Changes to UK MIFID’s conduct and organisational requirements

Policy Statement
PS21/20

November 2021

This relates to

Consultation Paper 21/9
which is available on our website at
www.fca.org.uk/publications

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Contents

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1 Summary

1.1 In April 2021, we published Consultation Paper 21/9 (CP21/9), 'Changes to UK MIFID's conduct and organisational requirements'. The CP proposed changes to the existing inducements rules on research and the removal of the requirement to produce reports linked to best execution.

1.2 This Policy Statement (PS) summarises the feedback received to CP21/9 and outlines our final policy position and Handbook rules. The removal of the best execution reporting in RTS 27 and RTS 28, will come in to force on 1 December 2021. The changes to the research rules will come in to force on 1 March 2022.

Who this affects

1.3 Our final rules will affect:

- investment firms and market operators in the UK
- banks and operators of Collective Investment Schemes who provide investment services
- persons providing investment advice and reception and transmission of orders who did not opt into MiFID ('Article 3' firms)
- unauthorised persons providing research

1.4 Our final rules are relevant to individuals who use the services of firms providing investment services, including pension funds and corporates. The rules are also relevant to small companies with shares traded on public markets.

The wider context of this policy statement

Our consultation

1.5 Our rules changes aim to improve the availability of research on SME firms and relieve trading venues and brokers from preparing and publishing best execution reports that don't appear to benefit users. Our changes sit within wider reform work we are undertaking together with the Treasury on capital markets.

1.6 Supplementing the changes we are making, the Treasury amended the UK MiFID implementing regulation through Statutory Instrument 2021/774. Most of its provisions came into force on 26 June 2021, although those relating to best execution reports take effect on 1 December 2021.

1.7 The Treasury consulted on the UK Wholesale Markets Review during summer 2021. The consultation considered how the UK's regime for wholesale capital markets could be reformed to deliver a framework that is fair, outcomes-based, supporting openness and competitiveness, while maintaining the highest regulatory standards.

The government will bring forward primary and secondary legislation to implement regulatory changes informed by this consultation.

1.8 We will publish our own consultation papers next year about aspects of the Wholesale Markets Review that fall within its rules and guidance.

How it links to our objectives

Make markets work well

1.9 The changes we are making to the UK MiFID rules are intended to ensure that our requirements are better tailored and more proportionate to the risks. This will remove unnecessary regulation, make the requirements less complex and make these markets work better.

Consumer protection

1.10 As explained in our CP, for the inducement's regime, we are mostly maintaining existing protections that reduce the possibility of conflicts of interest and enhance transparency for investors. However, the amount of SME research produced and the demand are both limited. We believe the inducement risk below a market cap of £200m is also limited. Therefore, we think it is unlikely that material costs will be transferred back to clients through SME research that is subsidised by inflated transaction costs.

1.11 In the case of best execution, our rule changes remove some reporting requirements that carry costs for firms but have not delivered the intended transparency benefits.

Competition

1.12 Our rule changes for research will improve competition in this market with increased research coverage and a potential increase in asset manager interest and liquidity for SMEs as a result. There may also be some potential impacts on market share, such as trading moving to brokers offering execution and research, rather than just execution, and reduced price transparency of research. However, we consider the effects would be limited given the current low levels of research for firms of this size. We also expect the impact of our rule change for research on fixed income, currencies and commodities on competition to be limited because this research applies to a section of the market where there is a weak connection between execution decisions and the provision of research.

1.13 We also expect that the removal of costly reporting requirements in RTS 27 and 28, will reduce barriers to entry into the execution business (as a trading venue, an SI or broker).

What we are changing

1.14 The new inducement rules relating to research are set out in Appendix 1:

- Exempt research on small and mid-cap listed or unlisted companies (SMEs) who have a market capitalisation below £200m from the inducement rules. This means that research on firms below this threshold could be provided by brokers to asset managers on a bundled basis (where asset managers make a single commission payment to brokers covering execution and research) or for free and would not constitute an inducement under our rules.
- Exempt third party research on fixed income currencies and commodities (FICC) instruments from the inducement rules allowing it to be provided on a bundled basis and would not constitute an inducement under our rules.
- Exempt research providers from our inducement rules who do not provide execution services and are not part of a group that includes a firm offering execution services.
- Clarify that openly available written research would not fall within the scope of the inducement rules.

1.15 The rules in Appendix 1 of this paper on reporting obligations remove:

- the obligation on execution venues to publish a report on a variety of execution quality metrics to enable market participants to compare execution quality at different venues (known as RTS 27 reports)
- the obligation on investment firms who execute orders to produce an annual report setting out the top 5 venues used for executing client orders and a summary of the execution outcomes achieved (known as RTS 28 reports)

Outcomes we are seeking

1.16 The outcomes we are seeking are:

- on the inducement rules for research, to increase the research coverage of SME issuers and to create a regime that is proportionate to the risks of inducements that arise
- on best execution reports, to remove reporting requirements where the cost for provision is not commensurate with the benefit from improved quality of execution resulting from the transparency

Measuring success

1.17 We will measure our rule changes through our general feedback from firms on whether they have used these proposals.

Summary of feedback and our response

1.18 We received 59 responses to CP21/9. These responses were from asset managers, investment brokers, wholesale banks and trade bodies.

1.19 Chapter 2 of this PS summarises stakeholder feedback to our proposals on research and outlines our response. Overall respondents were supportive of the changes.

1.20 The key issues raised by respondents were:

- The threshold for the SME research exemption to apply to research on SME firms below a market capitalisation of £200m was set too low. We consider that this threshold is calibrated to target companies that do not have coverage and our analysis did not show that companies above this threshold had no coverage. We consider the threshold is set at the right level to ensure the improvements in transparency of research costs from MiFID II are maintained for most firms. We will therefore maintain the threshold for this exemption as proposed.
- The calculation for assessing which firms were under the market capitalisation threshold should be amended to a calculation done once a year averaging market capitalisation for the preceding 24 months, reducing churn onto and off the list and ensuring operational simplicity. Determination of the threshold for newly listed companies should be based on the market capitalisation at the close of day 1 trading and apply until the date of the next re-assessment. We agreed with both of these proposals and will amend the calculation accordingly.
- The SME exemption should be extended to cover SME 'corporate access' (the practice of where a broker brings about contact between an asset manager and an issuer and the broker charges the asset manager for this introduction). The argument was that this would avoid unnecessary complexity for asset managers having to differentiate between SME research and corporate access. We agreed that the inducement risks are lower, reflecting the fewer number of introductions that relate to SME research, and will extend the exemption to corporate access.
- The FICC exemption proposal should be simplified to research on FICC instruments as a product rather than, as we had proposed, on research used by firms whose investment strategy was principally directed to FICC instruments. We believe that this approach will be easier for asset managers to implement and will make this change to the FICC exemption.
- That the scope for the FICC exemption should be extended to include macro-economic research. We do not think macro-economic research should be included as it may often explicitly or implicitly suggest an investment strategy and be a chargeable service for some major firms. It may also include elements of other types of research that are not easily disentangled. We therefore will not amend the FICC exemption to include macro-economic research.

1.21 Chapter 3 of this PS summarises stakeholder feedback to our proposals for best execution reporting. Feedback was very supportive of these changes with 33 out of 34 respondents supporting removal of RTS 27 reporting requirements and removal of RTS 28 requirements.

1.22 Key issues raised by the respondents were:

- The RTS 27 and 28 requirements should be amended to make them have more value. Given the evidence (as supported by the feedback to CP 21/9) that there are not many users of these reports and no other support for an amended regime, we will proceed with removal of the reporting obligations for both and this change will take effect on 1 December.
- Another trade body suggested that a supervisory flexibility statement for RTS 28 reports is required to ensure a smooth transition to the new rules. We do not agree as the deletion of the obligation to publish RTS 28 reports will take effect earlier than the next date for RTS 28 reports of 30 April 2022.

1.23 Annex 1 lists the names of non-confidential respondents and Appendix 1 sets out our final rules.

Equality and diversity considerations

1.24 We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement. We did not receive any feedback on these considerations during the consultation process.

1.25 Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.

What you need to do next

1.26 From 1 December 2021, your firm will no longer be required to prepare RTS 27 and RTS 28 reports.

1.27 From 1 March 2022, asset managers and research firms can exercise the options on exempting the following from our inducement rules on research: research on SMEs below a market capitalisation of £200m, FICC research, research provided by research providers who not provide execution services and are not part of a group that offer execution services and openly available research.

What we will we do next

1.28 We will continue monitoring firms' compliance with the UK MiFID inducement and best execution rules.

2 Our response to consultation feedback on our proposals for investment research

2.1 In CP21/9, we asked for views on our proposals for research and best execution reporting. In this chapter we go through the responses to our research proposals and in the following chapter to our best execution reporting proposals.

2.2 We received 59 responses to the consultation including from buy and sell side trade bodies.

Investment research

Exemption from inducement rules for SME research

2.3 In 2018 MiFID II introduced new inducement rules governing the provision of research. These rules require research to be priced separately from other services, such as execution services. Asset managers are now required to pay for research either directly out of their own resources or from a separately held research payment account (RPA) funded by specific research charges collected from clients. With a separately held account, firms have to set a budget for research and regularly assess the quality of research received. In practice, most research is now paid for by asset managers out of their own resources.

2.4 In CP21/9, we proposed creation of an exemption from the inducement rules for research on SME issuers i.e. issuers below a market capitalisation of £200m. The exemption would mean that asset managers could continue paying for research as described in the previous paragraph, but also that it would be possible to pay for the research out of charges on clients collected as part of commissions for the execution of orders and not held in an RPA or to receive the research for free. This was intended to address the potential market failure in the form of low levels of coverage in research for these firms. We proposed that the £200m threshold would be assessed for the 36 calendar months preceding the provision of the research.

2.5 Question 1 in the consultation asked whether respondents agreed with our proposal to create an exemption from the inducement rules for research on issuers with a market capitalisation of below £200 million. Views on the proposal were mixed.

2.6 Of the 35 respondents to this question, 19 respondents including 5 trade bodies expressed support for the exemption at the proposed threshold. Of the remainder, 10 respondents supported the exemption but recommended increasing the size of the market capitalisation threshold so that the exemption would cover more companies. Of these, 1 trade body recommended that this needed to be higher to cover more companies and that convergence with the EU's SME threshold of EUR 1bn for its SME exemption would be better. This view was echoed by 3 other trade bodies. A further trade body expressed concern that a lower threshold would place the UK at a competitive disadvantage to the EU. One trade body recommended a higher threshold of £1bn or £500m to better capture small/mid-sized companies reflecting developments within and maturing of the SME growth company eco-system. Another respondent recommended amending the exemption to cover all companies admitted to trading on an SME growth market to benefit a wider range of companies and remove potential uncertainty about market capitalisation thresholds particularly for companies whose growth trajectory may rapidly change in the first years following listing.

2.7 Five respondents including 2 trade bodies indicated that the costs of changing how they paid for research would be too high. A wholesale bank said that industry had already invested costs (time and money) that were now embedded at a firm and industry level. Introduction of a hybrid system between bundled/unbundled research on the basis of the market capitalisation would require another significant round in investment of new processes. These could include management of payments, changes to invoicing processes and systems changes.

2.8 Seven respondents including 1 trade body had concerns that the proposal would create administrative complexity. One trade body suggested that implementing 2 separate regimes for the payment of research (on companies above and below the threshold) within a fund/mandate would be confusing for investors as mandates and funds invest across several asset classes. Firms would be most likely to take advantage of changes to the rules if they applied to research more broadly. Changing the way research was paid for would also result in difficult conversations with clients accustomed to firms absorbing costs of research in their own P&L. It was suggested that clients would question why they would now be paying for SME research but not other research.

2.9 A couple of respondents suggested alternatives to the 36-month assessment period. One trade body recommended looking at the closing price on average during the 12 months ending on 15 November, the date that research agreements are arranged. They suggested the time of the calculations should not be linked to the date of the provision of the service as this would make calculations more complex. This view was supported by another respondent who also suggested a further alternative of defining SME issuers by reference to an AIM listing on the basis that AIM listing issuers are more static and do not often move in and out of AIM listing. The trade body also suggested determination of the threshold for new listed companies should be based on the market capitalisation at the close of day one trading until the data of the next re-assessment.

2.10 Lastly, a respondent suggested extending the exemption to cover SME corporate access. It argued that uptake might be hindered if SME corporate access remains chargeable while relevant research becomes a MNMB.

Our response

In the consultation, we explained that we supported the changes to the inducements rules for equity research as part of the EU MiFID II reforms that took effect in 2018. We took the view that they would benefit investors by addressing conflicts of interest and transparency. This is something that we think is apparent in our subsequent supervisory work.

We can see that aligning our threshold with EU's threshold would simplify things for firms, but we believe that the wider scope would reintroduce material bundling of fees and unacceptably high inducement risk in the UK market. Overall, the equity research reforms are positive for clients and it is likely that many asset managers will want to continue to pay for research directly, here and in the EU.

None of the responses provided a detailed argument based on data for why a threshold of €1 billion is appropriate. As set out in the consultation, we chose the £200 million threshold on the basis of an analysis of where the issue of a lack of research in the market in the UK is most acute.

We recognise that there will be some complexity for both asset managers and research providers if they want to use the exemption because it involves change for a limited part of the equity research market. However, we are not mandating change. It will be a matter for asset managers and their clients and research providers to decide whether they think the costs of change exceed the potential benefits.

We believe it is appropriate to go forward with the exemption and to maintain a threshold of £200 million.

We considered the merits of a change to the way the exemption threshold is assessed. We can see that using whether a company is admitted to trading on an SME growth market is a neat and simple solution. However, it would treat firms of the same size differently and therefore be much less targeted than a market capitalisation threshold and potentially increase the inducement risk.

We accept that it will make the exemption easier for asset managers and research providers to change the market capitalisation threshold assessment period from a flexible 36 calendar month period to a static closing price on average during over 12 months. We will therefore amend the rule to take the average closing price at the end of each month to 31 October for the preceding 24 months. This longer assessment period will reduce churn onto and off the list and ensure that more companies are covered. For newly listed companies, market capitalisation will be taken as the level at which they come to market with a re-assessment date of 31 October. We chose this date as the benchmark for these calculations based on industry feedback that this would best work with annual cycles of discussions over research payments.

We considered the extension of the exemption to include SME corporate access. While we believe the charging for arranging introductions under corporate access has the potential for inducements, we recognise that the limited demand for investment in SMEs reduces the likely inducements risks. Consequently, we do not think it likely that material costs will be transferred back to clients through corporate governance charges subsidised through transaction costs, and will extend the exemption to include corporate access for firms under the threshold.

Exemption for FICC research

2.11 In CP21/9, we proposed an exemption from the inducement rules for third party research that is received by a firm providing investment services or ancillary services to clients, where it is received in connection with an investment strategy for FICC instruments. This would allow FICC research to be provided without being charged for separately.

2.12 Of the 28 respondents commenting on this proposal, 25 supported it but many raised questions about the intended scope. A trade body highlighted that the previous inclusion of FICC research did not seem entirely sound, placing extra costs on firms without any noticeable impact on liquidity as measured by bid/offer spreads after their introduction. Another trade body, agreed that there has generally been more 'friction' around the implementation of the MiFID II research rules for FICC business and that there has been little progress in developing generally accepted market mechanisms enabling FICC research to be separately identified and paid for.

2.13 Fourteen respondents expressed views on the scope of the exemption. Five suggested that the scope of the exemption in applying solely to third party research that primarily relates to FICC instruments should be amended, with the exemption applying unconditionally to FICC research. Of these, 1 respondent suggested this would remove unnecessary complexity from requiring firms to make assessments on whether research was primarily relating to FICC. Another of the 5 respondents sought clarification on whether the exemption was intended to apply at the firm, product or investment level.

2.14 Two respondents suggested the exemption should also apply to the FICC portion of funds and mandates that have a mixed strategy with elements of both equity and FICC research. One trade body suggested that the benefits identified in CP21/9 of removing associated costs from applying the inducement rules should be available to all firms using FICC research in the course of providing client services.

2.15 One trade body sought clarity on whether investment professionals who contribute to the running of both fixed income and equity portfolios should be paying for macro and fixed income research that might be covered by this exemption. A wholesale bank also asked if the exemption applied to macro-economic research.

2.16 Four respondents were concerned that the proposed exemption would result in increased costs and complexity. Of these, 1 respondent said that clients would be required to determine at a fund level whether the exemption applies and research providers will need to develop and maintain new systems to identify qualifying/non-qualifying individuals. Another of these respondents highlighted operational challenges for clients with multi-asset fund/trading strategies in managing the boundary between two categories of research.

2.17 Another respondent questioned the CBA estimate for fixed and ongoing costs arising from the FICC exemption as being too low for a large firm. 1 respondent suggested that the CBA underestimated one off/on-going costs of 150k and £70k per year. They suggested these costs are more likely to be £500-£700k and £200k per year. We acknowledge that the costs may be higher for some firms. This may mean that firms with higher costs decide that they do not wish to take advantage of this optional exemption compared to firms with lower cost who on balance see greater benefits arising relative to cost. We did not receive any other responses from firms questioning the cost estimates set out in the cost benefit analysis and therefore do not propose to amend the CBA.

2.18 One trade body asked whether the exemption was intended to provide flexibility for both the buy and sell side, so firms that believe their existing arrangements satisfy the inducement rule could continue with those arrangements, while other firms could amend their current arrangements. Another respondent requested clarification on whether it is the responsibility of the firm receiving research to have mechanisms in place to comply with their inducements obligations.

2.19 A couple of respondents asked about the ramifications of the exemption to the application of the SEC no-action letters for research (similar comments were also received with regards to the SME research exemption). One respondent raised the issue of timing for implementation of the rule. They suggested there should be a 12-month deadline for implementation, coinciding with the calendar year and billing cycle, to allow for a tech build lead time and opportunity to discuss pricing and consumption with clients.

Our response

We recognise that given that research and investment strategies often go across different asset classes that there are operational challenges for purchasers and providers of research in respect of an exemption for FICC research however it is specified. On balance, we consider it will be operationally more straight forward for users of research to apply the exemption to research on FICC instruments rather than as proposed in the consultation to require firms to determine whether research is received in connection with an investment strategy that relates primarily to FICC instruments.

In our final rules therefore the exemption is specified as applying to 'third party research that is received by a firm providing investment services or ancillary services to clients where it relates to fixed income, currency or commodity instruments'.

We do not, however, intend for macro-economic research to be included in the exemption. This is because while macro-research may at times be openly available and generic in nature, it is also capable of explicitly or implicitly suggesting an investment strategy and be a chargeable service. We also understand that macro-economic research may include elements of other research, including equity, which may not easily be disentangled. For these reasons we consider macro-economic research has the potential to raise the same inducements risks as for equity research and should not be exempt.

We recognise that some firms may choose not to use this exemption where the costs in their individual case, outweighs the likely benefits. We intend for the exemption to be simple to apply and we view it as acceptable for a recipient firm to rely on representations from research providers that they are supplying FICC research.

The SEC no-action letters allow US broker-dealers to accept research payments from asset managers without being deemed an investment adviser. This applies where the asset manager is required, either directly by MiFID II or by contractual arrangement between the parties, to pay for research separately from execution either from their own resources or through a research payment account. It is not appropriate for us to comment on the application of these SEC no-action letters in light of our proposed amendment of the inducement's rules for research.

Lastly, we have considered the implementation period for this and the other proposals. We accept that the changes to the inducement rules will require a period for implementation both in client budgeting conversations and for technological build. It is also worth noting that given the optionality of these exemptions, we are not requiring firms to make changes. Accordingly, we will apply our rules from 1 March (a 3-month implementation period).

Independent Research Providers

2.20 In CP21/9, we proposed the creation of an exemption for research provided by independent research providers (IRPs), by including in the list of minor non-monetary benefits research provided by independent research providers, where the independent research provider is not engaged in execution services and is not part of a financial services group that includes an investment firm providing execution or brokerage services.

2.21 Of the 16 respondents commenting on this proposal, 13 were supportive, regarding it as a proportionate measure that could help address uncertainty for those buying research from IRPs. However, a couple of respondents suggested that the exemption would provide IRPs with a competitive advantage and act as a disincentive for non-IRPs to produce research.

2.22 One trade body was supportive of the proposal but suggested the scope might be unnecessarily restrictive or cause confusion in situations where the IRP may have the ability to carry out execution services, even though not in practice providing those services to the recipient of the research. The same trade body suggested additional wording '…if the independent research provider is not providing execution services to the firm receiving the research' as opposed to 'where the independent research provider is not engaged in execution services.'

2.23 One wholesale bank suggested use of the term 'independent' wrongly inferred that any research from a provider, which does offer execution or brokerage services, is non-independent in nature. They proposed guidance be used rather than an addition to the list of minor non-monetary benefits. They suggested this could refer to 'a research provider where the research provider is not engaged in execution or brokerage services and is not part of a financial services group that includes an investment firm that offers execution or brokerage services.' They suggested that the wording of an exemption should remove the reference to 'independent'.

Our response

As noted in the CP, IRPs only account for a small proportion of the research market, including for SME research but provide an alternative source of research to that provided by investment firms.

We consider that where research providers do not offer execution services their research will not raise the conflicts that can arise from investment firms providing research and offering execution services. On this basis, we do not see it as necessary to apply the same conflicts of interests rules that apply when a research provider or a company in its group offers execution services.

We consider there would be risks associated with amendments to the exemption to apply to situations where a research provider can but is not providing execution services to the firm receiving the research. This could include the risk that research is provided and then execution services are subsequently used. We have not therefore changed the rule to take to take account of such situations.

There are organisational requirements in MiFID to seek to ensure that what is labelled as research produced by investment firms, including those who also offer execution services, is objective and independent. In light of this we have removed 'independent' from the wording of the exemption.

Openly available research

2.24 In CP21/9, we explained that we would include in the list of minor non-monetary benefits written material that is made openly available from a third party to any firms wishing to receive it or to the general public.

2.25 All of the 7 respondents providing responses on this proposal supported making clear in the Handbook that when materials are openly available there is no inducement risk. However, 2 respondents noted that this clarification reflected existing market practice in the UK to allow openly available research to be distributed free of charge.

2.26 A further 2 respondents suggested the scope of 'openly available' should be clarified in the Handbook to include materials where the only limit to their availability, through use of logins or other restrictions, is dictated by compliance with relevant rules and regulations. One of these respondents also asked that we make clear that filtering restrictions do not mean research is no longer openly available where distribution is 'as frictionless and possible' and any restrictions stem from local regulatory requirements.

2.27 Another trade body welcomed the FCA making it clear that the proposal applies to all publicly available content (rather than solely macro-economic or FICC research which is the specific context of the ESMA Q&A).

Our response

We consider creation of the exemption for openly available research brings necessary regulatory clarification, recognising that for many participants this may reflect existing Industry practice.

There is an ESMA Q&A, Question 8 in Part 7 of the Q&A on MiFID II and MiFIR investor protection and intermediaries topics that touches on the issue of openly available research. We supported the adoption of this Q&A when we were a member of ESMA and it forms part of our ongoing supervisory expectations. It says that there should be no barriers to accessing research for it to be regarded as openly available and therefore a minor non-monetary benefit. However, we acknowledge that there may be some circumstances where research that would otherwise be openly available is subject to conditions on access that are necessary to comply with regulation.

In these circumstances, for research to be considered as openly available, we expect a firm to be able to demonstrate what steps it has taken to meet these requirements and how such measures are proportionate with the need on the one hand to place limitations on the audience that may view such material, given the need to ensure that access is as frictionless as possible. We have changed the wording of the exemption so that, where the steps a firm has taken meet this standard, its research will be regarded as openly available.

Industry-led initiative

2.28 In CP21/9, we invited views on an alternative measure to address the market failure of low research coverage. We suggested this could take the form of a market-led initiative to create a research pool, funded by firms from contributions from their own profit and loss accounts – with SME research commissioned using these funds and shared amongst contributors.

2.29 Of the 16 respondents responding to the proposal, 13 expressed reservations about the practical operation of a research pool. One trade body noted similar solutions were discussed at the time of MiFID II's introduction which were not developed; they suggested the success of any scheme was slimmer now that firms have bedded down their research evaluation and purchasing arrangements. They identified challenges to the operation of a pool including how its coverage would be decided, payment and access arrangements and the economics for research providers. Another trade body suggested that such an initiative would need to make commercial sense since sustaining research on an SME stock costs around £40,000 per year.

2.30 Other challenges were identified by respondents. One trade body noted that the buy-side were already performing a significant amount of in-house research so the initiative would be unlikely to have take-up or provide additional information of use to firms in their business. They also highlighted that it would be challenging to pre-fund research without seeing the quality and whether it would be of use. Another trade body suggested that the initiative would require significant investment to produce legal documentation, develop infrastructure for compliance oversight, seek agreement on which sell-side analysts should be used and which SMEs it would apply to.

Our response

In CP21/9, we note that there is a long-term decline in research, including SME research, and that regulatory changes to the inducement rules were unlikely to address this. We regard the issue of declining SME research coverage as one that industry can usefully contribute solutions to.

We recognise that an industry led initiative such as a research pool could present operational challenges however it could encourage further initiatives from industry in the future on this issue.

3 Our response to consultation feedback on best execution reports

Best execution reports

3.1 In CP21/9 we explained that we support the MiFID II objectives of increasing transparency and improving information about how firms execute and transmit their client orders and their outcomes that they obtain for their clients. However, we proposed deleting the obligations on execution venues and firms to produce RTS 27 and RTS 28 reports on the basis that these have not delivered on these objectives, since they are little used by investors or firms with best execution obligations and are costly to produce.

3.2 In the consultation paper, we highlighted that certain aspects of the rules relating to best execution reports are included in the UK version of the MiFID delegated regulation (known in our Handbook as 'The MiFID Org Reg'). We also said that the progress of the changes we were proposing were dependent upon whether the Treasury decided to make changes to the relevant provisions in the MiFID Org Reg. Subsequent to the publication of the consultation, Statutory Instrument (SI) 2021/774 has been made. It made various amendments to the MiFID Org Reg including changes to the provisions that relate to best execution reports to take effect on 1 December 2021. This therefore enables us to make the choice to implement the proposals in the consultation.

RTS 27 reports

3.3 There were 34 respondents to the question inviting comment on deletion of RTS 27 reports. All but 1 favoured removal of these reports. Of these, 1 trade body said that fund management firms use alternative means to assess the quality of the executions obtained, as the data provided by RTS 27 is too fragmented and hard to decipher, while not being the information that firms want. Another trade body said the reports had not reached their intended policy goal.

3.4 A couple of respondents made further comments. A trade body agreed with the proposed removal of RTS 27 reports but considered the original policy intention to be worthwhile. Accordingly, they suggested RTS 27 be replaced with a more effective new regime that is designed to provide useful information to market participants. They cited equivalent reports in the US (the SEC Rule 605 reports) as an example that provides market participants with actual transparency on execution quality in a relevant, standardised, centralised and consistent manner. A further trade body highlighted that members with operations in both the UK and EU would only see significant costs savings where removal took effect in both jurisdictions.

RTS 28 reports

3.5 All but one of the 34 respondents to the question inviting comment on deletion of RTS 28 reports were supportive of the proposal. Of these, 1 trade body noted client interest in reports being negligible with alternative, better means available for portfolio managers using brokers to execute their orders to assess trade execution. This view was shared by another trade body which noted that alternative transaction cost analysis solutions are evolving that enable firms to support a wider evaluation and assess their counterparties and performance in a more uniform way, while providing an additional level of transparency for investors.

3.6 The only trade body to disagree suggested the FCA could redesign the reporting requirements for firms about their order routing and execution outcomes to ensure these reports are insightful and highlight particular points where there are likely to be conflicts of interest. They suggested this should include a quicker turnaround and reporting frequency, mandating a specific format and making the reports machine-readable in a proscribed format. A different trade body suggested the FCA should consider issuing a statement of supervisory flexibility similar to those issued by the FCA for RTS 27 reports and notifications of 10% drops in the values of portfolios. This would be to take account of any work that firms would otherwise need to undertake in the interim prior to the next RTS 28 reports being due in April 2022 and finalisation of any rule changes.

Our response

As set out in the CP, we do not consider that RTS 27 and 28 reports are delivering their intended policy objectives and are creating unnecessary costs for execution firms and trading venues. While we note 1 trade body's suggestions for redesigning the RTS 27 and 28 requirements to make them have more value, this must be seen within a context of the feedback we received that there are very few users of those reports and in light of almost all respondents preferring complete removal. On this basis, we will proceed to remove the reporting obligations for both and this change will take effect on 1 December.

We will keep this issue under review and reflect again in light of our and the Treasury's work as part of the Wholesale Markets Review including on market data.

We do not consider a supervisory flexibility statement for RTS 28 reports is required. The deletion of the obligation to publish RTS 28 reports will take effect earlier than the next date for RTS 28 reports of 30 April 2022.

Annex 1
List of non-confidential respondents

Executive Compliance Limited

Plus 500 UK Ltd

PH7 Hedge Fund Consultants

TD Securities Limited

Baillie Gifford & Co

Messels

The Chartered Governance Institute UK & Ireland

AlphaValue

Electronic Debt Markets Association (EDMA)

AIG Asset Management (Europe) Ltd

Credit Suisse International

UK Finance

Association of British Insurers

Brewin Dolphin Limited

European Leveraged Finance Association

The European Association of Independent Research Providers (Euro IRP)

Castlefield Investment Partners

Global Financial Markets Association (GFMA)

The Investment Association

Legal & General Investment Management Limited

Citigroup Global Markets Limited

Ice Futures Europe

Alternative Investment Management Association (AIMA)

The London Metal Exchange

Quoted Companies Alliance (QCA)

Standard Chartered Bank

Personal Investment Management & Financial Advice Association (PIMFA)

Charles Stanley & Co. Limited

Morningstar

International Swaps & Derivatives Association (ISDA)

State Street

Futures Industry Association (FIA)

The International Capital Market Association (ICMA)

Invesco

Association of Foreign Banks

IHS Markit

Bloomberg LP

Association for Financial Markets in Europe (AFME)

European Venues and Intermediaries Association (EVIA)

FIA European Principal Traders Association (FIA EPTA)

Annex 2
Abbreviations used in this paper

Abbreviation	Description
CBA	Costs benefit analysis
COBS	Conduct of Business Sourcebook
Commission	European Commission
CP	Consultation Paper
ECP	Eligible Counterparty
EU	European Union
FCA	Financial Conduct Authority
FICC	Fixed Income Currencies and Commodities
FSMA	Financial Services and Markets Act 2000
IRP	Independent Research Provider
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
MNMB	Description Minor Non-Monetary Benefit
RPA	Research Payments Account
SME	Small and medium-sized Enterprise
UK	United Kingdom

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Appendix 1
Made rules (legal instrument)

CONDUCT OF BUSINESS SOURCEBOOK (AMENDMENT) INSTRUMENT 2021

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 137A (The FCA's general rule-making power);
(b) section 137R (The FCA's financial promotion rule-making power);
(c) section 137T (General supplementary powers);
(d) section 139A (Power of the FCA to guide guidance); and

(2) regulation 3 of the Financial Regulators' Powers (Technical Standards etc.) (Amendment etc) (EU Exit) Regulations 2018; and

(3) the other powers and related provisions listed in Schedule 4 (Powers exercised) to the General Provisions sourcebook (GEN) of the FCA's Handbook.

B. The rule-making provisions referred to above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. Part 1 of this instrument comes into force on 1 March 2022.

D. Part 2 of this instrument comes into force on 1 December 2021.

Amendments to the Handbook

E. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Conduct of Business sourcebook (COBS)	Annex A
Market Conduct sourcebook (MAR)	Annex B
Recognised Investment Exchanges sourcebook (REC)	Annex C

Citation

F. This instrument may be cited as the Conduct of Business Sourcebook (Amendment) Instrument 2021.

By order of the Board
25 November 2021

Annex A

Amendments to the Conduct of Business sourcebook (COBS)

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

Part 1: comes into force on 1 March 2022

2 Conduct of business obligations

…

2.3A Inducements relating to MiFID, equivalent third country or optional exemption business and insurance-based investment products

…

Acceptable minor non-monetary benefits

2.3A.19 R An acceptable minor non-monetary benefit is one which:

(1) is clearly disclosed prior to the provision of the relevant service to the *client*, which the *firm* may describe in a generic way (where applicable, in accordance with *COBS* 2.3A.10R);

(2) is capable of enhancing the quality of service provided to the *client*;

(3) is of a scale and nature that it could not be judged to impair the *firm's* compliance with its duty to act honestly, fairly and professionally in the best interests of the *client*;

(4) is reasonable, proportionate and of a scale that is unlikely to influence the *firm's* behaviour in any way that is detrimental to the interests of the relevant *client*; and

(5) …

(a) …

…

(e) research relating to an issue of *shares, debentures, warrants* or *certificates representing certain securities* by an *issuer,* which is:

(i) produced:

(A) prior to the issue being completed; and

(B) by a *person* that is providing underwriting or placing services to the *issuer* on that issue; and

(ii) made available to prospective investors in the issue; ~~or~~

(f) research that is received so that the *firm* may evaluate the research provider's research service, provided that:

(i) it is received during a trial period that lasts no longer than three *months*;

(ii) no monetary or non-monetary consideration is due (whether during the trial period, before or after) to the research provider for providing the research during the trial period;

(iii) the trial period is not commenced with the research provider within 12 *months* from the termination of an arrangement for the provision of research (including any previous trial period) with the research provider; and

(iv) the *firm* makes and retains a record of the dates of any trial period accepted under this *rule*, as well as a record of how the conditions in (i) to (iii) were satisfied for each such trial period~~.~~;

(g) research on listed or unlisted companies with a market capitalisation below £200m, provided that it is offered on a rebundled basis or provided for free. The market capitalisation is to be calculated with reference to the average closing price of the *shares* of the company at the end of each *month* to 31 October for the preceding 24 *months*. For companies newly admitted to trading, determination of the threshold should be based on the market capitalisation at the close of day one trading and apply until the date of the next re-assessment (i.e. 31 October). For these purposes, *firms* may reasonably rely on the assessment of a third party that the research is on a company with a market capitalisation below £200m;

(h) third party research that is received by a *firm* providing *investment services* or *ancillary services* to *clients* where it relates to fixed income, currency or commodity instruments;

(i) research received from a research provider where the research provider is not engaged in execution services and is not part of a financial services group that includes an *investment firm* that offers execution or brokerage services;

(j) written material that is made openly available from a third party to any firm wishing to receive it or to the general public. "Openly available" in this context means that there are no conditions or barriers to accessing the written material other than those which are necessary to comply with relevant regulatory obligations, for example requiring a log-in, sign-up or submission of user information by a firm or a member of the public in order to access that material; or

(k) *corporate access services* which relate to listed or unlisted companies with a market capitalisation below £200m in accordance with *COBS* 2.3A.19R 5(g).

[**Note:** articles 24(7)(b) and 24(8) of *MiFID*; article 12(2) and (3) of the *MiFID Delegated Directive* and article 72(3) of the *MiFID Org Regulation*]

…

2.3A.22A G In relation to *COBS* 2.3A.19R 5(h), since the particular features of the fixed income, currency and commodity markets, whereby portfolio managers and independent investment advisers transact with counterparties based on competitive pricing processes, the pricing of transactions in fixed income, currency and commodity instruments will typically not take into account research services.

…

Part 2: comes into force on 1 December 2021

11 Dealing and managing

…

11.2A Best execution – MiFID provisions

11.2A.1 R (1) Subject to (2) to (4), the following provisions apply to a *firm's* business other than *MiFID business* as if they were *rules*:

(a) provisions within this chapter marked "UK"~~; and~~.

(b) ~~*COBS* 11 Annex 1UK (Regulatory Technical Standard (RTS 28)).~~ [deleted]

(2) ~~The following provisions do not apply to *MiFID optional exemption firm's business*:~~

~~(a)~~ ~~the part of the first sub-paragraph of article 65(6) to the *MiFID Org Regulation* (reproduced at *COBS* 11.2A.34UK) that reads:~~

~~"In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 27(b) of Schedule 1 to Regulation (EU) 2014/600."; and~~

~~(b)~~ ~~*COBS* 11 Annex 1UK (Regulatory Technical Standard (RTS 28).~~ [deleted]

(3) This chapter does not apply (but *COBS* 11.2B applies) to *UCITS management companies* when carrying on *scheme management activity*.

(4) This chapter does not apply (but *COBS* 11.2 applies) to *AIFMs* when carrying on *AIFM investment management functions* and *residual CIS operators*.

…

Execution policies

11.2A.25 UK …

(9) Where an investment firm executes orders for retail clients, it shall provide those clients with a summary of the relevant policy, focused on the total cost they incur. ~~The summary shall also provide a link to the most recent execution quality data published in accordance with [*COBS* 11.2C.1R, *MAR* 5.3.1AR(5), *MAR* 5A.4.2R(3) and *MAR* 6.3A.1R] and paragraph 4C of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 for each execution venue listed by the investment firm in its execution policy.~~

…

11.2A.29 G An *investment firm* executing orders should be able to include a single *execution venue* in their policy only where they are able to show that this allows them to obtain best execution for their *clients* on a consistent basis.

Investment firms should select a single *execution venue* only where they can reasonably expect that the selected *execution venue* will enable them to obtain results for *clients* that are at least as good as the results that they could reasonably expect from using alternative *execution venues*. This reasonable expectation must be supported by relevant data ~~published in accordance with:~~ or by other internal analyses conducted by *investment firms*.

~~(1) *COBS* 11.2A.38G;~~

~~(2) *COBS* 11.2A.39R;~~

~~(3) *COBS* 11.2C; and~~

~~(4) by other internal analyses conducted by *investment firms*~~. [deleted]

[**Note:** recital 108 to the *MiFID Org Regulation*]

…

11.2A.31 R (1) A *firm* must monitor the effectiveness of its order execution arrangements and execution policy to identify and, where appropriate, correct any deficiencies. In particular it must assess, on a regular basis, whether the *execution venues* included in the order execution policy provide for the best possible result for the *client* or whether it needs to make changes to its execution arrangements taking into account ~~the information published in accordance with:~~ relevant data or other internal analyses conducted by *investment firms*.

~~(a) *COBS* 11.2A.38G;~~

~~(b) *COBS* 11.2A.39R; and~~

~~(c) *COBS* 11.2C~~. [deleted]

(2) The *firm* must notify *clients* of any material changes to its order execution arrangements or execution policy.

[**Note:** article 27(7) of *MiFID*]

…

11.2A.33 G In order to obtain the best execution for a client, a *firm* should compare and analyse relevant data~~, including that made public in accordance with *COBS* 11.2A.38G, *COBS* 11.2C and article 27(3) of *MiFID* and respective implementing measures~~.

[**Note:** recital 107 to the *MiFID Org Regulation*]

Duty of portfolio managers, receivers and transmitters to act in client's best interest

11.2A.34 UK 65 (1) …

…

(6) Investment firms shall provide information to their clients on the policy established in accordance with paragraph 5 and paragraphs 2 to 9 of Article 66. Investment firms shall provide clients with appropriate information about the firm and its services and the entities chosen for execution. ~~In particular, when the investment firm select other firms to provide order execution services, it shall summarise and make public, on an annual basis, for each class of financial instruments, the top five investment firms in terms of trading volumes where it transmitted or placed client orders for execution in the preceding year and information on the quality of execution obtained. The information shall be consistent with the information published in accordance with the Commission Delegated Regulation (EU) 2017/576 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution, or any technical standards made by the Financial Conduct Authority under paragraph 20(b) of Schedule 3 to Regulation (EU) 600/2014.~~

Upon reasonable request from a client, investment firms shall provide its clients or potential clients with information about entities where the orders are transmitted or placed for execution.

(7) …

…

(8) This Article shall not apply where the investment firm that provides the service of portfolio management or reception and transmission of orders also executes the orders received or the decisions to deal on behalf of its client's portfolio. In those cases, Articles 64 and 66 of this Regulation, ~~technical standards made under Article 27(10) of Directive 2014/65/EC~~ and rules in [*COBS*] which were relied on immediately before exit to implement Article 27 of Directive 2014/65/EU shall apply.

…

11.2A.36 G A *firm* transmitting or placing orders with other entities for execution may select a single entity for execution only where the *firm* is able to show that this provides the best possible result for their *clients* on a consistent basis and where they can reasonably expect that the selected entity will enable them to obtain results for *clients* that are at least as good as the results that could reasonably be expected from using alternative entities for execution. This reasonable expectation should be supported by relevant data <u>or by other internal analyses conducted by *investment firms*.</u> ~~published in accordance with:~~

~~(1) *COBS* 11.2A.38G;~~

(2) ~~*COBS* 11.2A.39R;~~

(3) ~~*COBS* 11.2C; and~~

(4) ~~by internal analysis conducted by *investment firms*.~~ [deleted]

[**Note:** recital 100 to the *MiFID Org Regulation*]

…

~~Publishing information on execution quality~~

11.2A.38 G ~~*Execution venues* (other than market makers and other liquidity providers to which *COBS 11.2C* applies) are reminded of the need to comply with the following provisions:~~

(1) ~~*MAR* 5.3.1A R(5);~~

(2) ~~*MAR* 5A.4.2R(3);~~

(3) ~~*MAR* 6.3A.1R; and~~

(4) ~~paragraph 4C of the Schedule to the *Recognition Requirements Regulations*.~~

~~[**Note:** article 27(3) of *MiFID* and *MiFID RTS 27*]~~ [deleted]

11.2A.39 R ~~In accordance with the requirements of *COBS* 11 Annex 1EU, a *firm* which executes *client* orders must summarise and make public on an annual basis, for each class of *financial instruments*, the top five *execution venues* in terms of trading volumes, where they executed *client* orders in the preceding year, together with information on the quality of execution obtained.~~

~~[**Note:** article 27(6) of *MiFID* and *MiFID RTS 28*]~~ [deleted]

…

11.2B Best execution for UCITS management companies

…

Obligation to execute orders on terms most favourable to the scheme

…

11.2B.22 G (1) A *management company* may specify a single *execution venue*, or a single entity with which it places orders for execution, in its execution policy where it:

(a) is able to show that this allows it to obtain best execution, or, when placing orders for execution, the best possible result, for the *schemes* it manages on a consistent basis; and

(b) can reasonably expect that the selected *execution venue* or entity will enable it to obtain results for each *scheme* that are at least as good as the results that it could reasonably expect from using alternative *execution venues* or entities.

(2) The reasonable expectation in (1)(b) should be supported by~~:~~ relevant data or by other internal analyses conducted by the *management company*.

~~(a) relevant data published in accordance with *COBS* 11.2A.39R, *COBS* 11.2B.36R, *COBS* 11.2C and the provisions referred to in *COBS* 11.2B.30G; or~~

~~(b) other internal analyses conducted by the *management company*.~~ [deleted]

…

Monitoring and review of the order execution arrangements including the order execution policy

11.2B.27 R (1) A *management company* must monitor the effectiveness of its order execution arrangements and policy on a regular basis to identify and, where appropriate, correct any deficiencies.

(2) A *management company* that places orders with other entities for execution must in particular monitor the execution quality of those entities on a regular basis to identify and, where appropriate, correct any deficiencies.

(3) A *management company* must assess, on a regular basis:

(a) whether the *execution venues* included in the order execution policy provide for the best possible result for the *schemes* it manages; and

(b) whether it needs to make changes to its execution arrangements taking into account ~~the information published in accordance with *COBS* 11.2A.39R, *COBS* 11.2B.36R, *COBS* 11.2C and the provisions referred to in *COBS* 11.2B.30G~~ relevant data or other internal analyses conducted by the *management company*.

[**Note:** article 25(4) first sentence, and article 26(3) first paragraph of the *UCITS implementing Directive*]

…

11.2B.30 G A *management company* should compare and analyse relevant data~~,~~ ~~including that made public in accordance with:~~ to monitor and review their order execution arrangements.

~~(1)~~ ~~*MAR 5.3.1AR(5)* (Functioning of an MTF);~~

~~(2)~~ ~~(Functioning of an OTF);~~

~~(3)~~ ~~*MAR 6.3A.1R* (Quality of execution); and~~

~~(4)~~ ~~paragraph 4C of the Schedule to the *Recognition Requirements Regulations*~~. [deleted]

Information requirements

…

11.2B.36 R ~~(1)~~ ~~Where a *management company* executes *scheme* orders or selects other *firms* to provide order execution services, it must summarise and make public, on an annual basis, for each type of *financial instrument*:~~

~~(a)~~ ~~the top five *execution venues* or investment firms where it transmitted or placed orders for execution in terms of trading volumes in the preceding year; and~~

~~(b)~~ ~~information on the quality of execution obtained.~~

~~(2)~~ ~~The information must be consistent with the information published in accordance with *COBS* 11 Annex 1UK (Regulatory technical standard 28) (which applies as *rules* in accordance with *COBS* 18.5B.2R).~~ [deleted]

…

11.2C Quality of execution

11.2C.1 R ~~A *market maker* or other liquidity provider must make available the data detailed in *COBS* 11.2C.2R to the public in the following manner:~~

~~(1)~~ ~~at least on an annual basis; and~~

~~(2)~~ ~~without any charges.~~ [deleted]

11.2C.2 R ~~*COBS* 11.2C.1R applies to data relating to the quality of execution of transactions by that *market maker* or other liquidity provider, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.~~

~~[**Note:** article 27(3) of *MiFID* and *MiFID RTS 27*]~~ [deleted]

…

COBS 11 Annex 1UK Regulatory Technical Standard 28 (RTS 28) is deleted in its entirety. The deleted text is not shown but the annex is marked [deleted] as shown below.

11 Annex 1	**UK**	**Regulatory Technical Standard 28 (RTS 28) <u>[deleted]</u>**

Annex B

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

…

5.3 Trading process requirements

…

Functioning of an MTF

5.3.1A R A *firm* must:

(1) …

…

(5) ~~make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:~~

~~(a) at least on an annual basis; and~~

~~(b) without any charges; and~~

~~[**Note:** article 27(3) of *MiFID*]~~ [deleted]

…

…

5A Organised trading facilities (OTFs)

…

5A.4 Trading process requirements

…

Functioning of an OTF

5A.4.2 R A *firm* must:

(1) …

…

(3) ~~make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:~~

~~(a) at least on an annual basis; and~~

~~(b) without any charges.~~

~~[**Note:** article 27(3) of *MiFID*]~~ [deleted]

…

6 Systematic internalisers

…

6.3A Quality of execution

6.3A.1 R ~~A *systematic internaliser* must make available the data in *MAR* 6.3A.2R to the public in the following manner:~~

~~(1) at least on an annual basis; and~~

~~(2) without any charges.~~ [deleted]

6.3A.2 R ~~*MAR* 6.3A.1R applies to data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.~~

~~[**Note:** article 27(3) of *MiFID*, *MiFID RTS 27* and *MiFID RTS 28*]~~ [deleted]

Annex C

Amendments to the Recognised Investments Exchanges sourcebook (REC)

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

2 Recognition requirements

…

2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets

…

2.6.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 4C

~~(1)~~	~~The [*UK RIE*] must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the [*UK RIE*] on at least an annual basis.~~ [deleted]
~~(2)~~	~~Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments~~. [deleted]

…

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

…			
(2)	An exchange operating a multilateral trading facility or an organised trading facility must comply with those requirements of-		
	(a)	any provisions of the law of the United Kingdom relied on by the United Kingdom before IP completion day to implement Chapter 1 of Title II of the markets in financial instruments directive—	
		(i)	as they have effect on ~~IP completion day~~ <u>1 December 2021</u>, in the case of rules made by the FCA under the Act; and

		(ii)	as amended from time to time, in all other cases;
	(b)	…	
…			
Paragraph 9F – Specific requirements for organised trading facilities: execution of orders			
…			
(4)	The discretion which the [*UK RIE*] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.		
(5)	The first discretion is whether to place or retract an order on the organised trading facility.		
(6)	The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the [*UK RIE's*] obligations under—		
	(a)	section 11.2A of the Conduct of Business sourcebook;	
	(b)	Articles 64 to 66 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;	
	(c)	~~Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions; and~~ [deleted]	
	(d)	~~Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.~~ [deleted]	
…			
(9)		The [*UK RIE*] must comply with rules made by the FCA as they have effect on ~~IP completion day~~ 1 December 2021 as	

		to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.
…		

…

TECHNICAL STANDARDS ((MARKETS IN FINANCIAL INSTRUMENTS REGULATION) (BEST EXECUTION) INSTRUMENT 2021

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) paragraph 20 of Part 2 of Schedule 3 to the 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 provisions referred to 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 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 FCA revokes the following EU Regulations:

Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions.
Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.

Commencement

G. This instrument comes into force on 1 December 2021.

Citation

H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Regulation) (Best Execution) Instrument 2021.

By order of the Board
25 November 2021

Pub ref: 007734

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