

# Quarterly Consultation

## No 34

**Consultation Paper**

CP21/35

December 2021

## How to respond

The Financial Conduct Authority invites comments on this Consultation Paper.

Comments should reach us by 10 January 2022 for Chapter 2, 3, 5 and 6, and 17 January 2022 for Chapter 4.

Comments may be sent by electronic submission using the form on the FCA's website at ([www.fca.org.uk/cp21-35-response-form](http://www.fca.org.uk/cp21-35-response-form)).

Alternatively, please send comments in writing to:

### Alternatively, please send comments in writing to:

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If you are responding in writing to several chapters please send your comments to Meghan Beller in the Handbook Team, who will pass your responses on as appropriate

### All responses should be sent to:

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Changes to SUP 8

# 1 Overview

Chapter No	Proposed changes to Handbook	Consultation Closing Period
2	Minor amendment to the Enforcement Guide to reflect the EU Exit Passport Regulations	5 weeks
3	Amendments to MAR 9 to include wind-down guidance when a data reporting services provider wishes to cancel its data reporting service authorisation	5 weeks
4	Changes to RTS 22 as onshored to remove the requirement to report certain Securities Financing Transactions (SFTs) under UK MiFIR	6 weeks
5	Consequential changes to SUP 8 to align with the revised procedure for making decisions on Waiver applications	5 weeks
6	Amendments to FCA forms in line with our interpretative guide on completing our forms after the UK's withdrawal from the EU	5 weeks

## 2 EU Exit Passport Regulations: Proposed changes to EG

### Introduction

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- 2.1** The temporary permissions regime (TPR) enables relevant firms and funds that were passporting into the UK when the transition period ended to continue operating temporarily. During this limited time, firms must seek full authorisation from us, if required, to continue to access the UK market.
- 2.2** Alongside the TPR, the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018 (the EU Exit Passport Regulations), created the financial services contracts regime (FSCR).
- 2.3** The FSCR was created solely to allow certain European Economic Area (EEA) firms and funds to run off existing UK contracts and conduct an orderly exit from the UK market. Firms within this regime will not be able to write new UK business.
- 2.4** The FSCR is made up of two separate regimes, Contractual Run-off and Supervised Run-off (SRO). This consultation paper concerns SRO only, which is relevant to an EEA passporting firm (or a Treaty firm) that has a UK branch or a UK top-up permission.
- 2.5** The EU Exit Passport Regulations contain certain conditions that must be met for a firm to enter SRO. Where the conditions are met, there are a number of scenarios in which a firm may enter SRO, for example:
- where a firm has not notified to go into the TPR, and it requires permission to carry out its contracts. Where these conditions are met SRO arises automatically;
  - where it has notified for TPR, it applies for permission and we decide that this should be varied, to cancel or refuse;
  - where it notifies for TPR but does not apply for permission and applies to cancel TPR wanting SRO to apply to enable it to wind down.
- 2.6** The scope of an SRO firm's permission is limited to the extent that permission is required for the performance of an existing contract or to transfer rights under an existing contract.
- 2.7** Whilst the SRO is intended to enable an orderly wind down of existing contracts, the EU Exit Passport Regulations contain a power for us to direct that SRO doesn't apply to a particular firm.
- 2.8** The power applies to persons with deemed permission under the EU Exit Passport Regulations. It does not apply to persons with deemed permission under the Electronic Money, Payment Services and Payment Systems (Amendment and Transitional Provisions) (EU Exit) Regulations 2018.

- 2.9** The effect of the power would be to remove the limited deemed permission of a firm. If we exercise the power a firm will no longer have deemed permission to wind down its existing regulated activities in the UK.
- 2.10** We are now consulting on changes to the Enforcement Guide (EG) relating to this power.

## Summary of proposals

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- 2.11** We propose amending EG to explain this power. The changes will provide information about when we are generally likely to consider using the power and who the decision maker will be.

### **Q2.1: Do you agree with our proposed changes to EG?**

## Cost benefit analysis

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- 2.12** The proposal set out in this consultation paper does not impose additional obligations on firms. It is not related to rule changes or guidance on rules. Under section 138I of the Financial Services and Markets Act 2000 (FSMA), when we wish to introduce any new rules, we must publish a cost benefit analysis along with the proposed rules. Since the requirements under section 138I are not applicable, we are not required to carry out a cost benefit analysis. In any event, we do not expect that the proposal to amend EG will lead to any increase in costs, or the cost increase will be of minimal significance.

## Compatibility statement

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- 2.13** Section 1B of FSMA requires us, when discharging our general functions, as far as is reasonably possible, to act in a way that is compatible with our strategic objective and advance one or more of our operational objectives. We also need to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out our general functions in a way that promotes effective competition in the interests of consumers. Our general functions include our functions in relation to the giving of general advice. In discharging our general functions, we must have regard to the regulatory principles in section 3B of FSMA. We are satisfied that the proposed changes are compatible with our objectives and regulatory principles.

## Equality and diversity

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- 2.14** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

- 2.15** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final amendments. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

## 3 Amendments to MAR 9

### Introduction

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- 3.1** The Markets in Financial Instruments Directive II (MiFID II) introduced a new authorisation and supervision regime for Data Reporting Services Providers (DRSPs). There are 3 types of DRSPs:
- Approved Reporting Mechanisms (ARMs): provide the service of reporting transaction details to competent authorities on behalf of investment firms;
  - Approved Publication Arrangements (APAs): provide the service of publishing post trade reports on behalf of investment firms; and
  - Consolidated Tape Providers (CTPs): collect trade reports for financial instruments from trading venues and APAs. They consolidate the trade reports into a continuous electronic live data stream, providing price and volume data per financial instrument.
- 3.2** The UK authorisation and supervision regulatory framework for DRSPs is a combination of the Data Reporting Services Regulations 2017 (SI 2017/699) (the DRS Regulations 2017), Chapter 9 in the FCA's Market Conduct sourcebook (MAR), UK Markets in Financial Instruments Regulation (UK MiFIR) and several UK technical standards.
- 3.3** These requirements aim to improve transparency in financial markets, promote reliable price formation, and enable the FCA to receive complete and accurate transaction report data used to detect and investigate suspected market abuse.
- 3.4** The current regulatory framework does not include guidance on the wind-down of a DRSP. This chapter proposes to amend MAR 9 to include guidance for a DRSP that wishes to cancel its data reporting services authorisation.
- 3.5** This chapter will be of interest to a person or firm authorised (or verified) to operate a data reporting service in the UK.

### Summary of proposals

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- 3.6** DRSPs provide important services to enable investment firms to comply with their regulatory reporting obligations, as well as to promote market transparency and integrity. If a DRSP wishes to wind-down its data reporting services, it is important that this is done in an orderly manner.
- 3.7** We propose to amend MAR 9 to include wind-down guidance for DRSPs that sets out:
- how a DRSP should engage with the FCA for the duration of the cancellation process;



- the requirement for a wind-down plan which promotes and protects the integrity of financial markets and the interests of the DRSP's clients; and
- a DRSP's obligations until the conclusion of the cancellation process.

**3.8** Setting out our expectations for an orderly wind-down of a DRSP in MAR 9 will ensure that there is a clear framework for a DRSP to follow should it wish to cancel its data reporting services authorisation under Regulation 11 of the DRS Regulations 2017. This should mitigate the impact of a DRSP exiting the market on clients and the wider financial service industry.

**3.9** We have set out our proposed amendment to MAR 9 to incorporate provisions relating to the wind-down of a DRSP in Appendix 3. In conjunction with the draft MAR 9 instrument, we have also set out our proposed updated MAR 9 Annex 4 cancellation form in Appendix 3, which includes a requirement to provide a wind-down plan.

**Q3.1:** Do you agree with our approach to include wind-down guidance for DRSPs in MAR 9? If not, please explain your rationale.

**Q3.2:** Do you have any comments on the wind-down provisions set out in our draft MAR 9 instrument in Appendix 3?

**Q3.3:** Do you have any comments on our proposed updated MAR 9 Annex 4 cancellation form?

## Cost benefit analysis

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**3.10** Our statutory cost benefit analysis (CBA) requirements in Section 138I of the Financial Services and Markets Act 2000 (FSMA) do not apply to directions and guidance issued under Regulation 11 and 20 of the DRS Regulations 2017.

**3.11** The proposed guidance seeks to support existing legislation, rules and supervisory practice underpinning the regulation of UK DRSPs. We consider that the expectations set out in this document are reasonably predictable from the relevant legislation and rules.

## Compatibility statement

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**3.12** We are satisfied that the proposed guidance is compatible with our objectives and regulatory principles. The amendment advances our operational objective of promoting market integrity under section 1B(3) FSMA and regulation 17 of the DRS Regulations 2017.

## Equality and diversity

---

**3.13** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact

any of the groups with protected characteristics under the Equality Act 2010 (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).

**3.14** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

## 4 Changes to Securities Financing Transactions – RTS 22

### Introduction

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- 4.1** We are proposing changes to the reporting of securities financing transactions (SFTs) under the UK Markets in Financial Instruments Regulation (UK MiFIR). Our aim is to reduce the reporting burden on firms by having these transactions reported under one regime (UK SFTR) only.
- 4.2** Our proposals will impact investment firms that have transaction reporting obligations and that carry out SFTs with a counterparty of the ESCB<sup>1</sup> or the Bank of England. They may also be of interest to firms subject to reporting requirements under UK SFTR.

### Summary of proposals

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#### Background

- 4.3** SFTs are excluded from reporting under UK MiFIR following the exclusion provided for in Article 2(5)(a) of RTS 22 as onshored. However, this exclusion does not apply to SFTs to which the counterparty is a member of the European System of Central Banks (ESCB) or Bank of England.
- 4.4** SFTs to which a member of the ESCB is a counterparty are also reportable under UK SFTR. However, as a result of the Temporary Transitional Power (TTP), this reporting obligation did not come into effect in January 2021.
- 4.5** The TTP is set to expire in March 2022. In the absence of any action, SFTs to which the counterparty is a member of the ESCB would become reportable under UK SFTR and remain reportable under UK MiFIR.

#### Proposal

- 4.6** We are proposing to widen the existing exclusion of SFTs from reporting under UK MiFIR to also include SFTs where the counterparty is a member of the ESCB or Bank of England, effective from 31 March 2022.

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<sup>1</sup> In accordance with paragraph 31(b) of Annex IX (Financial Services) to the EEA Agreement, this reference to a member of the European System of Central Banks shall be understood to include, in addition to its meaning in this Regulation, a national central bank of the EFTA States. Article 2(b) of the EEA Agreement defines 'EFTA States' to mean Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

4.7 This would mean that:

- No SFTs would be subject to reporting under UK MiFIR. SFTs would be reportable only under UK SFTR, including where a member of the ESCB is a counterparty.
- SFTs where the counterparty is the Bank of England would not be reportable under either regime.

4.8 Our proposal aims to remove the burden on firms attached to reporting the same transaction twice under different regimes. We view the associated reporting cost on firms as disproportionate to the benefit we receive from having the same transaction reported under UK SFTR and UK MiFIR.

4.9 UK SFTR is more suited to the reporting of these transactions and we see additional benefits to having all SFTs reported under one regime.

**Q4.1: Do you agree with the approach to report SFTs where the counterparty is a member of the ESCB under UK SFTR only?**

**Q4.2: Do you agree with the approach to stop reporting SFTs where the counterparty is the Bank of England?**

**Q4.3: Do you agree with the proposed amendments to onshored RTS 22?**

**Q4.4: Do you agree with the proposed timing for the amendment that will take effect at the end of the TTP?**

4.10 The proposed draft Handbook text is shown in Appendix 4.<sup>2</sup>

## Cost benefit analysis

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4.11 Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) when proposing draft rules. However, section 138L of FSMA says that we do not need to provide a CBA where we consider that there will be no increase in costs, or the increases will be of minimal significance. Having assessed the changes proposed in this chapter and having considered previous estimates of similar reporting changes, we believe this exemption applies to the proposals in this chapter.

4.12 We are proposing to remove an existing reporting obligation that exists under UK MiFIR. We anticipate that this will reduce reporting costs for firms subject to these requirements.

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2 The guidance on how to report an SFT transaction in the Guidelines on transaction reporting, order and clock synchronisation would no longer be relevant as no SFT transactions would be reportable under MiFIR under any circumstances.

## Impact on mutual societies

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- 4.13** Section 138S(2) of FSMA requires us to prepare a statement setting out our opinion on whether proposed technical standards will have an impact on mutual societies which is significantly different from the impact on other authorised persons.
- 4.14** We are satisfied that the proposed amendments do not impact on mutual societies to a greater extent than on other authorised firms.

## Compatibility statement

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- 4.15** When consulting on changes to technical standards, we are required by section 138S(2)(f) FSMA to explain why our proposal:
- i.** is compatible with our strategic objective, that is ensuring that relevant markets function well;
  - ii.** advances one or more of the FCA's operational objectives (consumer protection objective, integrity objective and competition objective); and
  - iii.** has regard to the regulatory principles in section 3B FSMA.
- 4.16** Our proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well because they ensure that firms report the appropriate type and level of information relating to securities financing transactions, thereby enabling us to discharge more effectively our supervisory obligations. As such they advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system and similarly help secure an appropriate degree of protection for the clients of firms subject to these reporting obligations.
- 4.17** We have had regard to the regulatory principles in section 3B FSMA. Not all of these regulatory principles are relevant to the proposals and we cover the most relevant of the principles below.

### **The need to use the resources of each regulator in the most efficient and economic way**

- 4.18** By streamlining the provision of reporting information in respect of the same transactions under different sources of retained EU law, the FCA is better able to target its supervisory resources in the most efficient and economic ways, when it comes to market monitoring.

### **The principle that a burden or restriction should be proportionate to the benefits**

- 4.19** The effect of our proposals is to reduce the duplication of regulatory reporting by firms subject to reporting obligations under both UK MiFIR and UK SFTR, in respect of the same transaction, thereby achieving a more proportionate outcome for firms that would be subject to dual requirements.

## Equality and diversity

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- 4.20** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 4.21** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

## 5 Changes to SUP 8

### Introduction

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- 5.1** Section 138A of the Financial Services and Markets Act 2000 (FSMA) details the availability of waivers or modifications of rules in the FCA Handbook. Chapter 8 in the Supervision manual (SUP) sets out the expectations that firms should have of the FCA when assessing applications.
- 5.2** FCA's Authorisation Division is restructuring its decision-making framework to further empower its staff to make decisions within an agreed framework.

### Summary of proposals

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- 5.3** We are seeking to amend the guidance at SUP 8.9.1G to remove references to the oversight of a staff committee. The existing committee has now been removed from our governance structure and the change better reflects how most decisions on waivers are currently made in practice. We are not proposing to introduce a process of escalation of high profile precedent setting or other significant cases to an alternative senior committee at the FCA; those will be escalated to appropriate senior individuals (with collective decision making where appropriate) following liaison with relevant stakeholders. We consider this to provide an appropriate balance between the desirability of our being able to take decisions at greater pace with the need for proportionate levels of quality control, consistency and governance.

**Q5.1: Do you have any comments on the proposed changes in light of the governance changes the FCA has made?**

### Cost benefit analysis

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- 5.4** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.
- 5.5** We are satisfied that the proposed amendment does not increase costs to firms or consumers, or any increase will be of minimal significance, as they do not create any new obligations. It will have a general benefit of clarifying our guidance.

## Compatibility statement

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- 5.6** Section 1B of FSMA requires us, when discharging our general functions, so far as is reasonably possible, to act in a way that is compatible with our strategic objective and advances one or more of our operational objectives.
- 5.7** We are satisfied that the proposed guidance is compatible with our objectives and regulatory principles. Taking decisions at greater pace with proportionate levels of quality control, consistency and governance ensures that the amendment advances our operational objectives of securing an appropriate degree of protection for consumers, promoting market integrity and promoting effective competition

## Equality and diversity

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- 5.8** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 5.9** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final guidance. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.



## 6 EU withdrawal-related amendments to FCA forms

### Introduction

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- 6.1** The FCA has amended its Handbook to take account of the UK's withdrawal from the EU. However, in general, we have not made EU withdrawal-related amendments to any FCA forms that existed prior to the end of the transition period that followed the UK's withdrawal.
- 6.2** We indicated in Consultation Paper [CP18/36](#) that: 'we propose to not carry out a detailed line by line review of all forms to identify and resolve these provisions. Instead, we will produce a guide which sets out the approach we expect users of our Handbook forms to take after Brexit'.
- 6.3** We consulted on our 'Interpretative guide on completing our forms after the UK's withdrawal from the EU' in Appendix 2 of that CP, issued the guide in February 2019 in Appendix 5 of [PS 19/5](#), and updated the guide in September 2020 to take account of the EU withdrawal transition period (see [FCA Handbook Notice 80](#)).

### Summary of proposals

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- 6.4** We propose to amend the remaining forms in line with the FCA's guide, and to withdraw or remove any forms which are obsolete because of EU withdrawal.<sup>3</sup>
- 6.5** Having consulted on the guide, which is now in operation, we do not propose to consult further on the detail of amendments to specific forms.
- 6.6** Certain forms refer directly or indirectly to the concept of passporting, which is no longer relevant except for UK firms passporting into Gibraltar or Gibraltar firms passporting into the UK in line with the transitional arrangements for [Gibraltar](#). We do not propose to tailor all of these references to the transitional arrangements, but will instead update our website with further information on how firms passporting in and out of Gibraltar should complete FCA forms.
- 6.7** We expect to make the necessary changes and to implement them on systems such as RegData no later than the end of March 2022.

#### **Q6.1: Do you have any comments on our proposed approach to amending forms?**

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<sup>3</sup> Please note that forms related to reporting under the Capital Requirements Regulation are being amended separately as part of the implementation of the FCA's Investment Firms Prudential Regime (IFPR).

## Cost benefit analysis

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- 6.8** Section 138I of the Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis unless, in accordance with section 138L, we believe that there will be no increase in costs or that the increase will be of minimal significance. Section 138I also requires us to publish an estimate of costs and benefits unless these cannot be reasonably estimated or it is not reasonably practicable to estimate them.
- 6.9** We are satisfied that the proposed amendment does not increase costs to firms or consumers, or any increase will be of minimal significance, as they do not create any new obligations. It will have a general benefit of clarifying our forms.

## Compatibility statement

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- 6.10** We propose to make these changes using the delegated powers under the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018. We consider that these changes prevent, remedy or mitigate any failure of the relevant FCA Handbook and non-Handbook forms to operate effectively, or any other deficiency in the relevant FCA Handbook and non-Handbook forms, arising from the withdrawal of the UK from the EU.
- 6.11** The changes proposed under these powers do not:
- impose or increase taxation or fees; make retrospective provision;
  - create a criminal offence which is capable of leading to imprisonment of more than 2 years;
  - establish a public authority;
  - implement the Article 50 Withdrawal Agreement;
  - result in the transfer of a function of an EU authority to a UK authority;
  - confer any power to legislate by means of orders, rules, regulations or any other subordinate instrument; or
  - amend any legislation other than the relevant FCA Handbook and non-Handbook forms.

## Equality and diversity

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- 6.12** We have considered the equality and diversity issues that may arise from the proposed amendments. We do not think that the proposals in this chapter adversely impact any of the groups with protected characteristics under the Equality Act 2010 (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 6.13** We will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when publishing the final rules. In the meantime, we welcome comments on any equality and diversity considerations respondents believe may arise.

## Appendix 1

### Abbreviations used in this paper

Abbreviation	Description
<b>APAs</b>	Approved Publication Arrangements
<b>ARMs</b>	Approved Reporting Mechanisms
<b>CBA</b>	Cost benefit analysis
<b>CP</b>	Consultation Paper
<b>CTPs</b>	Consolidated Tape Providers
<b>DRSPs</b>	Data Reporting Services Providers
<b>EEA firm</b>	European Economic Area firm
<b>EG</b>	The Enforcement Guide
<b>EU</b>	European Union
<b>FCA</b>	Financial Conduct Authority
<b>FSCR</b>	Financial services contracts regime
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>MAR</b>	Market Conduct sourcebook
<b>MiFID II</b>	Markets in Financial Instruments Directive II
<b>PRA</b>	Prudential Regulation Authority
<b>SFT</b>	Securities financing transactions as defined in UK SFTR
<b>SRO</b>	Supervised Run-off
<b>TPR</b>	Temporary permissions regime
<b>TTP</b>	Temporary Transitional Power
<b>UK MiFIR</b>	UK Markets in Financial Instruments Regulation
<b>UK SFTR</b>	The UK version of the Securities Financing Transactions Regulation

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# Appendix 2

## EU Exit Passport Regulations : Proposed changes to EG

**ENFORCEMENT GUIDE (EU EXIT PASSPORT REGULATIONS)  
INSTRUMENT 2022**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A of the Financial Services and Markets Act 2000 (power of the FCA to give guidance).

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the material outside Handbook**

- C. The Enforcement Guide (EG) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Enforcement Guide (EU Exit Passport Regulations) Instrument 2022.

By order of the Board  
[*date*]

## Annex

### Amendments to the Enforcement Guide (EG)

Insert the following new section, EG 19.42, after EG 19.41 (Securities Financing Transactions Regulation). All of the text is new and is not underlined.

#### **19 Non-FSMA powers**

...

#### **19.42 EU Exit Passport Regulations**

19.42.1 Regulations 28 and 34 of the *EU Exit Passport Regulations* make provision for certain qualifying *persons* to be treated as having *Part 4A permission*. The *EU Exit Passport Regulations* provide a supervised run-off regime - which enables such *persons* to run off existing *UK* contracts and conduct an orderly exit from the *UK* market.

19.42.2 The *FCA* has power under the *EU Exit Passport Regulations* to direct that the regime should not apply to a particular *person*. The effect of such a direction would be to remove that *person's* deemed permission to conduct *regulated activities* in the *UK*.

19.42.3 The *FCA* may consider whether to make a direction under the *EU Exit Passport Regulations* where:

- (1) the *person* is failing or is likely to fail to satisfy the threshold conditions; or
- (2) it is desirable to exercise the power in order to advance one or more of its *operational objectives*.

19.42.4 When exercising this power, the *FCA* will do so in a manner consistent with its approach generally to enforcement and cancellation under the *Act*.

19.42.5 The decision making procedures used to exercise the power will be consistent with the *FCA's* approach to making decisions under *Executive Procedures*.

# Appendix 3

## Amendments to MAR 9



**MARKET CONDUCT SOURCEBOOK (DATA REPORTING  
SERVICES CANCELLATION) INSTRUMENT 2022**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017, (SI 2017/699):
- (1) regulation 11 (Cancellation of authorisation); and
  - (2) regulation 20 (Guidance).

**Commencement**

- B. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- C. The Market Conduct sourcebook (MAR) is amended in accordance with the Annex to this instrument.

**Citation**

- D. This instrument may be cited as the Market Conduct Sourcebook (Data Reporting Services Cancellation) Instrument 2022.

By order of the Board  
[*date*]

## Annex

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text.

#### 9 Data reporting service

...

#### 9.2 Authorisation and verification

...

Cancellation of authorisation form

...

9.2.5A G When the *data reporting services provider* wishes to cancel all of its *data reporting service* authorisation, it should engage with the *FCA* as early as possible. As part of its supervisory approach set out in *MAR 9.4.1G*, the *FCA* expects to continue to have an open, cooperative and constructive relationship with the *data reporting services provider* for the whole duration of the cancellation process.

9.2.5B G As set out in the form at *MAR 9 Annex 4D*, the *data reporting services provider* must provide in its request for cancellation a plan which sets out how it will cease all of its *data reporting services* in an orderly manner (*wind-down plan*). The *wind-down plan* should promote and protect the integrity of the financial markets and the interests of the *data reporting services provider's* clients. The *FCA* expects at the minimum the *wind-down plan* to:

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

(5) demonstrate that the timings in the wind-down plan are reasonable.

9.2.5C **G** Where a *data reporting services provider* wishes to cancel all of its *data reporting service* authorisation, it must continue to comply with the requirements in the *DRS Regulations* up until its authorisation is cancelled, in particular in relation to publishing trade reports or submitting details of transactions to the *FCA*. The *FCA* expects the *data reporting services provider* to provide a written confirmation at the end of the cancellation process confirming compliance with the *DRS Regulations*.

...

**9** **D** **Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)**  
**Annex**  
**4**

...

# 1 Cancellation - notes

Before completing this form to cancel your DRSP authorisation and stop providing ALL Data Reporting Services (DRSs), you may find it helpful to discuss the application with your usual supervisory contact at the FCA.

...

<ul style="list-style-type: none"> <li>• Have you submitted an MDP disconnection form available at <a href="#">Market data reporting and MDP   FCA</a>?</li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <li>• <u>Have you submitted a wind-down plan?</u></li> </ul>	<input type="checkbox"/>	<input type="checkbox"/>

If you are not able to answer YES to all the questions above, please contact Market Data Infrastructure Supervision - [mdis@fca.org.uk](mailto:mdis@fca.org.uk) to discuss this cancellation.

...

# Appendix 4

## Changes to Securities Financing Transactions – RTS 22

**TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS)  
(TRANSACTION REPORTING) INSTRUMENT 2022**

**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) article 26(9) (Obligation to report transactions) of 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.

**Commencement**

- E. This instrument comes into force on *[date]*.

**Interpretation**

- F. 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**

- G. Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities is amended in accordance with the Annex to this instrument.

## **Citation**

- H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments) (Transaction Reporting) Instrument 2022.

By order of the Board  
[*date*]

In this instrument, striking through indicates deleted text.

## **Annex**

### **Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities**

...

#### *Article 2*

#### **Meaning of transaction**

...

...

- (5) A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:
- (a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;

...

~~The exclusion provided for in point (a) of the first subparagraph shall not apply to the securities financing transactions to which a member of the European System of Central Banks or Bank of England is a counterparty.~~

...

In accordance with paragraph 31b(2) of Annex IX (Financial Services) to the EEA Agreement, this reference to a member of the European System of Central Banks shall be understood to include, in addition to its meaning in this Regulation, a national central bank of the EFTA States. Article 2(b) of the EEA Agreement defines ‘EFTA States’ to mean Iceland, the Principality of Liechtenstein and the Kingdom of Norway.

The European Union (Withdrawal) Act 2018 provides that the Annexes to the EEA Agreement, as they have effect in EU law immediately before IP completion day, form part of UK law on and after IP completion day – to the extent that they refer to or adapt any EU

regulation, EU decision or EU tertiary legislation which is retained by section 3 of the Act. The 2018 Act also provides that Protocol 1 to the EEA Agreement, as it has effect in EU law immediately before IP completion day, forms part of UK law on and after IP completion day.

...



# Appendix 5

## Changes to SUP 8

**SUPERVISION MANUAL (WAIVERS GOVERNANCE PROCESS)  
INSTRUMENT 2022**

**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) the following sections of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 139A (Power of the FCA to give guidance);
    - (b) section 137T (General supplementary powers); and
  - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions of the Handbook.
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Supervision manual (SUP) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Supervision Manual (Waivers Governance Process) Instrument 2022.

By order of the Board  
[*date*]

## Annex

### Amendments to the Supervision manual (SUP)

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

#### 8 Waiver and modification of rules

...

#### 8.9 Decision making

- 8.9.1 G The *waivers* regime is overseen by a ~~staff committee~~. Its dedicated team whose responsibility it is to ensure that the giving of *waivers* is in accordance with the requirements of the *Act*, of the *guidance* in SUP 8 and of other relevant *guidance*. Decisions on individual applications are generally made by individuals under arrangements designed to result in rapid, responsive and well-informed decision making in line with established precedents and policies. The arrangements also include arrangements for collective decision making to set general policies, and, as necessary, determine cases for applications with substantially common characteristics or other particular significance (for example, *waivers* in relation to the same *rule* or related *rules* or by *firms* in a similar position). It also includes arrangements for escalation of decision making by senior individuals within established precedents and policies following liaison with relevant internal stakeholders.

...

