FINANCIAL CONDUCT AUTHORITY

Policy Statement

PS23/4

# Improving Equity Secondary Markets

May 2023

## This relates to

Consultation Paper 22/12
which is available on our website at
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## Contents

**1.** Summary 3

**2.** The wider context 5

**3.** Our response to feedback on post-trade transparency 11

**4.** Our response to feedback on waivers from pre-trade transparency 33

**5.** Our response to feedback on the tick size regime 37

**6.** Our response to feedback on improving market-wide resilience during outages 39

**7.** Our response to feedback on the UK market for retail orders 42

**8.** Cost benefit analysis 44

**Annex 1**
List of non-confidential respondents 46

**Annex 2**
Abbreviations used in this paper 47

**Appendix 1**
Draft Handbook text

**Request an alternative format**

Please complete this form if you require this content in an alternative format.

## Chapter 1

# Summary

**1.1** In July 2022 we published the consultation paper CP22/12 'Improving Equity Secondary Markets'. In the CP we proposed amendments to:

- post-trade transparency, including the introduction of the new 'designated reporter regime' (DRR)
- pre-trade transparency waivers
- the tick size regime

**1.2** We also sought views on improving:

- market resilience during trading venue outages
- the way retail orders are executed in the UK

**1.3** Our proposals aim to enhance execution quality for investors by lowering the cost of trading, reducing market impact and ultimately increasing liquidity. They also aim to improve the content of post-trade transparency, which is about the disclosure of the details of transactions that have been executed in the market and to facilitate their consolidation from different sources. We have also sought to amend requirements that impose material operational and compliance costs on firms but that have not delivered benefits to end users.

**1.4** This policy statement (PS) summarises the feedback received and sets out our final policy position with the changes to technical standards.

**1.5** The new post-trade transparency requirements will enter into force in April 2024. This timing is different to the one that we proposed in CP22/12 in light of the feedback received and the consequential additional changes which we plan to consult on at the earliest possible convenience. The changes to waivers from pre-trade transparency and to the tick size regime will apply immediately.

**1.6** In this PS, we also set out our future direction of work on improving the resiliency of UK trading venues to outages and on the execution of retail orders under the Retail Service Provider (RSP) model.

**1.7** On outages, we have established a sub-committee within our Secondary Markets Advisory Committee (S-MAC) to consider developing good practices for trading venues and investment firms.

**1.8** Responses to our questions about the quality of the UK market for retail orders showed different views. Some see merit in the RSP model as it provides a cost-effective protocol for the execution of retail orders. Others are of the view that keeping retail flow away from transparent public markets may impede the delivery of best execution obligations. This is clearly a contentious area, and we will continue discussing it with stakeholders to explore more fully the concerns raised.

## Who this affects

**1.9** Our changes to the technical standards will apply to:

- trading venues
- investment firms
- UK branches of overseas firms undertaking investment services and activities

**1.10** Our technical standards will also be of interest to Approved Publication Arrangements (APA), law firms, market data and analytics firms, consultancies, retail investors and trade associations.

## Chapter 2

# The wider context

## Our consultation

**2.1** The proposals in CP22/12 and this PS are part of the Wholesale Markets Review (WMR), the review of UK wholesale financial markets we have been conducting with the Treasury.

**2.2** On 1 March 2022, the Treasury published the WMR Consultation Response, which confirmed the government's intention to deliver some of the proposals contained in the WMR Consultation Document through the Financial Services and Markets Bill. In the Consultation Response, we also committed to take forward consultations about parts of the proposed changes that fall within our requirements and guidance.

**2.3** The proposals in CP22/12 can be delivered using our existing powers and therefore are not contingent on changes that will be implemented via the Financial Services and Markets Bill. In addition, we had discussed extensively some of these proposals with market participants as part of the WMR before we published CP22/12 in July 2022. We are therefore able to take forward these proposals ahead of the broader changes to be delivered through the Bill. This helps to expedite a series of amendments that are beneficial for UK markets.

**2.4** These proposals are also linked to the FCA's Strategy for 2022-2025 and the associated Business Plans for 2022/23 and 2023/24. The Strategy includes a commitment to strengthen the UK's position in global wholesale markets. This involves working with industry, government and other bodies to strengthen the UK's leading position as a global and vibrant financial centre, through a regulatory environment that maintains high and proportionate standards and making sure our markets remain attractive to financial services firms both domestically and internationally and support UK economic growth. As part of achieving this, we said we would tailor our regulatory requirements to suit UK markets and to promote competition and positive change. This included developing proposals on secondary markets, including on the transparency regime for equity markets. CP22/12 and this PS support those objectives and help to deliver against our commitments.

**2.5** The changes we are making aim at making markets more efficient, reducing the cost of trading and streamlining reporting obligations. Greater transparency means better quality information for firms executing orders on investors' behalf. Furthermore, by removing some unnecessary requirements, we believe we will reduce cost for businesses.

**2.6** More broadly, enactment of the Bill will also implement the outcomes of the Future Regulatory Framework Review (FRF) under which responsibility for financial market rules in areas of retained EU law will be transferred to the regulators. Under the FRF, the firm-facing requirements of the MiFID II regime which currently sit in legislation will move

to our Handbook. When this occurs, we will be able to revise the requirements through our rule-making powers and will consider further changes to rules governing equity markets. We also intend to consult on other reforms covered in the WMR which are more closely linked to changes to legislation over the course of this year and next.

## How it links to our objectives

### Consumer protection

**2.7** We have the operational objectives of securing an appropriate degree of protection for consumers. The changes do not directly affect the relationship between consumers and their service providers. However, the efficiency of equity markets is of relevance to end investors, affecting the costs of buying and selling shares and therefore the returns they earn from investing.

**2.8** The aim behind the changes to post-trade transparency is to improve the quality of information that is available to market participants. This should help to make the price formation process more efficient by making market participants better informed about the level of activity in the market. The changes should improve the ability of those executing orders on behalf of clients to achieve the best possible result for their clients. Effective post-trade information enables firms to better understand the impact of different trading strategies, the type of liquidity they can interact with and the execution quality that can be achieved.

**2.9** Improving the way in which retail orders are executed in the UK has direct relevance for private investors. Our consultation has helped us gather views about the strengths and weaknesses of the RSP model and we will continue to explore this issue before proposing any changes.

### Market integrity

**2.10** The changes bear on our operational objective of market integrity in two ways. First, in respect of transparency where our proposals aim to ensure that the information that is made available to the market is as useful as it can be to understanding liquidity in the market. If well calibrated, greater transparency is associated with markets that are perceived as fairer which fosters greater resiliency, confidence and participation.

**2.11** Second, the work proposed on outages seeks to enhance the resilience of trading of UK markets. We want greater certainty when an outage occurs around how trading venues should communicate with market participants and manage potential disruption. Better disclosures and greater predictability of the actions of trading venues during an outage can improve market resilience.

### Competition

**2.12** We expect that the changes will improve competition. By allowing UK trading venues to source reference prices from overseas markets, market participants should have more choice on where they can execute their trades. This should also help lower the cost of trading for end-investors.

**2.13** Permitting the use of the same tick size, i.e. of minimum price increments, as overseas primary markets should support the establishment of transparent electronic order books for shares that have their primary market outside the UK, which would increase competition and choice for intermediaries and end-investors. It would also establish a level playing field for UK venues in relation to overseas shares.

**2.14** We expect the separation of the status of systematic internaliser (SI) from the requirements setting out when an investment firm is responsible for the public reporting of over-the-counter (OTC) transactions to lower the cost of reporting for firms, in particular for buy-side firms. SIs are investment firms which on an organised, frequent, systemic and substantial basis, deals on own account when executing client orders outside a regulated market, UK multilateral trading facility (MTF) or UK organised trading facility (OTF) without operating a multilateral system. Currently, firms that want to take on the responsibility for reporting transactions with clients must notify us of their status as SIs and comply with pre-trade transparency obligations. It is likely that the pre-trade transparency requirements associated with the SI status currently increase barriers to entry which may reduce competition.

## What we are changing

**2.15** We are changing our requirements to enhance the quality of execution for investors and improve the content of post-trade transparency. We will also support the establishment of industry good practices on outages to enhance the resilience of UK markets. The changes will:

- Improve the content of post-trade transparency by enabling market participants to better identify transactions that contribute to the price discovery process and by improving the consolidation of trade reports from different sources.
- Simplify the reporting of OTC transactions for all classes of financial instruments by removing the SI status as a criterion for establishing when an investment firm is required to report transactions. We will adopt a new regime based on designated reporting firms.
- Improve choice and competition by allowing UK trading venues to use reference prices from overseas venues, where those prices are robust, reliable and transparent. We will also remove size thresholds for orders benefiting from the order management facility (OMF) waiver by allowing trading venues to calibrate them according to the characteristics of their markets.
- Improve the quality of execution by removing restrictions preventing trading venues from using the same tick size used by trading venues established overseas where the overseas venues are the primary markets in a financial instrument.

- Enhance market resilience by establishing an industry task force working on good practices in relation to trading venues and firms' conduct during an outage.

## Outcome we are seeking

**2.16** Our aim is that these changes will enhance post-trade transparency and trade execution. The changes should result in better execution for clients. We are also seeking to create a simpler, clearer and more flexible regime. This includes seeking to ensure that requirements relating to equity secondary markets where costs outweigh benefits are removed.

**2.17** The changes should lead to:

- improved market liquidity
- more efficient prices
- greater competition, choice and access between trading venues, SIs and investment firms
- lower operating costs for firms
- lower costs of trading
- greater activity on UK trading venues

## Measuring success

**2.18** We will evaluate the effect of the changes by monitoring markets and gathering data on the quality of execution. As indicated in Our Strategy 2022 to 2025 and the 2022/23 and 2023/24 Business Plans, we will use a variety of metrics to assess whether our reforms achieve their objectives.

**2.19** On our reforms to the post-trade transparency regime, we will seek feedback from firms, including through surveys, to understand whether our reforms have lowered costs and improved the content of post-trade reports. We will seek to gather views from across financial markets, trading venues, sell-side and buy-side firms and data analytics firms.

**2.20** For our changes to waivers, we will measure success by assessing whether investors have greater access to liquidity on UK trading venues operating under the reference price waiver for equity instruments that have their primary markets outside the UK. We will look at the number of overseas shares available for trading and the volume traded on trading venues operating under the reference price waiver.

**2.21** We will assess the effect of our changes to the tick size regime for shares that have their primary markets overseas by looking at whether UK trading venues expand their trading services in those shares and, subject to that, whether quality of execution (such as spreads) for those shares improves.

## Summary of feedback and our response

**2.22** We received 40 responses to the consultation. The list of non-confidential respondents is in Annex 1.

**2.23** Chapters 3 to 7 summarise feedback to our proposals for each of the areas we had consulted on in CP22/12.

**2.24** Feedback to our proposals was generally very supportive. We received several comments from respondents regarding the setup of our proposed Designated Reporter Regime (DRR). Whilst respondents supported the objectives that the introduction of the DRR aims to achieve, they commented on:

- how this is to operate
- the timeframe for implementing such a regime

**2.25** Respondents also provided useful input into the technical feasibility of our proposals regarding post-trade transparency, in particular on the amendment of the trade reporting flags.

**2.26** Cost implications for firms from these requirements have been appropriately considered in our Cost Benefit Analysis, and in developing the proposals we have had regard of operational costs for firms.

**2.27** We received a number of responses, in particular in relation to post-trade transparency and trade reporting, highlighting the cost of divergence from EU rules for firms with operations in both the UK and EU. We recognise that differences in requirements in the UK and the EU may increase some costs for firms operating in both jurisdictions, as is the case for firms operating in any jurisdiction with different requirements.

**2.28** In line with feedback received from firms, we have tailored our rules in certain areas to the reality and the specific position of UK wholesale markets.

**2.29** We believe our final rules deliver net benefits for participants in UK wholesale markets, and achieve the same outcomes of similar requirements for wholesale markets in the EU and other jurisdictions. They are also consistent with global regulatory standards.

**2.30** Finally, we would note that rules in this area are currently under review in the EU and therefore that differences in specific requirements may also occur over time even if we kept our rules unchanged.

## Equality and diversity considerations

**2.31** We have considered the equality and diversity issues that may arise from the proposals in this PS.

**2.32** Overall, we do not consider that the changes to the technical standards materially impact any of the groups with protected characteristics under the Equality Act 2010.

## Next steps

**2.33** Because of the changes set in this PS, trading venues and investment firms and APAs consolidating trade reports by them, will need to update their systems to comply with the changes to post-trade transparency, including the changes to the reporting fields and to trade flags. This may also impact on their systems for transaction reporting. We will consider how to minimise the operational impact on firms while ensuring that they continue to report transactions correctly.

**2.34** Firms that wish to register as a designated reporter will need to submit a notification to us. We shall announce further details of this process in due course.

**2.35** Following our changes, trading venues will be able to:

- derive reference prices from non-UK trading venues, under the conditions we have set out
- set the minimum size of reserve and stop orders in financial instruments that trade on their systems under OMF waiver
- adopt the minimum tick size of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues

## What we will do next

**2.36** We will work with industry participants, through our S-MAC, to establish a task force to develop good practices for trading venues and investment firms in the event of a trading venue outage.

**2.37** We will consider whether further work is necessary on the RSP model. For this, we intend to liaise with market participants and consider representations originating from this sector.

## Chapter 3

# Our response to feedback on post-trade transparency

**3.1** Post-trade transparency deals with the disclosure of the details of transactions that have been executed in the market. Trading venues are required to publish information about the price, the volume and the time of the transactions executed under their systems. The same requirement applies to investment firms for the transactions they execute OTC in instruments traded on trading venues.

**3.2** In CP22/12, we consulted on changes to improve the consistency of post-trade transparency reports and their information content. We proposed to:

- **a.** modify and expand the list of transactions that are exempted from post-trade transparency because they are non-price forming
- **b.** achieve greater consistency and limit duplications in the use of trade identification flags, including by aligning the definitions and types of transactions that are identified as non-price forming in post-trade reports
- **c.** change the conditions under which investment firms are required to report trades executed OTC, to simplify and lower the cost of reporting for firms

## Exemptions from post-trade transparency

**3.3** Article 13 of onshored RTS 1 lists the types of transactions that, when executed OTC, are exempted from post-trade transparency. Given their nature, public reporting those transactions would add noise to the market and impose costs on firms who need to publish and use post-trade reports.

**3.4** The types of transactions listed in Article 13 are:

- **a.** transactions that are exempted from transaction reporting under Article 2(5) of onshored RTS 22
- **b.** transactions executed by management companies that transfer the beneficial ownership of shares or other equity instruments from one collective investment undertaking to another managed by the same company
- **c.** give-up and give-in transactions
- **d.** transfers of shares or other equity instruments that arise in the context of investment firms complying with margin or collateral requirements or that are part of the default management of a central counterparty (CCP)

**3.5** In the consultation we proposed to:

- **a.** maintain the exemption under point a) which cross-refers to transactions that are not subject to the transaction reporting regime for the purposes of monitoring against market abuse

**b.** amend point b) on transactions executed by fund managers by addressing the deficiency in our current requirements as to the scope of the exemption

**c.** amend point c) on give-ups to include transactions executed in the context of the practice of a request for market data

**d.** delete point d) covering transactions that arise in the context of margin or collateral requirements for the purposes of clearing consistent with Article 2(5)(b) of RTS 22 because it is already caught by the first paragraph of Article 13

**e.** include intra-group transactions in the list of transactions exempted from post-trade transparency

## Inter-funds transfers

**3.6** In the consultation we proposed a modification aimed at addressing a deficiency in our requirements. The exemption currently refers to transactions executed by UCITS management companies and AIF managers. However, UCITS management companies and AIF managers are not subject to trade reporting under MiFIR and hence the exemption is not needed. We proposed modifying it by ensuring that it applies to investment firms carrying our portfolio management as they are subject to MiFIR.

**3.7** We received 16 responses to our proposal. All respondents agreed to maintain the exemption for inter-funds transfers on the basis that they result in transactions that are non-price forming and do not constitute addressable liquidity. All respondents except one agreed with our proposed new definition of inter-funds transfers.

**3.8** Whilst supportive of amending the definition of inter-funds transfers, we received some comments highlighting that our definition is overly restrictive. Two main points were raised:

- that the limitation preventing another investment firm from being party to a transaction would restrict the use of systems and arrangements provided by sell-side firms to portfolio managers to effect the transfer
- that the exemption should be expanded beyond collective investment schemes to include segregated mandates

**3.9** The respondent disagreeing with our proposed definition noted that portfolio managers currently use MTFs to conduct inter-funds transfers. Such transfers would not meet the proposed definition as they are not taking place OTC and do involve another investment firm. Yet, it is argued, inter-funds transfers conducted through the systems of trading venues are akin to those concluded OTC.

**Our response:**

We recognise that the condition that no other investment firm is party to an inter-fund transfer would restrict the exemption where participation by another investment firm is not with a view to the provision of liquidity but is to provide the technical infrastructure to execute the transfer. The wording used in the consultation aimed at ensuring that participation by another investment firm would not lead to an expansion of the exemption to transactions that are price forming. We have changed the definition of

inter-fund transfer to permit interaction with another investment firm but only for the purpose of facilitating the operational transfer from one fund to another.

In relation to the application of the exemption to segregated discretionary funds, we agree that the rationale for the exemption is the same as that for any collective investment undertaking. We are hence clarifying the wording of the exemption to confirm segregated discretionary funds are also exempt from post-trade transparency requirements under the same circumstances applicable to any collective investment undertakings.

We recognise that trading venues systems can be used to achieve the same result as those used internally by portfolio managers or by sell-side firms on behalf of portfolio managers. However, the scope of Article 13 only covers trades executed outside trading venues. We will consider excluding them from post-trade transparency when executed on venue once we have the power to amend the relevant provision in MiFIR.

We intend to change the exemption in Article 13(b) along the following lines:

*"b) transactions executed by an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one ~~collective investment undertaking~~* ***fund*** *to another and where no other investment firm is a party to the transaction* ***other than for the sole purpose of providing arrangements for the execution of such non price-forming transactions."***

## Give-ups and give-ins

**3.10** Give-ups and give-ins are arrangements supporting the efficient operation of post-trade processes. They result in transactions that are currently exempted from post-trade transparency as they do not provide information about the pricing or the liquidity of the relevant financial instrument.

**3.11** In the consultation we identified a practice where transactions are passed from an executing broker to the prime broker of a client following a request for market data by that client. The prime broker generally enters into a swap with the client with the equity position acquired from the executing broker as a hedge against the swap.

**3.12** We said that that give-ups and give-ins in the context of requests for market data (RFMD) should not be reported as they do not provide additional information to that provided by the reporting of the market leg of the transaction which is concluded by the executing broker. We proposed to expand the definition of give-up/-in transaction to cater for those types of trades which are currently reported as OTC benchmark trades. We also said that we would consider developing guidance to further clarify the types of give-ups/-ins that can be included in the list of trades exempted from post-trade transparency.

**3.13** We received 20 responses. Almost all respondents agreed with expanding the exemption to give-ups and give-ins in the context of RFMD. A small number of respondents were neutral towards it.

**3.14** The main comments related to the scope and applicability of the proposed wording on give-ups/-ins in the context of RFMD. One objection to the proposed definition is that it is restricted to a scenario where a derivatives position is established between the prime broker and the client on the back of the transaction concluded by the executing broker (which is then passed to the prime broker). Respondents also considered problematic setting the expectation that the executing broker has knowledge about the nature of the position between the prime broker and the prime broker's client. Another issue raised by respondents is that the definition of give-ups/-ins does not cover a third-country firm that is executing the trade in the market.

**3.15** Of the respondents expressing views as to whether guidance would be beneficial on the types of give-ups and give-ins that should be in scope of the exemption, most thought that guidance is required. A small number of respondents commented that guidance is not necessary as the amendment is sufficiently clear.

**3.16** Respondents who supported new guidance were of the view that specific examples would help to ensure consistent interpretation and implementation of the requirements. Those respondents also provided suggestions as to what aspects of give-ups and give-ins should be covered by future guidance.

**3.17** One comment we received referenced an ESMA Q&A on RFMD and recommended that it should no longer apply in future in the UK following the change proposed in the consultation.

**Our response:**

RFMDs encompass arrangements and practices which may vary between firms. It is likely that those practices will further evolve over time. The wording in the consultation was intended to provide the basis for a targeted exemption along the lines of give-ups/ins which are already exempted in Article 13. The definition consulted on tried to clarify which types of transaction can be characterised as RFMD and should benefit from the exemption. The responses, and our engagement with market participants, have allowed us to redraft the definition so as to address a concern that, drafted as proposed, it failed to incorporate RFMD. We will consider in due course whether additional guidance is necessary.

*We have amended the definition of give-up/give-in along the following lines:*

*"give-up transaction" or "give-in transaction" means:*

**a.** *a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or*

b. *where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging ~~a derivative~~* ***the*** *position that it has committed to enter into with ~~its~~* ***a*** *client.*

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## Inter-affiliate trades

**3.18** Investment firms often execute transactions between entities within the same group that are not carried out at arm's length but are for only risk management purposes. Inter-affiliate trades do not represent liquidity others can interact with, nor do they carry relevant information for the pricing of the shares or other equity instruments being transacted. They mirror trades that are already reported when the market leg is executed.

**3.19** In the consultation we proposed introducing an exemption from post-trade transparency for inter-affiliate trades. We received 22 responses. Most respondents agreed with introducing an exemption for inter-affiliate trades, whilst a small number of respondents were neutral towards it.

**3.20** Like for inter-funds transfers, respondents noted that these trades do not represent addressable liquidity and they do not support price formation.

**3.21** We received one comment suggesting that the reporting of inter-affiliate trades could be dealt with by either exempting them from reporting or by using a dedicated flag. The respondent stated that either method would be similarly effective.

**3.22** Relating to this, two respondents highlighted that inter-affiliate trades arise after positions are established over several days before subsequently being booked to an affiliate. This would represent volume that has some relevance to the market. As such it may be worth reporting – albeit with a flag to indicate their non-addressable nature.

**3.23** Some respondents suggested amendments to the definition. They argued that inter-affiliate transactions for intragroup risk management purposes do not always take place within the centralised booking model framework. Respondents noted that a variety of booking models exist and that tying the definition to a specific model, the boundaries of which are not always clear, would treat transactions that are equivalent differently.

**Our response:**

We will proceed with introducing an exemption from post-trade transparency for inter-affiliate transactions. However, we will amend the proposed exemption by removing the reference to centralised booking models in line with the feedback received to ensure that the exemption is not restricted to specific risk management practices.

*'Inter-affiliate transaction' means a transaction between entities within the same group carried out exclusively ~~as part of centralised booking~~ for intra-group risk management purposes.*

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### Central counterparties

**3.24** In the consultation we proposed to delete point d) of Article 13 of RTS 1, which relates to transactions arising in the context of margin or collateral requirements for the purposes of clearing. We considered this to be duplicative, as it is already covered under Article 2(5) of RTS 22. Point (b) of article 2(5) refers to contracts that arise exclusively for clearing and settlement purposes.

**3.25** We received 13 responses. All views except one agreed with us.

**3.26** Some respondents commented that it is not clear that the exemption of point d) of Article 13 of RTS 1, which we are proposing to delete on the grounds of duplication, is reflected in Article 2(5)(b) of RTS 22. They argued that the current exemption is wider than the sub-paragraph we mentioned in the consultation. The respondents also asked us to clarify that the deletion of point d) from Article 13 is not intended to reduce the current scope of the exemption.

**Our response:**

Our proposal to delete point d) or Article 13 is intended to remove a duplication and not to restrict the current use of the exemption. Our reference to point b) in the consultation should not be read as to restrict the use of other types of transactions in Article 2(5) of RTS 22, such as acquisitions or disposals that are a result of a transfer of collateral under point o) of Article 2(5).

Taking account of the clarification above, we will proceed with the deletion of point d) of Article 13.

### Deferrals for transactions under Article 13 when executed on venue

**3.27** Article 13 of RTS 1 allows certain types of trades to be exempted from post-trade transparency. The exemption is based on a power set out in Article 20 of UK MiFIR. The power applies to transactions executed OTC. Consequently, when a transaction of the type of Article 13 is executed on a trading venue instead of OTC, post-trade transparency applies.

**3.28** In the consultation we said that post-trade transparency should apply to trades executed OTC in the same way they apply to trades concluded on a trading venue. In absence of a mandate in UK MiFIR to align the transparency regime between on venue and OTC transactions, we proposed to introduce a deferral which would permit trading venues to postpone the publication of transactions within scope of Article 13 until prior to the opening of the next trading day. We proposed this as a temporary fix, until when, subject to Parliamentary approval, we have the necessary powers to address this more permanently under UK MiFIR.

**3.29** We received 23 responses to this proposal. Most respondents agreed with the intent of our proposal, but many, especially trading venues which ultimately would make use of the deferral if available, disagreed.

**3.30** The main objection to the proposed change is that implementing it would have costs for trading venues that would exceed the benefits delivered given the short-term nature if the change. Some respondents also argued that real-time reporting with the correct use of the flags delivers the same outcome as the proposed deferral.

**3.31** Two respondents suggested that our proposed deferral should be discretionary for trading venues to follow.

**Our response:**

Trading venues can, but are not required to, use deferrals. However, considering the responses in support of a permanent solution and highlighting the limitations of the introduction of a new deferral regime as an interim solution, we will not proceed with the proposed change but consider aligning the regime for on-venue transactions to that applicable to OTC trades in due course.

## Proposal for a new deferral for ETF transactions priced at NAV

**3.32** During the consultation period, market participants asked us to consider the reporting of transactions in exchange traded funds (ETF) priced at the net asset value (NAV). The NAV of an ETF represents the unit value of all the securities and cash held by the ETF minus any liabilities.

**3.33** Currently, transactions in ETFs that are priced at or against the NAV are required to be reported as soon as possible after execution, unless a deferral applies. Deferrals for ETFs are set at 60 minutes for trades at or above €10m and until end of the day for trades at or above €50m. When reporting a trade before the NAV price is available, firms are expected to use the post-trade flag "PNDG" in accordance with Table 3 in Annex I of RTS1 to indicate that the price is pending.

**3.34** Once the NAV is available, generally at the end of the day or the beginning of the next day, the investment firm or trading venue is required to send a cancellation (using the cancellation flag, "CANC") and an amendment report (using the amendment flag "AMND").

**3.35** The current regime for NAV trades requires 3 trade reports instead of one, which increases the costs of reporting for firms and complicates the interpretation of data by end-users. The availability of the large in scale deferral regime does not address the problem as the deferral period is likely to expire before the NAV is published. Disclosure before the NAV is published may also expose the counterparties' hedging of the trade to information leakage before the price is finalised.

**3.36** We have sought views from market participants, including the members of our S-MAC, on whether transactions priced at NAV should benefit from a deferral until the NAV is published.

**3.37** We looked at best practices outside the UK. In the US, the largest and most liquid market in ETFs, FINRA's rules do not require the reporting of transactions priced at NAV until the NAV is set.

**3.38** We also looked at the level of transparency ETFs would be subject to following the introduction of a new deferral for trades at NAV. Our analysis is based on transactions executed on one of the most liquid UK trading venues in ETFs. We looked at the impact of the deferral on transparency and price formation. Based on the data provided to us, 98% of the trades and 46% of the volume in ETFs is currently reported in real time. The introduction of the deferral would result in 0.7% fewer trades and 2.7% less volume being reported in real time.

**3.39** We will consult at the earliest opportunity to amend Article 15 of RTS 1 to introduce a new deferral for transactions in ETFs executed at NAV. We intend to align the implementation timeline for the new deferral with those for the other changes in post-trade transparency set out in this policy statement..

## Alignment between Article 13, Article 2 and Article 6 in UK RTS 1

**3.40** Onshored RTS 1 contains several provisions that relate to transactions that do not support the price formation process. In addition to those listed in Article 13 of RTS 1 covered in the previous section ('transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument'), Article 2 lists the types of transactions that can be exempted from the share trading obligation while Article 6 covers transactions that can be executed under the negotiated trade waiver when concluded under the rules of a trading venue.

**3.41** The transactions listed under Articles 2, 6 and 13 largely overlap. This complicates the use of flags which makes it more challenging for firms to identify liquidity and extract information from the post-trade transparency reports. In the consultation we also identified a deficiency with the definition of benchmark trade, which excludes transactions executed at the closing market price. Transactions at the closing market price have increased in relevance over the past few years and their exclusion prevents their flagging, lowering the information content of post-trade transparency.

**3.42** In the consultation we proposed to:

- streamline Articles 2 and 6 by deleting types of transactions that are already in Article 13 while adding a cross reference to that article
- expanding the definition of a benchmark trade used in Articles 2 and 6 to trades priced at the closing market price

**3.43** Almost all respondents supported streamlining Articles 2 and 6. However, technical points were raised in relation to the importance that the scope of transactions covered by Articles 2 and 6 remains unchanged following the implementation of the change. For example, some respondents considered our cross-reference between Articles 2(f), 6(f) and 13(d) of onshored RTS 1 to article 2(5)(b) of onshored RTS 22 as mistaken since some of the trades under those articles do not fall into Article 2(5)(b) (which relates to contracts arising exclusively for clearing or settlement purposes) but instead fall into Article 2(5)(o) (which relates to acquisitions or disposals that are solely the result of transfers of collateral) of RTS 22.

**3.44** On the expansion of the definition of benchmark trade in Articles 2 and 6, almost all respondents supported the inclusion of transactions using the closing market price in the definition of a benchmark trade. However, some respondents stressed the importance of the system of flags distinguishing between the two types of benchmark trades, by using a flag for benchmark trades at the market closing price that is distinct from the one currently used for all the other types of benchmark trades.

**3.45** One respondent argued against our proposal unless the same change is adopted in the EU. It is argued that divergence in the concept of benchmark trade would increase the regulatory burden for firms operating cross border with no proportionate benefit. Another respondent argued against our proposal on the grounds that the use of a point in time benchmark would confuse the regulatory intent give the definition of a benchmark under Article 3(1)(3) of the Benchmark regulation.

**Our response:**

It is not the intent of the proposed restructuring of Articles 2 and 6 to narrow nor otherwise change the scope of the existing exemptions for the purposes of the share trading obligation or the types of trades eligible for the negotiated trade waiver. Following the amendment to those articles, all transactions included in Article 2(5)(b) of RTS 22 will be included in the relevant articles of RTS 1.

In relation to the definition of benchmark under RTS1 and the one under the Benchmark regulation, we note that the different content and application of those definitions pre-exist the change we proposed in CP 22/12.

We will proceed with expanding the definition of benchmark trade to include transactions at the market closing prices and introduce a new flag "CLSE" to identify them.

*Table 2: final content of articles 2, 6 and 13 of RTS 1*

| Article 2 | Article 6 | Article 13 |
|---|---|---|
| (a) the transaction is a benchmark trade; | (a) the transaction is a benchmark trade; | (a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable; |
| (b) the transaction is part of a portfolio trade; | (b) the transaction is part of a portfolio trade; | (b) transactions executed by an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one fund to another and where no other investment firm is a party to the transaction other than for the sole purpose of providing arrangements for the execution of such non price-forming transactions; |
| (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot; | (c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot; | (c) give-up transactions and give-in transactions; |
| (ca) the transaction is of a type listed in Article 13 | (ca) the transaction is of a type listed in Article 13 | (ca) inter-affiliate transactions |
| | (j) any other transaction equivalent to one of those described in points (a) to (ca) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded. | |

## Improving the information content of trade reports

**3.46** Post-trade identifiers (or flags) facilitate the identification of addressable liquidity and more generally the interpretation and use of post-trade transparency information. Their correct use supports price formation by enabling users to separate trades that have information content from other trades that do not provide meaningful information.

**3.47** In our consultation we sought views on the deletion and aggregation of various post-trade identifiers within the post-trade transparency reporting requirements under RTS 1.

**3.48** We proposed:

- deleting SI-related flags "SIZE", "ILQD" and "RPRI"
- deleting the agency cross flag "ACTX", the duplicate trade flag "DUPL" and algorithmic trade flag the "ALGO"
- using a single flag "TNCP" to identify benchmark, portfolio and contingent trades
- aggregating the flags applicable to different types of negotiated trades "NLIQ", "OILQ" and "PRIC" into single flag "NETW"

**3.49** We also asked stakeholders whether there are any other flags we should consider removing, amending or adding.

### *Deletion of flags "SIZE", "ILQD" and "RPRI"*

**3.50** The flags "SIZE", "ILQD" and "RPRI correspond to specific types of trades executed under the systems of systematic internalisers. The first flag "SIZE" is used when an SI executes a trade against an order that is above the standard market size. The standard market size is the size up to which an SI is required to display pre-trade transparent quotes when dealing in liquid instruments. The second flag "ILQD" is used for transactions that SIs execute in illiquid instruments. The third flag "RPRI", identifies trades that receive a price improvement upon the quotes that an SI makes available to clients. In the consultation we said that those flags reflect the different transparency obligations SIs are subject to rather than information relevant for the price formation process.

**3.51** We received 18 responses. Most respondents agreed with our proposal since they consider the flags to be of limited use. Two responses were neutral.

**3.52** We did receive one response which said that the "RPRI" flag could potentially provide useful additional information to market participants on SI activity that could only be obtained with greater difficulty in other ways.

**Our response**

We note the general support to our proposal. We will proceed with deleting the flags "SIZE, "ILQD" and "RPRI". We also note that the combination of the use of market identifier codes (MIC) by SIs, the information about the execution price and the pre-trade information available by SIs and trading venues, should provide adequate information to end-users as to the quality of execution provided by by SIs. We maintain our original proposal and proceed with deleting the flags.

### *Deletion of the agency cross flag "ACTX", the duplicate trade flag "DUPL" and the algorithmic trade flag "ALGO"*

**3.53** The list of flags also includes i) a flag related to the crossing of client orders by an investment firm, "ACTX"; ii) a flag to identify whether the same trade has been reported by more than one APA, "DUPL"; and iii) a flag to identify whether the trade is an algorithmic trade, "ALGO".

**3.54** In the consultation we noted that it was unclear how these flags are used and whether they provide meaningful information.

**3.55** We received 18 responses. The majority agreed with our proposal to delete the flags. Two disagreed with our proposal. A further small number of responses were neutral.

**3.56** Two respondents said that whilst the "DUPL" flag is not currently used, it could be repurposed to identify transactions by firms operating SIs from a UK-based branch of an EU entity. The flag, it was suggested, would only be used for cross-jurisdictional reporting purposes, i.e. to avoid double counting transactions that are executed between UK and EU counterparties.

**3.57** Some respondents also disagreed with our proposal to remove the "ALGO" flag. They stated that it should be retained as it provides a useful method for looking at systematic and non-systematic activity. It was argued that the flag helps to determine whether reported activity was "addressable" and therefore could be expected to be available to a wide number of market participants, or whether it was manually bilaterally agreed and therefore only available to one counterparty.

**Our response**

Considering the support for our proposal and lack of evidence as how they are currently used, we will proceed with deleting the agency cross flag "ACTX" and the duplicate trade flag "DUPL". We believe that the removal of these flags should not impinge on the reporting in overseas jurisdictions where those flags continue to be used. In relation to the algorithmic trade flag "ALGO", given the feedback received we have decided to maintain it rather than deleting as originally proposed.

### *Use of the "TNCP" flag to identify benchmark, portfolio and contingent trades*

**3.58** In the consultation, we sought to streamline further the current flagging framework. Our proposals on this included aggregating and merging the identified existing reportable transactions into the single "TNCP" flag. We argued that this would simplify post-trade reporting.

**3.59** We received 23 responses. Half of respondents agreed with our proposal, with the other half disagreeing. One response was neutral.

**3.60** Those who agreed with our proposal cited simplicity of the approach to post-trade transparency.

**3.61** Those who disagreed expressed various issues with the change including that the proposal would remove useful information from the markets. They argued that "benchmark", "portfolio" and "contingent" trades are distinct types of trades and there is value in recognising this through multiple trade flags. Two respondents also noted that changes would be costly.

**3.62** 8 respondents also identified divergence in the flags from those used in the EU as a source of unnecessary regulatory burden. The European Commission has accepted ESMA proposals on RTS 1 that will delete the "TNCP" flag in favour of adding "PORT" and "CONT" flags. Respondents did not see sufficient justification in deviating from alignment with EU standards, against the benefits gained from this proposal.

**Our response**

We will retain the separate flags "BENC" and "TNCP" as they would allow firms to distinguish different types of liquidity. As indicated in our response in the section on alignment between Article 13, Article 2 and Article 6, we will introduce a new flag, "CLSE" for benchmark trades concluded at the closing price. We will also introduce a new "PORT" flag for portfolio transactions under point b) in Articles 2 and 6.

### *Negotiated trade waiver flags "NLIQ", "OILQ" and "PRIC" into a single flag "NETW"*

**3.63** Currently there are three flags that identify trades carried out under the negotiated trade waiver in accordance with Article 4(b) of UK MiFIR. Each flag refers to one of the three conditions under which transactions can be executed under the waiver. These flags are "NLIQ", "OILQ" and "PRIC". The first one is used to identify transactions that are executed within the available spread in the market in a liquid equity. The second is for transactions in illiquid equities instrument. The third is for transactions subject to conditions other than the current market price.

**3.64** In the consultation we said that we did not see value in these flags because they do not provide meaningful additional information about the price or the level of liquidity of a financial instrument. Furthermore, the use of those flags for the purposes of

compliance with the double volume cap mechanism is no longer relevant as since the UK's withdrawal from the EU the volume cap is no longer applied and in the Bill the government has proposed repealing it. In the consultation, we proposed replacing all the flags with a single flag, "NETW".

**3.65** We received 22 responses. Most agreed with our proposal. A minority disagreed with our proposal. One response was neutral.

**3.66** A small number of the respondents said that these trade flags were useful in determining which liquidity is addressable.

**3.67** Two respondents also commented that we should consider the impact of divergence from the EU reporting standards in this area.

**3.68** We also received a comment which suggested that we repurpose one of the existing flags to act as the aggregated flag, rather than introducing the new "NETW" flag. The latter would involve greater work in reconfiguring reporting systems to be in line with our proposal.

**Our response**

We will proceed with aggregating the existing flags for negotiated transactions "NLIQ", "OILQ" and "PRIC". The use of an existing flag under which all the different types of negotiated trades can be identified would create confusion between the old and the new reporting of negotiated trades. We will proceed with introducing the negotiated trade waiver flag "NETW".

**3.69** In the consultation we asked whether there are flags that we should consider removing, amending or introducing. We received recommendations for new trade flags.

**3.70** Two respondents proposed a new flag for transactions resulting from the matching of orders that are above the pre-trade large in scale (LIS) threshold. Currently, only transactions that are above the post-trade LIS thresholds are flagged as such (using the "LRGS" identifier). Instead, RTS 1 does not provide an identifier for transactions that are above the pre-trade LIS threshold. The reason being that the prompt disclosure of LIS orders resting on order books for which pre-trade transparency would increase market impact and the cost of trading.

**3.71** The proposed new flag would identify transactions that are equal or above the pre-trade large in scale threshold that are bilaterally negotiated off-book and reported to the trading venue for acceptance. The flag, it is argued, would allow a better understanding of the liquidity, reported to venues as off-book, given the absence of a pre-trade LIS flag for orders.

**3.72** Some respondents also proposed the introduction of a new flag to identify transactions that are reported multiple times given the overlapping reporting obligations that apply

to transactions that have a cross-border dimension, with counterparties subject to separate trade reporting obligations.

**3.73** We also received proposals to introduce new flags in relation to roll over trades, a flag to identify transactions between market makers and a flag for transactions related to selling investments held outside an ISA account and reinvesting the proceeds into an ISA account. No rationale as to how transactions would be identified for those purposes nor how the flags would be used was provided.

**Our response**

Trades that are above the pre-trade LIS threshold which are bilaterally negotiated are not currently identified as such. Some of those transactions are not reported as negotiated trades as they may not meet the conditions of being executed within the weighted volume spread. We acknowledge that their identification as large in scale would better inform market participants about the nature of the liquidity, addressable or not, executed under the rules of trading venues. The identification of large in scale trades that are bilaterally negotiated off-book would not expose liquidity providers to undue risk. We therefore will introduce a new flag "NTLS".

### *Implementation timelines*

**3.74** Respondents raised concerns regarding the timelines for implementing the changes. Having considered these concerns, we have extended the implementation period for the requirements relating to post-trade transparency and the designated reporter regime to 12 months, up from 6 months as originally proposed. This should provide firms with sufficient time for them to make the necessary changes to their IT systems and internal processes.

**3.75** We recognise that these amendments do result in a degree of divergence with EU reporting standards. However, on balance, we believe the benefits of the increased quality and clarity of post-trade reporting will outweigh the potential costs arising from the divergence from the EU on this matter.

*Table 3: final new Table 4 in Annex I on the list of flags for the purpose of post-trade transparency*

| Flag | Name | Type of execution or publication venue | Description |
|---|---|---|---|
| BENC | Benchmark transactions flag | RM, MTF, APA, CTP | Benchmark transactions executed by reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price. |
| CLSE | Market closing price flag | RM, MTF, APA, CTP | Benchmark transactions executed at the market closing price. |
| PORT | Portfolio trade transactions flag | RM, MTF, APA, CTP | Transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price. |
| NPFT | Non-price forming transactions flag | RM, MTF, CTP | Transactions where the exchange of financial instruments is determined by factors other than the current valuation of the financial instrument as listed under Article 13. |
| TNCP | Transactions not contributing to the price discovery process, other than where covered by BENC, CLSE or PORT flags. | RM, MTF, APA, CTP | Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014, other than where covered by BENC, CLSE or PORT flags. |
| SDIV | Special dividend transaction flag | RM, MTF, APA, CTP | Transactions that are either:<br>a. executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or<br>b. executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer. |

| Flag | Name | Type of execution or publication venue | Description |
|---|---|---|---|
| LRGS | Post-trade large in scale transaction flag | RM, MTF, APA, CTP | Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15. |
| NTLS | Pre-trade large in scale trade flag | RM, MTF, CTP | Transactions that are large in scale compared with normal market size for which pre-trade transparency can be waived under Article 7. |
| RFPT | Reference price transaction flag | RM, MTF, CTP | Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014. |
| NETW | Negotiated transaction flag | RM, MTF, CTP | Transactions executed in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 and Article 6 of this regulation. |
| ALGO | Algorithmic transaction flag | RM, MTF, CTP | Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701). |
| CANC | Cancellation flag | RM, MTF, APA, CTP | When a previously published transaction is cancelled. |
| AMND | Amendment flag | RM, MTF, APA, CTP | When a previously published transaction is amended. |

### *Alignment between trade reporting and transaction reporting*

**3.76** Almost all the flags that are in Table 4 in Annex I of RTS 1 are also part of the information that is reported by firms under Article 26 of UK MiFIR for transaction reporting purposes. They are currently included in fields 61 (waiver indicator) and 63 (OTC post-trade indicator) of Table 2 in Annex I of onshored RTS 22.

**3.77** In the consultation, we did not propose amending RTS 22. We asked stakeholders whether the proposed changes to the flags in RTS 1 would have an impact on their transaction reporting systems. We asked what problems maintaining the existing flags for transaction reporting would cause to them.

**3.78** We received 15 responses. A slight majority of respondents said that the proposed amendments would impact upon transaction reporting systems. Two respondents said that they do not have an impact.

**3.79** Respondents raised concerns about the added complexity brought about by the lack of ongoing comparability of flags for trade and transaction reporting.

**3.80** Respondents said that not aligning the changes between the flags used for trade reporting and those required on a transaction report may increase the complexity for firms' reporting systems due to the need to retain separate logic to generate the flags for trade reporting and transaction reporting. Respondents have requested consistency between RTS 1 and RTS 22.

**3.81** We also received comments that the proposed implementation period be extended to 12 months. Respondents cited the complexities involved and the changes required to internal systems because of the divergence between the use of flags in RTS 1 and RTS 22.

**Our response**

We note feedback from respondents as to the potential impact of the divergence between the trade reporting and transaction reporting. Some respondents commented that maintaining alignment between would be highly desirable. We are considering policy options and will communicate our expectations for transaction reporting in due course.

### *Content of reporting fields*

**3.82** In the consultation, we proposed changes to the "Price" and "Price currency" reporting fields and its formatting conventions. This was in response to feedback we received citing challenges to harmonise and subsequently aggregate and utilise post-trade data.

**3.83** We proposed to only allow numerical values to populate the field "Price". Currently, RTS 1 requires using the text "PNDG" instead of a numerical value where the price is not available at the time of the transaction. We understand that allowing the same field to be populated with decimal and alphanumerical values increases operational complexity.

**3.84** We said that we would introduce a new field for price conditions to be populated with the pre-defined text "PNDG" when the "Price" field is not provided.

**3.85** In relation to the "Price currency" field, some market participants complained about the lack of harmonisation in the use of the currency code, which according to Table 2 of Annex I should only use major currency codes, in line with the ISO 4217 standard. However, some trade reports use minor currency codes, e.g. GBX instead of GBP.

**3.86** To provide more clarity on how to populate the "Price currency" field, we proposed to include major currency in the description of the field "Price currency" in Table 3.

**3.87** We received 18 responses to this proposal. A vast majority agreed with our proposal. Two disagreed with our proposal and two were neutral.

**3.88** Respondents, including those who disagreed or had neutral views, supported our proposal in principle. Those expressing dissenting views did so on the basis that firms have already adapted to the reporting of the "Price" field on both decimal

and alphanumeric bases. There were several respondents who commented that amendments to reporting systems would incur cost to make the necessary technical changes with limited value in return. One of the respondents disagreeing with our proposal recommended the use of a flag, instead of a reporting field. They argued that changing fields requires more substantial changes from an operational perspective, including changing the status and structure of a message, and that a flag instead, results in lower operational costs for firms to proceed with the change.

**3.89** Furthermore, 4 of these respondents also highlighted the issue of alignment with EU standards. The lack of alignment would add to complexity and costs because of the need to maintain multiple formats.

**3.90** We received one comment that most UK equities are quoted in GBX (pence). As a result, the proposed amendment would result to a change in the pricing convention in the UK which would not reflect current market practice.

**3.91** Finally, we asked whether there are any other changes that we should make to the fields in Table 3. We did not receive any recommendations for further changes to the reporting fields.

### Our response

In relation to the change to use a field instead of a flag, we note that this is already supported under the FIX trade reporting message structures with the "Price" field being used for numerical values and the "TradePriceCondition" field supporting values e.g. pending ("PNDG").

We acknowledge that divergence between requirements and standards in the UK and the EU is a potential source of complexity and cost. We also recognise that changing the reporting systems is costly and imposes sunk costs on firms. However, considering the feedback received and the ongoing benefits in terms of better content of post-trade information that we expect to arise from the proposed changes, we intend to maintain our proposals for both the "Price" and "Price currency" fields. We also confirm that we will introduce a new field "Price conditions" to be populated with the text "PNDG".

As to the use of minor currency codes like GBX, as noted in the CP, RTS 1 already requires compliance with ISO 4217 standards. Our change intends to provide further clarity in Table 3 on the list of details for the purpose of post-trade transparency. We note that the use of major currencies applies only to post-trade transparency, not to pre-trade information, such as quotes providers by market makers or orders displayed on order books.

## Designated reporter regime

3.92 Under MiFID, investment firms could bilaterally agree who would discharge the obligation to report trades to the public. In the absence of such agreement, they had to follow a waterfall of conditions based on whether the investment firm was buying or selling the financial instrument and whether it was acting on a proprietary basis or on behalf of a client. The MiFID approach was, at least in the UK, well-suited to buy-side firms as they could agree with sell-side firms to be relieved from reporting executed transactions. This meant they could avoid building the infrastructure to publish trades and sustain the cost of connecting to trade publication arrangements.

3.93 MiFID II set out new rules for reporting OTC trades when a transaction involves two investment firms (an investment firm is required to report all the trades it executes with non-investment firms, including non-UK investment firms). Under MiFID II, the investment firm that is an SI in the instrument being traded is required to take on post-trade regulatory reporting obligations, regardless of whether it is acting as a buyer or a seller, where the other investment firm is not an SI in the same instrument. The seller is required to post-trade report where both parties, or neither party, are SIs.

3.94 The purpose of these rules is to clarify which counterparty has the obligation to ensure a trade is made public. Clarity on who reports a trade is a necessary precondition to ensure that post-trade transparency is complete, timely and accurate.

3.95 The government recognised in its WMR consultation that there is some ambiguity about which party is obligated to report and that there is scope to simplify the regime. This uncertainty arises as SIs are currently determined on an instrument-by-instrument basis. The government therefore proposed a revision of MIFID II by determining the status of an SI at entity level. The use of "level" in this context refers to the granularity used to determine an SI's status; specifically, whether it should be determined at instrument level, asset class level or entity level irrespective of the instrument traded.

3.96 Some respondents to the WMR suggested going further than the proposal put forward. They recommended separating the reporting regime from a firm's status as an SI. Under this model, a firm could assume the obligation to report without having to comply with any of the other regulatory obligations that currently apply to SIs. They also argued that the level of granularity should be set at an asset class rather than entity level. The respondents who put forward these proposals suggested that they would provide clarity, reduce operational costs and regulatory risks, reduce duplication, improve accuracy, and increase completeness of reporting data.

3.97 Our proposal in CP22/12 reflected the suggestion of some WMR respondents that SI status should not be used in establishing reporting obligations. However, we argued against asset class level designation. We therefore proposed to remove the SI status as a criterion in establishing when an investment firm is obligated to report a transaction. In its place we proposed to introduce a designated reporter regime (DRR). Under the DRR, firms could elect to register themselves as a designated reporter (DR) by notifying us. A firm would be able to register as a DR regardless of its SI status. Registration would apply at entity level. This would mean DR status would apply to all that firm's reportable trades across all financial instruments. Where they are trading with a non-DR, a DR would be

responsible for reporting all trades. The seller would report where both, or neither, of the counterparties are a DR.

**3.98** Almost all respondents strongly supported delinking of SI status from post-trade transparency.

**3.99** However, some trade associations and a number of their sell-side members argued against entity level designation. They recommended allowing firms to choose the asset classes for which they wish to be a DR. They said that any SI becoming a DR at entity level would be obliged to ensure publication of trade reports in instruments for which it currently does not take on the obligation. Fulfilling these new obligations would require them to expand their publication arrangements and thus incur costs. Additionally, they are concerned that these costs will create a competitive disadvantage for smaller and specialised broker-dealers.

**3.100** In contrast, buy-side firms strongly supported entity level designation as it would simplify their dealings with liquidity providers. They argued against any reporting regime which would require them to continue to maintain systems with the purpose of checking whether the instrument being traded is within an asset class for which the counterparty is registered as a DR. However, they encouraged us to further look into the concerns of the sell-side to seek to ensure a more widespread adoption of DR status by sell-side firms than has been the case with the SI regime.

**3.101** Following the formal consultation, we have had extensive discussions with market participants and APAs, looking at the impact of our entity level proposal on their systems and on their compliance risk under alternative reporting models. While many sell-side firms have not expressed views, others continue to strongly oppose having to register at entity level. These respondents support flexibility to register for a subset of asset classes.

**3.102** This engagement has allowed us to investigate the relative merits of entity versus asset-class level DR designation. Central to our consideration is maximising the simplicity and accuracy with which the reporting obligation is established.

**3.103** Under entity level designation there is no need for any consideration of the instrument being traded. However, both asset class level designation and the current SI based regime identify the obligated party by reference to the specific instrument being traded. Asset class designation additionally requires establishing an asset class taxonomy and determining how each traded instrument fits into that taxonomy.

### Our response

Based on our discussions we established the following:

**a.** Identifying which party is obligated to report is substantially simpler under an entity-level regime than one based on asset-class registration
**b.** Asset-class level registration would require establishing a taxonomy which would still be unsuitable for some firms who are currently SIs for a small subset of financial instruments
**c.** Asset-class level registration would require establishing a system

matching an instrument to the relevant asset class in the taxonomy which firms should rely on a trade-by-trade basis

d. Firms who find the cost of expanding their reporting capabilities too burdensome, would still have a range of options which include benefitting from assisted reporting or dealing with their clients on venue

The key issue is that some of the firms that are currently an SI will, if they become a DR, acquire the reporting obligation for trades that they currently have no arrangements in place to publish.

However, while moving from the SI regime to an entity level DR regime may create an issue for some SIs, it represents an important improvement for a far greater number of participants, especially buy-side firms.

Decoupling reporting obligations from SI status will allow sell-side firms, especially smaller ones, who wish to offer their clients trade reporting services the ability to do so without the need to incur the additional cost of the pre-trade obligations that come with SI status. Therefore, under a DR regime such firms may be better able to compete with those firms that are currently SIs.

On the basis of our engagement with market participants, we have decided that proceeding with the proposed entity level designation for the DR regime is preferable to both adopting an asset-class designation and to retaining the current SI based method of determination. To respond to concerns raised by some sell-side firms, we will amend our proposed requirements to provide the option for DRs to bilaterally agree, explicitly and in advance, which party shall fulfil the reporting obligation. The seller will always have the regulatory obligation to report but may discharge this by entering into an agreement with the buyer whereby the buyer agrees to report on its behalf. This option addresses the situation of having a reporting obligation but no arrangements to make the report public.

## Chapter 4

# Our response to feedback on waivers from pre-trade transparency

**4.1** UK MiFIR requires orders and quotes broadcast through the systems of trading venues to be pre-trade transparent, i.e. to be publicly displayed, before execution. However, a system of waivers from pre-trade transparency is available in those circumstances where pre-trade transparency doesn't support price formation, or it is not in the best interest of the market.

**4.2** In CP22/12 we consulted on targeted changes to the reference price waiver and the order management facility waiver. We said that once the transparency regime is delegated to us, we will consider whether broader changes to waivers, including changes allowing the use of reference prices that are composite prices from multiple venues, are needed.

## The reference price waiver

**4.3** The reference price waiver is available to systems where orders are matched at a reference price determined by other systems. In the consultation we identified a problem with use of the reference price waiver for overseas shares. Current rules require the reference price to be sourced either from the trading venue where that instrument was first admitted to trading or from the most relevant market in terms of liquidity (MRMTL). In both instances the price can only be sourced from UK trading venues and not from overseas trading venues which are likely to display tighter spreads and higher liquidity for overseas shares for which they are the primary markets.

**4.4** To address the problem, we proposed to amend RTS 1 to enable reference prices to be derived from trading venues outside the UK, subject to the prices being reliable, transparent and consistent with best execution. This would allow prices to be derived not only from EEA venues, but also from other jurisdictions such as the United States or Switzerland whose companies' shares are regularly traded in the UK.

**4.5** We asked market participants whether they agree with the proposal to change the definition of the MRMTL to allow trading venues to derive the price from an overseas venue provided that the price is transparent, robust and offers the best execution result.

**4.6** We received 20 responses to this question. Almost all respondents supported our proposal and agreed that it would go in the direction of seeking to establish a level playing field with overseas exchanges. It was argued that it would benefit liquidity by reducing transaction costs for end investors. This would also support best execution.

**4.7** One respondent disagreed with our proposal on the basis of concerns about the operations of overseas venues and how the robustness and transparency of prices from these venues would be determined.

**4.8** Further to the responses expressing supporting views, we received a few further comments for consideration.

**4.9** We received two responses which suggested extending the availability of the reference price waiver to any UK and overseas venue provided the reference price is reliable and transparent. The respondents stated that this would further facilitate best execution.

**4.10** A small number of respondents suggested further amending the proposal to allow venues to refer to the third country market with the highest turnover for a relevant financial instrument, in addition to our current proposal of referring to the third country venue of first admission. The respondents believe that their suggestion would ensure that market participants accessing UK trading venues have access to prices established by the deepest pools of liquidity in a given share and be of greater relevance.

**4.11** Finally, we received comments regarding the possibility of reviewing how the MRMTL should be determined under RTS 1, including the calculations and the relevant liquidity events to include. One of these respondents commented that this would be to address the distortion caused by the inclusion of opening and closing auctions which results in the primary market generally being considered as the MRMTL.

**4.12** We also asked respondents whether they agree with the proposal to change the definition of the MRMTL for the purpose of the tick size regime.

**4.13** This proposal was put forward as the definition of MRMTL is used for calibrating the tick size regime, as well as for pre-trade transparency waivers. Amending the definition of MRMTL for the purpose of waivers has a bearing on its use for the tick size regime. We explain the impact in paragraphs 4.14 and 4.15 in our CP.

**4.14** We received 20 responses to this question. Most respondents agreed with the proposal, whilst a small number of them were neutral and two disagreed.

**4.15** While most respondents supported our proposal, one noted the scenario of a share which is listed on more than one third country trading venue and in more than one currency denomination. The respondent remarked that it would be appropriate to apply the tick size in the currency denomination of the relevant third country venue.

**4.16** We also received a comment about the risk of a divergence in tick size regimes between the UK market and the EU caused by amending the definition of MRMTL. Another respondent disagreed based on the level of robustness of the venues being referenced.

### Our response

We acknowledge broad support for permitting the use of prices from overseas venues for shares that are admitted to trading on those venues. We also note the high level of support for amending the definition of the MRMTL to facilitate our proposals for the tick size regime.

Regarding a review of the methodology for the calculation of the MRMTL and other changes permitting a broader set of reference prices to be used, including in relation to the trading of shares traded in different currencies. We intend to undertake a broader review at the time once the Financial Markets and Markets Bill confers the operation of the pre-trade transparency waivers regime for equities to us via the creation of new powers.

As to whether expanding the MRMTL might undermine the robustness and transparency of prices derived from overseas venues, we note that UK MiFIR requires that reference prices are widely published and regarded by market participants as reliable reference prices. We expect venues to have in place appropriate policies and procedures to satisfy themselves that those conditions are met.

We intend to maintain the original amendment to Article 4 of RTS 1.

## The order management facility (OMF) waiver

**4.17** The OMF waiver caters for reserve (or iceberg) orders and for stop orders. Reserve orders are orders where only part of the volume (the peak) is visible to the market while the remainder remains hidden. Once the visible part is executed, the system discloses the rest of the order until the order is fully executed, or it is withdrawn. Onshored RTS 1 requires reserve orders to be of a size equal or larger than €10,000.

**4.18** A stop order, either an unpriced market or a limit order, is an order that remains undisclosed until a certain price condition is met. Once the price condition is met, the order is released into the order book in accordance with the rules applicable to all orders of that kind at the time of disclosure.

**4.19** In the consultation, we said that we were not convinced that setting a minimum threshold mitigates harm. In absence of evidence that the existing approach contributes to the integrity and transparency of the equity markets, we think there is no case to maintain the minimum monetary threshold.

**4.20** We proposed that trading venues set the minimum size of reserve and stop orders in financial instruments they trade on their systems. They should have the power and the responsibility to set thresholds that are appropriate to the type of financial instrument and considering the market in which it is traded. We therefore propose to repeal the fixed threshold of €10,000 and allow trading venues to determine minimum size thresholds in respect of financial instruments traded in their systems.

**4.21** We asked respondents whether they agree with the proposal to allocate the decision to set a minimum size threshold for reserve and other orders to trading venues using the OMF waivers.

**4.22** We received 20 responses to this question. Most respondents agreed with the proposal, whilst a small number of respondents were neutral and a further small number disagreed.

**4.23** We received supportive comments about our proposal on the basis that it strikes the right balance between achieving a high level of transparency while allowing trading venues to tailor appropriately the size thresholds to market dynamics. Another respondent commented that they were not aware of any evidence to suggest that the current approach benefits the transparency or integrity of equity markets.

**4.24** We received a small number of responses suggesting setting a minimum transparency level or display quantity threshold for these orders in lieu of the fixed €10,000 threshold. The respondents commented that this would ensure an appropriate level of transparency while still allowing trading venues to tailor size thresholds as they see fit.

**4.25** This ties in with the comment of a respondent disagreeing with our proposal. The respondent stated that leaving full discretion to venues risks encouraging a race to the bottom which could ultimately result in a very limited number of disclosed shares at the top of an iceberg order. It recommended having a minimum size that must be disclosed for iceberg orders (the peak).

**4.26** Two respondents who disagreed with our proposal stated that the regulator should set thresholds. The respondents also commented that the current €10,000 threshold is arbitrary and that setting them on a per instrument basis would be more appropriate to take account of each instrument's liquidity and trading characteristics.

**Our response**

We continue to be of the view that venues are best placed to consider the appropriate minimum size thresholds, based on the specific instrument and the market conditions. A fixed threshold that rigidly applies to all shares or equity instruments is not, in our view, as effective in advancing transparent and orderly markets as an approach that allocates responsibility to the venue, which owes an overarching obligation to maintain fair and orderly trading. We expect venues to set the minimum size of orders held in an order management facility operated by them having regard to that requirement. We will proceed with enabling trading venues to set a minimum size threshold for reserve and other orders using the OMF waivers.

## Chapter 5

# Our response to feedback on the tick size regime

**5.1** The tick size is the minimum increment between quoted prices in a financial instrument. The tick size is an important component of the market microstructure as it affects transaction costs, liquidity and the orderliness of markets.

**5.2** Onshored RTS 11 sets out the minimum tick size that trading venues shall comply with according to the price and the liquidity of each share. In CP22/12 we identified an issue with the application of the tick size regime to overseas shares whose main pool of liquidity is on trading venues located outside the UK.

**5.3** The use of UK-only data sourced through our Financial Instrument Transparency System (FITRS) in accordance with onshored RTS 11 often delivers larger than optimal minimum ticks for overseas shares as it does not consider liquidity available on overseas primary markets, which is an essential input in the tick size determination.

**5.4** While we have the power to override FITRS calculations, current requirements are operationally cumbersome as they require us to source data from overseas venues which may not always be available to us or when it is does not follow the same standards and definitions used in RTS 11.

**5.5** Furthermore, once the data is individually sourced and adjusted, differences between the tick size in the overseas primary market and the one determined according to RTS 11 may persist.

**5.6** This may prevent UK trading venues from competing with overseas venues on a level playing field. In CP22/12 we proposed to amend RTS 11 by allowing trading venues to set the minimum tick size at the level of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues.

**5.7** In the consultation we asked respondents whether they agree with the proposal to allow trading venues to adopt the minimum tick size of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues.

**5.8** We received 23 responses to this question. Almost all respondents agreed with the proposal. One respondent was instead against the proposal, whilst two respondents did not express a strong view either way.

**5.9** The themes of respondents' comments in support of our proposal include:

- operational simplicity in comparison with ad hoc calculations
- a level playing field with overseas exchanges, particularly with respect to equalisation of spreads and transaction costs for end investors
- a greater ability to secure best execution for end investors

**5.10** Several of the responses remarked that the proposal has the benefit of preventing artificially wide spreads and thus enables growth in the trading of such shares in the UK.

**5.11** Two of respondents cautioned that the increased flexibility resulting from this proposal could bring about complexity and unintended consequences for the integrity of the trading landscape. The respondents separately suggested:

- clear guidance to accompany the amendment for trading venues to meet
- that trading venues' ability to set minimum tick sizes must be supervised by us to ensure adequate protections for impartiality

**5.12** Additionally, one respondent recommended a transitional period to ensure that trading venues and firms have sufficient systems in place to accommodate the change and mitigate any implementation issues.

**5.13** The respondent disagreeing with our proposal stated that it could create more complication. The respondent's preferred outcome is for the UK to have its own requirements.

**Our response:**

We note the strong support for our proposals on the tick size regime, whilst acknowledging the additional comment made by a respondent regarding the complexity of tick sizes of shares with multiple currency denomination, raised under question 23 of the consultation.

We will continue to supervise the application of the tick size regime while having regard to the change made in this policy statement.

We maintain our position of allowing trading venues to adopt the minimum tick size of the primary market (i.e. the trading venue where the share was first admitted to trading) located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues.

We remain of the view that given the changes made in this policy statement, trading venues will be able to decide when to exercise the flexibility provided in our requirements. In consequence of that, no transitional period is necessary and our requirements will take effect immediately after publication of this policy statement.

Chapter 6

# Our response to feedback on improving market-wide resilience during outages

**6.1** Confidence in the resilience of trading venues is fundamental to maintaining orderly markets. A market outage is the temporary interruption of the essential services provided by a trading venue, such as order processing, execution of transactions and publication of trading interests. During a market outage firms' ability to hedge their risk is limited. The interruption of the price formation process increases uncertainty and lowers market confidence.

**6.2** In CP22/12 we said that whilst outages can occur on trading venues across any asset class, there are some issues related to outages of primary markets that are specific to the trading of shares.

**6.3** The specific problem we identified with shares is that when a primary market experiences an outage, it affects price formation and liquidity to the whole market, notwithstanding alternative venues are in principle able to continue to operate. In the consultation we identified some of the reasons this happens.

**6.4** Our policy statement PS21/3 on "building operational resilience" contains final rules and guidance applicable across various financial services firms, including RIEs. The rules came into force on 31 March of 2022. We updated the FCA Handbook (SYSC 15A.8) to include a section on expected communication standards during operational disruptions. In the consultation we said that while these new rules and guidance provide an overall framework for improving communications, they do not address, because of broader application, specific issues linked to trading venue outages and market-wide resilience.

**6.5** In CP22/12, we identified three main policy areas we want to focus on to improve market-wide resilience, namely the development of a playbook for handling outages, exploring alternatives to the closing auction operated by the primary market and the amendment of the scope of the reference price waiver. We then set out our expectations before, during and after a market outage for trading venues in terms of communication protocols, procedures to follow and alternative closing mechanisms.

**6.6** We received 27 responses to the market outage section of the consultation paper. We specifically asked for feedback on whether stakeholders agreed with:

- the proposals for trading venues
- current arrangement for alternative closing price
- proposals for market participants

**6.7** Respondents broadly agree with our proposals of the key regulatory expectations for trading venues, noting that improvement is needed in their communication protocols and playbook to handle outages, so that market participants have a clearer view on what and how to plan for trading decisions when trading is being disrupted on a venue. Some respondents provided a list of requirements that should be included in the

communication plan in terms of communication method, content and audience. Others highlighted that any guidance should not be overly prescriptive and need to account for differences between different types of venues (RIE/MTF/OTF), trading protocols, asset classes and viable alternatives. One market participant argued that detailed rules are needed. Some respondents also noted that to increase resiliency the definition of the most relevant market under the reference price waiver would need to be updated to allow a broader set of venues than just the primary market.

**6.8** Some respondents felt that the current arrangement for an alternative closing price is inappropriate, while others were more neutral. One respondent suggested that there should be scenario planning for the alternative closing price if the alternative method specified by the primary market does not result in a fair market price. Most respondents do not think that an alternative closing auction is needed if a reliable alternative closing price is agreed by the exchanges and the industry. Some respondents noted that a consolidated tape (CT) would provide a more robust and reliable reference price for both the continuous trading and closing periods when the primary market is down.

**6.9** On the proposals for market participants, some respondents agreed with our regulatory expectations on market participants being well-informed of trading venue outages procedures. They also agreed on the importance of considering order routing options and capabilities to access liquidity. There was also support for specifying the use of an alternative closing price in the event of an outage. However, one firm disagreed and noted that MiFID II best execution rule is already sufficient in ensuring that firms have considered the issues. Some firms noted that the industry prefer FCA involvement in resolving the coordination problem of moving trading to an alternate venue and the need for a central platform to notify participants of trading venue system statuses and for participants to communicate multilaterally and raise issues.

### Our response

Under the WMR and in CP22/12, we noted that we would consider developing FCA/industry guidance on market outages. As part of the consultation process, we spoke with trade bodies and individual market participants. We also spoke with our advisory committee on secondary markets. We received broad support to the development of good practices by the industry.

We will form a subcommittee of our S-MAC to work on good practices reflecting the views of all relevant stakeholders. If appropriate and in due course, we would consider providing confirmation to industry guidance in accordance with our confirmation process.

We are also working with IOSCO on this topic and will use it to inform our work. While these two workstreams are in progress, we will in the meantime continue working with trading venues to develop their communication protocols and procedures on handling outages.

As noted in CP22/12, subject to parliamentary approval of the Financial Services and Markets Bill, we will propose amending the waivers regime to allow for reference prices to be derived from multiple markets.

In relation to respondents supporting the establishment of a consolidated tape to enhance market resiliency during outages, we are developing the CT regime with Treasury. We intend to consult on this in the near future, as part of work towards having a regulatory regime in place for a CT by 2024. A framework for CT will initially be for bonds but will have the scope to be built upon and adapted for equities. The development of a CT regime would facilitate additional contingencies in the event of an outage and contribute to reducing harm of market disruption.

## Chapter 7

# Our response to feedback on the UK market for retail orders

**7.1** In CP22/12 we sought views on whether the UK market for retail orders works well and how we might change the regulatory regime to strengthen best execution while enhancing the efficiency and liquidity of public markets. We described the UK model for the execution of retail orders based on Retail Service Providers (RSP) and summarised the findings of our 2018 Investment Platforms Markets Study (the Study).

**7.2** A minority of respondents is of the view that the RSP is working well while the majority is either explicitly critical or suggest that a review is required. We have had subsequent conversations with a number of those respondents who expressed criticism. In both their consultation responses and those meetings, they expressed concerns that by separating retail flow from the liquidity in regulated venues the RSP model is disadvantaging retail investors and failing to meet the requirements of best execution.

**7.3** These concerns arose from the view that too few market makers are competing for retail orders, that most of the time only 2 or 3 of those RSP market makers trade against the retail flow and the inability of retail orders to interact with other order flow. Respondents also raised concerns about retail orders having to cross the spread due to RSP model neither supporting trading at mid-price nor permitting those orders to rest on an order book. The counterparty exposure created by the lack of a CCP in the design of the RSP model was also raised.

**7.4** In contrast, most of the respondents supporting the RSP model offered a range of areas in which it results in better outcomes for investors. Those include price improvements (i.e. execution at a better price than the one displayed on transparent order books), simplicity of use, and resilience. Among the explanations offered for these benefits were views that when compared to the broader market the RSP model provides retail investors with more liquidity, lower costs and improved resilience. It was also felt that the RSP is benefiting from market makers delivering innovations such as ensuring best price for the investor by developing new real timing price checking logic.

**7.5** Most suggested improvements focused around either opening the RSP model to more liquidity providers to compete to be the retail investors' counterparty or opening access to more liquidity pools for the retail investors.

### Our response

We will continue discussing with stakeholders to explore more fully the concerns raised and inform our decision as to whether a more formal review is appropriate. As part of this we aim to seek views on:

- the key gaps in knowledge that a review should look to fill
- ways to test the competing views on the quality of execution RSP is providing relative to what would hypothetically be achieved if the retail

orders could execute against counterparties other than only RSP market makers

In the consultation we included the messages from the Study about best execution and the RSP system. While we continue engaging with market participants on this topic, we reemphasise those messages again here:

- firms should make clear to clients in their order handling policies or best execution policies that they use the RSP system
- firms using the RSP system need contingency arrangements if the RSP system is not available at a time of market volatility
- firms using the RSP system need to undertake thorough assessments to confirm that the way in which they select venues under their execution policies, particularly where they rely on a small number of RSP market makers, delivers a consistently high quality of execution for their clients

## Chapter 8

# Cost benefit analysis

**8.1** In CP22/12, the FCA presented cost benefit analyses (CBAs) of the expected costs and benefits associated with the policy proposals set out in the consultation.

**8.2** Our analyses were based on:

- engagement with market participants
- our internal assessment and quantification of the identified costs and benefits of the proposals

**8.3** Some respondents to the CP commented on the challenges and potential costs of implementing the post-trade transparency proposals. They also discussed potential costs arising from divergence from the EU. These points were already taken into account within the CP CBAs. We note the feedback from respondents as to the potential impact of the divergence between the trade reporting and transaction reporting. Respondents did not however provide any specific comments on the cost estimates set out in the CBAs or provide any additional evidence on their costs that would change our analyses.

**8.4** In finalising our rules, we have made no changes to the proposals set out in the CP on waivers from pre-trade transparency and tick size. We find that our assessments on costs and benefits covering these topics remain valid.

**8.5** In addition, we have made limited changes to the proposals on post-trade transparency, including:

- minor amendments to the content of post-trade transparency, specifically to the scope of exemptions and to reporting flags
- the DRR where we provide the option for DRs to bilaterally agree on the reporting obligations
- longer implementation period of 12 months to implement the changes

**8.6** We do not find that the minor amendments to the content of post-trade transparency have a material impact on the cost estimates set out in the original CBA as the changes have a limited impact on the scope of work firms will need to carry out. Moreover, the extension of the implementation period should enable firms to spread the work they plan to undertake on their systems, processes, and IT over a longer timeframe. This would be expected to relieve pressures on resourcing within the implementation period and may result in reduced costs.

**8.7** Regarding the DRR, some respondents challenged the entity level designation given potential additional costs for some firms. We have provided a detailed response in support of entity level designation in section 3. In addition, the amendment to allow DRs to bilaterally agree which party shall take the reporting obligation is one option for a DR to address its reporting obligation in an instrument for which it has no reporting capabilities. Therefore, we see no material impact on the estimated costs and the CBA

remains valid. As explained above, the extended implementation period may result in reduced costs.

**8.8** Taking into account the feedback received and the nature of the changes we are making, we do not consider that our amendments will materially impact the findings in our original CBAs. Therefore, we judge that the CBAs as consulted on remain appropriate.

## Annex 1

# List of non-confidential respondents

AFME

Aquis Exchange PLC

The Alternative Investment Management Association (AIMA)

The APA & ARM Association (APARMA)

Association of Foreign Banks

Cboe Europe

Citadel Securities Europe

City of London Law Society - Regulatory Law Committee

European Principal Traders Association (FIA EPTA)

European Venues and Intermediaries Association

FIX Trading Community

The Investment Association (The IA)

Invesco

IPSX UK Limited

ISDA

Managed Funds Association

Schroders Investment Management

TD Securities

UK Equity Markets Association

UK Finance

Vanguard Asset Management Ltd.

Virtu Financial

World Federation of Exchanges

# Annex 2

# Abbreviations used in this paper

| Abbreviation | Description |
|---|---|
| **AIF** | Alternative investment fund |
| **APA** | Approved publication arrangement |
| **CBA** | Cost benefit analysis |
| **CCP** | Central counterparty |
| **CT** | Consolidated tape |
| **DCO** | Derivatives clearing obligation |
| **DR** | Designated reporter |
| **DRR** | Designated reporter regime |
| **DTO** | Derivative trading obligation |
| **ESMA** | European Securities & Markets Authority |
| **ETF** | Exchange traded fund |
| **EU** | European Union |
| **FITRS** | Financial Instrument Transparency System |
| **FRF** | Future Regulatory Framework |
| **HFT** | High-frequency trading |
| **IOSCO** | International Organisation of Securities Commissions |
| **LIS** | Large in scale |
| **MIC** | Market identifier code |
| **MRMTL** | Most relevant market in terms of liquidity |
| **MTF** | Multilateral trading facility |

| Abbreviation | Description |
|---|---|
| **NAV** | Net asset value |
| **OMF** | Order management facility |
| **OTF** | Organised trading facility |
| **OTC** | Over-the-counter |
| **RIE** | Recognised investment exchange |
| **RFMD** | Request for market data |
| **RSP** | Retail service provider |
| **RTS** | Regulatory technical standard |
| **S-MAC** | Secondary Markets Advisory Committee |
| **SI** | Systematic internaliser |
| **TDM** | Trade data monitor |
| **UCITS** | Undertaking in collective investment trusts |
| **UK MiFID** | UK Markets in Financial Instruments Directive |
| **UK MiFIR** | UK Markets in Financial Instruments Regulation |
| **WMR** | Wholesale Markets Review |

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# Appendix 1

# Draft Handbook text

# TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS TRANSPARENCY) INSTRUMENT 2023

## Powers exercised

A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under:

(1) articles 4, 7, 20, 21 and 23 of and paragraph 24 of Schedule 3 to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and

(2) the following sections of the Financial Services and Markets Act 2000 (“the Act”):

(a) section 138P (Technical standards);
(b) section 138Q (Standards instruments);
(c) section 138S (Application of Chapters 1 and 2); and
(d) section 137T (General supplementary powers).

B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

## Pre-conditions to making

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

## Interpretation

E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

## Modifications

F. The following technical standards are amended in accordance with Annexes A, B and C of this instrument.

| (1) | (2) |
|---|---|
| Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments | Annex A |

| | |
|---|---|
| and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser | |
| Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives | Annex B |
| Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds | Annex C |

**Commencement**

G. Part 1, 3 and 5 of Annex A, and Annex B of this instrument come into force on 29 April 2024.

H. Part 2 and 4 of Annex A, and Annex C of this instrument come into force on 28 April 2023.

**Notes**

I. In the Annexes to this instrument, the “notes” (indicated by “**Note**:” or “*Editor’s note*:”) are included for the convenience of readers, but do not form part of the legislative text.

**Citation**

J. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Transparency) Instrument 2023.

By order of the Board
27 April 2023

In this annex, underlining indicates new text and striking through indicates deleted text.

## Annex A

**Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser**

**Part 1: Comes into force on 29 April 2024**

…

*Article 1*

**Definitions**

For the purposes of this Regulation, the following definitions apply:

(1) "portfolio trade" means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;

(2) "give-up transaction" or "give-in transaction" means:

(a) a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or

(b) where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging the position that it has committed to enter into with a client.

(3) "securities financing transaction" means a securities financing transaction as defined in Article 3(6) of Delegated Regulation (EU) 2017/577;

(5) "the Recognition Requirements Regulations" means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995);

(5A) "benchmark trade" means a transaction is executed by reference to:

(a) a price calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price; or

(b) the market closing price.

(5B) "designated reporter" means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients;

(5C) "inter-affiliate transaction" means a transaction between entities within the same group carried out exclusively for intra-group risk management purposes.

~~(6) "the AIFM Regulations" means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).~~

*Article 2*

**Transactions not contributing to the price discovery process (Article 23(1) of Regulation (EU) No 600/2014)**

A transaction in shares does not contribute to the price discovery process where any of the following circumstances apply:

(a) the transaction is ~~executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time weighted average price~~ a benchmark trade;

(b) the transaction is part of a portfolio trade;

(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;

(ca) the transaction is of a type listed in article 13.

~~(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, or a UK AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~

~~(e) the transaction is a give-up transaction or a give-in transaction;~~

~~(f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;~~

~~(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;~~

~~(h) the transaction is a securities financing transaction;~~

~~(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or a similar third country law for the same type of transactions, where applicable).~~

**Part 2: Comes into force on 28 April 2023**

…

*Article 4*

**Most relevant market in terms of liquidity (Article 4(1)(a) of Regulation (EU) No 600/2014)**

(-1) For the purposes of this Article, Article 2(1)(62) of Regulation 600/2014/EU shall not apply.

(1) For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the relevant area for that financial instrument except where Article 4(1A) of this Regulation applies.

(1A) Where a share, depositary receipt, ETF, certificate or other similar financial instrument is admitted to trading in a third country, the most relevant market in terms of liquidity may be considered to be the third-country trading venue where that financial instrument was first admitted to trading.

…

**Part 3: Comes into force on 29 April 2024**

…

*Article 6*

**Negotiated transactions subject to conditions other than the current market price (Article 4(1)(b) of Regulation (EU) No 600/2014)**

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be subject to conditions other than the current market price of the financial instrument where any of the following circumstances applies:

(a) the transaction is ~~executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price~~ a benchmark trade;

(b) the transaction is part of a portfolio trade;

(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;

(ca) the transaction is of a type listed in article 13;

~~(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~

~~(e) the transaction is a give-up transaction or a give-in transaction;~~

~~(f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;~~

~~(g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;~~

~~(h) the transaction is a securities financing transaction;~~

~~(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or similar third country law for the same type of transactions, where applicable);~~

(j) any other transaction equivalent to one of those described in points (a) to ~~(i)~~ (ca) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

**Part 4: comes into force on 28 April 2023**

…

*Article 8*

**Type ~~and minimum size~~ of orders held in an order management facility (Article 4(1)(d) of Regulation (EU) No 600/2014)**

(1) The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:

(a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are pre-defined by the system's protocol;

(b) cannot interact with other trading interests prior to disclosure to the order book operated by the trading venue;

(c) once disclosed to the order book, interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.

(1A) By way of derogation from paragraph 1(b), where a portion of a quantity of an aggressive order has executed against the disclosed quantity of a reserve order and other disclosed orders in the order book of a trading venue, the non-disclosed quantity of the reserve order held in the trading venue's order management facility is a type of order for which pre-trade disclosure may be waived and which can be executed against the remainder of the quantity of the aggressive order.

(1B) A reserve order as referred to in paragraph 1A shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity in the order book of a trading venue and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is held in the order management facility of a trading venue.

(1C) An aggressive order as referred to in paragraph 1A shall be considered a limit order that has been disclosed in the order book of a trading venue and which initiates trades.

~~(2) Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:~~

~~(a) in the case of a reserve order, a size that is greater than or equal to EUR 10000;~~

~~(b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.~~

~~(3) A reserve order as referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order~~.

**Part 5: comes into force on 29 April 2024**

…

*Article 12*

**Post-trade transparency obligations (Article 6(1) and Article 20(1) and (2) of Regulation (EU) No 600/2014)**

…

(4) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that ~~sells the financial instrument concerned~~ is registered as a designated reporter shall make the transaction public through an APA.

(5) ~~By way of derogation from paragraph 4, where only one of the investment firms~~ Where neither investment firm party to the transaction ~~is a systematic internaliser in~~

~~the given financial instrument and it is acting as the buying firm~~ is a designated reporter, only ~~that~~ the firm acting as the selling firm shall be obliged to make the transaction public through an APA~~, informing the seller of the action taken~~.

(5A) Where each investment firm party to the transaction is registered as a designated reporter:

(a) only the firm acting as the selling firm shall be obliged to make the transaction public through an APA; or

(b) the selling firm may discharge its obligation by arranging for the buyer only to make the transaction public through an APA.

(6) …

(7) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.

(8) The FCA shall publish and maintain on its website a register of designated reporters. The register shall be publicly accessible on the FCA's website and updated on a regular basis.

*Article 13*

**Application of post-trade transparency to certain types of transactions executed outside a trading venue (Article 20(1) of Regulation (EU) No 600/2014)**

The obligation in Article 20(1) of Regulation (EU) No 600/2014 shall not apply to the following:

(a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable;

(b) transactions executed by ~~a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations~~ an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one ~~collective investment undertaking~~ fund to another and where no other investment firm is a party to the transaction other than for the sole purpose of providing arrangements for the execution of such non price-forming transactions;

(c) give-up transactions and give-in transactions;

(ca) inter-affiliate transactions.

~~(d) transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP.~~

…

## ANNEX I Information to be made public

…

*Table 3* List of details for the purpose of post-trade transparency

| Field identifier | Description and details to be published | Type of execution or publication venue | Format to be populated as defined in Table 2 |
|---|---|---|---|
| … | | | |
| Price | Traded price of the transaction excluding, where applicable, commission and accrued interest.<br>Where price is reported in monetary terms, it shall be provided in the major currency unit.<br>~~Where price is currently not available but pending, the value should be "PNDG".~~<br>~~Where price is not applicable the field shall not be populated.~~<br>The information reported in this field shall be consistent with the values provided in field Quantity. | RM, MTF<br>APA<br>CTP | {DECIMAL-18/13} in case the price is expressed as monetary value<br>{DECIMAL-11/10} in case the price is expressed as percentage or yield<br>~~"PNDG" in case the price is not available~~ |
| <u>Price conditions</u> | <u>Where price is currently not available but pending, the value should be "PNDG".</u> | <u>RM, MTF</u><br><u>APA</u><br><u>CTP</u> | <u>"PNDG" in cases where the price is not available</u> |
| Price <u>major</u> currency | Currency in which the price is expressed (applicable if the price is expressed as monetary value). | RM, MTF<br>APA<br>CTP | {CURRENCYCODE_3} |

| | | | |
|---|---|---|---|
| | **Note**: This field should use an ISO 4217 currency code for a major currency. | | |
| … | | | |

*Table 4* List of flags for the purpose of post-trade transparency

| Flag | Name | Type of execution or publication venue | Description |
|---|---|---|---|
| "BENC" | Benchmark transactions flag | RM, MTF<br>APA<br>CTP | Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price. |
| ~~"ACTX"~~ | ~~Agency cross transactions flag~~ | ~~APA~~<br>~~CTP~~ | ~~Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.~~ |
| "CLSE" | Market closing price flag | RM, MTF<br>APA<br>CTP | Benchmark transactions executed at the market closing price. |
| "PORT" | Portfolio trade transactions flag | RM, MTF<br>APA<br>CTP | Transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price. |
| "NPFT" | Non-price forming transactions flag | RM, MTF<br>CTP | Transactions where the exchange of financial instruments is determined |

| | | | |
|---|---|---|---|
| | | | by factors other than the current market valuation of the financial instrument as listed under Article 13. |
| "TNCP" | Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag, other than where covered by BENC, CLSE or PORT flags. | RM, MTF<br>APA<br>CTP | Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2, other than where covered by BENC, CLSE or PORT flags. |
| "SDIV" | Special dividend transaction flag | RM, MTF<br>APA<br>CTP | Transactions that are either:<br>(a) executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or<br>(b) executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer. |
| "LRGS" | Post-trade large in scale transaction flag | RM, MTF<br>APA<br>CTP | Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15. |
| "NTLS" | Pre-trade large in scale trade flag | RM, MTF<br>CTP | Transactions that are large in scale compared with normal market size for which pre-trade transparency can be waived under Article 7. |
| "RFPT" | Reference price transaction flag | RM, MTF | Transactions which are executed under systems operating in accordance |

| | | CTP | with Article 4(1)(a) of Regulation (EU) No 600/2014. |
|---|---|---|---|
| ~~“NLIQ”~~ | ~~Negotiated transaction in liquid financial instruments flag~~ | ~~RM, MTF~~<br>~~CTP~~ | ~~Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.~~ |
| ~~“OILQ”~~ | ~~Negotiated transaction in illiquid financial instruments flag~~ | ~~RM, MTF~~<br>~~CTP~~ | ~~Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.~~ |
| ~~“PRIC”~~ | ~~Negotiated transaction subject to conditions other than the current market price flag~~ | ~~RM, MTF~~<br>~~CTP~~ | ~~Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.~~ |
| “NETW” | Negotiated transaction flag | RM, MTF<br>CTP | Transactions executed in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 and article 6 of this regulation. |
| “ALGO” | Algorithmic transaction flag | RM, MTF<br>CTP | Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701). |
| ~~“SIZE”~~ | ~~Transaction above the standard market size flag~~ | ~~APA~~<br>~~CTP~~ | ~~Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.~~ |
| ~~“ILQD”~~ | ~~Illiquid instrument transaction flag~~ | ~~APA~~<br>~~CTP~~ | ~~Transactions in illiquid instruments as determined in accordance~~ |

| | | | |
|---|---|---|---|
| | | | ~~with Articles 1 to 9 of Commission Delegated Regulation (EU) 2017/567 executed on a systematic internaliser.~~ |
| ~~"RPRI"~~ | ~~Transactions which have received price improvement flag~~ | ~~APA~~<br>~~CTP~~ | ~~Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.~~ |
| "CANC" | Cancellation flag | RM, MTF<br>APA<br>CTP | When a previously published transaction is cancelled. |
| "AMND" | Amendment flag | RM, MTF<br>APA<br>CTP | When a previously published transaction is amended. |
| ~~"DUPL"~~ | ~~Duplicative trade reports flag~~ | ~~APA~~ | ~~When a transaction is reported to more than one APA in accordance with Article 17(1) of Delegated Regulation (EU) 2017/571.~~ |

In this annex, underlining indicates new text and striking through indicates deleted text.

**Annex B comes into force on 29 April 2024**

## Annex B

**Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives**

…

*Article 1*

### Definitions

For the purposes of this Regulation, the following definitions shall apply:

…

(4) “the AIFM Regulations" means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773)~~.~~;

(5) “designated reporter” means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients.

…

*Article 7*

### Post-trade transparency obligations (Article 10(1) and Article 21(1) and (5) of Regulation (EU) No 600/2014)

…

(5) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that ~~sells the financial instrument concerned~~ is registered as a designated reporter shall make the transaction public through an APA.

(6) ~~By way of derogation from paragraph 5, where only one of the investment firms~~ Where neither investment firm party to the transaction ~~is a systematic internaliser in the given financial instrument and it is acting as the buying firm,~~ is a designated

reporter, only ~~that~~ the firm acting as the selling firm shall be obliged to make the transaction public through an APA~~, informing the seller of the action taken~~.

(6A) Where each investment firm party to the transaction is registered as a designated reporter:

(a) only the firm acting as the selling firm shall be obliged to make the transaction public through an APA; or

(b) the selling firm may discharge its obligation by arranging for the buyer only to make the transaction public through an APA.

…

(8) …

(9) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.

In this annex, underlining indicates new text and striking through indicates deleted text.

**Annex C comes into force on 28 April 2023**

## Annex C

**Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds**

…

*Article 1*

**Most relevant market in terms of liquidity**

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be ~~the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587~~ <u>the trading venue with the highest turnover for that financial instrument within the UK</u>.

*Article 2*

**Tick size for shares, depositary receipts and exchange-traded funds (Article 49(1) and (2) of Directive 2014/65/EU)**

(1) Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to average daily number of transactions in the most relevant market in terms of liquidity for that instrument; and

(b) the price range in that liquidity band corresponding to the price of the order.

(2) By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a trading system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

(2A) By way of derogation from paragraph (1), where a share or a depositary receipt is admitted to trading on a third country trading venue, trading venues may apply to orders in these instruments a tick size that is applied by a third country trading venue where that financial instrument was first admitted to trading.

…

*Article 3*

**Average daily number of transactions for shares and depositary receipts (Article 49(1) and (2) of Directive 2014/65/EU)**

(1) By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, for the purposes of this regulation, the FCA shall, when determining the most relevant market in terms of liquidity for each share or depositary receipt that is traded on a trading venue~~,~~ calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

…

~~8. The competent authority for a specific share may adjust the average daily number of transactions calculated or estimated by that competent authority for that share in accordance with the procedure set out in paragraphs 1 to 7 where all of the following conditions are met:~~

~~(a) the trading venue with the highest turnover for that share is located in a third country;~~

~~(b) where that average daily number of transactions has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4, it is equal to or greater than one.~~

~~When adjusting the average daily number of transactions for a share, the competent authority shall take into account the transactions executed on the third-country trading venue with the highest turnover for trading of that share.~~

~~9. The competent authority that adjusted the average daily number of transactions for a share in accordance with paragraph 8 shall ensure the publication of that adjusted average daily number of transactions.~~

~~10. Trading venues shall apply the tick sizes of the liquidity band corresponding to the adjusted average daily number of transactions from the second calendar day after its publication.~~

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