. 12.3.1



#### 12.4 Characteristics of an eligible posttrade risk reduction service

- 12.4.1 R A PTRRS meets the criteria for the purposes of MAR 12.2 and MAR 12.3 where it:
  - (1) is provided by a *post-trade risk reduction service provider* which is not:
    - (a) affiliated to the market participants to whom the service is provided; and
    - (b) a party to a transaction resulting from the PTRRS;
  - (2) is operated on the basis of non-discretionary rules set in advance by the *post-trade risk reduction service provider* that are based on specified parameters; and
  - (3) results in a transaction that binds all the participants.

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12.5 Applicable conditions for a posttrade risk reduction service provider to be exempt from the relevant obligations and transparency obligations

- 12.5.1 A post-trade risk reduction service provider must perform a PTRRS in accordance with an eligible agreement.
- 12.5.2 R (1) A post-trade risk reduction service provider must make public in relation to its service of portfolio compression:
  - (a) the total number of transactions and aggregate volume submitted for compression; and
  - (b) the total number of transactions and aggregate volume of derivatives terminated or modified.
  - (2) A post-trade risk reduction service provider must make public in relation to its PTRRS, other than portfolio compression:
    - (a) the total number of new derivatives transactions; and
    - (b) the value of these transactions expressed in terms of aggregate volume.
  - (3) A post-trade risk reduction service provider must make public the information in (1) and (2) no later than the close of the following business day after a risk reduction has been completed.
- 12.5.3 A post-trade risk reduction service provider must maintain complete and accurate records of all the PTRRS which they organise or participate in and make the records available to the FCA promptly upon request.



#### **12.6** Notification requirement

- 12.6.1 R A person must, prior to providing a PTRRS for the first time, notify the FCA of:
  - (1) its intention to rely upon the exemption in MAR 12.2.1R and MAR 12.3.1R;
  - (2) the details of each type of *eligible post-trade risk reduction service* that it provides; and
  - (3) a variation in the type of *eligible post-trade risk reduction service* it provides.
- 12.6.2 R A post-trade risk reduction service provider must notify the FCA prior to ceasing to provide an eligible post-trade risk reduction service.
- A notification under MAR 12.6.1R and MAR 12.6.2R should be by way of electronic mail to an address for the *firm's* usual supervisory contact or online submission via the *FCA's* website at www.fca.org.uk, in accordance with SUP 15.7.5AR.

#### MAR TP 1

#### **Transitional Provisions**

GEN contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

1) Transitional Provisions for MAR 1 (Market abuse) (known previously as the Code of Market Conduct)

There are no transitional provisions for MAR 1 (Market Abuse).

2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)

[deleted]

3) Transitional provisions for MAR 6 (systematic internaliser reporting requirements)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

(1)	(2) Material provision to which trans- ition al provi- sion applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	MAR 2	R	Expired		
2	MAR 6	R	Expired		
3	MAR 8.3		This section as it was in force on 28 June 2018 continues to apply to a benchmark administrator in relation to a specified benchmark until that administrator becomes authorised or registered under the benchmark regulation, or ceases to be authorised for administering a specified benchmark.	From 29 June 2018	Already in force
4	MAR 8.4.2	R	This rule only applies to a benchmark contributor from the point at which the administrator of the benchmark to which it contributes becomes authorised or registered under the benchmarks regulation.	From 29 June 2018	29 June 2018
6	MAR 8.6.2	R	This rule only applies to a benchmark contributor from the point at which the administrator of the benchmark to which it contributes becomes authorised or registered under the benchmarks regulation.	From 29 June 2018	29 June 2018

#### MAR TP 2

## Transitional provisions relating to trading venue operators and transparency investment firms TP 2.1

	Application	า		
1.1	R	(1)	The <i>rules</i> in	MAR TP 2 apply in respect of:
			(a)	trading venue operators;
			(b)	transparency investment firms; and
			(c)	APAs.
		(2)	The <i>rules</i> ap vember 2025	ply in respect of the period 1 December 2024 to 30 No- i, except where indicated otherwise.
	Trading ve	nue operato	rs	
1.2	R	ously arisin	ig under <i>MiFli</i>	or is subject to the transparency requirements previ- R, including <i>MiFID RTS 2</i> , as it had effect immediately and applied to it, except where MAR TP 2 1.4R applies.
1.3	G	MAR TP 2 1.2 venue ope	•	r continuity of transparency requirements for trading
1.4	R	venue oper Chapter 2	rator is not su of <i>MiFIR</i> in re	31 March 2025 and 30 November 2025, a <i>trading</i> bject to a pre-transparency requirement under Title II, spect of a <i>request for quote system</i> or voice trading by the <i>trading venue operator</i> .
	Systematic	internalisers	S	
1.5	R	arising und	ler <i>UK MiFIR</i> ,	is subject to the transparency requirements previously including <i>MiFID RTS 2</i> , as it had effect immediately bend applied to it, except where MAR TP 2 1.7R applies.
1.6	G	MAR TP 2 1.5		r continuity of transparency requirements for system-
1.7	R	atic international	aliser is subjecting under artic	1 December 2024 and 30 March 2025 only, a <i>system</i> t to the pre-trade transparency requirements previle 18 of <i>UK MiFIR</i> , including <i>MiFID RTS 2</i> , as it had ef-1 December 2024 and applied to it.
	Transparer	cy investme	nt firms (exce	pt systematic internalisers) and APAs
1.7A	R	are subject including <i>N</i>	to the transp	ant firm (except a systematic internaliser) and an APA parency requirements previously arising under MiFIR, and MiFID RTS 3, as it had effect immediately before 1 lied to them.
1.7B	G			or continuity of transparency requirements for <i>trans</i> -s (except <i>systematic internalisers</i> ) and <i>APAs</i> .

## **MAR TP 3 Transitional provisions relating to trading venue operators**

iransitional	provisions re	elating to trac	ng venue o	perators
	Application			
1.1	R		23 applies in respect ch 2025 to 5 July 202	of <i>trading venue op-</i> 26.
	Position manageme	nt controls		
1.2	R		perator must notify t sich of the following:	he FCA prior to im-
		(1)	the risk assessment tional reporting ar analysis;	
		(2)	accountability thre	sholds;
		(3)	view of position lir assessment framew	n and continuing remit setting, the risk work, accountability rket risk analysis, inof senior managements and controls,
		(4)	sition limits and ac olds, including the lated contracts, rel	for and setting of po- countability thresh- identification of re- ated OTC contracts eligible for netting;
		(5)	policies and proced	dures relating to:
			(a)	the granting of position limit exemptions for the position limits it sets, including the approach to the setting of exemption ceilings; and
			(b)	position limit breaches including resolution and ac- cess to enforce- ment tools; and
		(6)	arrangements for t formation with rel	
1.3	G	ance with MAR TP 3.	consider and assess	s the FCA in accordsuch time as is necesthe relevant matters,
	Additional reportir	ng		

1.4 R		A <i>trading venue operator</i> must notify the <i>FCA</i> promptly when it decides to require additional reporting to that required by MAR 10.4, including in respect of OTC positions, to
		ensure the proper monitoring of risks to its markets and to protect orderly pricing and settlement conditions in relation to the <i>commodity derivatives</i> traded on its systems.

### Schedule 1 Record keeping requirements

Sch 1.1 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MAR 7A.3.8R	Algorithmic and high- frequency algorithmic trading	Records necessary to meet MAR 7A.3.7R, and high-frequency algo- rithmic trading records and quotes	On initiation of algorithmic and high-frequency algorithmic trading strategies	5 years, or as other- wise pro- vided for high-fre- quency al- gorithmic trading re- cords and quotes in MiFID RTS 6
MAR 7A.4.6R	Direct elec- tronic ac- cess pro- viders' sys- tems and controls	Records necessary to meet MAR 7A.4.2R and MAR 7A.4.5R	On initiation of direct electronic access provision	5 years
MAR 8.2.10 R	Benchmark submissions	Information in MAR 8.2.10 R and MAR 8.2.11 G	When making a benchmark submission	5 years
MAR 8.3.12A R	Benchmark submissions	Information in MAR 8.3.12A R and MAR 8.3.12B G	When using a benchmark submission to determine a specified benchmark	5 years

MAR Sch 1/2

## **Schedule 2 Notification requirements**

#### Sch 2.1 G

This schedule outlines the notification requirements detailed in MAR where notifications should be provided to the FCA.

Sch 2.2 G Notification requirements

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Handbook Reference	Matter to be notified	Contents of Noti- fication	Trigger event	Time allowed
MAR 5.3A.3R(4)	Market making agreements	Content of mar- ket making agreements	Upon formation of a binding written agreement	Without delay
MAR 5.3A.8R	Trading halts on material markets	Information that trading is halted in a financial instrument	Upon trading halt	Without delay
MAR 5.6.1R(1)	Non-compliant, disorderly or ab- usive trading	Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve mar- ket abuse	Upon occurrence of the breach, conditions or conduct	Without delay
MAR 5.6A.1R(3)	Suspension and removal of financial instruments	Information of the suspension or removal of a financial in- strument and any related or referenced de- rivative	Upon suspension or removal	Without delay
MAR 5A.5.3R(4)	Market making agreements	Content of mar- ket making agreements	Upon formation of a binding written agreement	
MAR 5A.5.8R	Trading halts on material markets	Information that trading is halted in a financial instrument	Upon trading halt	Without delay

Handbook Reference	Matter to be notified	Contents of Noti- fication	Trigger event	Time allowed
MAR 5A.8.1R(1)	Non-compliant, disorderly or ab- usive trading	Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve mar- ket abuse	Upon occurrence of the breach, conditions or conduct	Without delay
MAR 5A.9.1R(3)	Suspension and removal of financial instruments	Information of the suspension or removal of a financial in- strument and any related or referenced de- rivative	Upon suspension or removal	Without delay
MAR 6.4.1R	Systematic in- ternaliser status	Information of gaining or ceasing systematic internaliser status	Upon becoming or ceasing to be a systematic internaliser	Without delay
MAR 7A.3.6R	Engaging in al- gorithmic trading	Information that a member of a trading venue is engaging in al- gorithmic trading	Upon engage- ment in <i>algo-</i> <i>rithmic trading</i>	Without delay
MAR 7A.4.4R	Provision of <i>DEA</i> services	Information that a <i>firm</i> is providing <i>DEA</i> services	Upon engage- ment in <i>DEA</i> provision	Without delay
MAR 5.6.2R(1)	Proposal to change fee incentive scheme	Summary of proposal in the form set out in Annex 1	Proposal com- municated to members	Without delay
MAR 5.6.2R(2)	Change to fee incentive scheme	Summary of change	Change pub- lished or noti- fied to members	Without delay
MAR 8.3.17 R	Reasonable pos- sibility of not be- ing able to hold sufficient fin- ancial resources	Full details to- gether with rel- evant financial information	Occurrence	As soon as practicable
MAR 9.2B.5 (3)	Any planned sig- nificant changes to IT systems	Summary of changes	Decision to make the planned change	Without delay
MAR 9.2B.6(4)	Breaches of the physical and electronic secur- ity measures re- ferred to in MAR 9.2B.6 R(1) to MAR 9.2B.6 R(3)	Full details of the breach, in- cluding an incid- ent report, indic- ating the nature of the incident, the measures ad- opted to cope with the incid- ent and the initi	Occurrence	Without delay

Handbook Reference	Matter to be notified	Contents of Noti- fication	Trigger event	Time allowed
		atives taken to prevent similar incidents		
MAR 9.2B.10R(8)	Errors or omissions in transaction reports	Summary of the error or omission	Occurrence	Without delay
MAR 9.3.10R(2)	Non-compliance with any <i>rule</i> in MAR 9 or other regulatory ob- ligation	Reasons for non- compliance	Occurrence	As soon as reas- onably practicable

MAR Sch 2/4

## Schedule 3 Fees and other required payments

#### Sch 3.1 G

There are no requirements for fees or other payments in MAR.

MAR Sch 3/2

## Schedule 4 Powers Exercised

Sch 4.1 G [deleted]

Sch 4.2 G [deleted]

## Schedule 5 Rights of action for damages

#### Sch 5.1 G

- 1. The table below sets out the *rules* in *MAR* contravention of which by an *authorised* person may be actionable under section 138D of the *Act* (Actions for damages) by a person who suffers loss as a result of the contravention.
- 2. If a "yes" appears in the column headed "For private person?", the *rule* may be actionable by a " *private person* " under section 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
- 3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a "private person" is:
  - i. any individual, except when acting in the course of carrying on a *regulated* activity; and
  - ii. any *person* who is not an individual, except when acting in the course of carrying on business of any kind;but does not include a government, a local authority or an international organisation.
- 4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of *person* by whom the *rule* is actionable is given.

#### Sch 5.2 G

Chapter / Appendix	Section / Annex	Paragraph	For Private Person?	Removed	For other person?
MAR 1 (no rules)					
All rules in MAR 3 except MAR 3.5.7 E			Yes	Yes MAR 3.1.5 R	No
MAR 4 (all rules)			Yes	No	No

## Schedule 6 Rules that can be waived

#### Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*.