

## **Supervisory Statement on the Operation of the MiFID Markets Regime after the end of the EU withdrawal transition period**

1. This Supervisory Statement (Statement) sets out how we will operate the pre- and post-trade transparency regime for the secondary trading of financial instruments after the end of the EU withdrawal transition period (transition period). It replaces the statements we issued in March and October last year.
2. This Statement is part of our necessary preparations for the possibility that at the end of the transition period there is not a free trade agreement between the UK and EU and no mutual equivalence decisions in areas relevant to the MiFID markets regime. Therefore, it may be subject to change in the event of a free trade agreement being reached and mutual equivalence decisions being taken. Also as market conditions develop, we may revise our approach. Any updates to the Statement will be published on our website. Questions on the commodities section of this Statement should be sent to [commodity.derivatives@fca.org.uk](mailto:commodity.derivatives@fca.org.uk), questions on other sections should be sent to [fcafitrs@fca.org.uk](mailto:fcafitrs@fca.org.uk).
3. Under the UK legislation that will take effect after the end of the transition period we will be responsible for many of the tasks the European Securities and Markets Authority (ESMA) currently undertakes under the European Union's MiFID II (the Markets in Financial Instruments Directive) and MiFIR (Markets in Financial Instruments Regulation). UK MiFIR gives us various temporary powers, for a period of up to 4 years, to help us run the transparency regime after the end of the transition period. This Statement explains how, using those powers, we will approach operating the UK transparency regime in 2021.
4. We published a [statement](#) on the share trading obligation in November. After the end of the transition period trading venues in the EU will be able to be used for the purposes of executing trades by UK participants, providing the venue has ensured it has the relevant permissions under either the UK's longstanding regimes for overseas access or the [temporary permissions regime \(TPR\)](#).
5. Below we make several specific references to ESMA Level 3 materials. Our general approach to these materials is set out in the following [statement](#).

### **FIRDS, FITRS, investment firms register, trading venues register, and systematic internalisers register**

6. ESMA currently publishes data relevant to the operation of the transparency regime on several public databases and registers. Most significantly:

**Financial Instruments Reference Database (FIRDS)**. This database has reference data on financial instruments. The data is supplied by trading venues and systematic internalisers. It helps firms determine which instruments are traded on trading venues and are inside the scope of trade reporting. FCA FIRDS will be open from 4 January 2021.

**Financial Instruments Transparency System (FITRS)**. This database receives reference and quantitative transparency data, performs the transparency calculations and publishes the results. Venues use these calculations to determine liquidity classification, transparency thresholds and tick sizes of financial instruments.

For **equities and bonds**, on 2 January 2021 FCA FITRS will carry over and publish all calculations from ESMA FITRS for instruments that are traded on a trading venue (ToTV) in the UK, and will make estimates for any instruments that are admitted to a trading in the UK from 1 January 2021 onwards. From 2 January, for equities, we will also begin making the first 4-week calculations (FFWK) and publish these in line with the current EU timelines (ie at the 6-week anniversary of an instrument being admitted to trading). For **derivatives**, from 2 January we will carry over and publish all calculations from ESMA FITRS for instruments that are ToTV in the UK. We will also make estimates for derivatives that are admitted to trading in the UK from the 1 January onwards for the following derivative sub-asset classes:

- equity derivatives
- interest rate derivatives
- FX derivatives
- securitisation derivatives
- commodity derivatives

The remaining instruments will be added in due course.

**Double Volume Cap Mechanism System.** This system receives and validates quantitative information from trading venues on the volume of transactions executed under certain waivers. It publishes the results every month. Our system will not be operational by the end of the transition period, but if we do need to publish any suspensions we will publish these on our website.

**Register for the trading obligation.** This is a register with the classes of derivatives that are subject to the trading obligation, and the trading venues which can trade those classes. We will publish our own trading obligation register on our website after the end of the transition period.

**Investment firm register.** This register is a list of EU investment firms authorised under MiFID. We will publish our own similar list of UK investment firms on our website after the end of the transition period.

**Trading venues, Approved Reporting Arrangements (APA) and systematic internalisers (SI) register.** This database includes details of all EU regulated markets, Multilateral Trading Facilities, Organised Trading Facilities, APAs and SIs. We already publish details of all UK trading venues, APAs and SIs (on the Financial Services Register) and will continue to do so after the end of the transition period.

**Systematic internaliser database.** This database includes information on the total number of transactions and volume of trading in financial instruments. It facilitates calculations by investment firms to determine whether they are an SI. We will not have such a database at the end of the transition period and do not plan to build one.

### **Concept of Traded on a Trading Venue**

7. The transparency regime in UK MiFIR is based around instruments that are ToTV. After the end of the transition period, the scope of instruments that are ToTV for the purposes of our transparency regime will only include instruments traded on UK trading venues. This excludes Recognised Overseas Investment Exchanges but includes trading venues operated by branches of EEA firms operating under the Temporary Permission Regime. This is a narrower scope of ToTV than we use for transaction reporting. Transaction reporting includes instruments traded on EU trading venues even where they are not also traded on a trading venue in the UK.

8. In May 2017, ESMA published an [Opinion](#) on ToTV to clarify its scope for OTC derivatives. After the end of the transition period, the approach reflected in the Opinion will continue to apply as the basis for considering the scope of ToTV for the purposes of the transparency regime in the UK.
9. Instruments that are ToTV in the UK for the purposes of the transparency regime will be identifiable when they appear in FCA FIRDS. The FCA will be the Relevant Competent Authority for these instruments.

### **Submission of transparency data to the FCA**

10. We currently receive daily quantitative and reference data from trading venues and Approved Publication Arrangements (APAs) for the purposes of transparency and other calculations. The timing and the format of data submissions will not change after the end of the transition period. APAs will only need to report data to us for instruments that are ToTV in the UK.

### **Double Volume Cap (DVC)**

11. The DVC operates by the monthly publication (and in certain circumstances twice-monthly) of information on the level of dark trading in individual equities. It lists the equities subject to suspensions under the DVC which cannot be traded under the reference price and negotiated trade waivers from pre-trade transparency.
12. Waiver suspensions under the DVC in force at the end of the transition period will continue to operate within the UK until the completion of the relevant 6-month suspension period.
13. The temporary powers we will have for the DVC will allow us to suspend the use of waivers for specific instruments without undertaking and publishing the calculations as required under UK MiFIR. We published [Statements of Policy](#) on 4 March 2019 about our use of these powers.
14. We expect to rely on our temporary powers for the DVC in 2021 rather than undertaking calculations of dark trading every month and publishing the results. We will suspend the use of waivers under the DVC, for any of the financial instruments covered by it. This is in line with the approach we set out in the Statements of Policy mentioned in the previous paragraph. Other than for instruments suspended by ESMA, we do not expect regular suspensions to be necessary.
15. If we use our temporary powers to suspend the use of waivers for specific financial instruments under the DVC, the suspensions will last for 6 months, unless renewed. The main date of publication of any suspensions will be 5 working days after the end of each calendar month. Suspensions then take effect 2 working days later.
16. To allow the market time to digest the changes linked to the end of the transition period, the first time after the end of the transition period that we might publish details of new DVC suspensions will be in March 2021. As we currently do, we will inform trading venues by email of instruments for which they cannot use waivers under the DVC. We will also publish a list of any new suspensions that we undertake from March 2021 onwards which will appear on our website on an ISIN by ISIN basis.

## **Transparency waivers and deferrals**

17. After the end of the transition period there will no longer be a timetable in legislation for the approval of transparency waivers. We will expect firms to make waiver applications to us with adequate time before they are due to take effect.
18. The way in which trading venues apply for the use of waivers and deferrals will not change after the end of the transition period. We will continue to use the same pre-trade transparency waiver request form as currently for waivers. We will also continue to require applications for deferrals to be made in writing and to cover the:
- specific arrangements for deferral
  - reasons for deferral
  - way in which the relevant requirements in MiFIR and the regulatory technical standards have been met
  - date on which it is being submitted to us
  - date on which the waiver or deferral is intended to take effect
  - classes of financial instruments the waiver or deferral would apply to
  - name and contact details of the applicant
19. After the end of the transition period we will not be requiring trading venues to resubmit applications for their existing waivers and deferrals which will continue to apply.
20. Under UK MiFIR the trading venues whose prices can be referenced for the purposes of the reference price waiver (RPW) are UK trading venues. However, this change applies to any new waiver applications. It does not apply retrospectively to waivers granted for reference price trading before the end of the transition period. These waivers will continue to apply in the same way after the end of the transition period as they apply before. Trading venues already using a RPW will be able to continue to reference prices from a trading venue in the EU where a venue is either the venue where the relevant instrument was first admitted to trading or is the most relevant market in terms of liquidity for the instrument.

## **Equity transparency**

21. Under the current transparency regime, for each equity instrument a number of calculations must be made and published annually, including:
- determination of whether an instrument is liquid
  - determination of the most relevant market in terms of liquidity
  - the minimum size of an order that is above large-in-scale
  - the standard market size
22. We will make our own determinations of the most relevant markets in terms of liquidity by the end of this year. We will publish the information for equities traded on trading venues in the UK from these calculations in FCA FITRS after the end of the transition period.

23. The equity transparency regime also requires estimates of the above calculations for instruments that are newly admitted to trading. These calculations are updated using actual trading data, within 6 weeks of admission to trading, using information provided by trading venues. Trading venues should continue to provide data to our Market Data Processor for this purpose as they do now, so that we can make those calculations.
24. We will add the information to FCA FITRS as and when necessary.
25. ESMA published Q&A (Q3 in Section 3 of the Q&A on MiFID II and MiFIR transparency topics) on what happens when the transparency parameters of an equity are not published in FITRS. After the end of the transition period, the approach in that Q&A will apply to circumstances where we do not publish the transparency parameters of an equity in FCA FITRS.
26. From the end of the transition period calculations for the purposes of the equity transparency regime for shares other than those of EU issuers will be based on data from UK trading venues and UK APAs only. This applies to equity instruments which are traded on a trading venue in the UK for the first time after the end of 2020. It also applies to the annual determinations of liquidity and calculations of thresholds that we will publish by 8 March and will take effect from 1 April 2021. The determinations and calculations will be based on UK only data for 2020.
27. In the event there is not mutual equivalence for the purpose of the share trading obligation from 1 January, and the EU authorities prohibit EU market participants from trading in the UK the shares of many EU issuers, it is likely that there will be significant evolution in the pattern of trading in these shares. So from 1 January we will until further notice regard the shares of EU issuers who have not sought admission to trading in the UK as illiquid and subject to the pre-trade and post-trade Large-in Scale thresholds associated with having an Average Daily Turnover (ADT) of under 50,000. This will be reflected in the information published in FCA FITRS after the end of the transition period. This means that Systematic Internalisers (SIs) will not be subject to pre-trade transparency requirements when trading those shares, and the Large in Scale threshold will be lower for trading on trading venues, allowing for more block trades and more deferrals from post-trade transparency.
28. Additionally, shares of EU issuers who have sought admission to trading in the UK and whose shares are traded here in euro will also be regarded as illiquid and subject to the pre-trade and post-trade Large-in Scale thresholds associated with having an ADT of under 50,000 until further notice. This is because EU authorities have also prohibited EU market participants from trading these shares in the UK. However, for this small group of shares we are not able currently to reflect this in the information published in FCA FITRS. Market participants should take this statement as notification of their liquidity status and transparency thresholds until further notice. Where the EU authorities have not prohibited EU market participants from trading EU issuers' shares in the UK, for example those shares that are traded in sterling, the current transparency thresholds will continue to apply until 1 April 2021.
29. We will subsequently monitor levels of trading in shares of EU issuers. If there is a significant change in the levels of trading in these instruments in the UK in 2021 we will consider whether to update the annual determinations of liquidity and calculations

of transparency thresholds in the course of 2021 using trading data from 2021. If we do this we will be able to reflect the results in FCA FITRS.

30. ESMA published Q&A (Q3 in Section 3 of the Q&A on MiFID II and MiFIR transparency topics) on what happens when the transparency parameters of an equity are not published in FITRS. After the end of the transition period the approach reflected in that Q&A will apply when the transparency parameters of an equity are not included in FCA FITRS.

### **Frequent batch auctions**

31. Since MiFID II was implemented 'frequent batch auctions' (FBAs) have grown in significance. Our supervisory expectations for transparency and the tick size regime are:
- We do not believe that non-price forming auctions need to operate under a waiver from pre-trade transparency where they publish price and potential executable volume.
  - We do not believe that auctions with price band limitations are constrained to use a price benchmark from a single trading venue which is either the trading venue in the UK where the instrument was first admitted to trading or the most relevant market in terms of liquidity.
  - Transactions executed off-tick at the mid-price are permissible when required by the auction algorithm used by the FBA.

### **Bond transparency**

32. Under the bond transparency regime, calculations and assessments are required to determine the following:
- whether certain instruments are deemed liquid
  - the minimum size of an order that is above large-in-scale (LiS)
  - the minimum size of an order that is above the size specific to the instrument (SSTI)
33. A liquidity status is assigned to newly issued bonds based on their issue characteristics (known as, 'class of financial instruments determination'). Thereafter, the liquidity status of bonds is based on trading activity, each quarter. At the end of the transition period, the determination that ESMA made on 1 November 2020 (based on trading activity in the quarter ending 30 September 2020) will apply until close on 15 February 2021.
34. We will not undertake calculations to determine bond liquidity on 1 February 2021 for application from 16 February 2021. This will give markets time to adjust to the separation between the UK and EU transparency regimes, and the corresponding difficulty during this period in establishing whether there appears to be a liquid market for any given bond. Bonds that would have been within the scope of the calculation (that is, any first issued or admitted to trading on or before 30 November 2020) will be deemed illiquid with effect from 16 February 2021. This means that between 16 February 2021 and 15 May 2021 the only bonds that will be determined to be liquid in

the UK will be newly issued bonds considered liquid according to their initial class of financial instruments determination.

35. Bonds admitted to trading in the UK after the end of the transition period will be included in UK FITRS and assigned a liquidity status according to the class of financial instruments determination.
36. To meet the publication obligations of onshored RTS 2 we will, by 8 February 2021, confirm that we have not determined any bonds first issued or admitted to trading on or before 30 November 2020 to be liquid. We will consider data available to us on the trading of bonds and, by 10 May 2021, publish information on any bonds we deem liquid in the UK (for the purposes of the transparency regime). If we determine any bonds to be liquid, this will apply from 16 May 2021 until 15 August 2021.
37. Annual calculations are made each year to determine the SSTI and pre- and post-trade LiS for classes of bonds. Following the provisions of the onshored RTS 2 we will publish by 7 May 2021 details of the SSTI and LiS for bonds and these thresholds will apply in the UK from 1 June 2021.
38. In respect of the quarterly liquidity determinations for bonds and the annual calculations for transparency thresholds, we will decide whether to use our temporary powers rather than just publishing liquidity determinations and transparency thresholds based on the methodology in the legislation. We will seek the views of market participants on this.
39. ESMA published Q&A (Q10 and Q15 in Section 4 of the Q&A on MiFID II and MiFIR transparency topics) on what happens when the liquidity status of a bond, its LiS or its SSTI is not published in FITRS. After the end of the transition period the approach reflected in those Q&A will apply when the liquidity status of bonds or their transparency thresholds are not included in FCA FITRS.
40. We do not plan to change the technical standard dealing with transparency for bonds to lower the number of transactions for the purposes of determining liquidity and to raise the LiS and SSTI thresholds. We would only consider this as part of a wider review in 2021 of the transparency regime for bonds.

### **Derivatives and other non-equity instruments transparency**

41. For derivatives and other non-equity instruments, as with bonds, calculations and assessments are required to determine the following:
  - whether certain instruments are deemed liquid
  - the minimum size of an order that is above large-in-scale (LiS)
  - the minimum size of an order that is above the size specific to the instrument (SSTI)
42. Determination of the liquidity status of derivatives and certain non-equity instruments other than bonds and calculations of the LiS and SSTI thresholds for these instruments occurs annually. Following the provisions of the onshored RTS 2 if we make new determinations of liquidity and transparency thresholds for these instruments they must be published by 7 May 2021 and the new liquidity determinations and thresholds apply from 1 June 2021.

43. We will not be undertaking calculations to make new liquidity determinations or set new thresholds in 2021, but will make assessments in line with our temporary powers. We intend to discuss with market participants this use of our temporary powers.
44. ESMA published Q&A (Q20 in Section 4 of the Q&A on MiFID II and MiFIR transparency topics) on what happens when the LIS and SSTI have not been published for derivatives in FITRS. After the end of the transition period the approach reflected in that Q&A will apply when those thresholds are not published in FCA FITRS.

#### **Actionable indications of trading interest**

45. There has been some uncertainty over what should be understood as an actionable indication of interest in a request for quote trading system. Our supervisory expectations are that indications of interest can only be considered actionable, and subject to pre-trade transparency, if they are confirmed as being a price and a quantity at which the quote provider is willing to trade.

#### **Systematic internalisers (SIs)**

46. After the end of the transition period, we will not, until further notice, publish data on overall trading for the purposes of allowing firms to determine whether they cross the thresholds to be considered SIs. Firms will continue to be able to opt in to be an SI in particular instruments or classes of financial instruments.
47. Following the end of the transition period we want branches of EU firms using the Temporary Permission Regime (TPR) who are operating an SI in the UK to have a separate Market Identifier Code (MIC) for that SI which is different from the MIC of the SI they operate from in their home Member State. This is to help distinguish SI activities which fall within the scope of UK regulation. Consistent with our overall approach to regulatory changes not covered by the TTP, we expect firms to make reasonable steps during the TTP period to ensure compliance and, at the latest, by 31 March 2022.

#### **Territorial scope of trade reporting**

48. After the end of the transition period, consistent with the statement we published on 1 October 2020 we will not require UK investment firms when transacting on trading venues outside the UK, whether in the EU or elsewhere, to publish details of those transactions through a UK APA.

#### **Trade reporting and the TPR**

49. Firms in the TPR have to follow UK trade reporting rules except where they are following rules that have equivalent effect in their home member state. This means that where a financial instrument is ToTV in the EU as well as the UK, they can comply with their trade reporting obligation in the UK by publishing the trade through an APA in the EU. This will be the case even if there are different liquidity determinations and transparency thresholds in the UK and in the EU.

#### **Trade reporting and the temporary transitional power (TTP)**

50. On 1 October 2020, we published a draft direction on our use of the TTP – this enables us to delay or phase in changes to regulatory requirements made under the EU Withdrawal Act. This included details of how the TTP will apply to amendments to onshored EU legislation. We are using the power to delay changes in regulatory



requirements for 15 months, until 31 March 2022, during which time firms will be able to comply with the pre-existing regulatory standards if they wish.

51. The key effect of the application of the TPP to trade reporting is that, until the end of March 2022, UK investment firms will not need to publish through an APA OTC transactions concluded with an EU investment firm if they are not an SI in the instrument and are not the buyer.

### **Tick sizes**

52. The tick size regime involves calculating the average daily number of transactions (ADNTE) in a share or depositary receipt annually. This enables trading venues to determine what the tick size is for each of the instruments they trade based on the tick size table in RTS 11. The ADNTE figures published by ESMA on 1 March 2020 will continue to apply in the UK after the end of the transition period until 31 March 2021. By 8 March 2021 we will publish new ADNTE figures for shares traded on UK trading venues.
53. The tick size regime also requires estimates for instruments which are newly admitted to trading, revising these within 6 weeks of the start of trading based on trading data for the first 4 weeks of trading. Trading venues should continue to provide data to our Market Data Processor for this purpose as they do now so that we can make calculations and publish them using FCA FITRS.
54. We intend to use our temporary powers in respect of the tick size regime for shares of EU issuers traded on UK markets. This will happen immediately after the end of the transition period for any such instruments which are traded for the first time on UK trading venues. For all other such instruments already trading on UK trading venues we will use the ADNTE published by ESMA in March 2021 where that is larger than the ADNTE based on UK only data for 2020.
55. We will not be able to publish through FCA FITRS the ADNTE of ESMA where that is larger than the ADNTE we have calculated. Trading venues and firms will have to take that data from ESMA FITRS.
56. We will be keeping the tick size regime under close review, particularly with respect to shares whose home market is not a UK regulated market, UK multilateral trading facility or recognised overseas investment exchange.

### **Commodity position limits**

57. Under the MiFID II commodity position limit regime, we currently set and monitor position limits on commodity derivative contracts that are traded on UK trading venues. A position limit prescribes the maximum long or short position that a person is allowed to take in the relevant contract. An exemption exists for positions held by non-financial entities which are objectively measurable as reducing risks directly relating to the commercial activity of those entities.
58. The coronavirus crisis has highlighted inflexibilities in the current regime. While commercial end-users of the market can apply for the exemption described above, positions taken by liquidity providers as a result of transactions with these end-users

cannot benefit from an exemption. That may represent an undue constraint on the ability of commercial users to access the liquidity they require to meet their risk management needs. We have observed that constraint become more pronounced in the market conditions prevailing during the crisis.

59. We are clarifying our approach to this element of the position limit regime. With effect from 1 January 2021, we do not intend to take supervisory or enforcement action for breaches of position limits where the breach arises from a position held by a liquidity provider. For the purpose of this statement, we would regard a position to be held by a liquidity provider where it arises from transactions executed to fulfil obligations to provide liquidity on a trading venue. To ensure that a position results from genuine liquidity provision, we would expect a firm relying on this statement to be able to evidence the liquidity obligations it is meeting by reference to the rules, agreements or other written provisions of the trading venue. We would regard evidence of a firm participating in a trading venue's liquidity provider incentive scheme as adequate to show that it is acting as a liquidity provider. This is not the only way a firm might show this.
60. We will apply the approach set out in the paragraph above until 1 January 2022.
61. We expect firms to make their own assessment of whether the positions they take can be regarded as positions resulting from their actions as a liquidity provider. Firms do not need to notify these assessments to us. However, we may request a firm to explain its assessment to us at any time, such as when a position limit breach occurs. The position should not be any larger than necessary to enable the firm to fulfil its role as a liquidity provider. We will expect a firm to reduce its positions if it reports a breach and it is not able to show that it is engaged in genuine liquidity provision.
62. This statement does not affect the responsibilities owed by members or participants of a trading venue under the position management rules of that venue. Further, it does not affect our expectation that firms comply with market conduct obligations, and that entities operate adequate systems and controls to remain within position limits at all times, unless a waiver has been granted or a firm is able to rely on this statement.
63. As set out in the statement published on [1 October 2020](#), commodity derivative contracts traded on trading venues outside the UK should not be considered as economically equivalent OTC contracts and so will not count towards the UK position limit regime.