

Supervisory Statement on the Operation of the MiFID Transparency Regime post-Brexit

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 if the UK leaves the European Union on 29 March at 11pm without a withdrawal agreement. Under the UK legislation that will then take effect we will be responsible for many of the tasks the European Securities and Markets Authority (ESMA) currently undertakes under the EU legislation, MiFID II (the Markets in Financial Instruments Directive and Markets in Financial Instruments Regulation (MiFIR)). We will not, by 29 March, have fully developed and implemented the technology to make the relevant calculations and assessments that ESMA currently undertakes and to publish the results. The onshored legislation gives us various temporary powers, for a period of up to 4 years, to help us run the transparency regime in the meantime. This Statement explains our approach to operating the UK transparency regime over that period. Should conditions change we may revise our approach and give notice accordingly.
2. This Statement takes account of the [statement](#) ESMA issued on 5 February 2019: 'Use of UK data in ESMA databases and performance of MiFID II calculations in case of a no-deal Brexit'. It also takes account of the statements [we](#) and [ESMA](#) issued about post-trade transparency. It builds on the [Statements of Policy](#) we issued on 4 March about how we will use our temporary powers for the MiFID II transparency regime that are set out in the [onshored MiFIR](#).

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

3. ESMA currently publishes data of relevance to the operation of the transparency regime on several public databases and registers. The most significant of these are as follows:
 - **Financial Instruments Reference Database (FIRDS)**. This database has reference data on financial instruments supplied by trading venues and systematic internalisers. It helps firms determine which instruments are traded on trading venues and therefore are inside the scope of trade reporting. We published a [statement](#) on 1 February 2019 about our plans for an FCA FIRDS which will be open from 1 April assuming we leave the EU on 29th March.
 - **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. We published a further statement today about our plans for FCA FITRS which will be open from 1 April 2019, assuming we leave the EU on 29th March.
 - **Double Volume Cap Mechanism System**. This system receives and validates quantitative information from trading venues on the volume traded under certain waivers. It publishes the results every month. Our system will not be fully operational until the end of 2019, but we will publish suspensions on our website after the UK leaves the EU.

- **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 we leave the EU.
- **Investment firm register.** This register is a list of EU investment firms authorised under MiFID. We will publish our own list of UK investment firms on our website after the UK leaves the EU.
- **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 (see the Financial Services Register page) and will continue to do so after the UK's exit from the EU.
- **Systematic internaliser database.** This database includes information on the total number of transactions and volume of trading in financial instruments to facilitate calculations by investment firms to determine whether they are an SI. We will not have such a database before 2020.

Concept of Traded on a Trading Venue

4. The transparency regime in MiFID II is based around instruments that are 'traded on a trading venue' ('ToTV'). After the UK leaves the EU, the scope of instruments that are ToTV for the purposes of our transparency regime will only include instruments traded on UK trading venues¹. 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.
5. In May 2017 ESMA published an [Opinion](#) on ToTV to clarify its scope for OTC derivatives. After the UK's exit from the EU, we will continue to use this Opinion as the basis of our approach to considering the scope of ToTV.
6. It will be possible to determine which instruments are ToTV in the UK for the purposes of the transparency regime from FCA FIRDS. Where instruments are traded on a trading venue in the UK, such instruments will be identifiable by the fact that we will be the Relevant Competent Authority.

Submission of transparency data to the FCA

7. We currently receive daily data on quantitative and reference (as appropriate) data from trading venues and Approved Publication Arrangements (APAs) under Commission Regulation 2017/590. We send this data on to ESMA who use it to make various calculations needed to operate the transparency regime. The timing and the format of data submissions will not change after Brexit. APAs will send less data to us, as they will only need to report data on instruments that are ToTV in the UK. We will no longer send information to ESMA.

Double Volume Cap (DVC)

8. ESMA operates the DVC by publishing on a monthly basis (and in certain circumstances twice-monthly) information on the level of dark trading in individual equities. It lists the equities subject to suspensions under the DVC and which therefore cannot be

¹ This excludes Recognised Overseas Investment Exchanges but includes trading venues operated by branches of EEA firms operating under the Temporary Permission Regime.

traded under the reference price and negotiated trade waivers from pre-trade transparency.

9. Waiver suspensions under the DVC in force at the point when the UK leaves the EU will continue to operate within the UK until the completion of the relevant six-month suspension period as determined at the time when the suspension was issued.
10. ESMA said in its 5 February statement that they will not publish DVC calculations for the first two months following a 29 March 2019 hard Brexit. Publication will resume on 7 June 2019.
11. Until the end of 2019, we will not have the technology to undertake the DVC calculations in a similar manner to ESMA's. The temporary powers we will have in relation to the DVC will allow us to suspend the use of waivers for specific instruments without undertaking and publishing the sort of calculations that ESMA currently does. We published a policy statement on 4 March about our use of these powers.
12. Until we have our calculation engine in place, we will not be able to calculate the level of trading under the relevant waivers for equity instruments that are only traded on UK trading venues. We are likely to be suspending only where, in accordance with our market integrity objective, we have strong evidence that the use of waivers is undermining price formation.
13. In relation to instruments with significant trading on trading venues in the EU as well as in the UK we said in our Statement of Policy that we shall pay close attention to the market-wide suspensions announced by ESMA, in particular where ESMA calculations take account of UK trading data. We also said there is likely to be a strong case for using our power in these circumstances, particularly given that ESMA has confirmed it will include data from the UK, albeit less and less each month, in its calculations until the figures it publishes in April 2020.
14. When 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. We intend to make our waiver suspensions to the same timetable that ESMA currently operates. The main date of publication of suspensions is 5 working days after the end of each calendar month. Suspensions then take effect 2 working days later. ESMA is also sometimes required to publish calculations 5 working days after the 15th day of the month, with any resulting suspensions taking effect 2 working days later.
15. Therefore, the first time after the UK's exit from the EU that we may publish details of DVC suspensions, if applicable, will be Friday 7 June 2019. Any such suspensions will take effect from Wednesday 12 June 2019. 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 June 2019 onwards which will appear on our website on an ISIN by ISIN basis.

Transparency waivers and deferrals

16. We currently need to notify ESMA of our intention to grant a pre-trade transparency waiver. Applications from trading venues to use pre-trade transparency waivers need to be with us in time for us to assess them and give ESMA an opinion 4 months before the waiver is due to take effect. Under the existing regime, we expect UK trading venues to submit waivers at least one month before we notify ESMA. After Brexit, we will no longer have to get an opinion from ESMA on granting waiver applications and the timetable for this will no longer apply. We will continue to expect firms to make waiver applications to us with an adequate amount of time before they are due to take effect.

17. The way in which trading venues need to inform us of applications for the use of waivers and deferrals will not change after Brexit. We will continue to use the same form for waivers and 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.

18. After Brexit we will not be requiring trading venues to resubmit applications for their existing waivers and deferrals, as the EU Withdrawal Act provides that they continue to have effect post-exit as per the conditions under which they were granted. The only change to our power to withdraw waivers is that this process can no longer be initiated by a request from a regulator in an EU country.

Equity transparency

19. Under the current transparency regime, for each equity instrument ESMA makes and publishes a number of calculations on an annual basis, 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.

20. ESMA publishes these calculations on 1 March each year. At the time the UK leaves the EU, we will still be setting up the technology we need to make these calculations. However, we have temporary powers to use the calculations that ESMA published on 1 March 2019 (which includes UK data) as the basis for determining liquidity, large-in-scale and standard market size applying in the UK from 1 April 2019 for a year. We will make our own determinations of the most relevant markets in terms of liquidity. We will publish the information for equities traded on trading venues in the UK from these calculations in FCA FITRS after the UK leaves the EU.

21. ESMA also currently makes estimates of the above calculations for instruments that are newly admitted to trading. We shall take on this task for equities admitted to trading on UK trading venues.

22. ESMA updates these calculations using actual trading data, within six 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 FCA can make calculations.

23. We will add the information to FCA FITRS as and when necessary.

24. 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 UK's exit from the EU, that Q&A will apply to circumstances where we do not publish the transparency parameters of an equity in FCA FITRS.

Non-equity transparency

25. Under the non-equity transparency regime, ESMA makes calculations and assessments 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')

26. ESMA assigns a liquidity status to newly issued bonds on the basis of their issue characteristics (or, 'class of financial instruments determination'). Thereafter, ESMA determines the liquidity status of bonds on the basis of trading activity, each quarter. At the time the UK leaves the EU, the determination that ESMA made on 1 February 2019 (based on trading activity in the quarter ending 31 December 2018) will apply until close on 15 May 2019. ESMA will not publish a bond liquidity determination on 1 May 2019, both because of Brexit and its need to amend the IT system. As a result, bonds that would have been within the scope of the calculation (that is, any first issued or admitted to trading on or before 28 February 2019) will be deemed illiquid with effect from 16 May 2019. ESMA will publish its first bond calculation after Brexit on 1 August 2019. This means that between 16 May 2019 and 15 August 2019 the only bonds that will be determined to be liquid in the EU will be newly issued bonds considered liquid according to their initial class of financial instruments determination.

27. Bonds admitted to trading in the UK after Brexit will be included in UK FITRS and assigned a liquidity status according to the class of financial instruments determination.

28. To meet the publication obligations of onshored RTS 2 we shall, before 9 May 2019 publish a confirmation that we have not determined any bonds first issued or admitted to trading on or before 28 February 2019 to be liquid. We shall consider our own information and the bond calculation results published by ESMA on 1 August 2019 and data available to us on the trading of bonds and, before the end of 8 August 2019, 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, such a determination will apply from 16 August 2019 until 15 November 2019.

29. ESMA published Q&A (Q10 in Section 4 of the Q&A on [MiFID II and MiFIR transparency topics](#)) on what happens when the liquidity status of a bond is not published in FITRS. After Brexit that Q&A will apply in relation to circumstances in which the liquidity status of bonds is not included in FCA FITRS.

30. Determination of the liquidity status of certain non-equity instruments other than bonds occurs on an annual basis with publication on 30 April and the new determinations applying from 1 June². However, ESMA intends to postpone the publication of the annual determination of liquidity for certain derivatives to 2020. As a consequence, the liquidity determinations for certain non-equity instruments other

² Generally these are determined on a sub-asset class or sub class basis.

than bonds made as part of Transitional Transparency Calculations (TTC) made by ESMA at the end of 2017 will continue to apply in the EU until 2020.

31. Following the provisions of the onshored RTS 2, if we do not make and publish our own annual determination of liquidity for certain non-equity instruments other than bonds then the pre-exit determinations made by ESMA for the purposes of the TTC will continue to apply. We are not currently planning to make such an annual determination in 2019 and therefore there will be no change to the existing non-equity instruments' other than bonds' determinations from 1 June 2019. We will consider whether to make new determinations of liquidity for certain non-equity instruments other than bonds in 2020.
32. Calculations of thresholds relating to the Size Specific to the Instrument (SSTI) and Large in Scale (LiS) for non-equity instruments would ordinarily be published on 30 April 2019 and take effect on 1 June 2019. ESMA will publish calculations for bonds in March 2019 (and these calculations will include data on UK trading) to take effect on 1 June 2019. ESMA will not publish these calculations for non-equity instruments other than bonds in 2019³ and will continue to rely on the thresholds for these instruments included in the TTC that were published at the end of 2017.
33. Following the provisions of the onshored RTS 2 we will publish before 9 May 2019 details of the SSTI and LiS for bonds using the data published by ESMA on 1 March 2019 and these thresholds will apply in the UK from 1 June 2019. For non-equity instruments, other than bonds, our own calculations of the SSTI and LiS will likely mirror ESMA's and therefore there will be no change to the existing SSTI and LiS for relevant non-equity instruments other than bonds from 1 June 2019. We will consider whether to make and publish new calculations before 8 May 2020.

Systematic internalisers

34. Although not a legislative requirement, ESMA currently publishes data on the total level of trading and number of transactions in financial instruments and classes of instruments. This enables firms to calculate whether or not they are required to notify their national competent authority that they are a Systematic Internaliser (SI) in particular instruments or classes of instrument. Data are published on a quarterly basis.
35. ESMA will not publish the first SI calculations for equity instruments and bonds after Brexit on 1 May 2019, due to concerns about disruptions of the ESMA IT systems after Brexit. EU27 investment firms will not need to perform the SI-test until ESMA publishes the results of the next SI-calculations. These firms will also not be required to comply with the SI requirements, although they can continue to opt into the SI-regime for all financial instruments. ESMA will resume the SI-calculations for equity instruments and bonds at the next regular publication date of 1 August 2019, based on an observation period from 1 January 2019 to 30 June 2019, which will include UK-related data up to 29 March 2019. As of November 2019, the SI calculations will reflect only EU27 data.
36. ESMA will not perform the SI calculations for non-equity instruments other than bonds until at least 2020, due to concerns about the completeness and quality of data received. ESMA will start performing those calculations once the submitted data reaches an acceptable level. ESMA will inform market participants as soon as it has set a date for publishing the SI calculations for non-equity instruments other than bonds.
37. When the UK leaves the EU, we will still be developing the software needed to make the calculations of trading volume and transactions. We will not publish data on any

³ Generally these are determined on a sub-asset class or sub class basis.

financial instruments, whether they are already trading on trading venues or are traded on a trading venue in the course of the year, for the purposes of SI calculations in 2019. Firms will continue to be able to opt in to be an SI in particular instruments or classes of financial instruments.

Territorial scope of trade reporting

38. Following the UK's exit from the EU we will not require UK investment firms that transact on venues outside the UK to publish details of those transactions through a UK APA. ESMA has also said that it will regard UK trading venues as providing an equivalent regime for post-trade transparency and therefore EU investment firms will not need to publish through an APA in the EU details of transactions conducted on trading venues in the UK.

Trade reporting and the temporary permission regime

39. Firms in the temporary permission regime (TPR) have to follow UK 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, they can comply with their trade reporting obligation in the UK by publishing the trade through an APA in the EU.

Trade reporting and the temporary transitional power

40. On 28 February 2019 we published a draft direction on our use of the temporary transitional power – this enables us to delay or phase in changes to regulatory requirements made under the EU Withdrawal Act. This included details of how the temporary transitional power will apply to amendments to onshored EU legislation. We are using the power to delay changes in regulatory requirements for 15 months during which time firms will be able to comply with the pre-existing regulatory standards if they wish.
41. The key effect of the application of the temporary transitional power to trade reporting is that, for 15 months from the UK's exit from the EU, UK investment firms will not need to publish through a UK 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

42. The tick size regime involves ESMA calculating the average daily number of transactions (ADNT) in a share or depositary receipt on an annual basis. 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. ESMA published calculations of ADNT on 1 March 2019 and these will take effect in the EU from 1 April 2019. We will use the ESMA calculations published on 1 March 2019 to determine the ADNT for instruments traded in the UK after 29 March 2019.
43. ESMA also makes estimates for instruments which are newly admitted to trading, revising these within 6 weeks of the commencement 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 FCA can make calculations. On 29 March 2019, we will still be in the process of setting up the software we need to undertake the 4 weeks' determinations. We may therefore liaise with the trading venues to produce values for ADNT.

Updating this Statement

44. We may update the information in this Statement from time to time. Updates will be published on our website.