

Markets in Financial Instruments Directive II Implementation – Consultation Paper I

December 2015



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We are asking for comments on this Consultation Paper by 8 March 2016.

You can send them to us using the form on our website at:

www.the-fca.org.uk/cp1543-response-form

Or in writing to:

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Markets Policy and International Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 9758

Email: cp15-43@fca.org.uk

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: www.fca.org.uk. Or contact our order line for paper copies: 0845 608 2372.

Abbreviations used in this document

APA	Approved Publication Arrangements
ARM	Approved Reporting Mechanism
BoE	Bank of England
CA	Competent Authority
CASS	the Client Assets sourcebook
CBA	Cost benefit analysis
COBS	the Conduct of Business sourcebook
Commission	European Commission
CTP	Consolidated Tape Provider
DEA	Direct Electronic Access
DEPP	the Decision Procedure and Penalties manual
DRS	Data Reporting Services
DRSP	Data Reporting Services Provider
EEA	European Economic Area
ECP	Eligible Counterparty
EG	the Enforcement Guide
EMIR	European Market Infrastructure Regulation
ESAs	European Supervisory Agencies
ESMA	European Securities and Markets Authority
EU	European Union
ETF	Exchange Traded Fund
FAMR	Financial Advice Markets Review
FCA	Financial Conduct Authority
FEMR	Fair and Effective Markets Review
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions
HFT	High Frequency Trading
IFPRU	the Prudential sourcebook for Investment Firms
ITS	Implementing Technical Standard

MAR	the Market Conduct sourcebook
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
OTC	Over The Counter
OTF	Organised Trading Facility
Parliament	European Parliament
PERG	the Perimeter Guidance manual
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses
RAO	Regulated Activities Order
REC	the Recognised Investment Exchanges sourcebook
RIE	Recognised Investment Exchange
RM	Regulated Market
RRRs	FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001
RTS	Regulatory Technical Standard
SUP	the Supervision manual
SYSC	Senior Management Arrangements, Systems and Controls
TDM	Trade Data Monitor
the Treasury	HM Treasury

1. Overview

Introduction – Markets in Financial Instruments Directive (MiFID) background and MiFID II key objectives

- 1.1** MiFID became law in the UK in November 2007. It set the conditions for initial authorisation and the on-going regulatory requirements that investment firms, Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs) must meet. It was designed to encourage competition between Europe's trading venues for financial instruments. It also aimed to ensure appropriate levels of protection for investors and consumers of investment services across the European Union (EU). So, for example, it introduced conduct rules such as suitability requirements for investment advice, best execution requirements for firms carrying out client orders, pre- and post-trade transparency requirements for equity markets and set minimum requirements for transaction reporting and regulated commodity derivatives. It expanded the range of investment services that investment firms could provide across the EU on the basis of their authorisation in the country where they are established.
- 1.2** More recently, the European Commission (Commission) reviewed the MiFID framework and concluded that change was needed. This was to address issues identified as a result of the 2008 financial crisis, market developments such as the growth of algorithmic trading and lessons learned from experience of how MiFID had operated so far. The Commission made a proposal in 2011 for revisions to MiFID which, after negotiations, were agreed in 2014.
- 1.3** The Commission set out four objectives for the revised legislation:
- strengthen investor protection
 - reduce the risks of a disorderly market
 - reduce systemic risks, and
 - increase the efficiency of financial markets and reduce unnecessary costs for participants
- 1.4** MiFID II includes:
- The Directive (MiFID -2014/65/EU); this revises and expands the existing directive. The UK has to decide how to change its laws and regulations to give effect to its provisions, and to consult on the changes.
 - The Regulation, the Markets in Financial Instruments Regulation (MiFIR -2014/600/EU); this is a binding legislative act, which directly applies across the EU. It seeks to harmonise across the EU key provisions linked to the trading of financial instruments.

MiFID II framework and implementing legislation

- 1.5** The agreement of the MiFID II framework legislation in 2014 allowed the European Securities and Markets Authority (ESMA) to publish consultation documents on the implementing legislation, delegated acts and technical standards, which sits underneath the framework legislation. ESMA gave the Commission technical advice on the delegated acts in December 2014. These cover mainly issues around conduct of business rules and organisational requirements for investment firms.
- 1.6** In June and September 2015, ESMA sent most of the draft technical standards to the Commission. They covered mainly issues related to the secondary trading of financial instruments. We expect the delegated acts and technical standards to be completed in the first half of 2016.

UK implementation

- 1.7** MiFID II is currently due to apply from 3 January 2017. By 3 July 2016, Member States must change their laws and regulations to give effect to the provisions of MiFID II that are in a directive and not directly applicable. Discussion is currently taking place between the Commission, the European Parliament and Council of the European Union about whether the date of application of MiFID II should be delayed by a year. If there is a change to the legislated timetable, our implementation plans will take that into account.
- 1.8** HM Treasury (the Treasury) consulted on most of the changes to UK legislation required to implement MiFID II in March 2015. At the same time, we began our own consultation process and published a discussion paper, DP 15/3¹, about issues where we have discretion in implementing MiFID II. We cannot consult on the full range of changes we need to make to our Handbook until we have greater clarity on the MiFID II implementing measures, particularly the delegated acts. So we have decided to consult in stages.
- 1.9** This first MiFID II consultation paper covers, and seeks views on, the issues related to our regulation of the secondary trading of financial instruments. Some of the points on which we are consulting may be impacted by as yet unpublished EU legislation and guidance, but we think it is helpful to set out our views on these matters, at this relatively early stage of the implementation process.
- 1.10** We will consult on the other MiFID II changes we need to make to the Handbook, including the conduct issues covered in DP 15/3, in the first half of next year. We understand that the PRA will also consult next year on the changes it needs to make to its Rulebook.
- 1.11** A significant part of MiFID II takes the form of EU regulations. These are directly applicable, which means they can take effect in the UK without the need for changes to domestic laws and regulations. When implementing MiFID, we copied into the Handbook provisions in the implementing regulation (Regulation 1287/2006/EC).
- 1.12** In implementing MiFID II, our starting point for provisions in regulations, given their directly applicable nature and length, is that we will not copy them out into the Handbook but simply include a reference to them and update the Reader's Guide accordingly. There will be some exceptions to this, for example when it is necessary to exercise a discretion provided for in the regulation itself.

¹ <https://www.fca.org.uk/news/dp15-03-mifid-ii-approach>

Content of this Consultation Paper

- 1.13** Our Consultation Paper focuses on areas where we have sufficient certainty about the MiFID II legislation to be able to make proposals for implementation. We set out our implementation proposals, and seek views on the proposed changes to the FCA Handbook in the following areas.
- 1.14** Trading Venues:
- Regulated Markets (RMs) – Issues around new obligations relating to algorithmic and high frequency trading, direct electronic access, tick sizes, business continuity and systems and controls. We propose making changes to the Recognised Investment Exchanges sourcebook (REC).
 - Multilateral Trading Facilities (MTFs) – Changes to the requirements for MTFs. We propose making changes to the Market Conduct sourcebook (MAR) in MAR 5.
 - Organised Trading Facilities (OTFs) – Issues around the requirements for this new category of trading venue. We propose introducing a new Handbook chapter for OTFs, MAR 5A.
- 1.15** Systematic Internalisers (SIs) – Changes to the SI regime, much of which is directly applicable by virtue of being included in MiFIR. We propose amendments to MAR 6.
- 1.16** Transparency – The expansion of transparency requirements to equity-like and non-equity markets, including our approach to pre-trade transparency waivers and post-trade transparency deferrals. We are proposing changes to sections of the Handbook for trading venues including REC, MAR 5, and the new MAR 5A.
- 1.17** Market Data – Introducing the new Data Reporting Services Providers (DRSP) category of firms and their responsibilities, and also covering Transaction Reporting. We seek views on proposals within a new Handbook chapter, MAR 9 on DRSPs, and whether we should apply MiFID II's transaction reporting obligations to managers of collective investment undertakings and pension funds.
- 1.18** Algorithmic and High Frequency Trading (HFT) Requirements – The controls for MTFs and OTFs in MAR 5 and 5A, and those for trading firms in the new MAR 7A. These proposals cover, among other things, business continuity, systems and controls, financial crime and market abuse, direct electronic access and tick sizes.
- 1.19** Passporting and UK branches of non-European Economic Area (EEA) firms – Where we address the technical changes needed to make the correct references to the new MiFID II provisions and to highlight the harmonised forms required for passporting notifications. These changes will predominantly apply to the Supervision manual (SUP). We also make a proposal to ensure that UK branches of non-EEA firms are subject to the same rules as investment firms when undertaking investment services and activities.
- 1.20** Principles for Businesses (PRIN) – Where we take account of the extension in MiFID II of some conduct of business obligations and propose extending the application of some of the principles, to include firms that conduct business with clients categorised as Eligible Counterparties (ECPs).
- 1.21** The Perimeter Guidance manual – PERG 13 provides guidance on the scope of MiFID. MiFID II introduces some changes to the scope of investment services and activities and financial

instruments, requiring us to make proposals to revise parts of PERG 13. These include guidance on the MiFID II definition of a 'multilateral system'.

1.22 MiFIR and the Regulatory and Implementing Technical Standards (RTSs and ITSs) apply directly in the UK and, in the main, do not require changes to UK law or rules to have effect in the UK. So, although the measures listed below are significant market issues, we will not consult on them. Such measures include:

- the double volume cap mechanism to restrict the 'dark' trading of equity and equity-like financial instruments (article 5 MiFIR)
- the trading obligation in shares (article 23 MiFIR)
- the obligation of investment firms to maintain records of transactions, and of trading venues to keep data relating to orders (article 25 of MiFIR)
- transaction reporting (article 26 MiFIR)
- the obligation to supply instrument reference data (article 27 MiFIR)
- the obligation to trade on a RM, MTF or OTF (article 28 MiFIR)
- the clearing obligation for derivatives traded on a RM and timing of acceptance for clearing (article 29 MiFIR)
- portfolio compression (article 31 MiFIR), and
- non-discriminatory access to central counterparties and trading venues and non-discriminatory access to, and obligation to, licenced benchmarks (articles 35 to 38 of MiFIR)

1.23 We will consult on the many MiFID II issues not covered in this paper in the first half of next year when we expect to propose changes to:

- the Conduct of Business sourcebook (COBS)
- Senior Management Arrangements, Systems and Controls (SYSC)
- the Client Assets sourcebook (CASS)
- the Decision Procedures and Penalties manual (DEPP), and
- the Enforcement Guide (EG)

1.24 There will also be further changes to the Perimeter Guidance manual (PERG) to reflect issues related to certain exemptions and definitions of financial instruments being dealt with in the implementing measures. We will consult on those changes in 2016.

Draft Handbook Text

1.25 The draft handbook text appears in Appendix 1. We also include amendments to the Glossary relating to the Handbook materials under consultation.

1.26 The scope of this consultation is broad, and will be of general interest to many of the firms currently providing MiFID services and performing MiFID activities, and also to Recognised Investment Exchanges.

MiFID II Handbook Guide for trading venues and data reporting service providers

1.27 We seek feedback on a MiFID II Handbook Guide, which will sit alongside the Handbook changes. Please note that this document is intended to clarify how our approach to implementing MiFID II is addressed through our sourcebooks.

1.28 Our attached prototype Guide can be expanded to cover other firms and other areas of MiFID II when we issue further consultations, if respondents think it is helpful. Please see Appendix 3 for our proposed MiFID II Handbook Guide.

Q1: Do you find our proposed MiFID II Guide helpful? If not, how can we amend and improve the prototype?

Cost benefit analysis (CBA)

1.29 Annex I includes the CBA analysis undertaken for this consultation. There is high level analysis of issues where we have little or no discretion in the way we implement MiFID II, and more detailed consideration of other issues.

1.30 This supplements the CBA work done by the Commission on its original legislative proposal and by ESMA on the draft technical standards².

Who does this consultation affect?

1.31 This consultation affects a wide range of firms we authorise and recognise, particularly

- investment banks
- interdealer brokers
- firms engaging in algorithmic and high-frequency trading
- trading venues including RMs, MTFs, and prospective OTFs
- prospective DRSPs, and
- investment managers

² Drafts of the technical standards on transparency, microstructural issues, data publication and access, requirements applying on and to trading venues and market data reporting [RTS 1-18 & 20-28 & ITS 19] are available at <https://www.esma.europa.eu/news/ESMA-readies-MiFID-II-MAR-and-CSDR?t=326&o=home> – see link to ‘2015/1464 –Annex I –Draft Technical standards on MiFID II/MiFIR’.

Drafts of the technical standards relating to passporting [RTS 3- passporting & ITS 4] are available at <https://www.esma.europa.eu/content/Final-Report-MiFID-II-MiFIR-draft-technical-standards-authorisation-passporting-registration>.

Drafts of the technical standards relating to further data reporting services measures and suspension and removal of financial instruments [ITS 2& ITS 3] are available at https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf

Is this of interest to consumers?

- 1.32** Consumers have a clear interest in financial markets that operate fairly and transparently, which is the rationale for the proposals in this Consultation. However, the subjects covered, other than the PRIN chapter, do not deal with the investor protection rules in MiFID II that are of more direct concern to consumers. We will issue a subsequent consultation on these.

Additional information

Equality and diversity considerations

- 1.33** We have considered the equality and diversity issues that may arise from the proposals in this consultation.
- 1.34** Overall, we do not consider that the proposals in this consultation paper adversely affect any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 1.35** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 1.36** In the interim, we welcome any input to this consultation on such matters.

Next steps

What do you need to do next?

- 1.37** We want to know what you think of our proposals. Please send us your comments by 8 March 2016.

How?

- 1.38** Use the online response form on our website or write to us at the address on page 2.

What will we do?

- 1.39** We will consider your feedback and publish our rules in a Policy Statement in the first half of 2016. We will also publish further consultations, as explained in paragraph 1.8 above, on the other Handbook changes required to implement MiFID II.

2. Regulated Markets (RMs)

Who should read this chapter?

This chapter is relevant for the operators of UK RMs such as Recognised Investment Exchanges (RIEs).

It may also be of interest to direct and indirect users of RMs such as investment banks, interdealer brokers, high frequency traders, and investment managers.

Introduction

- 2.1** MiFID II has updated the framework for RMs in a number of ways including; to increase transparency, strengthen the management of the risks posed by algorithmic trading and improve the post-trade processes. Proposed detailed rules on these matters and others have been set out by ESMA in a number of relevant draft RTSs; RTS 7³, RTS 8⁴, RTS 9⁵, RTS 10⁶, RTS 11⁷ and RTS 12⁸.
- 2.2** The Treasury consulted on changes to Part 18 of FSMA and to the FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (RRRs) required to implement MiFID II, in March 2015⁹. These changes largely concerned new requirements in respect of the ‘management body’ of an RIE, and systems and controls in respect of algorithmic trading, including HFT and direct electronic access. To address the concern with algorithmic trading these changes cover market-making schemes, new measures to prevent disorderly markets and tick sizes.
- 2.3** This section covers the amendments to REC necessary to reflect the changes to the RRRs. The amendments also take account of MiFIR, and the draft RTS set out above.

3 RTS 7 – Draft regulatory technical standards on organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems

4 RTS 8 – Draft regulatory technical standards on market making: agreements and market making schemes

5 RTS 9 – Draft regulatory technical standards on the ratio of unexecuted orders to transactions

6 RTS 10 – Draft regulatory technical standards on requirements to ensure co-location and fee structures are fair and non-discriminatory

7 RTS 11 – Draft regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds

8 RTS 12 – Draft regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications

9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418282/Annex_A_-_MiFID2_Regs_-_Consultation_Final.pdf

- 2.4** The amended REC sets out the new recognition requirements, amends existing guidance where it duplicates areas covered by the draft RTS or by MiFIR, and adds new guidance where relevant.

Changes to REC to reflect new systems and controls

- 2.5** The changes to REC should be read in conjunction with the RTS mentioned in paragraph 2.1. There are references to those RTS at relevant places in the proposed changes to REC. We will take compliance with these detailed standards into account, where relevant, in assessing the adequacy of an RIE's systems and controls.
- 2.6** We are proposing three new sections in REC: 2.4A which deals with the new requirements in MiFID II on the management bodies of RMs; 2.7A on position management and position reporting for commodity derivatives (this refers to a new section of MAR, MAR 10, which we will consult on next year); and 2.16B which deals with the operation of a data reporting services provider.
- 2.7** Significant revisions to other parts of REC include: REC 2.16A to cover changes to the trading processes for MTFs and the introduction of OTFs (which are discussed further in chapters 3 and 4); REC 2.6 to deal with the suspension and removal of financial instruments and the new provisions on trade transparency (which are discussed further below in chapter 6); and REC 2.5 to cover the requirements in MiFID II on algorithmic trading (algorithmic trading rules for MTFs and OTFs are discussed in chapter 8).

Q2: Do you agree with our approach outlined above to amend REC to take account of the MiFID II changes? If not, please give reasons why

Q3: Do you foresee any implementation issues with the approach above?

3. Multilateral Trading Facilities (MTFs)

Who should read this chapter?

This chapter is relevant for RIEs and authorised firms that operate, or may seek to operate, a MTF.

It may also be of interest to direct and indirect users of MTFs such as investment banks, interdealer brokers, HFTs, and investment managers.

Introduction

- 3.1** In this chapter, we consult on the changes introduced by MiFID II that will affect MTF operators. We present proposals for Handbook changes in MAR 5 to implement articles 18, 19, 31 and 32 of the recast MiFID which deal with the trading processes of MTFs, compliance with their rules and trading suspensions.
- 3.2** The changes introduced by MiFID II aim to align requirements of MTFs with those of RMs. MiFID II will subject RMs and MTFs that operate businesses of a similar size to equivalent organisational requirements and similar regulatory oversight. The changes aim to ensure fair and orderly trading, efficient execution of orders, and require published and non-discriminatory rules. MTF operators will be required to have specific arrangements in place to identify and manage conflicts of interest, with systems to recognise and mitigate risks to operations, and soundly manage the technical operation of the system.
- 3.3** MiFID II will also expand the scope on algorithmic trading systems and controls, which are covered in more detail in Chapter 8. MiFID II also introduces changes to pre- and post-trade transparency arrangements, which are covered in Chapter 6.

Multilateral Trading Facilities

- 3.4** The requirements that MiFID II introduces for investment firms operating an MTF expand the current MiFID regime described in the FCA's Handbook in MAR 5. The requirements for MTFs have been aligned to those of RMs, so that an investment firm operating an MTF will be required to have systems and controls in place to ensure that the performance of its activities are adequate, effective and appropriate.

- 3.5** There are proposed revisions to MAR 5.3.1 which may impact the rules, procedures and arrangements of an MTF. These include new requirements for rules on access to the MTF to be publicly available and non-discriminatory as well as being based on objective criteria; to have arrangements to ensure their systems function appropriately; to establish contingency plans to cope with any disruption; and must have arrangements in place to manage any conflicts of interest.
- 3.6** There is a proposed new section, MAR 5.3.1A dealing with the functioning of an MTF. This includes provisions on having at least three active members or users; risk management requirements; an obligation to have adequate financial resources; an obligation to publish data on execution quality; and a restriction on the operator engaging in proprietary trading. We propose guidance to make clear that the restriction on proprietary trading does not prevent an operator from executing orders against its proprietary capital or engaging in matched principal trading outside the MTF it operates.
- 3.7** Another new section, MAR 5.6A, sets new obligations on trading suspensions. A firm operating an MTF will have to comply with the rules on the suspension or removal of financial instruments set out in MiFID II. Firms will have to make public any decision and notify us.
- 3.8** In relation to RIE-operated MTFs (rather than MTFs operated by investment firms) the Treasury has consulted on amending the RRRs to insert new paragraphs 12-14 to the Schedule (see footnote 9) to reflect MiFID II requirements relevant to MTF operators. We propose including these in REC 2.16A.
- 3.9** While RIEs are required to comply with the requirements in the RRRs, rather than the rules set out in MAR5, an RIE operating an MTF should still have regard to the Guidance set out in MAR 5.

Q4: Do you agree with our approach to implementing the MTF requirements in MAR 5? If not, please give reasons why

4. Organised Trading Facilities (OTFs)

Who should read this chapter?

This chapter is relevant for RIEs and authorised firms who operate, or may seek to operate, an OTF.

It may also be of interest to direct and indirect users of OTFs such as investment banks, interdealer brokers, high frequency traders, and investment managers.

Introduction

- 4.1** MiFID II introduces a new category of trading venue called OTFs. An OTF is a multilateral system that is not a RM or MTF. Within an OTF, multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in a way that results in a contract. Equities are not permitted to be traded through an OTF.
- 4.2** This section addresses issues around this new category of trading venue, and discusses the impact of general rules on OTFs and of rules specific to OTFs. We present proposals for Handbook changes which turn MiFID II provisions on the trading processes of OTFs into rules, and signal where there are relevant directly applicable requirements covering such issues as trading transparency and requirements for algorithmic trading. These are contained in a proposed new Handbook module, MAR 5A.
- 4.3** The introduction of OTFs means that many transactions currently categorised as off-venue will come within a multilateral trading environment. This should increase overall market transparency, reduce the prevalence of opaque market models and products, and increase the quality of price discovery, investor protection and liquidity.
- 4.4** OTFs are an important addition to the EU market infrastructure, and will help market participants to meet MiFID II's platform trading obligation for derivatives. Where ESMA deems that a derivative instrument subject to the clearing obligation – introduced in Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, sometimes referred to as the European Markets Infrastructure Regulation (EMIR) – is sufficiently liquid for the trading obligation to apply, OTFs will provide an additional venue type on which to trade those instruments.
- 4.5** We also expect instruments not subject to the trading obligation will be traded through OTFs, for example via market making schemes. A key difference between OTFs and MTFs is the ability

and requirements on an OTF to use discretion when matching buying and selling interests, provided the use of discretion is in line with fair and orderly trading and with best execution obligations to clients. This helps to provide liquidity and price transparency in asset classes that have traditionally been less liquid.

- 4.6** This should help facilitate competition in these markets, where execution has traditionally been between large market participants, dealing in large sizes. Bringing over the counter (OTC) contracts on venue should bring better price transparency.

General Rules for OTFs

- 4.7** The requirements that apply to OTFs and their transactions are generally the same as the requirements for MTFs. This is because MTFs and OTFs are similar multilateral systems that bring together third-party buying and selling interests in financial instruments in a way that results in a contract (see article 4(1)(23) of the recast MiFID).
- 4.8** As with MTFs, under article 18 of the recast MiFID, OTFs must establish clear rules and processes around trading. For example, an OTF operator must establish transparent rules and procedures for fair and orderly trading, and publish rules about which instruments can be traded on their venue. They must also establish and publish clear and non-discriminatory access rules, be able to suspend instruments from trading, and maintain resilient systems to facilitate continuity of trading under stressed conditions.
- 4.9** OTFs are also subject to the same transparency requirements as RMs and MTFs. Pre- and post-trade transparency both apply to any order or transaction executed through the systems or under the rules of an OTF. According to the new pre-trade transparency regime, OTF operators will have to publish the details of current bids and offers and the depth of trading interests of those prices. To comply with post-trade transparency rules, OTF operators will have to make public the details of transactions as close to real time as is technically possible. This is discussed further in Chapter 6.
- 4.10** MiFID II will also expand the scope of algorithmic trading systems and controls, which are covered in more detail in Chapter 8.
- 4.11** MiFID II is 'technology neutral' and permits any trading protocol to be operated by an OTF, provided it is consistent with fair and orderly trading and the exercise of discretion.
- 4.12** OTFs are also required to establish and maintain effective arrangements and procedures to enable the regular monitoring of compliance by the members. OTFs must monitor the transactions undertaken by their members using the venue's systems to identify breaches of the rules, disorderly trading conditions or conduct that may involve market abuse. They are obliged to do so continuously and to take action if they identify such activity.
- 4.13** Investment firms operating an OTF will also be subject to similar financial resources requirements to investment firms operating MTFs as set out in CRD IV (comprising: the Capital Requirements Regulation (CRR), Regulation 575/2013, and the Capital Requirements Directive (CRD), Directive 2013/36/EU). These rules are implemented in the Prudential sourcebook for Investment Firms (IFPRU) and the directly applicable CRR, and further guidance on the perimeter between MiFID and CRD IV is included in PERG 13.6. As with investment firms currently operating MTFs, investment firms operating an OTF will also have to meet the Recovery and Resolution Directive

(BRRD), Directive 2014/59/EU. This requires firms to produce recovery plans and also to submit data relevant to resolution. These rules are in IFPRU 11.

Rules specific to OTFs

- 4.14** In relation to RIE-operated OTFs (rather than those operated by firms) the Treasury has consulted on amending the RRRs to insert new paragraphs 15-17 to the Schedule (see footnote 9) to reflect MiFID II requirements relevant to RIE-operated OTFs. We propose including these in REC 2.16A.
- 4.15** However, RIEs operating OTFs should still take note of the FCA Guidance set out in MAR 5A, as it will be relevant both for firms required to comply with MAR 5A Rules and to RIEs required to comply with RRRs. RIEs should also take note that the rule in MAR 5A.3.8, concerning conduct of business obligations of an OTF operator, applies to them as if they were a firm.
- 4.16** OTFs are also subject to specific provisions that cover the OTF business model and the transactions executed through it. These provisions are in article 20 of the recast MiFID. We propose to implement these requirements in MAR 5A.3.
- 4.17** In particular, an OTF operator is required to use discretion when deciding when to place or remove an order on their OTF, and whether or not to match a specific client order with other orders available in the system, subject to best execution obligations.
- 4.18** The investment firm or market operator running an OTF must not allow client orders to be executed against the proprietary capital of the firm or any entity that is part of the firm's legal group. The only asset class for which the use of proprietary capital is permitted is illiquid sovereign debt instruments.
- 4.19** An OTF may engage in matched principal trading where this has been agreed by the clients. This is not permitted for derivatives subject to the EMIR clearing obligation.
- 4.20** OTFs are also restricted in the way that they can interact with SIs. The same legal entity cannot operate both an OTF and an SI. An OTF is also prohibited from interacting with an SI if this allows any quotes or orders in the SI to interact. This prohibition also applies to quotes and orders in another OTF, when two OTFs are interacting.
- 4.21** We propose to add an additional chapter to the FCA Handbook, MAR 5A, containing the rules that apply specifically to OTFs. We propose that MAR 5A also contains some of the more general requirements that apply to MTFs, thus duplicating some of MAR 5. Although some investment firms will operate both MTFs and OTFs, they are distinct venue types. To make the Handbook as useable and accessible as possible for all OTF operators, we propose that MAR 5A is inserted as a separate chapter.

Q5: Do you agree with our proposals on how to implement OTF rules in MAR 5A? If not, please give reasons why

5. Systematic Internalisers (SIs)

Who should read this chapter?

This chapter is relevant to firms that operate, or may seek to operate, an SI.

It may also be of interest to direct and indirect clients of SIs such as investment banks, interdealer brokers, high frequency traders, and investment managers.

Introduction

- 5.1** MiFID II retains the SI regime. However, it introduces two key changes: the expansion of instruments within the scope of the regime; and specific pre-trade transparency requirements for the trading of bonds and derivatives. Transparency requirements are discussed in Chapter 6.
 - 5.2** Proposed detailed rules on these matters and others have been set out by ESMA in two draft RTSs: RTS 1¹⁰ and RTS 2¹¹. Aspects of the SI regime will also be included in delegated acts.
 - 5.3** Firms that exceed the SI thresholds (which will be set out in the delegated acts) need to be aware of, and comply with, all of the relevant parts of MiFID II and the binding delegated regulations. The SI regime in MiFID was restricted to equities. MiFID II expands it to equity-like instruments, such as depositary receipts, certificates and exchange traded funds, and non-equity instruments such as bonds, derivatives, emissions allowances and structured finance products.
 - 5.4** The provisions in MiFID II which cover SIs are in the directly binding MiFIR, and directly applicable regulations made under it. These include the obligation to make firm public quotes, detailed aspects of the quoting obligation, and the thresholds for identifying SIs. We therefore propose to delete most of the existing provisions in the Handbook dealing with SIs.
- MAR 6**
- 5.5** MAR 6 transposes the provisions in the existing MiFID on SI and also copies out relevant provisions in the implementing regulation. The provisions in MiFID II which cover SIs are in the directly binding MiFIR, and directly applicable regulations made under it. So in line with our general approach for directly applicable regulations, we propose to delete most of the existing

¹⁰ RTS 1 – Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

¹¹ RTS 2 – Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

MAR 6. We propose only to keep amended versions of MAR 6.1 and MAR 6.2 which cover scope and purpose, and MAR 6.4 under which firms are required to notify us if they are a SI. SIs need also to be aware of Title III of MiFIR, because it contains many of the provisions that we propose to delete from the Handbook. We propose to transpose into MAR 6.3 the requirement in article 27(3) of MiFID II for a SI to publish data on execution quality.

Q6: Do you agree with our approach to implementing the SI regime in MAR 6? If not, please give reasons why

6. Transparency

Who should read this chapter?

This chapter will be of interest to operators of trading venues, and to direct and indirect users such as investment banks, interdealer brokers, High Frequency Traders, and investment managers.

Introduction

- 6.1** MiFID II's objective to improve the integrity, fairness and efficiency of financial markets introduces significant changes to transparency. It extends transparency from shares to other equity-like instruments such as depositary receipts, ETFs, certificates and to non-equities such as bonds, structured finance products, derivatives and emission allowances. Transparency applies to financial instruments, or classes of financial instruments, that are admitted to trading or traded on a trading venue. The concept of trading venues is extended to include RMs and MTFs plus the new category of OTFs for non-equities.
- 6.2** Proposed detailed rules on these matters and others have been set out by ESMA in draft RTSs: RTS 1¹² and RTS 2¹³.
- 6.3** The MiFID II provisions which deal with transparency are directly applicable. We propose deletion of the existing provisions in the Handbook which deal with transparency, and we will provide links to the relevant directly applicable provisions in MiFID II. However, in a similar fashion to MiFID, MiFID II allows us and other competent authorities (CAs) to grant trading venues a waiver from the pre-trade transparency requirements. It also allows us to authorise deferrals of post-trade transparency to trading venues and investment firms under certain specified circumstances.
- 6.4** We will delete from the Handbook MAR 7 transparency requirements which address post-trade transparency for transitions that take place off venue. These requirements are now in MiFIR, and so no longer need to be in the Handbook.

12 RTS 1 – Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

13 RTS 2 – Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

- 6.5** This chapter consults on our approach to waivers and deferrals, and the remainder is split into equity and non-equity sections. We are not currently making any proposals for Handbook changes in relation to our proposed approach but will consider in the light of the feedback we receive whether to include guidance or other materials in a subsequent consultation.

Equity Waivers

- 6.6** For shares and other equity-like financial instruments such as ETFs, depositary receipts and certificates, MiFID II provides the same four types of waiver currently available to trading venues for shares admitted to trading on a regulated market. These waivers are:
- systems matching orders where the price is derived from the trading venue where the financial instrument was first admitted to trading, or from the most relevant market in terms of liquidity
 - systems that formalise negotiated transactions
 - orders that are large in scale compared to normal market size, and
 - orders held in an order management facility pending disclosure
- 6.7** While the waivers in MiFID II mirror those listed under MiFID, MiFID II specifies different conditions. MiFID II also empowers the Commission to adopt delegated regulation governing the use of those waivers, on the basis of draft RTSs developed by ESMA.
- 6.8** At the time of the implementation of MiFID, the FSA decided to grant waivers in accordance with the framework directive and the implementing regulation. We also granted waivers across all UK trading venues, RMs and MTFs applying for a waiver, provided the conditions under MiFID were met.
- 6.9** We continue to believe that the waivers are important to ensure an appropriate balance between transparency and liquidity in equities markets. Therefore under MiFID II we propose to grant waivers to RMs and MTFs trading equity and equity-like instruments where the use of the waivers meets the conditions set out in the legislation.

Q7: Do you agree that we should be prepared to use our power to grant waivers from pre-trade transparency in shares, ETFs, and depositary receipts in relation to:

- **systems matching orders on the basis of a reference price**
- **systems that formalise negotiated transactions**
- **orders that are large in scale, and**
- **orders held in an order management facility pending disclosure?**

If not, please give your reasons why

Non-Equity Waivers

- 6.10** The expansion of transparency to non-equities comes with a number of pre-trade transparency waivers that are calibrated for the specific structure of the markets in those financial instruments.
- 6.11** Under MiFID II, CAs may grant a pre-trade transparency waiver to trading venues for:
- orders that are large in scale
 - orders held in an order management facility pending disclosure
 - actionable indications of interest in request-for-quote and voice trading systems that are above a size specific to the instrument, which would expose liquidity providers to undue risk, and
 - derivatives that are not subject to the trading obligation under article 28 of MiFIR, and other financial instruments for which there is not a liquid market
- 6.12** While the large in scale and the order management facility waivers are similar to those currently available under MiFID, MiFID II introduces two new types of waivers.
- 6.13** The first allows a CA to grant a waiver to trading venues operating request-for-quote or voice trading systems in relation to actionable indications of interest above a certain size, as determined in accordance with the draft RTSs. The venues must continue to make public the indicative bid and offer prices that are close to the price of trading interest in the system. The draft RTSs also define the key characteristics of a request-for-quote and voice trading system.
- 6.14** The second waiver allows a CA to grant a waiver to trading venues in relation to financial instruments that are not sufficiently liquid for derivatives subject to the EMIR clearing obligation. The assessment of liquidity is carried out in accordance with MiFID II's trading obligation.
- 6.15** We support greater transparency in non-equity markets. However, transparency in those markets, which are often characterised by lower and episodic liquidity, requires careful calibration. We believe that waivers established under MiFID II are appropriate and propose that waivers to trading venues are granted in accordance with the conditions set by the RTSs.

Q8: Do you agree that we should use our power to grant waivers from pre-trade transparency in bonds, structured finance products, derivatives and emission allowances in relation to:

- orders that are large in scale
- orders held in an order management facility pending disclosure
- actionable indications of interest in request-for-quote and voice trading systems, and
- derivatives that are not subject to the trading obligation under article 28 of MiFIR, and other financial instruments for which there is not a liquid market?

If not, please give your reasons why

Waiver application process

- 6.16** As with MiFID, MiFID II gives us the power to grant waivers to trading venues. However, MiFID II establishes a new process to grant waivers that formalises the current approach of ESMA providing opinions in relation to the compliance of certain types of waivers. Consistent with the ESMA mandate, the purpose is to promote common supervisory approaches and practices across Europe.
- 6.17** Under MiFID II, we are required, before granting a waiver, to notify other CAs and ESMA of the intended use of each individual waiver and to provide an explanation regarding its functioning. We must submit our notification at least four months before the intended use of the waiver. Within two months of the date of notification, ESMA is expected to issue a non-binding opinion in accordance with article 29 of ESMA Regulation.¹⁴ If CAs disagree about a waiver, ESMA may use its powers to facilitate conciliation and ultimately settle those disagreements.
- 6.18** In light of the wider scope of waivers from an asset class and trading venue perspective, and the larger number of waivers, we will seek to ensure that sufficient clarity is provided to UK trading venues in relation to the process of waiver applications. We will consider at a later date what changes, if any, are necessary to our sourcebooks in relation to the FCA waiver application process, including the minimum information that we expect to receive from trading venues.
- 6.19** We will in due course publish a MiFID II Permissions and Notifications Guide, to share more specific step-by-step information about how to apply for waivers.

Q9: Do you agree that our sourcebooks should provide more clarity in relation to: the process of applying for a pre-trade transparency waiver, and the information that we deem necessary in order to evaluate an application? If not, please give reasons why

Q10: Should the sourcebooks include templates setting the minimum information content that trading venues should provide to us when applying for a waiver? If not, please give reasons why

Deferrals

- 6.20** Post-trade transparency has a wider scope than pre-trade transparency as it includes investment firms dealing OTC (i.e. outside the systems and/or the rules of a trading venue). The content of the post-trade information includes the time, price, volume and venue of executed transactions. MiFIR acknowledges that, in some circumstances, the immediate public disclosure of an executed transaction may reduce liquidity and increase the cost of execution for investors.
- 6.21** In accordance with MiFID, MiFID II gives us and other competent authorities the power to grant authorisation for post-trade deferrals. We will extend the current practice, and require market operators and investment firms operating a trading venue to apply for authorisation to defer the publication of details of the transactions. Under MiFID II the ability to defer the publication of post-trade information in relation to shares admitted to trading on an RM will be available to investment firms dealing OTC, should they meet a set of requirements.

¹⁴ Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

Equity Deferrals

- 6.22** In equities, the draft RTS allow the deferral of the publication of transactions above a certain size, where the transaction is between an investment firm dealing on its own account with a counterparty (excluding matched principal transactions). The length of the deferral is calibrated on the basis of the size of the transaction and by asset class, but it is no later than the end of the trading day (with some additional deferral, until noon of the next trading day, for trades conducted late in the first trading day).
- 6.23** Maintaining consistency with the approach taken under MiFID, we are inclined to authorise deferrals to large in scale transactions in accordance with the draft RTSs.

Q11: Do you agree that we should be prepared to authorise operators of trading venues and investment firms to defer the publication of post-trade information in relation to large in scale transactions in shares, ETFs, and depositary receipts executed by investment firms acting in a principal capacity?

If yes, should we provide guidance in the Handbook on the process for applying for deferrals? If not, please give reasons why

Non-Equity Deferrals

- 6.24** For non-equities, MiFID II and the draft RTS establish a wider set of conditions for deferrals. These include transactions that are:
- large in scale compared with normal market size
 - in instruments for which there is not a liquid market
 - above the size specific to the instrument where the investment firm is dealing on its own account other than on a matched principal basis, and
 - package transactions meeting certain requirements
- 6.25** The standard deferral for transactions complying with the above is the second trading day after the day of the trade.
- 6.26** We believe that transactions which meet the above conditions should benefit from a deferral. We are inclined to use our powers to authorise the deferred publication by both trading venues and investment firms dealing OTC.

Q12: Do you agree that we should authorise operators of trading venues and investment firms to provide for deferred publication in relation to transactions that are:

- large in scale
- in financial instruments for which there is not a liquid market
- above the size specific to the instrument, and
- packages

If yes, do you agree that we should set up the process for the use of guidance in the Handbook for the application of deferrals? If not, please give reasons why

- 6.27** Where the above conditions are met, MiFIR article 11(3) also permits operators of trading venues and investment firms further to calibrate the deferral. The provision allows the publication of certain information before the end of the deferral, or to defer or to aggregate certain information for an extended time (or indefinitely, in the case of sovereign bonds only).
- 6.28** The draft RTS 12¹⁵ sets the conditions for CAs to exercise their power under article 11(3) of MiFIR. At a high level, those conditions allow a CA to require:
- the publication of all the details of a transaction as close to real time as possible, with only the exception of the volume, which is disclosed at the end of the standard deferral
 - the daily aggregation of a minimum number of transactions to be disclosed before 9 am the following trading day
 - the omission of the publication of the volume of individual transactions for a period of four weeks after the day of the trade
 - for non-equity instruments other than sovereign debt, the publication of aggregated information of all transactions over the course of the calendar week to be published by 9 am on Tuesday of the following week, and
 - for sovereign debt, the publication of aggregated information of all transactions over the course of the calendar week to be published by 9 am on Tuesday of the following week
- 6.29** We are considering whether to use our powers under article 11(3) of MiFIR to allow trading venues and investment firms to use any of the options set out above. Therefore we are interested in views on whether one or more of the options should be made available to UK trading venues and investment firms.

¹⁵ RTS 12 – Draft regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications

Q13: Should we:

- use our powers under article 11(3) of MiFIR further to calibrate post-trade deferrals in accordance with the above options
- require additional information to be made public during the deferral period?

and/or, should we:

- permit the omission of the volume, or the aggregation of information, for an extended time period of four weeks?

If not, please give reasons why

7.

Market Data

Who should read this chapter?

This chapter is relevant to persons who are interested in becoming authorised as a DRSP in the UK. DRSPs include ARMs, APAs and CTPs.

It may also be of interest to any operator of a UK trading venue seeking verification of its rights to provide data reporting services under regulation 5(b), (c) or (d) of the DRS Regulations¹⁵.

The part of the chapter on transaction reporting will be of interest to managers of collective undertakings and pension funds.

Introduction

- 7.1** This chapter addresses the new Data Reporting Services Providers (DRSP) category of firms and their responsibilities, and Transaction Reporting.
- 7.2** Title V of MiFID II establishes three types of DRSP: Approved Reporting Mechanism (ARMs) for submission of transaction reports to competent authorities; Approved Publication Arrangements (APAs) for publication of OTC trade reports; and Consolidated Tape Providers (CTPs) for consolidation of trade reports from trading venues and APAs.
- 7.3** The concept of DRSPs is not completely new to the UK; there are ARMs that are currently approved under MiFID. In addition, Trade Data Monitors (TDMs) in the UK carry out functions similar to those of the APAs.
- 7.4** Although there are similar requirements under MiFID and MiFID II, the organisational requirements of MiFID II are more detailed. As a result of this new authorisation and supervision framework, Title V of MiFID II does not support the grandfathering of existing entities. This means that existing ARMs and TDMs in the UK will need to submit new applications to be authorised as DRSPs under MiFID II if they wish to offer data reporting services after MiFID II comes into effect.

¹⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418287/Annex_B_-_Data_Reporting_Services_Regs_-_Consultation_Final.pdf

- 7.5** The detailed regulatory obligations of DRSPs are contained in the Treasury’s legislation, which turns relevant provisions in the recast MiFID into UK law, and technical standards which are directly applicable. We are proposing therefore a new chapter in the Handbook, MAR 9, dealing with aspects of the authorisation and supervision of DRSPs. We provide signposts in MAR 9A to the Treasury legislation and the relevant technical standards.
- 7.6** MiFID II expands the scope and depth of transaction reporting, covering a wider range of transactions and requiring more information to be reported on each transaction. The relevant provisions are in regulations. We are consulting therefore on two limited aspects of transaction reporting. First, whether the MiFID II transaction reporting obligations should be applied to managers of collective investment undertakings and pension funds whom we currently require to follow the transaction reporting obligations in MiFID. Second, proposed rules to require certain entities transaction reporting to us or providing reference data to us to have connectivity to our systems.

Data Reporting Service Providers

Content of proposed MAR 9

- 7.7** We propose the addition of a new chapter (MAR 9) to MAR. It will provide entities with directions and guidance about how they can apply to become authorised as a DRSP, or to extend, vary or cancel an authorisation. It will also cover matters such as the FCA’s supervisory approach, and how a DRSP can notify us of important information such as changes to its management body. It will also provide answers to a number of ‘Frequently Asked Questions’ including those relating to a trading venue operator seeking verification of its rights to provide data reporting services, and to the process for addressing connectivity requirements for ARMs.
- 7.8** MAR 9 should be read together with the DRS Regulations, Title V of MiFID II, as well as a number of draft RTSs: RTS 13¹⁷, RTS 1¹⁸, RTS 2¹⁹ RTS 3²⁰ and the draft ITS 3²¹.
- 7.9** We will in due course publish a MiFID Permissions and Notifications Guide, to share more specific step-by-step information about how to apply to become a DRSP. We will also provide further guidance on decision making, procedures and penalties, and enforcement matters for DRSP applications when we consult on DEPP and EG in 2016.
- 7.10** Please note that there will be one-off and annual fees for becoming authorised and operating a DRSP. This is currently subject to consultation as part of FCA CP 15/34 Regulatory fees and levies: policy proposals for 2016/17 in respect of the FEES (Markets Data Reporting) Instrument 2016. Some key areas that are covered by MAR 9 are highlighted below.

Application forms and notifications

- 7.11** To become authorised as a DRSP, an applicant must submit an application form and a notification form for the list of members of the management body. Under RTS 13 and the DRS Regulations, DRSPs must also provide several different types of notifications. These enable us to

¹⁷ RTS 13 – Draft regulatory technical standards on authorisation, organisational requirements and the publication of transactions for data reporting services providers

¹⁸ RTS 1 – Draft regulatory technical standards on transparency requirements in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments

¹⁹ RTS 2 – Draft regulatory technical standards on transparency requirements in respect of bonds, structured finance products, emission allowances and derivatives

²⁰ RTS 3 – Draft regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations

²¹ ITS 3 – Draft implementing technical standards under Article 61(5) of Directive 2014/65/EU

assess whether the DRSP continues to comply with its obligations. To ensure these notifications are handled efficiently, MAR 9 will include, in due course, standard forms to be used for applications and notifications. These are:

- application form to provide service of ARM and/or APA and/or CTP
- notification form for list of members of management body
- application form for extension or variation of authorisation
- application form for cancellation of authorisation
- notification form for material change in information provided at time of authorisation
- notification form for changes to the members of the DRSP's management body
- notification form to be used by an APA/CTP for establishing technical connectivity
- annual notification to FCA form
- form for ad-hoc notifications, and
- non-disclosure agreement

7.12 Some examples of ad-hoc notifications include: notifying us under article 9 of RTS 13 of any security breaches, notifying us if an ARM has caused an error and/or omission in a transaction report (article 11 of RTS 13); and notifying us where the DRSP is experiencing a service disruption (article 7 of RTS 13).

7.13 We are currently considering what notifications DRSPs should make to us each year. We will provide guidance on this at a later stage in 2016.

Supervision

7.14 MAR 9 outlines our proposed supervisory approach to DRSPs. It makes clear that we expect DRSPs to have an open, constructive and co-operative relationship with us and also sets out the supervisory tools we may use in the supervision of DRSPs.

Connectivity

7.15 MAR 9 aims to clarify how the connectivity requirements operate in relation to the different types of DRSPs.

7.16 ARMs need to establish technical links with us so that they can successfully send us transaction reports on behalf of clients. ARMs must comply with our technical specification as an express requirement in RTS 13²² and as a condition of becoming authorised as an ARM. So an applicant that wishes to become an ARM must sign a non-disclosure agreement to obtain the technical specification and then perform testing with us to establish the connection before becoming authorised as an ARM.

7.17 The process and requirements are subtly different for APAs and CTPs. As the core activity of an APA or CTP is to publish trade data rather than submitting data to us, they do not need

²² RTS 13 - Draft regulatory technical standards on authorisation, organisational requirements and the publication of transactions for data reporting services providers

to establish connectivity to us as a condition of authorisation. However, APAs and CTPs are obliged to send us transparency calculation data under article 22 of MiFIR. They will have to establish connectivity to our systems to send us this data, once they have become authorised. So, while APAs and CTPs will still have to send us a signed non-disclosure agreement and undergo testing, they do not have to do so at the same time as applying to become authorised.

**Q14: Do you agree with our approach to DRSPs in MAR 9?
If not, please give reasons why**

Transaction Reporting

- 7.18** We decided to extend MiFID's transaction reporting obligations to managers of collective investment undertakings and pension funds. Those managers were not directly caught by the provisions in the directive because they were exempt from it under article 2(1)(h) to the extent they acted in their capacity as a manager²³. We extended the obligations to managers of these firms because the type of activity they are undertaking is very similar to the type of activity being undertaken by MiFID portfolio managers. Therefore, we also brought them within scope to avoid gaps and blind spots in our market abuse monitoring.
- 7.19** For the purposes of MiFID II, we have reviewed the likely costs and benefits of applying the new MiFID II transaction reporting requirements to these managers, who remain exempt from the recast directive. As a result we have decided not to apply article 26 MiFIR transaction reporting obligations to managers of collective investment undertakings and pension funds at this stage.
- 7.20** Proposed detailed rules on these matters and others have been set out by ESMA in draft RTS: RTS 13²⁴ and RTS 22²⁵.

Content of proposed SUP 17

- 7.21** The SUP 17 instrument reflects our decision not to continue applying transaction reporting for managers of collective investment undertakings and pension funds. We recognise that transaction reporting under MiFID II will be significantly more complex and broad in scope than under MiFID. We will still receive the information we need to perform market abuse detection through the transaction reports of the MiFID investment firms that the managers deal with to execute transactions. We will also receive information through the transaction reports provided by trading venues reporting on behalf of non-MiFID investment firms, and also order data from trading venues.
- 7.22** Following the implementation of MiFID II, we may review this decision and re-evaluate whether we should apply the transaction reporting requirements to managers of collective investment undertakings and pension funds. We will include a cost-benefit analysis as part of any re-evaluation.
- 7.23** We expect MiFID investment firms, non-RIE trading venues and non-EEA firms required to transaction report in accordance with article 26 MiFIR or GEN to establish connectivity with our system. This requirement is reflected in SUP 17.

²³ See PERG 13, Q43 <https://www.handbook.fca.org.uk/handbook/PERG/13.pdf>.

²⁴ RTS 13 – Draft regulatory technical standards on authorisation, organisational requirements and the publication of transactions for data reporting services providers.

²⁵ RTS 22 – Draft regulatory technical standards on reporting obligations under article 26 of MiFIR

7.24 For reference data, SUP 17 reflects our expectation that systematic internalisers and non-RIE trading venues required to provide reference data in accordance with article 27 MiFIR establish connectivity with our system.

7.25 RIEs will also have to provide us with transaction reports and reference data. We will consider consulting next year on rules requiring them to establish connectivity with our systems to do this.

Q15: Do you agree with our proposal not to apply the transaction reporting obligation to managers of collective investment undertakings and pension funds? If not, please give reasons why

Q16: Do you agree with our proposals to require connectivity with our systems for certain entities sending transaction reports and reference data to us? If not please give reasons why

8. Algorithmic and High Frequency Trading (HFT) Requirements

Who should read this chapter?

This chapter is of interest to: algorithmic trading and HFT firms; proprietary traders who engage in algorithmic trading techniques, including HFT and banks with a proprietary algorithmic trading desk. It may also be useful for trade bodies that represent those firms, and trading venues or others with an interest in this topic.

This chapter is applicable to operators of MTFs, prospective operators of OTFs and authorised persons engaging in algorithmic trading.

Introduction

- 8.1** Technological developments in trading, particularly algorithmic trading have driven the need for new legislation in MiFID II. This legislation will determine the capacity and arrangements needed to manage MTFs and OTFs that allow or enable algorithmic trading to take place. MiFID II also contains obligations, systems and controls for algorithmic investment firms to mitigate the risks arising from algorithmic trading, including HFT.
- 8.2** Proposed detailed rules on these matters and others have been set out by ESMA in draft RTSs: RTS 6²⁶ RTS 7²⁷ RTS 8²⁸, RTS 9²⁹, RTS 10³⁰, RTS 11³¹ and RTS 12³².
- 8.3** We are proposing changes to MAR 5 and provisions in the new MAR 5A to transpose the provisions in Title III of the recast MiFID that apply high-level systems and controls requirements for algorithmic trading to MTFs and OTFs. More detailed requirements are contained in the draft RTSs mentioned above to which we provide references in the Handbook.

26 RTS 6 – Regulation on the regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading

27 RTS 7 – Draft regulatory technical standards on organisational requirements of RMs, MTFs and OTFs enabling or allowing algorithmic trading through their systems

28 RTS 8 – Draft regulatory technical standards on market making agreements and market making schemes

29 RTS 9 – Draft regulatory technical standards on the ratio of unexecuted orders to transactions

30 RTS 10 – Draft regulatory technical standards on requirements to ensure co-location and fee structures are fair and non-discriminatory

31 RTS11 – Draft regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds

32 RTS12 – Draft regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications

- 8.4** We are also proposing to introduce a new MAR 7A to give effect to article 17 of MiFID II which contains systems and controls requirements for investment firms undertaking algorithmic trading. More detailed requirements are contained in, from the list above, draft RTSs 6 and 8 to which we provide references in the Handbook. Key parts of the new Handbook provisions include:
- high-level requirements for investment firms engaging in algorithmic trading
 - requirements for high frequency traders
 - requirements for those providing Direct Electronic Access (DEA), and
 - new rules for a person who acts as a general clearing member
- 8.5** Some of the proposed MAR 7A content is closely linked to the SYSC provision in the FCA Handbook, we propose to include flags in the relevant parts of SYSC to point the reader to MAR 7A. An alternative option would have been to add the requirements under article 17 MiFID II into SYSC. We prefer to create a new, dedicated section for algorithmic trading and other relevant firms since the inclusion of these provisions in SYSC would require an extension that would only apply to these specific firms.

Content of proposed MAR 5 & MAR 5A - Systems and Controls for Algorithmic Trading on MTFs and OTFs

- 8.6** In the current Handbook, there are references to the ESMA's 2012 automated trading guidelines. These guidelines formed the basis of two RTSs. The references to the 2012 guidelines will be removed and replaced with transposition, or references to the relevant MiFID II text.
- 8.7** We propose to add sections in MAR 5.3A and in MAR 5A.5 for the systems and controls, to ensure that MTFs and OTFs have in place appropriate capacity and arrangements to manage the risks of algorithmic trading. The systems and controls utilised by an MTF or OTF must be appropriate to the nature, scale and complexity of their business.
- 8.8** One of the risks of trading algorithmically, particularly when using a HFT technique, is that the number of messages sent from the trader to the MTF or OTF tends to be higher than non-algorithmic strategies. The increased number of messages can lead to the trading system experiencing higher demands when allowing or enabling algorithmic trading. The new Handbook rules in MAR 5.3A.2(2) and MAR 5A.5.2(2) aim to mitigate this risk by making it a requirement that the trading systems must be resilient and have the capacity to deal with peak order and message volumes.
- 8.9** An MTF or OTF must have the ability to ensure orderly trading under severe market stress, and must have systems and controls in place that can cope in stressed market conditions.
- 8.10** The new rules in 5.3A.2(4) and MAR 5A.5.2(4) state that business continuity arrangements must be effective enough to ensure that the services the business provides can continue where there is a failure of its trading systems, and that the business should test its systems and controls.
- 8.11** In order to prevent market crashes due to 'fat finger' trade entry, or the submission of erroneous trades, MAR 5.3A.2(5) and MAR 5A.5.2(5) require MTFs and OTFs to have mechanisms to

manage volatility. These mechanisms include the need to have in place systems and controls to reject orders that exceed predetermined volume and price thresholds, or those that are clearly erroneous.

- 8.12** The new rules in MAR 5.3A.2(7) and MAR 5A.5.2(7) aim to give the MTF or OTF the ability to ensure that algorithmic trading systems cannot create or contribute to disorderly trading conditions.
- 8.13** If the algorithmic trading systems create disorderly trading conditions, we expect the MTF or OTF will be able to manage those trading conditions. Measures to do this include limiting the ratio of unexecuted orders to transactions that may be entered into the trading system by a member or participant.
- 8.14** MAR 5.3A.2(8) and MAR 5A.5.2(8) Handbook rules also state that the MTF or OTF must have the ability to slow down the flow of orders if there is a risk of breaching the system capacity.
- 8.15** RTS 11 on tick sizes introduces a pan-European tick size regime for equities, equity-only ETFs and Depositary Receipts. MAR 5.3A.14 and MAR 5A.5.14 Handbook rules mandate the MTF or OTF to adopt and enforce the minimum tick-size in the RTS.
- 8.16** Members and participants are required under MAR 7A to carry out appropriate testing of algorithms. Under MAR 5.3A.2(10) and MAR 5A.5.2(10), an MTF or OTF is required to provide an environment for this testing. Testing of algorithms is a precautionary measure to prevent algorithms that contribute to, or cause, disorderly trading conditions from being used in the markets. Further details of the testing environments that MTFs and OTFs must provide are elaborated in RTS 7.
- 8.17** MiFID II introduces new requirements for all investment firms pursuing a market making strategy on an MTF or OTF. New rules in MAR 5.3A.3 and MAR 5A.5.3 state the obligations for the MTF and OTF providing the scheme, which needs to be appropriate to the nature and scale of the MTF or OTF. This point is explained further in RTS 8.
- 8.18** The MTF or OTF is required to halt or constrain trading if there is a significant price movement on their market. They will need to report the parameters for halting or constraining the trading to us. The obligation to make the report is set out in MAR 5.3A.7 and MAR 5A.5.7.
- 8.19** MiFID II introduces the concept of 'material market in terms of liquidity'. ESMA will assign this title each year to the trading venue deemed to have the most liquid market for a particular financial instrument in the EU. Once that market has been named, it must (if UK based) notify us of any halts to trading that occur in the financial instrument that it is material for. This obligation is set out in MAR 5.3A.8 and MAR 5A.5.8.
- 8.20** Under MiFID II, the principles of fairness, transparency and non-discrimination must be applied to co-location services and also to the fees charged and rebates given by MTFs and OTFs. These obligations can be found in MAR 5.3A.10 and 5.3A.11 and MAR 5A.5.10 and 5A.5.11. RTS 10 provides more clarity and includes information on banned fee structures.
- 8.21** To be able to distinguish between the algorithms of different firms, under MAR 5.3A.13 and MAR 5A.5.13, MTFs and OTFs will require members or participants to flag the orders generated by algorithmic trading. The features that will need to be flagged are the different algorithms used for the creation of orders and the people responsible for the orders initiated by the algorithm.

- 8.22** The new rules in MAR 5.3A.17 and MAR 5A.5.17 provide for the MTF and OTFs to synchronise the business clocks they use to record the date and time of any reportable event.
- 8.23** MAR 5.3A.2(7) and MAR 5A.5.2(7) requires an MTF or OTF to have the ability to set out the maximum order to trade ratio (OTR) allowed on their venue. To aid the setting of the OTR, RTS 9 prescribes the methodology to calculate the OTR. It is part of the requirement that the venue has to ensure the potential risks of the use of algorithmic trading systems are capable of being managed.
- 8.24** New rules in MAR 5.3A.9 and MAR 5A.5.9 mandate that where a firm allows DEA to an MTF or OTF it operates, it must follow certain requirements.

Q17: Do you agree with our proposal to add in the rules outlined above to our Handbook? If not, please give reasons why

Overview of MAR 7A requirements – Systems and controls for algorithmic trading for investment firms and for general clearing members

Content of proposed MAR 7A

- 8.25** In the current Handbook, there are references to ESMA's 2012 automated trading guidelines. These guidelines formed the basis of two RTSs. The references to the 2012 guidelines will be removed and replaced with transposition, or references to the relevant MiFID II text.
- 8.26** MAR 7A sets out the additional MiFID II requirements which an algorithmic trading firm must comply with, in addition to the SYSC requirements. As such, the content of the new chapter should be read in conjunction with the SYSC part of the Handbook.
- 8.27** As HFT is a subset of algorithmic trading, persons engaging in HFT techniques must abide by the general rules which apply to algorithmic traders, as well as specific rules for HFT.
- 8.28** MiFID II mandates that a person notifies us if they engage in algorithmic trading. Where a person uses a HFT technique, they will generally also be subject to our authorisation. So if a person uses a HFT technique, they should consider the need to be authorised by us and notify us that they are engaged in algorithmic trading.
- 8.29** In addition to notifying us, the firm must also notify the competent authorities of the trading venues at which it engages in algorithmic trading as a member or participant of the trading venue.
- 8.30** The purpose of the organisational requirements is to ensure that the firm undertaking the algorithmic trading has effective systems and controls which are suitable to the business it operates.
- 8.31** Where an algorithmic market making strategy is used, the firm must enter into a binding written agreement with the trading venue to make markets for a specified period of time. This is in order to improve the availability of liquidity in the markets, particularly in times of high volatility. The terms of the market making agreements are left up to the trading venue and market maker to determine, but should include the minimum requirements as set out under MiFID II. RTS 8 provides more details on when an investment firm is obliged to enter into a

market making agreement, and when it is appropriate for a trading venue to have a market making scheme in place.

- 8.32** MAR 7A includes the rules for firms that provide DEA to a trading venue. If DEA is provided to a UK trading venue, the DEA provider must notify us that they undertake this activity. The DEA provisions set out the systems and controls that the DEA provider must have in place to prevent trading by clients that may create risks to the clients themselves, or create or contribute to a disorderly market. The controls include real-time monitoring of the transactions made by the clients using the service to ensure that the rules of the trading venue are being adhered to, and that they are not creating or contributing to disorderly markets. Should the DEA provider discover conduct that may involve market abuse, they are obliged to notify us.
- 8.33** Before provision of DEA, a due diligence of the prospective client must be undertaken to assess their suitability for using the service. RTS 6 remains applicable.
- 8.34** MiFID II article 17 gives CAs a choice regarding the frequency of the reporting requirements imposed on a firm regarding engagement in algorithmic strategies and systems and provision of DEA. The choice is to have either regular or ad-hoc reports. We have considered the other reports that we will receive under the forthcoming legislation and decided to request ad-hoc reports.
- 8.35** A firm which provides the service of acting as a general clearing member of another person must have a binding agreement with the person receiving the service. Before the agreement, the service provider must carry out appropriate due diligence to assess the suitability of the client for the service provided. These requirements are intended to reduce the risks to both the service provider and the market.

Q18: Do you agree with our proposal to add a new section to MAR for Algorithmic and HFT firms, DEA providers and general clearing members? If not, please give reasons why

Q19: Do you foresee any implementation issues with the content of MAR 7A? If so, please provide examples

Q20: Are you in favour of the reports under MAR 7A.3.7 and MAR 7A.4.5 being submitted to us regularly, as opposed to an ad hoc basis?

Q21: If you are in favour, what will be the advantages of regular reporting as opposed to ad hoc reporting?

Q22: If we were to require regular reporting, what would be the cost to your firm?

9. Passporting and branches of non-European Economic Area (EEA) firms

Who should read this chapter?

The passporting part of chapter is relevant for UK MiFID investment firms wishing to provide investment services, or perform investment activities, in other EEA countries. They may do so either on a cross-border basis or through a branch or branches. It is also relevant to EEA firms based outside the UK and carrying on similar business in the UK.

The rest of the chapter is relevant to UK branches of non-EEA firms undertaking investment services and activities.

Introduction

- 9.1** One of the purposes of MiFID II is to ensure there is an effective single market for investment services and activities. As was the case with MiFID, the main way of achieving this aim was through ‘passporting’. This is the ability of an investment firm authorised in one EEA³³ country to provide investment services, or perform investment activities, in another EEA country without requiring additional authorisation. A cross-border arrangement involves providing services to clients in another country through means such as the telephone and internet, without the firms or its tied agents having a permanent physical presence in the country concerned. It also includes services provided on a temporary basis, for example when visiting clients resident in other EEA states. The branch arrangement involves investment firms setting up a place of business in another country, or appointing tied agents to represent them in that country.
- 9.2** A proposed harmonised template for passporting notifications has been set out by ESMA in draft ITS 4³⁴. As a result the same templates will be used by firms in all EEA countries. We will translate these into our Connect system to enable UK firms to submit their applications.
- 9.3** The draft amendments to the passporting chapters of the FCA Handbook are addressed to firms that are not dual regulated. PRA-authorized firms should, instead, consult the PRA Rulebook. The PRA will consult on MiFID II related changes to its Rulebook shortly.

³³ The amendments to the Handbook text assume that MiFID 2 is adopted by the EFTA countries and will form part of the EEA agreement

³⁴ ITS 4 – Draft implementing technical standards under articles 34 (9) and 35 (12) of MiFID II

- 9.4** The current FCA Handbook addresses passporting by UK and EEA firms based outside the UK conducting business in the UK; it does not cover matters relating to non-EEA firms and passporting under MiFID II. The Treasury consultation on transposition of MiFID II³⁵ seeks to address this.
- 9.5** Separately from passporting, under MiFID branches of non-EEA firms which we authorise have to operate under similar rules to UK investment firms when they provide MiFID investment services and activities (such firms do not have the right to passport across the EEA). We maintain this approach under MiFID II and make a proposal to subject such firms to directly applicable regulations.

Existing Provisions

- 9.6** MiFID included passporting provisions in articles 31 and 32. Respectively, these articles deal with cross-border activity and the establishment of branches. Under MiFID, firms seeking to provide investment services, or undertake investment activities in another country had to notify their home regulator before they could use the passport. This regulator would then pass on the notification to the relevant regulator(s) in the country (or countries) where the firms wanted to do business. If an investment firm wanted to establish a branch or appoint tied agents in another country, the regulator in the 'host' country was responsible for supervising the firm's passporting activities to ensure they met their responsibilities under conduct of business rules.
- 9.7** The MiFID passporting provisions were transposed through a mixture of legislation (primarily amendments to Schedule 3 of the Financial Services and Markets Act, and the Passports Rights Regulations) and Handbook changes (primarily SUP 13). Together these ensure that investment firms make the required passporting notifications.
- 9.8** MiFID operates on the basis that branches of non-EEA firms should be treated no more favourably when undertaking investment services and activities in EEA countries than investment firms.

Drivers for change

- 9.9** MiFID II makes incremental changes to the MiFID passporting regime.
- First, the range of investment services and activities that can be passported has expanded to include the operation of an OTF. The range of instruments has expanded to include a new category of emission allowances. MiFID II brings into scope some of its provisions services provided by investment firms when selling structured deposits. However, we do not think that an investment firm's passport would extend to cover the selling of structured deposits that are not a financial instrument under MiFID II. (see 9.10 below).
 - Second, the range of provisions that a 'host' country regulator is responsible for when an investment firm is passporting through a branch (or when tied agents are appointed) in another country has expanded. This reflects new obligations in MiFID II, particularly the obligation in most circumstances for investment firms to conclude transactions in liquid shares on a trading venue or through a systematic internaliser. It also includes obligations to

³⁵ See chapter 2 www.gov.uk/government/uploads/system/uploads/attachment_data/file/418281/PU_1750_MiFID_II_26.03.15.pdf.

provide data for transparency calculations and a requirement to keep order book data and provide it to regulators when requested.

- Third, there will be harmonised templates for notifications, imposed through directly applicable regulations, for firms making passporting applications. These replace the templates that regulators agreed on under MiFID in the Committee of European Securities Regulators' (the predecessor of the ESMA) 'Protocol on Passporting Notifications'³⁶

9.10 MiFID passporting rights and requirements do not apply to the activities of investment firms in relation to structured deposits, as these are not 'financial instruments' for the purposes of MiFID authorisation requirements. In the case of credit institutions, passport notifications in respect of structured deposits are a matter for CRD 4 and the PRA as lead regulator³⁷. This is also the case regarding deposit-taking activity in general.

9.11 Much of MiFID II takes the form of directly applicable regulations. These impose obligations on investment firms but not branches of non-EEA firms which we authorise and who undertake investment services and activities. Therefore we need to introduce a rule to make sure that the obligations in the directly applicable regulations apply to such firms.

Proposals

9.12 The Treasury has already consulted on changes to Schedule 3 of FSMA and the Passport Rights Regulations³⁸ for the revised passporting provisions in MiFID II. However, the draft changes were not able to take account of the draft implementing technical standards with the new passporting templates. We propose changes to SUP (primarily chapters 13, 13A, 14 and Annex 3) to update references to MiFID and provide signposting to the technical standard with the new harmonised templates for applications.

9.13 We are proposing a new rule in the part of the Handbook in the High Level Standards which has the title General Provisions (GEN) to subject branches of non-EEA firms which we authorise and who undertake investment services and activities to subject such firms to the obligations in the directly applicable regulations that are a part of MiFID II.

Implications for firms

9.14 Firms will need to assess whether they need to revise their existing passporting notifications because of the change of scope between MiFID and MiFID II. While existing MiFID passports will remain valid under MiFID II, firms may wish to revise their passports in order to add new activities or instruments.

9.15 Branches of non-EEA firms will have to have regard to the MiFID II directly applicable regulations when they undertake investment services and activities.

³⁶ www.esma.europa.eu/system/files/07_317c.pdf

³⁷ See paragraph [1.1.2 above] and Annex 1 paragraphs 8-9 MoU between the FCA and the PRA www.fca.org.uk/static/fca/documents/mou/mou-pra-annex.pdf.

³⁸ www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii

Implications for consumers

- 9.16** The passporting provisions ensure that regulators in each country are aware of the firms actively providing services to consumers in their country. This helps to ensure that we can meet our operational objective of providing an appropriate degree of protection for consumers. Consumers purchasing investment services from branches of non-EEA firms which we authorise need to be properly protected.

Q23: Do you agree with our proposed Handbook changes on passporting? If not, please give reasons why

Q24: Do you agree with the drafting of our proposed rule to apply obligations in directly applicable regulations to UK branches of non-EEA firms? If not, please give reasons why

10.

Principles for Businesses (PRIN)

Who should read this chapter?

PRIN applies to authorised firms.

Introduction

- 10.1** MiFID II extends some of the conduct of business obligations and general principles that apply to firms when providing investment services to firms that are carrying on business with clients categorised as ECPs. Under article 30 (1) of the recast MiFID, the Directive applies the following obligations to transactions with ECPs:
- the provision of comprehensible information requirements in article 24 (4 and 5)
 - reporting to client requirements in article 25 (6), and
 - in their relationship with ECPs, for firms to act honestly fairly and professionally and communicate in a way that is fair, clear and not misleading pursuant to article 30 (1)
- 10.2** The requirements in the recast MiFID do not require the dis-application of certain principles for ECP business within its scope.
- 10.3** Secondly, MiFID II makes changes to the categorisation of local authorities. It excludes local authorities from the list of entities that can be categorised as ECPs and narrows the definition of bodies that ‘manage public debt’ to exclude local authorities. The changes are intended to provide enhanced regulatory protection for these consumers. In light of this change and recent cases of mis-selling deposits to local authorities, we have reconsidered our approach. This includes the treatment of local authorities under PRIN.
- 10.4** This chapter explains the changes that we propose to make to PRIN arising from the implementation of MiFID II. We will not change how PRIN applies to ECPs for all other business (except in the case of local authorities).

Existing provisions

- 10.5** PRIN provides a comprehensive high-level regulatory framework that sets fundamental standards which apply to authorised firms.
- 10.6** When MiFID was introduced, certain Principles imposed high-level obligations similar to (and, in some cases, beyond) those imposed by the conduct of business and organisational requirements in MiFID. We therefore dis-applied certain Principles to ensure consistency with EU Law.
- 10.7** The Principles currently apply to MiFID ECP business as follows:
- Principles 1³⁹, 2⁴⁰, 6⁴¹ and 9⁴² are dis-applied to a firm when carrying on ECP business (PRIN 4.1.4G)⁴³
 - Principle 7⁴⁴ is partially applied for business undertaken with ECPs under MiFID; only the requirement to communicate information to ECPs in a way that is not misleading applies for ECPs⁴⁵, and
 - Principle 8⁴⁶ is dis-applied for ECP business, although the general conflicts rules under SYSC 10 apply to business with ECPs
- 10.8** For non-designated investment business (e.g. general insurance business or accepting deposits), a firm may choose to comply with Principles 6, 7, 8 and 9 as if all of its clients were customers. Alternatively, it may choose to distinguish between ECPs and customers in complying with those Principles. If a firm chooses to make this distinction, it should - in determining whether that client is an ECP or not – refer to PRIN 1 Annex 1.47 which sets out the type of entities which may be considered ECPs. This list includes local authorities and bodies that manage public debt.

Proposals

- 10.9** As a general principle of effective regulation, the Principles should apply in whole or in part to every firm, unless there is a clear reason for them not to apply.
- 10.10** As a consequence of MiFID II, there is no longer a case for us to dis-apply the Principles ‘switched off’ when MiFID was introduced. In light of the MiFID II extension of specific conduct of business obligations to ECPs, we think it is now appropriate to extend Principles 6 and 7 to ECP business that come under the scope of MiFID II. We also propose to apply Principles 1 and

39 Principle 1 Integrity: A firm must conduct its business with integrity.

40 Principle 2 Skill, care and diligence: A firm must conduct its business with due skill, care and diligence.

41 Principle 6 Customers’ interests: A firm must pay due regard to the interest of its customers and treat them fairly.

42 Principle 9 Customers: relationships of trust: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

43 These dis-applications only apply as regards a firm’s conduct of business obligations to ECPs under MiFID I. They do not impact non-MiFID business and continue to apply to ECPs in respect to client asset protections, systems and controls, prudential requirements and market integrity.

44 Principle 7 Communications with clients: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

45 The same approach applies to non-MiFID business.

46 Principle 8 Conflicts of interest: A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and a client.

47 PRIN 1 Annex 1 specifies a number of firm types which could be categorised as ECPs. Local authorities are currently included as one of these firm types.

2 to ECP business. The Principles will continue to apply, insofar as under MiFID II or other EU legislation the matter falls to us to supervise.

- 10.11** We also propose to switch on Principle 8 for ECP business. This ensures the alignment of the SYSC 10 rules (derived from MiFID) that apply to all clients with the high-level standards under PRIN⁴⁸.
- 10.12** We will not change how PRIN applies to ECPs for all other business.
- 10.13** We also propose to update PRIN 1 Annex 1 to remove the possibility of firms categorising local authorities as ECPs for non-designated investment business. We will delete the reference to local authorities in PRIN Annex 1.1.2(c) and update the scope of PRIN Annex 1 1.1(4).

Implications for firms

- 10.14** We believe that the amendments to the application of PRIN 1, 2, 6, 7 and 8 for ECP business will involve minimal cost because they do not alter the MiFID II requirements. These requirements will be implemented through changes to other areas of the Handbook, along with our high-level standards.
- 10.15** The effect of the proposed change to PRIN Annex 1 will mean that firms who provide non-designated investment business to local authorities will no longer be able to categorise local authorities as ECPs for the purposes of PRIN 6, 7, 8 and 9. These principles will apply to firms business with local authority customers. There will be no change for firms that treat local authorities as customers for the purposes of PRIN (i.e. not as ECPs. Firms that currently categorise local authorities as ECPs for the purposes of PRIN will now need to apply PRIN 6, 7, 8 and 9). However, we believe the change will not impose significant material extra requirements on these firms.

Implications for consumers

- 10.16** The extension of conduct of business obligations affords these clients with more consistent and increased regulatory protection and enhances market integrity. The change to PRIN reinforces this shift in approach and will enhance our ability to take action where misconduct arises.

Discussion

- 10.17** While there is no corresponding provision in MiFID II to Principle 1, our view is that acting honestly and professionally essentially addresses similar objectives to acting with integrity. This change also supports the objectives of the final report of the Fair and Effective Markets Review

⁴⁸ In this regard it is important to note PRIN 1.1.9G: Some of the other rules and guidance in the Handbook deal with the bearing of the Principles upon particular circumstances. However, since the Principles are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for guidance, the appropriate regulator's other rules and guidance should not be viewed as exhausting the implications of the Principles themselves. In addition, in this context it is important to note PRIN 3.1.6R. A firm will not be subject to a Principle to the extent that it would be contrary to the UK's obligations under an EU instrument.

(FEMR). This would also align our approach with the PRA's Fundamental Rule 1 on integrity, which applies to all PRA firms.

- 10.18** We need to consider further whether we should re-evaluate the application of PRIN to ECPs for non-designated investment business. We will need to undertake a more detailed market failure analysis, and a more extensive pre-consultation with the industry, than is possible within the MiFID II implementation timetable. Therefore, we propose to give further consideration to the broader policy implications in the first half of next year.

References

- 10.19** The existing provisions for MiFID ECP business are in PRIN 3.4.1R and PRIN 4.1.4G.
- 10.20** The relevant sections of MiFID II are article 30(1) of the recast Directive.
- 10.21** The rules for the categorisation of ECPs for the purposes of PRIN for non-designated investment business are set out in PRIN 1 Annex 1.

Q25: Do you agree with our proposal to apply Principles 1, 2, 6, 7 and 8 in full to firms when conducting business with ECPs under MiFID II? If not, please give reasons why

Q26: Do you agree with our proposal to update PRIN 1 Annex 1 to delete the possibility of local authorities being treated as ECPs for the purposes of PRIN in respect of non-designated investment business? If not, please give reasons why

11.

Perimeter Guidance (PERG)

Who should read this chapter?

Regulated and unregulated firms, and individuals performing investment services and activities.

Introduction

- 11.1** MiFID II imposes an array of scope changes. As well as the creation of a new investment service for operating an OTF, it creates a new financial instrument category of emission allowances. MiFID II also introduces changes to the scope of existing investment services and activities, financial instruments and exemptions. New definitions include those for dealing on own account, for execution of client orders and for miscellaneous categories of derivatives. It narrows existing exemptions, particularly in relation to business involving commodity derivatives. Although structured deposits are not financial instruments for the purposes of MiFID II scope, the extension of conduct requirements to banks and investment firms selling and advising on them has necessitated changes to the Regulated Activity Order (RAO) and created a need for related perimeter guidance.
- 11.2** This Chapter explains the changes that we propose to make to PERG arising from the implementation of MiFID II. It covers the scope changes in the directive and the amendments to the RAO on which the Treasury consulted in March 2015.
- 11.3** We will issue a later consultation to address the issues relating to scope matters, which will be expanded on in the delegated acts. Therefore, in general, we have not covered matters relating to derivatives including foreign exchange and commodity derivatives. For similar reasons, we will address various questions about exemptions, including those in respect of professional firms and commodity business, at a later stage. For now, we only consult on changes to PERG 2 and 13, and further changes to the financial promotion regime will also form part of a further consultation in the first half of next year.

Existing provisions

- 11.4** For UK businesses, PERG 13 provides guidance on the scope of MiFID, the Capital Requirements directive (often referred to as CRD4) and the recast Capital Adequacy directive (2006/49/EC). The guidance was first issued in connection with the FSA's transposition of MiFID. Since then,

it has been updated to take account of EU legislative developments, such as CRD 4. PERG 2 contains guidance relating to the activities, investments and exclusions in the RAO that give effect to the corresponding MiFID investment services and activities, financial instruments and exemptions.

Proposals

- 11.5** As a consequence of the scope changes imposed by MiFID II, we propose to issue guidance on various topics including the following:
- The new service of operating an OTF and the associated definition of multilateral system.
 - The extension of the MiFID service of executing client orders to cover issuance of securities. We have also sought to explain why the issue of its own securities by an ordinary commercial company should not be within the MiFID perimeter.
 - We have included guidance to reflect the fact that the matched principal exclusion no longer applies to the MiFID dealing on own account definition, although it remains relevant for prudential capital purposes.
 - Structured deposits and how they fit into the MiFID and RAO perimeters.
 - Changes to the dealing on own account exemption from the MiFID perimeter.
- 11.6** MiFID provides for two types of trading venues, RMs and MTFs. The definitions of RM and MTF are very similar and hinge on a number of common elements. In essence RMs and MTFs are systems which operate in accordance with non-discretionary rules that bring together multiple buying and selling interests in a way that results in contracts.
- 11.7** In addition to establishing a new type of trading venue, the OTF, and in line with the objective of extending the regulatory perimeter of trading venues, MiFID II introduces a new definition of multilateral system which is common to any trading venue. Article 4(19) of MiFID II specifies that a multilateral system is: *[...] any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system*. We note that the new definition does not require the conclusion of contracts under the system's rules but only that trading interest is able to interact in the system.
- 11.8** The definition of multilateral system is complemented by an obligation set out in article 1(7) of MiFID II that requires all multilateral systems in financial instruments to operate as a RM, an MTF or an OTF (where permissible depending on the asset class).
- 11.9** The combined effect of articles 4(19) and 1(7) is that the MiFID requirement that a contract is executed under the system's rules by means of the system's protocols is now a sufficient but not necessary condition to be a multilateral system and hence to be regulated as a trading venue. Instead it is required that trading interest is able to interact in the system. It is our view that the new definition is broader than the existing one and that the condition for trading interests to interact in the system is less stringent than; that a contract is executed under the system's rules, or by means of the system's protocols or internal operating procedures.

- 11.10** We are of the view that interaction in a system or facility occurs when the system or facility allows multiple trading interests to exchange information relevant to any of the essential terms of a transaction in financial instruments (being the price, quantity and subject-matter) with a view to dealing in such instruments. The information exchanged need not be complete contractual offers, but may be simply invitations to treat or 'indications of interest'.
- 11.11** At a minimum, therefore, a platform will be considered a multilateral system (and hence must operate as a RM, MTF, or OTF in accordance with article 1(7) of MiFID II) if the system provides the ability for trading interests to interact with a view to dealing and:
- allows multiple participants to see such information about trading interest in financial instruments, or submit such information about trading interest in financial instruments for matching, and
 - enables them, through technical systems or other facilities, to take steps to initiate a transaction, or be informed of a match
- 11.12** A system that provides participants confirmation or notification messages about a matching opportunity between those participants, with a view to a transaction in financial instruments, qualifies as such a system or facility.
- 11.13** Finally it should be noted that recital 8 of MiFIR clarifies that an OTF should not include facilities where there is no genuine interaction of trading interest, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression. Any system that only receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices shall not be considered a multilateral system for the purpose of MiFID II. This is because there is no reaction of one trading interest to another other within these systems – they do not 'act reciprocally'.
- 11.14** Given that the focus of PERG is to describe when someone needs authorisation under the Act, we propose to remove PERG 13.6 (CRD IV and CAD) in due course. However, because this material has been found to be useful, we do not propose to delete it but rather to move it to a more suitable location for those wishing to seek guidance on their prudential categorisation. As we have not settled on the timing for doing this, we thought it would be useful to include, for the purposes of the current consultation, the changes to this material that we think are required by MiFID II.
- 11.15** We are not proposing to include guidance on which DRSPs are required to be regulated under MiFID II. Firms carrying on this business are not required to be authorised under FSMA and are subject to other procedures and non-FSMA requirements, described in MAR 9.
- 11.16** The draft PERG guidance focuses on questions that are likely to be of wide relevance, and we have updated existing flowcharts and tables in the annexes to PERG 13. We propose to update these further when the delegated acts are published.

Implications for firms

- 11.17** Firms may wish to refer to the guidance when they are considering whether MiFID II requires them to seek new permissions and passports due to its changes in scope. If the business of a UK firm is to provide investment services and activities within the scope of MiFID II, the firm will

need to be either authorised with the appropriate Part 4A permission or exempt (e.g. because it is an appointed representative).

Implications for consumers

- 11.18** The purpose of PERG is to describe when someone needs authorisation under FSMA and is not of direct relevance to consumers. However, our proposed guidance may help investors to guard against dealing with people who are not regulated when they should be. We intend to make the guidance clearer on the circumstances in which MiFID II applies, and when authorisation is needed.

Discussion

- 11.19** Since MiFID, there has been increasing harmonisation of EU legislative requirements in relation to investment business, as evidenced by MiFID II itself. The creation of the European Supervisory Agencies (ESAs) and the issuing of technical standards and ESA guidelines have further deepened the process of regulatory and supervisory convergence.
- 11.20** In our view, none of these developments diminishes the case for guidance by national regulators on scope issues. For FSMA, the need for clarity and certainty on the scope of regulation remains as important as ever, particularly given the potential criminal and civil consequences of acting in breach of the general prohibition.

References

- 11.21** The existing guidance on the scope of MiFID is in chapter 13 of PERG. Guidance on the corresponding RAO activities, specified investments and exclusions are set out in chapter 2 of PERG.
- 11.22** The feedback statement to the original perimeter guidance in relation to MiFID is set out in FSA PS 07/5⁴⁹.
- 11.23** The scope provisions in MiFID II on which we propose to provide guidance are contained in Title I MiFID II.

Q27: Do you agree with our proposal to continue to offer perimeter guidance in relation to the scope of EU legislation by updating PERG 13? If not, please give reasons why

Q28: Do you agree with our interpretation of the definition of a multilateral system? If not, please give reasons why

⁴⁹ www.fsa.gov.uk/pubs/policy/ps07_05.pdf

Annex 1: List of questions

- Q1:** Do you find our proposed MiFID II Guide helpful? If not, how can we amend and improve the prototype?
- Q2:** Do you agree with our approach outlined above to amend REC to take account of the MiFID II changes? If not, please give reasons why
- Q3:** Do you foresee any implementation issues with the approach above?
- Q4:** Do you agree with our approach to implementing the MTF requirements in MAR 5? If not, please give reasons why
- Q5:** Do you agree with our proposals on how to implement OTF rules in MAR 5A? If not, please give reasons why
- Q6:** Do you agree with our approach to implementing the SI regime in MAR 6? If not, please give reasons why
- Q7:** Do you agree that we should be prepared to use our power to grant waivers from pre-trade transparency in shares, ETFs, and depositary receipts in relation to:
- systems matching orders on the basis of a reference price
 - systems that formalise negotiated transactions
 - orders that are large in scale, and
 - orders held in an order management facility pending disclosure?

If not, please give reasons why

Q8: Do you agree that we should use our power to grant waivers from pre-trade transparency in bonds, structured finance products, derivatives and emission allowances in relation to:

- orders that are large in scale
- orders held in an order management facility pending disclosure
- actionable indications of interest in request-for-quote and voice trading systems, and
- derivatives that are not subject to the trading obligation under article 28 of MiFIR, and other financial instruments for which there is not a liquid market?

If not, please give reasons why

Q9: Do you agree that our sourcebooks should provide more clarity in relation to: the process of applying for a pre-trade transparency waiver, and information that we deem necessary in order to evaluate an application? If not, please give reasons why

Q10: Should the sourcebooks include templates setting the minimum information content that trading venues should provide to us when applying for a waiver? If not, please give reasons why

Q11: Do you agree that we should be prepared to authorise operators of trading venues and investment firms to defer the publication of post-trade information in relation to large in scale transactions in shares, ETFs, and depositary receipts executed by investment firms acting in a principal capacity?

If yes, should we provide guidance in the Handbook on the process for applying for deferrals? If not, please give reasons why

Q12: Do you agree that we should authorise operators of trading venues and investment firms to provide for deferred publication in relation to transactions that are:

- large in scale
- in financial instruments for which there is not a liquid market
- above the size specific to the instrument, and
- packages

If yes, do you agree that we should set up the process for the use of guidance in the Handbook for the application of deferrals? If not, please give reasons why

Q13: Should we:

- use our powers under article 11(3) of MiFIR further to calibrate post-trade deferrals in accordance with the above options
- require additional information to be made public during the deferral period?

and/or, should we:

- permit the omission of the volume, or the aggregation of information, for an extended time period of four weeks?

If not, please give reasons why

Q14: Do you agree with our approach to DRSPs in MAR 9? If not, please give reasons why

Q15: Do you agree with our proposal not to apply the transaction reporting obligation to managers of collective investment undertakings and pension funds? If not, please give reasons why

Q16: Do agree you with our proposals to require connectivity with our systems for certain entities sending transaction reports and reference data to us? If not, please give reasons why

Q17: Do you agree with our proposal to add in the rules outlined above to our Handbook? If not, please give reasons why

- Q18:** Do you agree with our proposal to add a new section to MAR for Algorithmic and HFT firms, DEA providers and general clearing members? If not, please give reasons why
- Q19:** Do you foresee any implementation issues with the content of MAR 7A? If so, please provide examples
- Q20:** Are you in favour of the reports under MAR 7A.3.7 and MAR 7A.4.5 being submitted to us regularly as opposed to an ad hoc basis?
- Q21:** If you are in favour, what will be the advantages of regular reporting as opposed to ad hoc reporting?
- Q22:** If we were to require regular reporting, what would be the cost to your firm?
- Q23:** Do you agree with our proposed Handbook changes on passporting? If not, please give reasons why
- Q24:** Do you agree with the drafting of our proposed rule to apply obligations in directly applicable regulations to UK branches of non-EEA firms? If not, please give reasons why
- Q25:** Do you agree with our proposal to apply Principles 1, 2, 6, 7 and 8 in full to firms when conducting business with ECPs under MiFID II? If not, please give reasons why
- Q26:** Do you agree with our proposal to update PRIN 1 Annex 1 to delete the possibility of local authorities being treated as ECPs for the purposes of PRIN in respect of non-designated investment business? If not, please give reasons why
- Q27:** Do you agree with our proposal to continue to offer perimeter guidance in relation to the scope of EU legislation by updating PERG 13? If not, please give reasons why
- Q28:** Do you agree with our interpretation of the definition of a multilateral system? If not, please give reasons why

Annex 2: Cost benefit analysis

Introduction

1. The Financial Services and Markets Act (FSMA), as amended by the Financial Services Act (2012), requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as ‘an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made.’ It also requires us to include estimates of those costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable for us to produce an estimate.
2. Most of the areas covered by this consultation paper relate to matters where it is intended that there is a common approach across the EU and therefore we have little or no margin for discretion in implementing MiFID II. We therefore provide a high level cost benefit analysis. In addition we provide specific cost-benefit analysis of the changes to PRIN which cover matters not subject to a common EU approach.

The revision of MiFID

3. MiFID took effect in the UK in November 2007. It aimed to create a regulatory framework that stimulated competition between trading venues and to cut costs for investors. Also, through a comprehensive regime of investor protection, it sought to minimise the prospect of asymmetries of information between intermediaries and investors leading to investor detriment.
4. In its impact assessment⁵⁰ of the proposals that became MiFID II⁵¹, the Commission argued that the framework of MiFID was sound and did not need to be changed. It also stated that some detailed changes were needed to address shortcomings in the original legislation that had been identified as a result of the financial crisis and experience with the operation of MiFID. Problems that needed to be solved according to the Commission included: inconsistencies in the regulatory treatment of market participants; restrictions on small firms’ access to finance; lack of transparency in the trading of bonds and derivatives; limitations on regulators’ powers and sources of information; weaknesses in investor protection; and certain shortcomings in some market participants’ control over their activities.
5. The Commission set out four key objectives for the revised legislation:
 - strengthen investor protection
 - reduce the risks of market disorder

50 ec.europa.eu/finance/securities/docs/isd/mifid/111020-impact-assessment_en.pdf

51 Directive 2014/65/EU and Regulation 600/2014/EU

- reduce systemic risks
- increase the efficiency of financial markets and reduce unnecessary costs for participants

Cost-benefit analysis overview

6. MiFID is largely intended to deliver maximum harmonisation and to bring greater consistency to the regulation of investment business in the EU. This is reflected in the fact that part of the framework legislation is in a directly applicable regulation, as is a substantial proportion of the implementing measures. As mentioned above, we only conduct a full impact assessment on those parts of the implementation where we are exercising discretion. For the legislation in general, we have only conducted a high-level impact assessment. This is supplemented by the impact assessment work the Commission did on the framework legislation, referred to above, and the impact assessment work by ESMA on the technical standards.
7. From the cost estimates provided in the EU level impact assessment work, it is very difficult to be specific about the extent to which the costs will impact upon the UK. In its impact assessment, the Treasury⁵² used the fact that the UK accounts for 36% of EU wholesale financial services to scale the estimates from the Commission's impact assessment. MiFID II also covers retail investment business, for which the UK probably accounts for a smaller share of the EU total of business than it does for wholesale business. This explains the Treasury's description of the 36% figure as a 'cautious' estimate (i.e. it erred on the side of over-estimation).

MiFID II issues

8. To illustrate the impact the implementation of MiFID II is likely to have, we provide below a high level cost-benefit analysis across the areas of MiFID II covered in this CP below. There is a more detailed treatment of the changes to PRIN which are not subject to a common EU approach.

Regulated markets

9. MiFID already has the category of RMs. The changes to the existing regime for algorithmic trading and transparency are covered in separate sections below. A key change to the overall framework for RMs in MiFID II is the introduction of a regime for the operation of the management board, which has similarities to that for investment firms.
 - **Costs.** RMs will need to commit resources to reviewing their existing management board arrangements to ensure that they comply with the specific requirements under MiFID II and make the necessary changes.
 - **Benefits.** The management board requirements are aimed at ensuring that RMs are more effectively run. This should help to strengthen the resilience of secondary trading and the quality of trading services that are offered.

⁵² www.gov.uk/government/uploads/system/uploads/attachment_data/file/418294/MiFID_II_impact_assessment.pdf

MTFs

10. MiFID already has a regime for MTFs. MiFID II changes the regime by prohibiting MTF operators from dealing on own account on their own venue and strengthening the conflict of interest requirements applying to operators of MTFs.
- **Costs.** The inability of the operator of an MTF to trade on own account in their own MTF could raise the costs of trading on MTFs by requiring alternative arrangements to be put in place, including where operators of MTFs have been acting as a riskless principal to settle trades.
 - **Benefits.** Members or participants of MTFs should be at reduced risk of losing out as a result of an MTF operator favouring their own interests over those of a member or participant.

OTFs

11. MiFID II introduces the new venue category of OTF for the trading of bonds and derivatives. This is intended to help facilitate the bringing of more trading activity on to lit venues subject to appropriate organisational requirements.
- **Costs.** There will be one-off costs for firms, either existing investment firms or firms new to regulation, who want to run an OTF to vary their permissions or apply to be authorised. The requirements imposed on an OTF, including restrictions on own account trading by the operator, may also drive up the compliance costs of existing trading systems.
 - **Benefits.** The creation of the OTF category should aid the price formation process in bonds and derivatives and the resilience of the systems being used for the trading of these instruments.

Systematic internalisers

12. MiFID has an SI regime for equities which is being extended to equity-like instruments and a separate SI regime is being introduced for bonds and derivatives. Unlike under the current directive there will be quantitative thresholds to determine who is an SI.
- **Costs.** A wider range of firms will need to put in place arrangements for making quotes publicly available and for managing the risks associated with providing liquidity under the terms of the SI regime. The increase in costs for liquidity provision might lead to some firms withdrawing from liquidity provision.
 - **Benefits.** The benefits of the SI regime are essentially the benefits of greater transparency which are described below.

Transparency

(i) Equity and equity-like instruments (articles 3, 4, 6 & 7 MiFIR)

13. MiFID has requirements for pre- and post-trade transparency for the trading of shares admitted to trading on regulated markets. MiFID II extends these requirements to shares admitted to trading on MTFs, and to equity-like financial instruments trading on regulated markets and MTFs. To strengthen transparency, MiFID II also revises the existing framework for shares.

- **Costs.** If the regime is not calibrated correctly, it could have an adverse impact on liquidity in the trading of equity and equity-like instruments, and on the cost of capital for issuers. Trading venues and firms will need to adapt their systems to the new transparency regime.
- **Benefits.** Greater transparency may promote a more efficient process of price formation and increase confidence in financial markets. While we expect this to promote greater liquidity and to reduce the cost of capital for issuers, it is dependent on accurate calibration.

(ii) Bonds and derivatives (articles 8 to 11 MiFIR)

14. MiFID II introduces a calibrated pre- and post-trade transparency regime for bonds and derivatives that have liquid markets and are admitted to trading on trading venues.

- **Costs.** Any negative impact on the revenues of dealers could result in less capital committed. Liquidity of the markets could drop with poorly designed disclosure rules (particularly pre-trade) resulting in a negative impact on market participants. This should be contained by proper calibration. There will also be a cost incurred by trading platforms and market participants to upgrade systems, plus significant costs for market participants to access electronic trading platforms.
- **Benefits.** The increased transparency of derivatives and bond markets will benefit investors, particularly smaller ones. The cost of compliance and any effects on market liquidity are expected to be offset by benefits to all market participants through increased transparency. As pricing becomes more reliable, calibrations should better preserve liquidity, and valuations should improve.

Market Data

(i) Data Reporting Service Providers (articles 59 to 66 MiFID)

15. MiFID II requires investment firms to make public through APAs the details of OTC transactions in instruments admitted to trading on trading venues. These APAs need to be authorised. One of the means under MiFID II that can be used to send transaction reports to regulators will be ARMs which also need to be authorised. MiFID II seeks to ensure there is a consolidated tape of completed transactions available to market participants by providing for the authorisation of CTPs.

- **Costs.** The UK already has registered entities similar to APAs and ARMs. The authorisation regime in MiFID II will require existing UK equivalents of APAs and ARMs to upgrade their systems and control arrangements. This in turn, together with the broadened scope of their activities, will lead to higher costs for investment firms using APAs and ARMs. Anyone who wants to become a CTP will also need to ensure they have the necessary systems and control arrangements to meet the authorisation requirements.

- **Benefits.** An EU-wide regime for APAs and ARMs should raise the overall quality of trade and transaction reporting, helping both market participants and the FCA. It might also provide greater competition for the provision of these services, with a possible increase in efficiency and a reduction in costs. Having a CTP might reduce data costs for market participants.

(ii) Transaction reporting (article 26 MiFIR)

16. MiFID II significantly extends the scope of transaction reporting to regulators. It exempts only transactions where the instrument is purely traded OTC and where they are neither dependent on, nor may influence, the value of a financial instrument admitted to trading on a trading venue. There is also a large increase in the number of data fields for each report.
17. Our rules on connectivity for certain entities sending us transaction reports and reference data are essential for the practical implementation of transaction reporting. We therefore think that they are an important part of the overall MiFID II transaction reporting regime and necessary to secure its benefits. In terms of costs we are currently consulting through CP 15/34 (which closes on 8th January 2016) on fees to cover the recovery of costs of operating systems for persons to report data to us under MiFID II.
- **Costs.** There will be additional reporting costs for firms to deal with the wider scope of the obligation and greater depth of information required. Regulators will also need to update their systems to capture and process the information.
 - **Benefits.** Increased transaction reporting should help give regulators the tools they need to detect and prosecute the wider range of market abuse offences included in the Market Abuse Regulation. It should also provide additional information that can be used to enhance regulators' overall supervisory efforts, including identification of firm-specific and market-wide risks.

Algorithmic and high-frequency trading requirements (recast MiFID articles 17 and 49)

18. MiFID II introduces new systems and controls requirements on firms engaging in algorithmic and high-frequency trading, and on trading venues that allow algorithmic and high-frequency trading on their markets.
- **Costs.** The provisions build on ESMA's 2012 Algorithmic Trading Guidelines. This means that part of the costs will already have been absorbed by firms and trading venues. However, some of the obligations go beyond those in the guidelines by requiring firms to review and revise their governance and control arrangements. This might result in new costs for upgrading systems and for enhanced compliance arrangements.
 - **Benefits.** The provisions will enhance resilience and confidence in financial markets preventing problems at an individual firm from creating significant system-wide problems.

Passporting (articles 34 and 35 MiFID)

19. MiFID II makes a number of small but important changes to the passporting regime that exists under MiFID. These include: expanding the range of services and financial instruments that can be passported; updating the range of provisions for which a 'host' member state will be

responsible for supervising; requiring details to be exchanged between regulators of banks' use of tied agents to provide investment services and activities; and harmonised forms for passporting notifications by investment firms.

- **Costs.** There will be one-off costs for investment firms to notify new activities and instruments, for banks to notify their use of tied agents and for regulators to revise their systems to take account of the new harmonised passporting forms.
- **Benefits.** Bringing more activities within the scope of the passport should strengthen the single market in financial services. Exchange of information about banks' use of tied agents should enhance investor protection by providing more information to host supervisors about activities for which they are responsible.

PRIN

20. As set out in the PRIN chapter above, we propose to make the following changes to the existing provisions in PRIN in relation to ECPs:

- Extend Principles 1, 2, 6, 7 and 8 to ECP business under MiFID scope
- Update PRIN Annex 1 to remove the possibility of firms categorising local authorities as ECPs for the purpose of PRIN in respect of non-designated investment business. (in effect, this will switch on Principles 6, 7, 8 and 9 for local authorities that are currently categorised as ECPs)

21. Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) when proposing draft rules. Section 138L(3) of FSMA states that section 138I(2)(a) does not apply where we consider that there will be no increase in costs or the increase will be of minimal significance

22. We believe that the changes described above will not entail any significant additional costs for firms. We set out our analysis below.

- **Costs**

In terms of extending Principles 1, 2, 6, 7, and 8 to ECP business, these changes will, for the large part, align FCA high-level standards rules with the new conduct of business obligations under MiFID II (which will be implemented through changes to other areas of the FCA Handbook). As firms will be obliged to comply with the MiFID II obligations, there will be minimal additional costs associated with complying with the Principles we are proposing to switch on. In particular, in our view:

- Principle 1 (Integrity) essentially addresses similar objectives to “acting honestly, fairly and professionally” (as required under MiFID II);
- Principle 2 (Skill, care and diligence), Principles 6 (Customers' interests) and 7 (Communications with clients) essentially addresses similar objectives to those MiFID requirements switched on for ECPs under article 30;
- Principle 8 (Conflicts of interest) aligns with the requirements under SYSC 10 (as required under MiFID)

In relation to the changes to PRIN 1 Annex 1 regarding the prohibition on categorisation of local authorities as ECPs, we expect the costs to firms to be minimal. Some firms are already treating local authorities as customers and therefore already applying Principles 6, 7, 8, and 9.

Other firms that currently treat local authorities as ECPs would be applying these Principles to their other, non-ECP clients. In our view, extending the principles to local authorities would not necessitate material changes to the firms' businesses.

Furthermore, given the Principles for Businesses are a general statement of the fundamental obligations of being an authorised person⁵³, we do not envisage that this amendment should require a significant change in approach by firms.

Although some firms may need to re-visit their compliance procedures to ensure they are compliant with the principles in relation to local authorities, we do not expect this to result in material costs or require costly behavioural or practical changes.⁵³

- **Benefits**

The benefits of switching on Principles 1, 2, 6, 7, and 8 for ECP business will ensure a consistent approach between our high-level standards and European legislation for MiFID business.

In addition, we believe that the application of Principle 1 to MiFID business will encourage the responsible behaviour that should already be embedded in firms' conduct of business. It also supports the objectives of FEMR, which has made a number of recommendations on enhancing the fairness and effectiveness of markets.

Furthermore, it provides us with additional means to achieve our statutory and operational objectives. It will also provide us with an extra regulatory tool to take action, including in the case of unforeseen matters or future events.

In terms of updating PRIN 1 Annex 1 to prevent local authorities being categorised as ECPs, there has been evidence of mis-selling to local authorities in the past. This has highlighted concerns over the knowledge and experience of local authorities and questioned the appropriateness of categorising local authorities as ECPs. The Commission has made changes to the MiFID client categorisation regime to address these concerns. It explicitly prevents local authorities from being categorised as ECPs and makes clear that local authorities do not fall within the definition of 'public bodies that manage public debt'.

- Our proposal to update PRIN 1 Annex 1 to remove local authorities from the list of ECPs for the purposes of non-designated investment business in the application of PRIN aligns with our approach to increase the regulatory protection of local authorities. Being categorised as customers for the purposes of PRIN, local authorities will benefit from firms' having to abide by these Principles in their dealings with them, although we expect the direct benefits of firms' complying with PRIN to be low as we think it is reflective of how they currently treat their clients. However, our policy has the added benefit of creating a level playing field in the treatment of local authorities – MiFID II seeks to prohibit the categorisation of local authorities as ECPs in relation to MiFID business, and our policy in this chapter seeks

⁵³ Indeed, previous cost-benefit analysis conducted in relation to extending PRIN to consumer credit firms concluded that as such firms were already complying with OFT guidance that had the same objectives as PRIN, the additional costs to consumer credit firms of formally adopting PRIN would be minimal. See FCA (2013) "High-level proposals for an FCA regime for consumer credit" www.fca.org.uk/static/fca/documents/consultation-papers/fsa-cp13-07.pdf

to harmonise the treatment of local authorities with respect to non-designated investment business.

PERG

23. The PERG amendments constitute guidance only and not guidance on rules and so there is no FSMA obligation on us to conduct a CBA or produce a compatibility statement.

MiFID Guide

24. The MiFID Guide constitutes guidance only and not guidance on rules and so there is no FSMA obligation on us to conduct a CBA or produce a compatibility statement.
25. More generally, in the case of PERG and the MiFID Guide, we consider that producing guidance has positive benefits for firms and consumers alike. Market participants benefit from having greater clarity as to the regulatory perimeter which, in turn, should reduce the risk of firms carrying on unauthorised business to the detriment of consumers. Both publications provide greater transparency and for the reasons described above, advance our strategic objective and operational objectives.

Directly applicable obligations

26. Other issues linked to secondary trading of financial instruments not covered in the consultation paper because the obligations are directly applicable but which will involve a material impact are covered below.

Double volume cap for trading under the reference price and negotiated trade waivers (article 5 MiFIR)

27. MiFID II places restrictions on 'dark' trading in equity (an 8% threshold) and equity-like instruments (4%). These figures represent the total amount of 'dark' trading that can take place across Europe in a given financial instrument and on an individual trading venue. If trading exceeds these thresholds, use of the waivers will be suspended for six months.
- **Costs.** ESMA will need to have systems to collect and process data to check whether the caps are being exceeded. Where the waivers are suspended, this could lead to a poorer quality of execution than would otherwise have been the case and possibly deter trading in the instruments affected.
 - **Benefits.** The caps will protect the integrity of the price formation process on public markets. This will ensure that market participants have sufficient information about trading interest to make informed trading decisions.

Trading obligation for shares (article 23 MiFIR)

28. Subject to limited exceptions, MiFID II requires investment firms transacting in shares for which there is a liquid market to carry out the transaction on a RM, MTF, SI, or equivalent non-EEA market.
- **Costs.** Investment firms might need to establish connections to a larger range of trading venues and SIs than they might otherwise do, to ensure they can always meet the obligations. There will also be circumstances in which a better quality of execution will be obtained by using an execution venue other than those permitted under the trading obligation.
 - **Benefits.** Pushing trading flow through a prescribed set of execution venues might lead to more effective price formation.

Derivatives trading obligation (article 28 MiFIR)

29. In line with G20 commitments, MiFID II requires the trading of standardised derivatives (subject to the obligation to be centrally cleared under EMIR) to be traded on regulated markets, MTFs or OTFs, or equivalent non-EEA markets, where there is sufficient liquidity.
- **Costs.** Limiting trading to organised platforms subject to transparency requirements will prohibit beneficial trades that could otherwise have taken place OTC or on other venues. If platform trading obligations are applied to illiquid derivatives or illiquid packages that contain standardised derivatives, liquidity providers may offer poorer prices than they would in bilateral trading.
 - **Benefits.** Increased transparency and greater supervision should lead to further market integrity. Enhanced competition between trading venues is positive, along with improvements in quality and reliability of prices for OTC derivatives. This should result in improved bargaining positions for investors trading on electronic platforms, particularly smaller ones.

Access to market infrastructure and benchmarks (articles 35 to 37) MiFIR

30. MiFID II gives trading venues the right to choose which central counterparties (CCPs) they connect to and vice versa. It requires benchmark providers to offer access to their benchmarks on reasonable commercial terms, to allow trading venues and CCPs to facilitate trading and clearing. MiFID II also requires trading venues and CCPs to provide access to each other on a non-discriminatory basis.
- **Costs.** Those providing access will have to put in place arrangements to facilitate it, requiring expenditure on legal agreements and technical arrangements. Even where an access request to a CCP or trading venue is turned down, there will have been a cost associated with assessing the impact of the request and establishing the existence of the grounds permitted by MiFID II for a CCP or trading venue to turn down an access request.
 - **Benefits.** Provision of access will facilitate competition between trading venues and CCPs, driving down costs and potentially lowering the costs to investors of trading, including clearing.

Annex 3: Compatibility statement

Compatibility with the FCA's general duties

This annex follows the requirements set out in section 138I FSMA. When consulting on new rules, we are required by section 138I FSMA to include an explanation of why we consider the proposed rules are compatible with our strategic objective, advance one or more of our operational objectives, and have regard to the regulatory principles in section 3B FSMA. We are also required by section 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons. We also note the application of section 139A (5) relating to consulting on guidance. This annex also includes our assessment of the equality and diversity implications of these proposals.

The FCA's objectives and regulatory principles

Our proposals in this CP meet our strategic objective of ensuring that the relevant markets function well and are primarily intended to advance our operational objectives of:

- enhancing market integrity, protecting and enhancing the integrity of the UK financial system, by ensuring trading systems are resilient and there is transparency of the price formation process, and
- securing consumer protection, maintaining and securing an appropriate degree of protection for consumers, by ensuring firms provide customers with a level of care that is appropriate

In preparing our proposals, we have paid attention to the regulatory principles set out in section 3B FSMA. In particular:

The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons.

We do not believe that our proposals discriminate against any particular business model or approach. In some places MiFID II mandates trading in particular ways for example, on lit trading venues rather than 'in the dark' or OTC. This is however, the specific intent of the legislation in order to improve market functioning.

The principle that we should exercise our functions as transparently as possible.

We believe that by consulting on our proposals we are acting in accordance with this principle.

The need to use our resources in the most efficient and economical way.

For the proposals in this CP in the limited areas where we have discretion in implementing MiFID II we have had regard to the burden on us in assessing how best to implement.

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

We believe the proposals in this CP containing burdens or restrictions are proportionate to the benefits.

The desirability of publishing information relating to persons.

We believe that our proposals do not undermine this principle.

Expected effect on mutual societies

Section 138K FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised mutual societies, compared with other authorised bodies. The relevant rules we propose to amend will apply, according to the powers exercised and to whom they are addressed, equally regardless of whether it is a mutual society or another authorised body.

Equality and diversity

We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics (i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender), nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We welcome any comments respondents may have on any equality issues they believe may arise.

Appendix 1: Draft Handbook text

MARKETS (MiFID 2) INSTRUMENT 2016**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance);
 - (d) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights);
 - (e) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights); and
 - (f) section 293 (Power to make notification rules in respect of recognised bodies); and
 - (2) [the power in regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as inserted by the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2016];
 - (3) the powers of direction, guidance and related provisions in or under the following provisions of the [Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016]:
 - (a) regulation 7 (Application for authorisation);
 - (b) regulation 10 (Cancellation of authorisation);
 - (c) regulation 11 (Variation of authorisation);
 - (d) regulation 21 (Guidance); and
 - (e) regulation 23 (Reporting requirements); and
 - (4) in relation to the Glossary of definitions, the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [commencement dates will be added when all the relevant EU legislation has been finalised].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
General Provisions (GEN)	Annex C
Market Conduct sourcebook (MAR)	Annex D
Supervision manual (SUP)	Annex E
Recognised Investment Exchanges sourcebook (REC)	Annex F

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex G to this instrument.
- F. The Service Companies Handbook Guide (SERV) is amended in accordance with Annex H to this instrument.

Notes

- G. In the Annex to this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- H. This instrument may be cited as the Markets (MiFID 2) Instrument 2016.

By order of the Board
[date] 2016

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>algorithmic trading</i>	trading in <i>financial instruments</i> where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the timing, price or quantity of the order for how to manage the order after its submission, with limited or no human intervention, and does not include any system that is only used or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.
	[Note: article 4 (1)(39) of <i>MiFID</i>]
<i>APA</i>	<i>approved publication arrangement.</i>
<i>approved publication arrangement</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide services to an <i>investment firm</i> for the <i>investment firm</i> to meet its transaction reporting obligations under articles 20 and 21 of <i>MiFIR</i> .
<i>ARM</i>	<i>approved reporting mechanism.</i>
<i>branch passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>ITS 4 Annex VI</i> .
<i>certificates</i>	(as defined in article 2(1)(27) of <i>MiFIR</i>), those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments.
<i>consolidated tape provider</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of collecting trade reports for <i>financial instruments</i> made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i> from <i>regulated markets</i> , <i>MTFs</i> , <i>OTFs</i> and <i>APAs</i> , and of consolidating them into a continuous electronic live data stream providing price and volume data per <i>financial instrument</i> .
<i>CSDR</i>	Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the <i>EU</i> and on central securities depositories and amending the <i>Settlement Finality Directive</i> and <i>MiFID</i> and the <i>short selling regulation</i> .

<i>CTP</i>	<i>consolidated tape provider.</i>
<i>data reporting service</i>	(in accordance with regulation 2(1) of the <i>DRS Regulations</i>) the operation of an <i>APA</i> , an <i>ARM</i> or a <i>CTP</i> when carried out as a regular occupation or business activity.
<i>data reporting services provider</i>	a <i>person</i> operating one or more <i>data reporting services</i> in accordance with regulation 5 of the <i>DRS Regulations</i> .
<i>DEA</i>	<i>direct electronic access.</i>
<i>direct electronic access</i>	an arrangement where a member or participant or client of a <i>trading venue</i> permits a <i>person</i> to use its trading code so the <i>person</i> can electronically transmit orders relating to a <i>financial instrument</i> directly to the <i>trading venue</i> and includes arrangements which involve the use by a <i>person</i> of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a <i>person</i> (sponsored access). [Note: article 4(1)(41) of <i>MiFID</i>] [<i>To be revisited following the publication of Commission delegated legislation pursuant to article 4 MiFID</i>]
<i>DRS Regulations</i>	the Financial Services and Markets Act 2000 (Data Reporting Services) Regulations 2016 (SI 2016/xx).
<i>Emission Allowance Trading Directive</i>	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, and amending Council Directive 96/61/EC.
<i>ETF</i>	<i>exchange-traded fund.</i>
<i>EU regulation</i>	a regulation made pursuant to article 288 of the <i>Treaty</i> .
<i>exchange-traded fund</i>	a fund of which at least one unit or share class is traded throughout the day on at least one <i>trading venue</i> and with at least one market maker which takes action to ensure that the price of its <i>units</i> or <i>shares</i> on the <i>trading venue</i> does not vary significantly from its net asset value and, where applicable, from its indicative net asset value. [Note: article 4(1)(46) of <i>MiFID</i>]
<i>investment services and activities passport notification</i>	a notification made in accordance with article 34(2) of <i>MiFID</i> and <i>ITS 4</i> Annex I.
<i>ITS 2</i>	Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to the format and timing

of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to *MiFID*.

ITS 3 Commission Implementing Regulation (EU) No .../... laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to *MiFID*.

ITS 4 Commission Implementing Regulation (EU) No .../.. laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with *MiFID*.

ITS 19 Commission Implementing Regulation (EU) No .../.. laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to *MiFID*.

market making strategy

a strategy undertaken by a *person* where:

- (a) the *person* is a member or participant of one or more *trading venues*;
- (b) the *person's* strategy, when *dealing on own account*, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more *financial instruments* on a *trading venue*, or across different *trading venues*; and
- (c) the result provides liquidity on a regular and frequent basis to the overall market.

matched principal trading

a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.

[**Note:** article 4 (1)(38) of *MiFID*]

member of the management body

(in relation to a *UK recognised body*):

- (a) its chairman or president;
- (b) its *chief executive*;
- (c) a member of its *governing body*;

- (d) a *person* who, alone or jointly with one or more others, is responsible under the immediate authority of a *person* in (a), (b) or (c) or a committee of the *governing body* for the conduct of any *relevant function*.

MiFID/MiFIR requirements any of the requirements applicable to an *RIE* or an applicant to become an *RIE* imposed by *MiFIR* and any directly applicable regulation made under *MiFID* or *MiFIR*.

MiFID/MiFIR systems regulations *RTS 7* to *RTS 12* inclusive, *RTS 25* and *RTS 26*.

MiFI Regulations the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2016 (SI 2016/xx).

multilateral system any system or facility in which multiple third-party buying and selling trading interests in *financial instruments* are able to interact in the system.

[**Note:** article 4(1)(19) of *MiFID*]

operating an organised trading facility the *regulated activity* in article [25DA] of the *Regulated Activities Order*, which is in summary, the operation of an *organised trading facility* on which non-equity MiFID instruments are traded.

In this definition “non-equity MiFID instrument” means any investment:

- (a) of the kind specified by articles 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a bond, a structured finance product (within the meaning of article 2(1) (28) of *MiFIR*), an *emissions allowance*, or a derivative (within the meaning of article 2(1) (29) of *MiFIR*).

organised trading facility (in accordance with article 3(1) of the *Regulated Activities Order*):

- (a) an organised trading facility (within the meaning of article 4(1)(23) of *MiFID*) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (b) a facility which:
- (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
- (ii) if its operator had a *Home State*, would be an *organised trading facility* within the meaning of article 4(1)(23) of

MiFID.

[**Note:** article 4(1)(23) of *MiFID*]

<i>OTF</i>	<i>organised trading facility.</i>
<i>reportable financial instrument</i>	in <i>SUP 17</i> , those <i>financial instruments</i> in article 26(2) of <i>MiFIR</i> , namely: <ul style="list-style-type: none"> (a) <i>financial instruments</i> which are admitted to trading or are traded on a <i>trading venue</i> for which a request for admission to trading has been made; (b) <i>financial instruments</i> where the underlying is a <i>financial instrument</i> traded on a <i>trading venue</i>; and (c) <i>financial instruments</i> where the underlying is an index or a basket composed of <i>financial instruments</i> traded on a <i>trading venue</i>.
<i>RTS 1</i>	Commission Delegated Regulation (EU) .../.. of [date] supplementing <i>MiFIR</i> with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser.
<i>RTS 2</i>	Commission Delegated Regulation (EU) No .../.. of [date] supplementing <i>MiFIR</i> with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.
<i>RTS 3</i>	Commission Delegated Regulation (EU) No .../.. of [date] supplementing <i>MiFIR</i> with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.
<i>RTS 3A</i>	Commission Delegated Regulation (EU) No .../.. of [...] supplementing <i>MiFID</i> with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.
<i>RTS 6</i>	Commission Delegated Regulation (EU) No .../.. of [date] supplementing <i>MiFID</i> with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members.
<i>RTS 7</i>	Commission Delegated Regulation (EU) .../.. of [date] supplementing <i>MiFID</i> with regard to regulatory technical standards specifying

organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems.

- RTS 8* Commission Delegated Regulation (EU) .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.
- RTS 9* Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards on the ratio of unexecuted orders to transactions.
- RTS 10* Commission Delegated Regulation (EU) .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures.
- RTS 11* Commission Delegated Regulation (EU) .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds.
- RTS 12* Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications.
- RTS 13* Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.
- RTS 14* Commission Delegated Regulation (EU) No .../... of [date] supplementing *MiFIR* with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation.
- RTS 17* Commission Delegated Regulation (EU) No .../..of [date] supplementing *MiFID* with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.
- RTS 18* Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFID* with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.
- RTS 22* Commission Delegated Regulation (EU) .../.. of [date] supplementing *MiFIR* with regard to regulatory technical standards for the reporting of transactions to competent authorities.
- RTS 23* Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFIR* with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the

European Securities and Markets Authority and competent authorities.

<i>RTS 25</i>	Commission Delegated Regulation (EU) .../... of [date] supplementing <i>MiFID</i> with regard to regulatory technical standards for the level of accuracy of business clocks.
<i>RTS 26</i>	Commission Delegated Regulation (EU) .../.. of [date] supplementing <i>MiFIR</i> with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.
<i>RTS 27</i>	Commission Delegated Regulation (EU) .../.. of [date] supplementing <i>MiFID</i> with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions.
<i>RTS 28</i>	Commission Delegated Regulation (EU) .../.. of [date] supplementing <i>MiFID</i> 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.
<i>SME growth market</i>	<p>a <i>multilateral trading facility</i> that is registered as an SME growth market in accordance with article 33 of <i>MiFID</i>.</p> <p>[Note: article 4(1)(12) of <i>MiFID</i>]</p>
<i>sovereign debt</i>	<p>a debt instrument issued by a <i>sovereign issuer</i>.</p> <p>[Note: article 4 (1)(61) of <i>MiFID</i>]</p>
<i>structured deposit</i>	<p>(in accordance with article 3 of the <i>RAO</i>) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:</p> <ul style="list-style-type: none"> (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; (b) a <i>financial instrument</i> or combination of <i>financial instruments</i>; (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or (d) a foreign exchange rate or combination of foreign exchange rates. <p>[Note: article 4(1)(43) of <i>MiFID</i>]</p>
<i>structured finance products</i>	<p>(as defined in article 2(1)(28) of <i>MiFIR</i>) those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets.</p>

[**Note:** article 4(1)(48) of *MiFID*]

tiered agent passport notification a notification made in accordance with article 35(2) of *MiFID* and *ITS 4* Annex VII.

Amend the following as shown.

ancillary service (1) (except in *CONC*) any of the services listed in Section B of Annex I to *MiFID*, that is:

(a) safekeeping and administration of *financial instruments* for the account of *clients* including custodianship and related services such as cash/collateral management and excluding maintaining securities accounts at the top tier level; ('central maintenance service') referred to in point 2 of Section A of the Annex to *CSDR*;

...

...

approved reporting mechanism ~~a trade-matching or reporting system approved by the FCA in accordance with Section 412A of the Act.~~
a person permitted under regulation 5 of the *DRS Regulations* to provide services to an *investment firm* for it to meet its transaction reporting obligations under article 26 of *MiFIR*.

branch (a) ...

(b) (in relation to an *investment firm*):

(i) a place of business other than the head office which is a part of an *investment firm*, which has no legal personality and which provides *investment services and/or activities* and which may also perform *ancillary services* for which the *firm* has been ~~authorized~~ authorised;

(ii) all the places of business set up in the same *EEA State* by an *investment firm* with headquarters in another *EEA State* are regarded as a single branch;

[**Note:** article 4(1)(26) 4(1)(30) of *MiFID*]

(c) ...

derivative (1) (other than in *REC*, *MAR 5* and *MAR 5A*), a contract for differences, a future or an option. (see also *securitised derivative*.)

	(2) <u>(in REC, MAR 5 and MAR 5A), has the meaning in article 2(1)(29) of MiFIR.</u>
<i>designated investment</i>	a <i>security</i> or a contractually-based investment (other than a <i>funeral plan contract</i> and a right to or interest in a <i>funeral plan contract</i>), that is, any of the following <i>investments</i> , specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments), a <i>P2P agreement</i> , and a <i>long-term care insurance contract</i> which is a <i>pure protection contract</i> : ... (h) <i>stakeholder pension scheme</i> (article 82(1)) ; ... (hb) <i>emissions auction product</i> (article 82A) where it is a <i>financial instrument</i> ; (hc) <u><i>emissions allowance</i> (article 82B);</u> ...
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business: ... (daa) <u>operating an <i>organised trading facility</i> (article 25DA);</u> ...
<i>emissions allowance</i>	(a) an 'allowance', within the meaning of article 3(a) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC <u>the <i>Emission Allowance Trading Directive</i>.</u> (b) <u>(in relation to <i>MiFID business</i>) the <i>investment</i>, specified in article 82B of the <i>Regulated Activities Order</i> ('Emission Allowances'), which is in summary <u>emission allowances</u>: (i) <u>consisting of any units recognised for compliance with the requirements of the <i>Emission Allowance Trading Directive</i>; and</u> (ii) <u>to which article 82B of the <i>Regulated Activities Order</i> applies.</u></u>
<i>execution of orders on behalf of clients</i>	acting to conclude agreements to buy or sell one or more <i>financial instruments</i> on behalf of <i>clients</i> <u>including the conclusion of agreements to sell <i>financial instruments</i> issued by an <i>investment firm</i> or a <i>credit</i></u>

institution at the moment of their issuance.

[**Note:** article 4 (1)(5) of *MiFID*]

execute

- (1) (other than in SUP 17) (in relation to a transaction) carry into effect or perform the transaction, whether as *principal* or as agent, including instructing another *person* to execute the transaction;
- (2) (in SUP 17) an action in article 3(1) of RTS 2, excluding an action in article 3(2) of that regulation.

financial instrument

- (1) (other than in (2) and (3)) instruments specified in Section C of Annex I of *MiFID*, that is:

...

- (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (e) options, futures, swaps, ~~forward rate agreements~~ forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties ~~(otherwise than by reason of a default or other termination event)~~ other than by reason of default or other termination event;
- (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market* ~~and/or an MTF~~, an MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;
- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and not being for commercial purposes, which have the characteristics of other derivative financial instruments, ~~having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the MiFID Regulation)~~;

...

- (j) ...

where the conditions in Articles 38(3) and (4) of the *MiFID Regulation* are met;

[**Note:** article ~~4(1)(17)~~ 4(1)(15) and section C of Annex I to *MiFID* and ~~articles 38 and 39 of the *MiFID Regulation*~~]

[*To be updated when Commission publishes delegated acts under article 4 MiFID*]

- (k) emission allowances consisting of any units recognised for compliance with the requirements of the *Emission Allowance Trading Directive*;

Home State

...

- (2) (in relation to an *investment firm*):

...

[**Note:** article ~~4(1)(20)~~ 4(1)(55)(a) of *MiFID*]

...

- (15) (a data reporting services provider):

- (a) the EEA State in which its head office is situated, for a natural person;
- (b) the EEA State in which its registered office is situated, for a legal person;
- (c) if the data reporting services provider has, under its national law, no registered office, the EEA State in which its head office is situated.

[**Note:** article 4(1)(55)(c) of *MiFID*]

Home State regulator

...

- (4) (in *REC*) the competent authority (within the meaning of Article ~~(4)(1)(22)~~ 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* in relation to the *EEA market operator* concerned.

...

- (6) (for a data reporting services provider) the competent authority (within the meaning of article 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* for that data reporting services provider.

Host State

...

- (3) (in relation to *MiFID investment firms*) the *EEA State*, other than the *Home State*, in which an *investment firm* has a branch or

~~performs~~ provides *investment services and/or activities*, or the *EEA State* in which a *regulated market* provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same *EEA State*.

[**Note:** article 4(1)(56) of *MiFID*]

...

[**Note:** article 4(1)(21) of *MiFID*]

IFPRU 125K firm has the meaning in *IFPRU 1.1.9R* (Types of investment firm: IFPRU 125K firm), which in summary is an *IFPRU investment firm* that satisfies the following conditions:

...

- (e) it does not operate a *multilateral trading facility* or an *organised trading facility*.

IFPRU 50K firm has the meaning in *IFPRU 1.1.10R* (Types of investment firm: IFPRU 50K firm) which in summary is an *IFPRU investment firm* that satisfies the following conditions:

...

- (d) it does not operate a *multilateral trading facility* or an *organised trading facility*.

investment firm (1) any ~~person~~ person whose regular occupation or business is the provision of one or more *investment services* to third parties and/or the performance of one or more investment activities on a professional basis.

[**Note:** article 4(1)(1) of *MiFID*]

...

investment service any of the following involving the provision of a service in relation to a *financial instrument*:

...

- (h) operation of ~~*multilateral trading facilities*~~. an *MTF*;

- (i) operation of an *OTF*.

[**Note:** article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

investment services and/or activities any of the services and activities listed in Section A of Annex I to *MiFID* relating to any *financial instrument*, that is:

...

- (h) operation of *multilateral trading facilities*. an MTF; and
- (i) operation of an OTF.

[**Note:** article 4(1)(2) of, and section A of Annex 1 to, *MiFID* and article 6(5) of the *auction regulation*]

key individual

(~~in relation to a UK recognised body~~):

- (a) ~~its chairman or president;~~
- (b) ~~its chief executive;~~
- (c) ~~a member of its governing body;~~
- (d) ~~a person who, alone or jointly with one or more others, is responsible under the immediate authority of a person in (a), (b) or (c) or a committee of the governing body for the conduct of any relevant function. [deleted]~~

management body

- (1) (except for *MiFID* business, data reporting services or the business of a recognised investment exchange) (in accordance with article 3(7) of *CRD*) the governing body and senior personnel of a *CRR firm* who are empowered to set the firm's strategy, objectives and overall direction, and which oversee and monitor management decision-making.
- (2) (for *MiFID* business, data reporting services or the business of a recognised investment exchange) the body or bodies of an investment firm, trading venue operator or data reporting services provider, which:
 - (a) are appointed in accordance with national law;
 - (b) are empowered to set the entity's strategy, objectives and overall direction;
 - (c) oversee and monitor management decision making; and
 - (d) include persons who effectively direct the business of the entity.

[**Note:** article 4 (1)(36) of *MiFID*]

market operator

a person who manages and/or operates the business of a regulated market. ~~The market operator~~ and who may be the regulated market itself.

[**Note:** article 4(1)(13) ~~(4)(1)(18)~~ of *MiFID*]

<i>MiFID</i>	<p>The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC). See also <i>MiFID Regulation</i> and <i>MIFID implementing Directive</i></p> <p><u>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the <i>insurance mediation directive</i> and <i>AIFMD</i>.</u></p>
<i>MiFID II</i>	<p>Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the <i>insurance mediation directive</i> and <i>AIFMD</i> (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_173_R_0009&from=EN). [deleted]</p>
<i>MiFID implementing Directive</i>	<p>Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC 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. [deleted]</p>
<i>MiFID implementing requirement</i>	<p>(1) (In relation to a <i>UK RIE</i>) any of the requirements applicable to that body under the <i>MiFID Regulation</i>.</p> <p>(2) (In relation to a body applying for recognition as a <i>UK RIE</i>) any of the requirements under the <i>MIFID Regulation</i> which, if its application were successful, would apply to it. [deleted]</p>
<i>MiFID investment firm</i>	<p>(1) (in summary) (except in <i>SUP 13, 13A and 14</i> in relation to <u>notification of <i>passported activity</i></u>) a <i>firm</i> to which <i>MIFID</i> applies including, for some purposes only, a <i>credit institution</i> and <i>collective portfolio management investment firm</i>. (in full) a <i>firm</i> which is:</p> <p>(a) an <i>investment firm</i> with its head office in the <i>EEA</i> (or, if it has a registered office, that office);</p> <p>(b) a <i>CRD credit institution</i> (only when providing an <i>investment service or activity</i> in relation to:</p> <p style="margin-left: 40px;">(i) <u>the <i>rules</i> implementing the Articles referred to in Article 1(2) article 1(3) of <i>MiFID</i></u>);</p> <p style="margin-left: 40px;">(ii) <u>the requirements imposed upon it by and under <i>MiFIR</i></u>;</p> <p style="margin-left: 40px;">(iii) <u>the requirements imposed upon it by <i>EU regulations</i> made under <i>MiFID</i></u>);</p> <p>(c) a <i>collective portfolio management investment firm</i> (only when providing the services referred to in article 6(4) <i>AIFMD</i> or Article 6(3) of the <i>UCITS Directive</i> in relation to the <i>rules</i> implementing the articles of <i>MIFID</i> referred to in article 6(6) of <i>AIFMD</i> or Article 6(4) of the <i>UCITS Directive</i> and for a</p>

full-scope UK AIFM the rules implementing article 12(2)(b) of AIFMD);

unless, and to the extent that, *MiFID* does not apply to it as a result of Article 2 (Exemptions) or Article 3 (Optional exemptions) of *MiFID*.

- (2) (in SUP 13, 13A and 14 in relation to notification of *passported activity*) an investment firm with its head office in the EEA (or, if it has a registered office, that office) unless, and to the extent that, *MiFID* does not apply to it as a result of article 2 (Exemptions) or article 3 (Optional exemptions) of *MiFID*.

multilateral trading facility a multilateral system, operated by an *investment firm* or a *market operator*, which brings together multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with ~~the provisions of~~ Title II of *MiFID*.

[**Note:** article 4(1)(15) 4(1)(22) of *MiFID*]

operating a multilateral trading facility

...

In this definition “MiFID instrument” means any investment:

- (a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 82B, 83, 84 or 85 of the *Regulated Activities Order*; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a *financial instrument*.

option

the *investment*, specified in article 83 of the *Regulated Activities Order* (Options), which is in summary an option to acquire or dispose of:

- (a) a *designated investment* (other than a *P2P agreement*, an option or one to which (d) or (e) applies); or

...

overseas firm

- (1) (in relation to *MAR 5* and *MAR 5A*) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom* excluding an *incoming EEA firm*.

- (2) (in any other case) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

portfolio management

managing portfolios in accordance with mandates given by *clients* on a discretionary *client-by-client* basis where such portfolios include one or more *financial instruments*.

[~~Note: article 4(1)(9)~~ 4(1)(8) of *MiFID*]

- qualifying holding*
- (1) (in *GENPRU* and *BIPRU*) has the meaning in *GENPRU_2.2.203R* (Qualifying holdings), which is in summary a direct or indirect holding of a *bank* or *building society* in a non-financial *undertaking* which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that *undertaking*.
 - (2) (otherwise) ~~any~~ a direct or indirect holding in an *investment firm* which represents 10% or more of the capital or of the voting rights, as set out in ~~Article 92~~ articles 9 and 10 of the ~~European Parliament and Council Directive on the admission of securities to official stock exchange listing and on information to be published on those securities (No. 2001/34/EC) *Transparency Directive*, taking into account the conditions regarding aggregation in article 12(4) and (5) of that Directive~~, or which makes it possible to exercise a significant influence over the management of the *investment firm* in which that holding subsists.

[~~Note: article 4(1)(27)~~ 4(1)(31) of *MiFID*]

- regulated market*
- (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with ~~the provisions of Title III of *MiFID*~~.

[~~Note: article 4(1)(14)~~ 4(1)(21) of *MiFID*]

...

- security*
- (1) (except in *LR* and *CONC*) (in accordance with article 3(1) of the *Regulated Activities Order* (Interpretation)) any of the following *investments* specified in that Order:

...

(gb) *emissions allowance* (article 82B); and

...

...

- small and medium-sized enterprise*
- (1) (in *MAR 5*) companies that had an average market capitalisation of less than €200,000,000 based on end-year quotes for the previous three calendar years.

[**Note:** article 4(1)(13) of *MiFID*]

- (2) (in *PR*) (as defined in article 2.1(f) of the *prospectus directive*) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000.

systematic internaliser

(has the meaning in article 4(1)(20) of *MiFID*) (in summary) an investment firm which, on an organised, frequent and, systematic and substantial basis, deals on own account by executing ~~client~~ client orders outside a regulated market or, an MTF or an OTF without operating a multilateral system.

[**Note:** article 4(1)(7) ~~4(1)(20)~~ of *MiFID*]

third country investment firm

a firm which would be a *MiFID investment firm* if it had its head office or registered office in the *EEA*.

trading venue

- (1) (except in *FINMAR*) a regulated market, an MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the EU with similar functions to a regulated market or MTF or an OTF.

[**Note:** ~~article 2(8) of the *MiFID Regulation*~~ article 4(1)(24) of *MiFID*]

- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) a regulated market or an MTF.

transaction

- (1) (except in *CONC App 1.1 and SUP 17*) only the purchase and sale of a financial instrument. ~~For the purposes of the *MiFID Regulation*, excluding Chapter II, this does not include:~~
- (a) ~~securities financing transactions; or~~
 - (b) ~~the exercise of options or covered warrants; or~~
 - (c) ~~primary market transactions (such as issuance allotment or subscription) in financial instruments falling within Article 4(1)(18)(a) and (b) of *MiFID*.~~
- (2) (in *CONC App 1.1*, except in *CONC App 1.1.6R (1)(c)*) a credit agreement, any transaction which is a linked transaction, any contract for the provision of security relating to the credit agreement, any credit broking contract relating to the credit agreement and any other contract to which the borrower or a relative of his is a party and which the lender requires to be made or maintained as a condition of the making of the credit agreement.

~~[Note: article 5 of the *MiFID Regulation*]~~

- (3) (in SUP 17), a concluded acquisition or disposal of a reportable financial instrument, including those in articles 2(2) to 2(4) of RTS 22, but excluding those in article 2(5) of that Regulation.

*transferable
security*

...

- (3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

...

[Note: article 4(1)(18) 4(1)(44) of *MiFID*]

*UCITS
management
company*

...

- (2) (in relation to *MiFID business*) a *management company* as defined in the *UCITS Directive*.

[Note: ~~article 4 (1)(24)~~ article 4(1)(28) of *MiFID*]

Annex B

Amendments to the Principles for Businesses (PRIN)

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

1 Introduction

1.1 Application and purpose

...

Purpose

- 1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the ~~appropriate regulator's~~ FCA's rule-making powers as set out in the *Act* and reflect the *statutory objectives*.

...

Taking group activities into account

- 1.1.5 G *Principles* 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) 11 (Relations with regulators) take into account the activities of members of a *firm's group*.

...

Standards in markets outside the United Kingdom

- 1.1.6 G As set out in *PRIN* 3.3 (Where?), *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control) apply to world-wide activities in a *prudential context*. *Principle* 5 (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the *UK financial system*. In considering whether to take regulatory action under these *Principles* in relation to activities carried on outside the *United Kingdom*, the ~~appropriate regulator~~ FCA will take into account the standards expected in the market in which the *firm* is operating. *Principle* 11 (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under *Principle* 11 in relation to cooperation with an overseas regulator, the ~~appropriate regulator~~ FCA will have regard to the extent of, and limits to, the duties owed by the *firm* to that regulator. (*Principle* 4 (Financial prudence) also applies to world-wide activities.)

...

Consequences of breaching the Principles

1.1.7 G ... Under each of the *Principles* the onus will be on the ~~appropriate regulator~~ FCA to show that a *firm* has been at fault in some way. What constitutes "fault" varies between different *Principles*. Under *Principle 1* (Integrity), for example, the ~~appropriate regulator~~ FCA would need to demonstrate a lack of integrity in the conduct of a *firm's* business ...

...

1.1.9 G Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the ~~appropriate regulator's~~ FCA's other *rules* and *guidance* or EU regulations should not be viewed as exhausting the implications of the *Principles* themselves.

...

1 Annex 1R Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

1.1	A <i>firm</i> may categorise the following types of <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> :		
	...		
	(4)	a State investment body, or a body charged with, or intervening in, the management of the public debt <u>at national level</u> ;	
	...		
1.2	A <i>firm</i> may classify a <i>client</i> (other than another <i>firm</i> , <i>regulated collective investment scheme</i> , or an <i>overseas financial services institution</i>) as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> under 1.1(7) if:		
	(1)	the <i>client</i> at the time he is classified is one of the following:	
		...	

		(c)	a local authority or public authority; [deleted]
		...	
	...		

2.1 The Principles

2.1.1 R The Principles

...	
11 Relations with regulators	A <i>firm</i> must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator <u>FCA</u> appropriately anything relating to the <i>firm</i> of which that regulator would reasonably expect notice.

...

3.1 Who?

...

3.1.2 G *COBS* 1 Annex 1 and the territorial *guidance* in ~~PERG 13.6~~ 13.7 all contain *guidance* that is relevant to the reservation of responsibility to a *Home State regulator* referred to in *PRIN* 3.1.1R(1).

...

3.2 What?

...

3.2.3 R *Principles* 3, 4 and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) 11 (and this chapter) also:

- (1) apply with respect to the carrying on of *unregulated activities* (for *Principle* 3 this is only in a *prudential context*); and
- (2) take into account any activity of other members of a *group* of which the

firm is a member.

3.3 Where?

3.3.1 R Territorial application of the Principles

Principle	Territorial application
<i>Principles 1, 2 and 3</i>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule or EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule or EU regulation</i> .
...	
<i>Principles 6, 7, 8, 9 and 10</i>	Principle 8, in a prudential context, applies with respect to activities wherever they are carried on; otherwise apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule or EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule or EU regulation</i> .
...	

3.4 General

Clients and the Principles

3.4.1 R ~~Although Principle 7 refers to clients,~~ For business other than *MiFID or equivalent third country business*, the only requirement of *Principle 7* relating to *eligible counterparties* is that a *firm* must communicate information to *eligible counterparties* in a way that is not misleading.

3.4.1A G *Principle 7* applies in full to *MiFID or equivalent third country business*, similar to the effect of *COBS* [] [implementing article 30(1) of *MiFID*].

[COBS reference to be inserted following later FCA MiFID consultation in relation to this COBS change]

...

Reference to “regulators” in Principle 11

- 3.4.5 R Where *Principle 11* refers to regulators, this means, in addition to the ~~appropriate regulator~~ FCA, other regulators with recognised jurisdiction in relation to *regulated activities*, whether in the *United Kingdom* or abroad.

4.1 Principles: MiFID business

- 4.1.1 G *PRIN 3.1.6R* ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with an *EU* instrument. If a ~~Principles~~ *Principle* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle* but only to the extent necessary to ensure compliance with European law. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable *rule* or *EU regulation* which is relevant to an activity has a wider territorial scope. ...

...

What?

- 4.1.4 G (1) Certain requirements under *MiFID* are disapplied for:

(a) ~~eligible counterparty business~~; [deleted]

...

...

(3) *Principles 3, 4, 5, 7, 8, 10 and 11* are not limited in this way.

- 4.1.5 G ~~Although *Principle 8* does not apply to *eligible counterparty business*, a *firm* will owe obligations in respect of conflicts of interest set out in *SYSC 10* which are wider than those contained in *Principle 8* in that they apply to *eligible counterparty business*.~~ [deleted]

Annex C

Amendments to the General Provisions (GEN)

In this Annex, all of the text is new and is not underlined.

EU Regulations and third country firms

- 2.2.22A R (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *EU regulation* adopted as at 3 January 2017 under *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
- (a) when it carries on *MiFID* or *equivalent third country business*; and
 - (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
- (2) Paragraph (1) does not apply:
- (a) to the extent *MiFIR* or an *EU regulation* adopted under *MiFIR* or *MiFID* impose a specific requirement in relation to a *third country investment firm*; and
 - (b) to *EU regulations* adopted under articles 7, 34 and 35 *MiFID*.
- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.
- 2.2.22B G (1) The purpose of *GEN 2.2.22AR* is to ensure consistency with the principle referred to in recital 109 to *MiFID* that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*. A *third country investment firm* does not, however, benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.
- (2) *GEN 2.2.22AR* may be overridden where the individual application provisions at the beginning of individual *Handbook* chapters qualify its effect.

Annex D

Amendments to the Market Conduct sourcebook (MAR)

In MAR 5, MAR 6 and MAR Schedules 1 and 2 underlining indicates new text and striking through indicates deleted text, unless otherwise stated. In MAR 5A, 7A and MAR 9 the text is all new and is not underlined.

5 Multilateral trading facilities (MTFs)

5.1 Application

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and *direct electronic access*.~~

See ~~www.esma.europa.eu/system/files/esma_2012_122_en.pdf~~

Who and what?

5.1.1 R This chapter applies to:

- (1) a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *MTF* from an establishment in the *United Kingdom*.

Status of EU provisions as rules in certain instances

5.1.2 R ~~In this chapter, provisions marked “EU” apply to an *overseas firm* as if they were rules. *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.~~
G

5.2 Purpose

5.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles ~~14, 26, 29 and 30~~ 18, 19, 31, 32, 33, 48, 49 and 50 of *MiFID*. This chapter does not apply to bilateral systems, which are excluded from the *MTF* definition. ~~It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.~~

5.3 Trading process requirements

Rules, procedures and arrangements

- 5.3.1 R ~~A firm operating an MTF~~ must have:
- (1) transparent ~~and non-discretionary~~ rules and procedures for fair and orderly trading;

[**Note:** article ~~14~~ 18(1) of *MiFID*]
 - (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[**Note:** articles ~~14~~ 18 (1) and 19(1) of *MiFID*]
 - (2A) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[**Note:** article 18(1) of *MiFID*]
 - (3) transparent rules regarding the criteria for determining the *financial instruments* that can be traded under its systems;

[**Note:** subparagraph 1 of article ~~14~~ 18(2) of *MiFID*]
 - (4) published, transparent and non-discriminatory rules, based on objective criteria, governing access to its facility, and which ~~rules~~ must provide that its members or participants are *investment firms*, *CRD credit institutions* or other *persons* who:
 - (a) are ~~fit and proper~~ of sufficient good repute;
 - (b) have a sufficient level of trading ability and competence;
 - (c) where applicable, have adequate organisational arrangements;
 - (d) have sufficient resources for the role they are to perform, taking into account the different financial arrangements that the *firm* operating the *MTF* may have established in order to guarantee the adequate settlement of *transactions*; and

[**Note:** articles ~~14(4) and 42(3)~~ 18(3), 19(2) and 53(3) of *MiFID*]
 - (5) ~~where applicable must~~ arrangements provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded; and

[**Note:** subparagraph 2 of article ~~14~~ 18(2) of *MiFID*]
 - (6) (as between the interests of the *MTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly

and to manage any conflict with adverse consequences for:

- (a) the operation of the *trading venue* for the members and participants or users; or
- (b) the members and participants or users otherwise.

[Note: article 18(4) of *MiFID*]

Functioning of an MTF

5.3.1A **R** *A firm* must:

- (1) ensure the *MTF* has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[Note: article 18(7) of *MiFID*]

- (2) have arrangements to ensure it is adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks and put in place effective measures to mitigate those risks;

[Note: article 19(3)(a) of *MiFID*]

- (3) have available at the time of *authorisation* and on an ongoing basis, sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the venue and the range and degree of the risks to which it is exposed;

[Note: article 19(3)(c) of *MiFID*]

- (4) not execute client orders against proprietary capital, or engage in *matched principal trading*; and

[Note: article 19(5) of *MiFID*]

- (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*]

- (6) provide the following to the FCA:
- (a) a detailed description of the functioning of the MTF, including any links to or participation by a regulated market, an MTF or OTF or systematic internaliser owned by the same firm; and
- (b) a list of its members, participants and users.

[Note: article 18(10) of MiFID and ITS 19 with regard to the content and format of the description of the functioning of MTFs]

- 5.3.1B G The requirement in MAR 5.3.1A R(4) does not prevent a firm, with the appropriate permission, from executing orders against its proprietary capital or engaging in matched principal trading outside the MTF it operates.

~~Publication of pre and post trade information for shares not admitted to trading on a regulated market~~

- 5.3.2 G ~~In the case of shares not admitted to trading on a regulated market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public on reasonable commercial terms:~~
- (1) ~~on a continuous basis during normal trading hours, information about the quotes and orders relating to these shares which the MTF displays or advertises to its users; and~~
- (2) ~~as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems.~~
~~[deleted]~~

- 5.3.3 G ~~The firm may make information about a large quote, order or transaction available under MAR 5.3.2G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction. [deleted]~~

~~Publication of post trade information for financial instruments other than shares~~

- 5.3.4 G ~~Where financial instruments other than shares are traded on an MTF, and the same or substantially similar instruments are also traded on a UK RIE, a regulated market or an EEA commodities market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems. [deleted]~~

- 5.3.5 ~~G For large transactions in *debt securities*, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient transparency of the volume of a trade. [deleted]~~
- 5.3.6 ~~G The firm may make information about a large quote, order or transaction available under MAR 5.3.4G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction. [deleted]~~

Operation of a primary market in ~~shares~~ financial instruments not admitted to trading on a regulated market

- 5.3.7 G The FCA will be minded to impose a variation on the *Part 4A Permission permission* of an MTF operator (other than an SME growth market) that operates a primary market in ~~shares~~ financial instruments not admitted to trading on a regulated market in order to ensure its fulfilment of the requirements in MAR 5.3.1R as regards fair and orderly trading.

Transferable securities traded without issuer consent

- 5.3.8 R Where a *transferable security*, which has been *admitted to trading* on a regulated market, is also traded on an MTF without the consent of the issuer, the firm operating the MTF must not make the issuer subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that MTF.

[Note: article 14(6) ~~18(8)~~ of MiFID]

After MAR 5.3 insert the following new section. The text is not underlined.

5.3A Systems and controls for algorithmic trading

Systems and controls

- 5.3A.1 R A firm must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5.3A.2 R MAR 5.3A.1R applies in particular to systems and controls concerning:
- (1) the resilience of the firm's trading systems;
 - (2) capacity to deal with peak order and message volumes;
 - (3) the ability to ensure orderly trading under conditions of severe

market stress;

- (4) the effectiveness of business continuity arrangements to ensure the continuity of the *MTF's* services if there is any failure of its trading systems, including the testing of the *MTF's* systems and controls;
- (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
- (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
- (7) the ability to ensure any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being managed, including systems to limit the ratio of unexecuted orders to *transactions* that may be entered into the *MTF's* trading system by a *member* or participant;
- (8) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
- (9) the ability to limit and enforce the minimum tick size which may be executed on the *MTF*; and
- (10) the requirement for *members* and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[**Note:** article 48(1),(4) and (6) of *MiFID*, *RTS 7*, *RTS 9*, and *RTS 11*]

Market making agreements

5.3A.3 R *A firm* must:

- (1) have written agreements with all *investment firms* pursuing a *market making strategy* on *trading venues* operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a *trading venue*, to ensure that a sufficient number of *investment firms* enter into market making agreements;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the *FCA* of the content of its market making agreements; and
- (5) provide the *FCA* with any information it requests which the *FCA* reasonably requires to be satisfied that the market making agreements comply with this *rule*.

[Note: article 48(2) and (3) of *MiFID*, and *RTS 8*]

- 5.3A.4 R A market making agreement in *MAR 5.3A.3R(1)* must specify:
- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
 - (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme; and
 - (3) any incentives in terms of rebates or otherwise offered by the *firm* to the *investment firm* in order for it to provide liquidity to the *MTF* on a regular and predictable basis.

[Note: article 48(3) of *MiFID* and *RTS 8*]

Measures to prevent disorderly markets

- 5.3A.5 R A *firm* must have the ability to:
- (1) temporarily halt or constrain trading on the *MTF* if there is a significant price movement in a *financial instrument* on the *MTF* or a related *trading venue* during a short period; and
 - (2) in exceptional cases, cancel, vary or correct any *transaction*.

[Note: article 48(5) of *MiFID*]

- 5.3A.6 R For the purposes of *MAR 5.2A.3R* and to avoid significant disruptions to the orderliness of trading, a *firm* must calibrate the parameters for halting trading in a way which takes into account the following:
- (1) the liquidity of different asset classes and subclasses;
 - (2) the nature of the *trading venue* market model; and
 - (3) the types of users.

[Note: article 48(5) of *MiFID*]

- 5.3A.7 R The *firm* must report the parameters mentioned in *MAR 5.3A.6R* to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[Note: article 48(5) of *MiFID*]

- 5.3A.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *MTF* operated by the *firm* is material in terms of liquidity of the trading of a *financial instrument* in the *EEA*; and
 - (2) trading is halted in that instrument,

[Note: article 48(5) of *MiFID*]

Direct electronic access

- 5.3A.9 R A *firm* which permits *direct electronic access* to an *MTF* it operates must:
- (1) not permit *members* or participants of the *MTF* to provide such services unless they are:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) *third country investment firms*; or
 - (d) *overseas firms* registered in accordance with article 46 of *MiFIR*;
 - (2) set, and apply, criteria for the suitability of *persons* to whom *direct electronic access* services may be provided;
 - (3) ensure that the member or participant of the *MTF* retains responsibility for adherence to the requirements of *MiFID* in respect of orders and trades executed using the *direct electronic access* service;
 - (4) set standards for risk controls and thresholds on trading through *direct electronic access*;
 - (5) be able to distinguish and if necessary stop orders or trading on that *trading venue* by a *person* using *direct electronic access* separately from:
 - (a) other orders;
 - (b) trading by the member or participant providing the *direct electronic access*; and
 - (6) have arrangements to suspend or terminate the provision of *direct electronic access* on that market by a *member* or participant in the case of any non-compliance with this *rule*.

[Note: article 48(7) of *MiFID*]

Co-location

- 5.3A.10 R Where a *firm* permits co-location in relation to the *MTF*, its co-location services must be transparent, fair and non-discriminatory.

[Note: article 48(8) of *MiFID* and *RTS 10*]

Fee structures

5.3A.11 R A *firm*'s fee structure, for all fees it charges and rebates it grants in relation to the *MTF*, must:

- (1) be transparent, fair and non-discriminatory;
- (2) not create incentives to place, modify or cancel orders, or execute *transactions*, in a way which contributes to disorderly trading or market abuse; and
- (3) impose market making obligations in individual *financial instruments* or suitable baskets of *financial instruments* for any rebates that are granted.

[Note: article 48(9) of *MiFID* and *RTS 10*]

5.3A.12 G Nothing in *MAR* 5.2A.11R prevents a *firm*:

- (1) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
- (2) calibrating its fees to each *financial instrument* to which they apply;
- (3) imposing a higher fee for placing an order which is cancelled than an order which is executed;
- (4) imposing a higher fee on participants placing a high ratio of cancelled orders to executed orders; and
- (5) imposing a higher fee on a *person* operating a *high-frequency algorithmic trading technique*.

[Note: article 48(9) of *MiFID*]

Flagging orders, tick sizes and clock synchronisation

5.3A.13 R A *firm* must require *members* and participants of an *MTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:

- (1) different algorithms used for the creation of orders; and
- (2) the *persons* initiating those orders.

[Note: article 48(10) of *MiFID*]

5.3A.14 R A *firm* must adopt tick size regimes in:

- (1) *shares, depositary receipts, exchange-traded funds, certificates* and other similar *financial instruments* traded on the *MTF*; and
- (2) any other *financial instrument* which is traded on that *trading venue*, as required by a regulatory technical standard made under article

49.3 or 49.4 of *MiFID*.

[**Note:** article 49 of *MiFID* and *RTS 11*]

- 5.3A.15 R The tick size regime referred to in *MAR 5.2A.14R* must:
- (1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
 - (2) adapt the tick size for each *financial instrument* appropriately.

[**Note:** article 49 of *MiFID* and *RTS 11*]

- 5.3A.16 G Nothing in *MAR 5.3A.14R* or *MAR 5.3A.15R* requires a *firm* to act inconsistently with any regulatory technical standards made under article 49.3 or 49.4 of *MiFID*.

[**Note:** article 49 of *MiFID*]

- 5.3A.17 R A *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.

[**Note:** article 50 of *MiFID* and *RTS 25*]

- 5.3A.18 G For the purpose of *MAR 5.3A.17R*, the regulatory technical standards made under article 50 of *MiFID* provide further requirements.

5.4 Finalisation of transactions

- 5.4.1 R A *firm* ~~operating an MTF~~ must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in ~~that~~ its MTF; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[**Note:** articles ~~14(5)~~ 18(6) and 19(3)(b) of *MiFID*]

[**Note:** In relation to derivative transactions, *RTS 26* contains requirements on the systems for clearing of such transactions.]

5.5 Monitoring compliance with the rules of the MTF

- 5.5.1 R A *firm* ~~operating an MTF~~ must:

- (1) have effective arrangements and procedures relevant to ~~the~~ its MTF

for the regular monitoring of the compliance by its users with its rules; and

- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

[**Note:** article ~~26~~ 31(1) of *MiFID*]

5.6 Reporting requirements

5.6.1 R ~~A firm operating an MTF~~ must:

- (1) report to the *FCA* any:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; and
 - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the *FCA* and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the *firm's* systems.

[**Note:** article ~~26~~ 31(2) of *MiFID* and [[...]] of the *MiFID Delegated Act* and *RTS 18* on suspension and removal of financial instruments from trading]

After MAR 5.6 insert the following new section. The text is not underlined.

5.6A Suspension and removal of financial instruments

5.6A.1 R *A firm* must:

- (1) not exercise any power under its rules to suspend or remove from trading any *financial instrument* which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the *trading venue*;
- (2) where it does suspend or remove from trading a *financial instrument*,

also suspend or remove *derivatives* that relate or are referenced to that *financial instrument*, where necessary to support the objectives of the suspension or removal of the underlying; and

- (3) make public any decision in (2) and notify the *FCA* of it.

[**Note:** article 32 of *MiFID*, [[...] of the *MiFID* Delegated Act], *RTS 18* and *ITS 2*]

5.7 **Pre- and post-trade transparency requirements for shares equity and non-equity instruments: form of waiver and deferral**

...

- 5.7.1A D *A firm that makes an application to the FCA for a waiver in accordance with articles 4 or 9 of MiFIR (in relation to pre-trade transparency for equity or non-equity instruments) must make it in the approved form.*

[**Note:** articles 4 and 9 of *MiFIR*, and *RTS 1* and *2*]

- 5.7.1B G *According to article 4(7) of MiFIR, waivers granted by competent authorities in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2017 shall be reviewed by ESMA by 3 January 2019. ESMA shall issue an opinion to the competent authority, assessing the continued compatibility of those waivers with the requirements established in MiFIR and any regulations made pursuant to it. The FCA will cooperate with ESMA in relation to the continued effect of existing waivers.*

- 5.7.1C D *A firm that makes an application to the FCA for deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must make it in the approved form.*

[**Note:** articles 7 and 11 of *MiFIR*, and *RTS 1* and *2*]

Pre-trade information

- 5.7.2 EU (1) ~~*An investment firm or market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [of the MiFID Regulation], make public the information set out in paragraphs 2 to 6.*~~
- (2) ~~*Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid*~~

and offer price levels.

- (3) ~~Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.~~

~~The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.~~

~~In exceptional market conditions, however, one way prices may be allowed for a limited time.~~

- (4) ~~Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its *normal trading hours* the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.~~

- (5) ~~Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share. In particular, the five best bid and offer price levels and/or two way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.~~

- (6) ~~A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the *MiFID Regulation*].~~

~~[Note: Article 17 of the *MiFID Regulation*] [deleted]~~

Table 1: Information to be made public in accordance with Article 17

5.7.3

EU	Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels

	continuous basis	
Quote driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
Trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

[~~Note: Table 1, Annex II of the MiFID Regulation~~] [~~deleted~~]

Publication of pre-trade information

5.7.4 EU (1) ~~A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.~~

(2) ~~Pre-trade information ... shall be made available as close to real time as possible ...~~

[~~Note: Article 29(1) and (2) of the MiFID Regulation~~] [~~deleted~~]

5.7.5 EU ~~Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.~~

[~~Note: Recital (18) to the MiFID Regulation~~] [~~deleted~~]

Disapplication of the pre-trade transparency requirements

- 5.7.6 G The obligation in *MAR 5.7.1R(1)* to make public certain pre-trade information is disappplied in *MAR 5.7.1R(2)* based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in *MAR 5.7.8EU*, *MAR 5.7.9EU*, *MAR 5.7.10EU* and *MAR 5.7.11EU*. In particular, the obligation is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.
- [~~Note: Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*~~] [deleted]
- 5.7.7 EU If ~~granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.~~
- [~~Note: Recital 12 to the *MiFID Regulation*~~] [deleted]
- 5.7.8 EU (1) Waivers in accordance with Article 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC may be granted by the *competent authorities* for systems operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:
- (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
 - (b) they formalise negotiated transactions, each of which meets one of the following criteria:
 - (i) it is made at or within the current volume-weighted spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
 - (ii) it is subject to conditions other than the current market price of the share.

For the purposes of point (b), the other conditions specified in the rules of the regulated market or *MTF* for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

- (2) ~~Waivers in accordance with Articles 29(2) and 44(2) of [the MiFID] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market.~~

~~[Note: Article 18 of the MiFID Regulation] [deleted]~~

5.7.9 EU For the purpose of Article 18(1)(b) ~~[of the MiFID Regulation]~~ a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* and where that member or participant in doing so undertakes one of the following tasks:

- (a) ~~dealing on own account with another member or participant who acts for the account of a client;~~
- (b) ~~dealing with another member or participant, where both are executing orders on own account;~~
- (c) ~~acting for the account of both the buyer and seller;~~
- (d) ~~acting for the account of the buyer, where another member or participant acts for the account of the seller;~~
- (e) ~~trading for own account against a client order.~~

~~[Note: Article 19 of the MiFID Regulation] [deleted]~~

5.7.10 EU An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II ~~[of the MiFID Regulation]~~. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 ~~[of the MiFID Regulation]~~.

~~[Note: Article 20 of the MiFID Regulation] [deleted]~~

Table 2: Orders large in scale compared with normal market size

5.7.11	EU	Class in terms of average daily turnover (ADT)	ADT < €500 000	€500 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €25 000 000	€25 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
		Minimum size of	€50 000	€100 000	€250 000	€400 000	€500 000

order qualifying as large in scale compared with normal market size					
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~~[Note: Table 2, Annex II of the *MiFID Regulation*] [deleted]~~

- 5.7.12 G ~~The *FCA* will publish on its website the calculations and estimates for shares admitted to trading on a regulated market, made by the *FCA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*. [deleted]~~

5.8 Provisions common to pre- and post-trade transparency requirements for shares ~~[deleted]~~

- 5.8.1 EU ~~For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this [*MiFID*] *Regulation*, pre and post trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:~~

- ~~(a) the facilities of a *regulated market* or an *MTF*;~~
- ~~(b) the facilities of a third party;~~
- ~~(c) proprietary arrangements.~~

~~[Note: Article 30 of the *MiFID Regulation*] [deleted]~~

- 5.8.2 EU ~~Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the *MiFID Regulation*], shall satisfy the following conditions:~~
- ~~(a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;~~
 - ~~(b) it must facilitate the consolidation of the data with similar data from other sources;~~
 - ~~(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.~~

~~[Note: Article 32 of the *MiFID Regulation*] [deleted]~~

- 5.8.3 G ~~The *FCA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *MAR* 5.8.2EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross check of the accuracy of the information generated by the trading~~

~~process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business. [deleted]~~

- 5.8.4 G (1) ~~In respect of arrangements facilitating the consolidation of data as required in MAR 5.8.2EU(b), the FCA considers information as being made public in accordance with MAR 5.8.2EU(b), if it:~~
- ~~(a) is accessible by automated electronic means in a machine-readable way;~~
 - ~~(b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and~~
 - ~~(c) is accompanied by instructions outlining how users can access the information.~~
- (2) ~~The FCA considers that an arrangement fulfils the ‘machine-readable’ criteria where the data:~~
- ~~(a) is in a physical form that is designed to be read by a computer;~~
 - ~~(b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and~~
 - ~~(c) is in a format that is known in advance by the party wishing to access the data.~~
- (3) ~~The FCA considers that publication on a non-machine readable website would not meet the MiFID requirements.~~
- (4) ~~The FCA considers that information that is made public in accordance with MAR 5.8.2EU should conform to a consistent and structured format based on industry standards. Firms operating an MTF can choose the structure that they use. [deleted]~~

5.9 Post-trade transparency requirements for shares [deleted]

- 5.9.1 R (1) ~~In respect of shares admitted to trading on a regulated market, unless MAR 5.9.1R(2) applies and MAR 5.9.7R is satisfied, a firm operating an MTF must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an MTF that is made public under the systems of a regulated market.~~

~~[Note: Article 30(1) of *MiFID*]~~

- (2) ~~A firm may defer publication of trade information required in (1) for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and transaction concerned, provided that the following criteria in (a) and (b) are satisfied and subject to the provision in (c):~~
- ~~(a) the transaction is between an *investment firm dealing on own account* and a *client* of that firm;~~
 - ~~(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II;~~
 - ~~(c) in order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading* on a *regulated market* must be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.~~

~~[Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in MAR 7 Annex 1EU.] [deleted]~~

- 5.9.2 EU ~~Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.~~

~~[Note: Recital 18 to the *MiFID Regulation*] [deleted]~~

Post-trade information

- 5.9.3 EU (1) ~~*Investment firms, regulated markets and investment firms and market operators operating an MTF* shall, with regard to transactions in respect of shares admitted to trading on *regulated markets* concluded by them or, in the case of *regulated markets* or *MTFs*, within their systems, make public the following details:~~
- ~~(a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [of the *MiFID Regulation*];~~
 - ~~(b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;~~
 - ~~(c) an indication that the trade was a negotiated trade, where applicable;~~

- (d) ~~any amendments to previously disclosed information, where applicable.~~

~~Those details shall be made public either by reference to each transaction or in a form aggregating the volume and price of all transactions in the same share taking place at the same price at the same time.~~

~~[Note: Article 27(1) of the *MiFID Regulation*] [deleted]~~

~~Publication of post-trade information~~

- 5.9.4 EU (1) ~~...~~
- (2) ~~... post-trade information relating to transactions taking place on trading venues within *normal trading hours*, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.~~
- (3) ~~Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. Each constituent transaction shall be assessed separately for the purpose of determining whether deferred publication in respect of that transaction is available under Article 28 [of the *MiFID Regulation*].~~
- (4) ~~Post-trade information relating to transactions taking place on a trading venue but outside its *normal trading hours* shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.~~

~~[Note: Article 29(2) to (4) of the *MiFID Regulation*] [deleted]~~

- 5.9.5 EU (1) ~~... A reference to the opening of the trading day shall be a reference to the commencement of the *normal trading hours* of the trading venue ...~~

~~[Note: Article 4(1) of the *MiFID Regulation*] [deleted]~~

~~Deferred publication of post-trade information~~

- 5.9.6 EU ~~The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [of the *MiFID Regulation*] [reproduced in *MAR 7 Annex 1EU*] for the class of share and transaction concerned, provided that the following criteria are satisfied:~~
- (a) ~~the transaction is between an *investment firm dealing on own account* and a *client* of that firm;~~

- (b) ~~the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.~~

~~In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 [of the *MiFID Regulation*].~~

~~[Note: Article 28 of the *MiFID Regulation*] [deleted]~~

- 5.9.6A G ~~The deferred publication of information, referred to in MAR 5.9.6EU, is authorized by the *FCA*, to the extent set out in that provision, and, in particular, is given effect in MAR 5.9.1R(2). [deleted]~~
- 5.9.7 R ~~An *MTF* must obtain the prior approval of the *FCA* to proposed arrangements for deferred post trade publication and must clearly disclose such arrangements to market participants and the investing public.~~

~~[Note: Article 30(2) of *MiFID*] [deleted]~~

After MAR 5 insert the following new chapter. The text is not underlined.

5A Organised trading facilities (OTFs)

5A.1 Application

Who and what?

- 5A.1.1 R This chapter applies to:
- (1) a *UK domestic firm* which operates an *OTF* from an establishment in the *United Kingdom* or elsewhere; or
 - (2) an *overseas firm* which operates an *OTF* from an establishment in the *United Kingdom*.
- 5A.1.2 G In addition:
- (1) in accordance with paragraph 15(9) of the Schedule to the *Recognition Requirement Regulations* and REC 2.16A.1GR, MAR 5A.3.8R applies to a *UK RIE* as though it was an *investment firm*.
 - (2) GEN 2.2.22AR applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.

5A.2 Purpose

- 5A.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *OTFs*, specifically articles 18, 20, 31, 32, 48, 49 and 50 of *MiFID*.
- 5A.2.2 G *MAR* 5A.3.8R also sets out how the obligations of an *investment firm* under articles 16, 24, 25, 27 and 28 apply to a *firm* operating an *OTF* in respect of that operation.
- 5A.2.3 G This chapter does not apply to bilateral systems, which are excluded from the *OTF* definition.

5A.3 Specific requirements for OTFs

Executing orders

- 5A.3.1 R A *firm* must:
- (1) execute orders on a discretionary basis in accordance with *MAR* 5A.3.2R;
 - (2) unless permitted in *MAR* 5A.3.5R, not execute any *client* orders against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the *firm*; and
 - (3) ensure that the *OTF* does not connect with another *OTF* or with a *systematic internaliser* in a way which enables orders in the different *OTFs* or *systematic internaliser* to interact.

[**Note:** article 20(1) to (4) and (6) of *MiFID*]

- 5A.3.2 R The discretion which the *firm* must exercise in executing a *client* order must be either, or both, of the following:
- (1) the first discretion is whether to place or retract an order on the *OTF*;
 - (2) the second discretion is whether to match a specific *client* order with other orders available on the *OTF* 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 *firm's* obligations under article 27 of *MiFID*.

[**Note:** article 20(6) of *MiFID*]

- 5A.3.3 G Where the *OTF* crosses *client* orders, the *firm* may decide if, when and how much of two or more orders it wants to match. In addition, subject to the requirements of this section, the *firm* may facilitate negotiation between *clients* so as to bring together two or more potentially comparable trading interests in a transaction.

[Note: article 20(6) of *MiFID*]

- 5A.3.4 G *MAR* 5A.3 does not prevent a *firm* from engaging another *investment firm* to carry out market making on an independent basis on an *OTF* operated by it provided the *investment firm* does not have *close links* with the *firm*.

[Note: article 20(5) of *MiFID*]

Proprietary trading

- 5A.3.5 R A *firm* must not engage in:
- (1) *matched principal trading* on an *OTF* operated by it except in bonds, *structured finance products*, *emission allowances* and *derivatives* which have not been declared subject to the clearing obligation in accordance with article 5 of *EMIR*, and where the *client* has consented; or
 - (2) *dealing on own account* on an *OTF* operated by it, excluding *matched principal trading*, except in *sovereign debt instruments* for which there is not a *liquid market*.

[Note: article 20(2) and (3) of *MiFID*]

- 5A.3.6 R A *firm* engaging in *matched principal trading* in accordance with *MAR* 5A.3.5R(1) must establish arrangements to ensure compliance with the definition of *matched principal trading*.

[Note: article 20(1) and (7) of *MiFID*]

- 5A.3.7 G *Matched principal trading* does not exclude the possibility of settlement risk, although *firms* should take appropriate steps to minimise this risk. For *guidance* relating to the treatment of *matched principal trading* for the purposes of *IFPRU* prudential categorisation, see *PERG* 13 Q61 and Q64.

Other MiFID obligations

- 5A.3.8 R A *firm* must comply with the obligations under the following provisions of *MiFID*, [to be transposed in FCA rules], in the course of operating an *OTF*:
- (1) articles 16(2), 16(3) (first subparagraph), 16(4), 16(5), 16(6), 16(7), 16(8), 16(9), and 16(10);
 - (2) articles 24(1), (3), (4), (5), (9), (10) and (11);
 - (3) articles 25(3) (except to the extent that article 25(4) applies), 25(5), and 25(6) (to the extent applicable);
 - (4) article 27; and
 - (5) article 28.

[Note: article 20(8) of *MiFID*]

Reporting to the FCA

5A.3.9 R A *firm* must:

- (1) in respect of an *OTF* operated by it, or such a facility it proposes to operate, provide to the *FCA* a detailed explanation of:
 - (a) why the *OTF* does not correspond to, and cannot operate as, an *MTF*, a *regulated market* or a *systematic internaliser*;
 - (b) how discretion will be exercised in executing *client* orders; and
 - (c) its use of *matched principal trading*; and
- (2) supply the information in (1) to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA* and obtain an electronic confirmation of receipt.

[Note: article 20(7) of *MiFID*]

5A.3.10 G A *person operating an OTF* cannot also provide the service of a *systematic internaliser*, irrespective of whether the *systematic internaliser* trades different *financial instruments* or types of *financial instruments* to those traded on the *OTF*.

5A.4 Trading process requirements

Rules, procedures and arrangements

5A.4.1 R A *firm* must have:

- (1) transparent rules and procedures for fair and orderly trading;

[Note: article 18(1) of *MiFID*]
- (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[Note: article 18(1) of *MiFID*]
- (3) arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with the risks of systems disruption;

[Note: article 18(1) of *MiFID*]
- (4) transparent rules regarding the criteria for determining the *financial*

instruments that can be traded under its systems;

[**Note:** subparagraph (1) of article 18(2) of *MiFID*]

- (5) arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded;

[**Note:** subparagraph (2) of article 18(2) of *MiFID*]

- (6) transparent and non-discriminatory rules, based on objective criteria, governing access to its facility and which must be published, maintained and implemented; and

[**Note:** article 18(3) of *MiFID*]

- (7) (as between the interests of the *OTF*, its owners, or the *firm* and those of the members and participants or users in the sound functioning of the *trading venue*) arrangements to identify clearly and to manage any conflict with adverse consequences for:

- (a) the operation of the *trading venue* for the members and participants or users; or
- (b) the members and participants or users otherwise.

[**Note:** article 18(4) of *MiFID*]

Functioning of an OTF

5A.4.2 R A *firm* must:

- (1) ensure the *OTF* has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[**Note:** article 18(7) of *MiFID*]

- (2) provide the following to the *FCA*:

- (a) a detailed description of the functioning of the *OTF*, including any links to or participation by a *regulated market*, an *MTF* or *OTF* or *systematic internaliser* owned by the same *firm*; and
- (b) a list of its members, participants and users;

[**Note:** article 18(10) of *MiFID* and *ITS 19* with regard to the content and format of the description of the functioning of *MTFs* and *OTFs*]

- (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*]

Transferable securities traded without issuer consent

- 5A.4.3 R Where a *transferable security*, which has been *admitted to trading* on a *regulated market*, is also traded on an *OTF* without the consent of the *issuer*, the *firm* operating the *OTF* must not make the *issuer* subject to any obligation relating to initial, ongoing or ad hoc financial disclosure with regard to that *OTF*.

[Note: article 18(8) of *MiFID*]

5A.5 Systems and controls for algorithmic trading

Systems and controls

- 5A.5.1 R A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.
- 5A.5.2 R *MAR* 5A.5.1R applies in particular to systems and controls concerning:
- (1) the resilience of the *firm's* trading systems;
 - (2) its capacity to deal with peak order and message volumes;
 - (3) the ability to ensure orderly trading under conditions of severe market stress;
 - (4) the effectiveness of business continuity arrangements to ensure the continuity of the *OTF's* services if there is any failure of its trading systems, including the testing of the *OTF's* systems and controls;
 - (5) the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;
 - (6) the ability to ensure that *algorithmic trading* systems cannot create or contribute to disorderly trading conditions on the *trading venue*;
 - (7) the ability to ensure that any disorderly trading conditions which do arise from the use of *algorithmic trading* systems are capable of being managed, including systems to limit the ratio of unexecuted orders to *transactions* that may be entered into the *OTF's* trading system by a

member or participant;

- (8) the ability to ensure that the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
- (9) the ability to limit and enforce the minimum tick size which may be executed on the *OTF*; and
- (10) the requirement for members and participants to carry out appropriate testing of algorithms, including providing environments to facilitate that testing.

[**Note:** article 48(1), (4) and (6) of *MiFID*, *RTS 7*, *RTS 9*, and *RTS 11*]

Market making agreements

5A.5.3 R A *firm* must:

- (1) have written agreements with all *investment firms* pursuing a *market making strategy* on *trading venues* operated by it (market making agreements);
- (2) have schemes, appropriate to the nature and scale of a *trading venue*, to ensure that a sufficient number of *investment firms* enter into market making agreements;
- (3) monitor and enforce compliance with the market making agreements;
- (4) inform the *FCA* of the content of its market making agreements; and
- (5) provide the *FCA* with any information it requests which the *FCA* reasonably requires to be satisfied that the market making agreements comply with this rule.

[**Note:** article 48(2) and (3) of *MiFID* and *RTS 8*]

5A.5.4 R A market making agreement in *MAR 5A.5.3R(1)* must specify:

- (1) the obligations of the *investment firm* in relation to the provision of liquidity;
- (2) where applicable, any obligations arising, or rights accruing, from the participation in a liquidity scheme; and
- (3) any incentives in terms of rebates or otherwise offered by the *firm* to the *investment firm* in order for it to provide liquidity to the *OTF* on a regular and predictable basis.

[**Note:** article 48(3) of *MiFID* and *RTS 8*]

Measures to prevent disorderly markets

- 5A.5.5 R A *firm* must have the ability to:
- (1) temporarily halt or constrain trading on the *OTF* if there is a significant price movement in a *financial instrument* on the *OTF* or a related *trading venue* during a short period; and
 - (2) in exceptional cases, cancel, vary, or correct, any *transaction*.

[Note: article 48(5) of *MiFID*]

- 5A.5.6 R For the purposes of *MAR 5A.5.5R*, and to avoid significant disruptions to the orderliness of trading, a *firm* must calibrate the parameters for halting trading in a way which takes into account the following:
- (1) the liquidity of different asset classes and subclasses;
 - (2) the nature of the *trading venue* market model; and
 - (3) the types of users.

[Note: article 48(5) of *MiFID*]

- 5A.5.7 R The *firm* must report the parameters mentioned in *MAR 5A.5.6R* to the *FCA* in writing, by electronic mail to an address for the usual supervisory contact of the *firm* at the *FCA*, and obtain an electronic confirmation of receipt.

[Note: article 48(5) of *MiFID*]

- 5A.5.8 R A *firm* must have systems and procedures to notify the *FCA* if:
- (1) an *OTF* operated by it is material in terms of the liquidity of the trading of a *financial instrument* in the *EEA*; and
 - (2) trading is halted in that instrument.

[Note: article 48(5) of *MiFID*]

Direct electronic access

- 5A.5.9 R A *firm* which permits *direct electronic access* to an *OTF* it operates must:
- (1) not permit members or participants of the *OTF* to provide such services unless they are:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) *third country investment firms*; or
 - (d) *overseas firms* registered in accordance with article 46 of *MiFIR*;

- (2) set, and apply, criteria for the suitability of persons to whom *direct electronic access* services may be provided;
- (3) ensure that the member or participant of the *OTF* retains responsibility for adherence to the requirements of *MiFID* in respect of orders and trades executed using the *direct electronic access* service;
- (4) set standards for risk controls and thresholds on trading through *direct electronic access*;
- (5) be able to distinguish and if necessary stop orders or trading on that *trading venue* by a person using *direct electronic access* separately from:
 - (a) other orders;
 - (b) trading by the member or participant providing the *direct electronic access*; and
- (6) have arrangements to suspend or terminate the provision of *direct electronic access* on that market by a member or participant in the case of any non-compliance with this *rule*.

[**Note:** article 48(7) of *MiFID*]

Co-location

- 5A.5.10 R Where a *firm* permits co-location in relation to the *OTF*, its co-location services must be transparent, fair and non-discriminatory.

[**Note:** article 48(8) of *MiFID* and *RTS 10*]

Fee structures

- 5A.5.11 R A *firm*'s fee structure, for all fees it charges and rebates it grants in relation to the *OTF*, must:
- (1) be transparent, fair and non-discriminatory;
 - (2) not create incentives to place, modify or cancel orders, or execute *transactions*, in a way which contributes to disorderly trading or market abuse; and
 - (3) impose market making obligations in individual *financial instruments* or suitable baskets of *financial instruments* for any rebates that are granted.

[**Note:** article 48(9) of *MiFID* and *RTS 10*]

- 5A.5.12 G Nothing in *MAR 5A.5.11R* prevents a *firm*:
- (1) adjusting its fees for cancelled orders according to the length of time

for which the order was maintained;

- (2) calibrating its fees to each *financial instrument* to which they apply;
- (3) imposing a higher fee for placing an order which is cancelled than an order which is executed;
- (4) imposing a higher fee on participants placing a high ratio of cancelled orders to executed orders; and
- (5) imposing a higher fee on a person operating a *high-frequency algorithmic trading technique*.

[Note: article 48(9) of *MiFID*]

Flagging orders, tick sizes and clock synchronisation

5A.5.13 R A *firm* must require members and participants of an *OTF* operated by it to flag orders generated by *algorithmic trading* in order for the *firm* to be able to identify the following:

- (1) different algorithms used for the creation of orders; and
- (2) the *persons* initiating those orders.

[Note: article 48(10) of *MiFID*]

5A.5.14 R The *firm* must adopt tick size regimes for *financial instruments* as required by a regulatory technical standard made under article 49.3 or 49.4 of *MiFID*.

[Note: article 49 of *MiFID* and *RTS 11*]

5A.5.15 R The tick size regime referred to in *MAR 5A.5.14R* must:

- (1) be calibrated to reflect the liquidity profile of the *financial instrument* in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
- (2) adapt the tick size for each *financial instrument* appropriately.

[Note: article 49 of *MiFID* and *RTS 11*]

5A.5.16 G Nothing in *MAR 5A.5.14R* or *MAR 5A.5.15R* requires a *firm* to act inconsistently with any regulatory technical standards made under article 49.3 or 49.4 of *MiFID*.

[Note: article 49 of *MiFID*]

5A.5.17 R The *firm* must synchronise the business clocks it uses to record the date and time of any reportable event.

[Note: article 50 of *MiFID* and *RTS 25*]

- 5A.5.18 G For the purpose of *MAR 5A.5.17R*, the regulatory technical standards made under article 50 of *MiFID* provide further requirements.

5A.6 Finalisation of transactions

- 5A.6.1 R A *firm* must:

- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in its *OTF*; and
- (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[Note: article 18(6) of *MiFID*] [Note: In relation to derivative transactions, *RTS 26* contains requirements on the systems for clearing of such transactions.]

5A.7 Monitoring compliance with the rules of the OTF

- 5A.7.1 R A *firm* must:

- (1) have effective arrangements and procedures relevant to its *OTF* for the regular monitoring of the compliance by its users with its rules; and
- (2) monitor the transactions undertaken by its users under its systems in order to identify breaches of those rules, disorderly trading conditions or conduct that may involve market abuse.

[Note: article 31(1) of *MiFID*]

5A.8 Reporting requirements

- 5A.8.1 R A *firm* must:

- (1) report to the *FCA* any:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; and
 - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the

FCA and any other authority competent for the investigation and prosecution of market abuse; and

- (3) provide full assistance to the *FCA*, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the *firm's* systems.

[**Note:** article 31(2) of *MiFID*, [...] of the *MiFID* Delegated Act, *RTS 18* and *ITS 2*]

5A.9 Suspension and removal of financial instruments

5A.9.1 R A *firm* must:

- (1) not exercise any power under its rules to suspend or remove from trading any *financial instrument* which no longer complies with its rules, where such a step would be likely to cause significant damage to the interest of investors or the orderly functioning of the *trading venue*;
- (2) where it does suspend or remove from trading a *financial instrument*, also suspend or remove *derivatives* that relate or are referenced to that *financial instrument*, where necessary to support the objectives of the suspension or removal of the underlying; and
- (3) make public any decision in (2) and notify the *FCA* of it.

[**Note:** article 32 of *MiFID*, [...] of the *MiFID* Delegated Act, and *RTS 18*]

5A.10 Pre-trade transparency requirements for non-equity instruments: form of waiver

5A.10.1 D A *firm* that makes an application to the *FCA* for a waiver in accordance with article 9 of *MiFIR* (in relation to pre-trade transparency for non-equity instruments) must make it in the approved form.

[**Note:** article 9 of *MiFIR* and *RTS 2*]

5A.11 Post-trade transparency requirements for non-equity instruments: form of deferral

5A.11.1 D A *firm* that makes an application to the *FCA* for deferral in accordance with article 11 of *MiFIR* (in relation to post-trade transparency for non-equity instruments) must make it in the approved form.

[**Note:** article 11 of *MiFIR* and *RTS 2*]

6 Systematic Internalisers

6.1 Application

Who and what?

- 6.1.1 R ~~Except as regards the reporting requirement in *MAR 6.4.1R*, this chapter *MAR 6.3A (Quality of execution)* applies to the following firms when dealing in the *United Kingdom*:~~
- (1) ~~a *MiFID investment firm* which is a *systematic internaliser* in shares when dealing in sizes up to standard market size; or~~
 - (2) ~~a *third country investment firm* which is a *systematic internaliser* in shares when dealing in the *United Kingdom* in sizes up to standard market size.~~

[**Note:** article 35(8) of *MiFID*]

- 6.1.2 R The *systematic internaliser* reporting requirement in *MAR 6.4.1R* applies to an *investment firm* which is authorised by the *FCA*.

[**Note:** articles 15(1) and 18(4) of *MiFIR*]

Status of EU provisions as rules in certain instances

- 6.1.3 R ~~In this chapter, provisions marked "EU" apply to a *third country investment firm* which is a *systematic internaliser* as if they were rules. *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.~~
- G

6.2 Purpose

- 6.2.1 G The purpose of this chapter is to implement Article 27(3) of *MiFID*, which deals with the requirements on *systematic internalisers* ~~for pre-trade transparency in shares, the execution of orders on behalf of clients and standards and conditions for trading~~ to make available to the public data relating to the quality of execution of transactions. It also provides a rule requiring *investment firms* to notify the *FCA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to ~~Article~~ articles 21(4) 15(1) and 18(4) of the *MiFID Regulation*. ~~The chapter sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented *MiFIR*.~~

Delete MAR 6.3. The deleted text is not shown.

6.3 Criteria for determining whether an investment firm is a systematic internaliser [deleted]

After MAR 6.3 [deleted] insert the following new section. The text is not underlined.

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.

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* and *RTS 27* and *28*]

6.4 Systematic internaliser reporting requirement

6.4.1 R An *investment firm*, ~~which is authorised by the FCA,~~ must promptly notify the *FCA* in writing of its status as a *systematic internaliser* ~~in respect of shares admitted to trading on a regulated market:~~

- (1) when it gains that status; or
- (2) if it ceases to have that status.

[Note: ~~Article 21(4) of the *MiFID Regulation*~~ articles 15(1) and 18(4) of *MiFIR*]

6.4.1A R MAR 6.4.1R does not apply where a *firm* deals in sizes above standard market size, or above the size specific to the *financial instrument* determined in accordance with article 9(5)(d) of *MiFIR*.

[Note: articles 14(2) and 18(10) of *MiFIR* and *RTS 1* and *2*]

6.4.2 G The notification under MAR 6.4.1R can be addressed to the *firm's* usual supervisory contact at the *FCA*.

MAR 6.5 to MAR 6.14 and MAR 7 are deleted in their entirety. The deleted text is not shown.

- 6.5** **Obligations on systematic internalisers in shares to make public firm quotes**
[deleted]
- 6.6** **Size and content of quotes** [deleted]
- 6.7** **Prices reflecting prevailing market conditions** [deleted]
- 6.8** **Liquid market for shares, share class, standard market size and relevant market** [deleted]
- 6.9** **Publication of quotes** [deleted]
- 6.10** **Execution price of retail client orders** [deleted]
- 6.11** **Execution price of professional client orders** [deleted]
- 6.12** **Execution price of client orders not matching quotation sizes** [deleted]
- 6.13** **Standards and conditions for trading** [deleted]
- 6.14** **Limiting risk of exposure to multiple transactions** [deleted]

- 7** **Disclosure of information on certain trades undertaken outside a regulated market or MTF** [deleted]
- 7.1** **Application** [deleted]
- 7.2** **Making post-trade information public** [deleted]
- 7 Annex 1EU** **Deferred publication thresholds and delays** [deleted]

After MAR 7 insert the following new chapter. The text is not underlined.

- 7A** **Algorithmic trading**
- 7A.1** **Application**
- Who?

7A.1.1 R This chapter applies to :

- (1) a *UK MiFID investment firm*; and
- (2) a *third country investment firm*, with an establishment in the *United Kingdom*.

What?

7A.1.2 R This chapter applies to a *firm* in relation to the following activities:

- (1) *algorithmic trading (MAR 7A.3)*;
- (2) providing the service of *DEA* to a *trading venue (MAR 7A.4)*; and
- (3) providing the service of acting as a general clearing member for another *person (MAR 7A.5)*.

[**Note:** this chapter transposes article 17 of *MiFID*, in respect of the types of *firms* referred to above. Parts 4 and 5 of the *MiFi Regulations* set out equivalent requirements in respect of *persons* exempt under article 2(1)(a), (e), (i) and (j) of *MiFID*, which are required to comply with article 17(1) to (6) of *MiFID* due to article 1(5) of *MiFID*.]

Status of EU provisions as rules in certain instances

7A.1.3 G *GEN 2.2.22AR* applies to ensure that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*.

7A.2 Purpose

7A.2.1 G The purpose of this chapter is to implement article 17 of *MiFID*, which imposes requirements on *investment firms* which are:

- (1) engaging in *algorithmic trading*; or
- (2) providing the service of *DEA* to a *trading venue*; or
- (3) providing the service of acting as a general clearing member for another *person*.

[**Note:** related requirements imposed pursuant to article 48 of *MiFID* upon *trading venues*, in respect of *members* and participants engaging in *algorithmic trading* and providing the service of *DEA*, are transposed in *REC 2, MAR 5* and *MAR 5A*.]

7A.3 Requirements for algorithmic trading

Application

- 7A.3.1 R This section applies to a *firm* which engages in *algorithmic trading*.

Systems and controls

- 7A.3.2 R A *firm* must have in place effective systems and controls, suitable to the business it operates, to ensure that its trading systems:
- (1) are resilient and have sufficient capacity;
 - (2) are subject to appropriate trading thresholds and limits;
 - (3) prevent the sending of erroneous orders, or the systems otherwise functioning in a way that may create or contribute to a disorderly market; and
 - (4) cannot be used for any purpose that is contrary to:
 - (a) the *Market Abuse Regulation*; or
 - (b) the rules of a *trading venue* to which it is connected.

[Note: article 17(1) of *MiFID*, and *RTS 6* specifying the organisational requirements of *investment firms* engaged in *algorithmic trading*]

- 7A.3.3 R A *firm* must:
- (1) have in place effective business continuity arrangements to deal with any failure of its trading systems; and
 - (2) ensure that its systems are fully tested and properly monitored to ensure that it meets the requirements of (1) and of *MAR 7A.3.2R*.

[Note: article 17(1) of *MiFID* and *RTS 6* specifying the organisational requirements of *investment firms* engaged in *algorithmic trading*]

Market making

- 7A.3.4 R Where a *firm* engages in *algorithmic trading* to pursue a *market making strategy*, it must:
- (1) carry out market making continuously during a specified proportion of the *trading venue's* trading hours so that it provides liquidity on a regular and predictable basis to that *trading venue*, except in exceptional circumstances;
 - (2) enter into a binding written agreement with the *trading venue* which must specify the requirements for the purpose of (1); and
 - (3) have in place effective systems and controls to ensure that it meets

the obligations under the agreement in (2).

[Note: article 17(3) of *MiFID*, *RTS 8* specifying the circumstances in which a *person* would be obliged to enter into the market making agreement referred to in *MAR 7A.3.4R(2)* and the content of such an agreement, including the specified proportion of the *trading venue's* trading hours, and the situations constituting exceptional circumstances, referred to in *MAR 7A.3.4R(1)*]

7A.3.5 R For the purpose of *MAR 7A.3.4R*, the *firm* must take into account:

- (1) the liquidity, scale and nature of the specific market; and
- (2) the characteristics of the instrument traded.

[Note: article 17(3) of *MiFID*]

Notifications

7A.3.6 R A *firm* which is a *member* or participant of a *trading venue*, must immediately notify the following if it is engaging in *algorithmic trading*:

- (1) the *FCA*; and
- (2) any competent authority of a *trading venue* in another *EEA* State where the *firm* engages in *algorithmic trading*.

[Note: article 17(2) of *MiFID*]

7A.3.7 R A *firm* must provide the following, at the *FCA's* request, within 14 days from receipt of the request:

- (1) a description of the nature of its *algorithmic trading* strategies;
- (2) details of the trading parameters or limits to which the *firm's* system is subject;
- (3) evidence that *MAR 7A.3.2R* (systems and controls) and *MAR 7A.3.3R* (business continuity and system tests) are met;
- (4) details of the testing of the *firm's* systems;
- (5) the records in *MAR 7A.3.8R(2)* (accurate and time sequenced records of all its placed orders); and
- (6) any further information about the *firm's algorithmic trading* and systems used for that trading.

[Note: article 17(2) of *MiFID*]

Record keeping

- 7A.3.8 R A *firm* must:
- (1) arrange for records to be kept to enable it to meet *MAR 7A.3.7R*; and
 - (2) (if it engages in a *high-frequency algorithmic trading technique*) store, in the approved form, accurate and time sequenced records of all its placed orders, including:
 - (a) cancelled orders;
 - (b) executed orders; and
 - (c) quotations on *trading venues*.

[**Note:** article 17(2) of *MiFID* and *RTS 6* specifying the format and content of the approved form referred to in *MAR 7A.3.8R(2)*, and the length of time for which records must be kept by the *firm*]

7A.4 Requirements when providing direct electronic access

Application

- 7A.4.1 R This section applies to a *firm* which provides the services of *DEA* to a *trading venue*.

Systems and controls

- 7A.4.2 R A *firm* must have in place systems and controls which:
- (1) enable it to assess and review the suitability of *clients* using the service;
 - (2) prevent *clients* using the service from exceeding appropriate pre-set trading and credit thresholds;
 - (3) prevent trading by *clients* which:
 - (a) may create risks to the *firm*; or
 - (b) may create, or contribute to, a disorderly market; or
 - (c) would be contrary to the *Market Abuse Regulation* or the rules of the *trading venue*.

Client dealings

- 7A.4.3 R (1) A *firm* must monitor the *transactions* made by *clients* using the service to identify:
- (a) infringements of the rules of the *trading venue*; or

- (b) disorderly trading conditions; or
 - (c) conduct which may involve market abuse and which is to be reported to the *FCA*.
- (2) A *firm* must have a binding written agreement with each *client* which:
- (a) details the essential rights and obligations of both parties arising from the provision of the service; and
 - (b) states that the *firm* is responsible for ensuring the *client* complies with the requirements of the *Market Abuse Regulation* and the rules of the *trading venue*.

Notifications

- 7A.4.4 R A *firm* must immediately notify the following if it is providing *DEA* services:
- (1) the *FCA*; and
 - (2) the competent authority of any *trading venue* in the *EEA* to which the *firm* provides *DEA* services.

[Note: article 17(5) of *MiFID* and *RTS 6* specifying the organisational requirements of *investment firms* providing direct electronic access]

- 7A.4.5 R A *firm* must provide the following, at the *FCA*'s request, within 14 days from receipt of the request:
- (1) a description of the systems mentioned in *MAR 7A.4.2R(1)*;
 - (2) evidence that those systems have been applied; and
 - (3) information stored in accordance with *MAR 7A.4.6R*.

[Note: article 17(5) of *MiFID*]

Record keeping

- 7A.4.6 R A *firm* must arrange for records to be kept:
- (1) on the matters referred to in *MAR 7A.4.2R* in relation to its systems and controls; and
 - (2) in order to enable it to meet any requirement imposed on it under *MAR 7A.4.5R*.

[Note: article 17(5) of *MiFID*]

7A.5 Requirements when acting as a general clearing member

Application

- 7A.5.1 R This section applies to a *firm* which provides the service of acting as a general clearing member.

Requirements

- 7A.5.2 R A *firm* must:
- (1) have clear criteria as to the suitability requirements of *persons* to whom clearing services will be provided;
 - (2) apply those criteria;
 - (3) impose requirements on the *persons* to whom clearing services are being provided to reduce risks to the *firm* and to the market; and
 - (4) have a binding written agreement with any *person* to whom it is providing clearing services, detailing the essential rights and obligations of both parties arising from the provision of the services.

[**Note:** article 17(6) of *MiFID* and *RTS 6* specifying the organisational requirements of *investment firms* acting as general clearing members]

After MAR 8 insert the following new chapter. The text is not underlined.

9 Data Reporting Services**9.1 Application, introduction, approach and structure**

Application

- 9.1.1 G This chapter applies to:
- (1) a *UK person* (that is a person whose registered office or head office is located in the *UK*) seeking authorisation to provide *data reporting services*;
 - (2) a *UK MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide *data reporting services* under regulation 5(b) or (c) of the *DRS Regulations*;
 - (3) a *UK RIE* seeking verification of its rights to provide *data reporting services* under regulation 5(d) of the *DRS Regulations*; and
 - (4) a *data reporting services provider*.

This chapter is not limited to operators of *trading venues* and *firms*.

[**Note:** article 59 *MiFID*]

Introduction

- 9.1.2 G Title V *MiFID* sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across *EU* financial markets for users, and for competent authorities to receive accurate and comprehensive information on relevant transactions. These requirements provide for:
- (1) *approved publication arrangements (APAs)* to:
 - (a) improve the quality of trade transparency information published in relation to *over the counter* trading; and
 - (b) contribute significantly to ensuring such data is published in a way that facilitates its consolidation with data published by *trading venues*;
 - (2) *consolidated tape providers (CTPs)* to supply a comprehensive consolidated tape of *equity* and equity-like *financial instruments* data from all *APAs* and *trading venues* to make it easier for market participants to gain access to a consolidated view of trade transparency information;
 - (3) *CTPs* to enable a comprehensive consolidated tape for non-equity *financial instruments* with an extended date for the application of national measures transposing *MiFID*; and
 - (4) *approved reporting mechanisms (ARMs)* to provide the service of transaction reporting on behalf of *investment firms*.

Approach to transposition

- 9.1.3 G The market data services authorisation and supervision requirements in Title V *MiFID* are implemented in the *United Kingdom* through a combination of:
- (1) HM Treasury legislation in the form of the *DRS Regulations* which set out a separate regulatory framework for *persons* providing one or more *data reporting services* in the *United Kingdom*;
 - (2) this chapter; and
 - (3) *EU* regulatory technical standards and implementing technical standards including:
 - (a) *RTS 13*;
 - (b) *RTS 1*;

- (c) *RTS 2*;
- (d) *RTS 3*; and
- (e) *ITS 3*.

[**Note**¹: Each of these technical standards can be accessed at [insert link to Commission delegated act setting out finalised technical standards listed above].]

Structure

9.1.4 G The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
<i>MAR 9.1</i>	Application, introduction, approach and structure
<i>MAR 9.2</i>	Authorisation and verification
<i>MAR 9.3</i>	Notification and information
<i>MAR 9.4</i>	Supervisory regime
<i>MAR 9.5</i>	Frequently Asked Questions
<i>MAR 9 Annex 1 D to Annex 10D</i>	Forms

9.2 Authorisation and verification

Application form and notification form for members of the management body

- 9.2.1 D (1) Each of the following must complete the forms in (2):
- (a) an applicant for *data reporting services* authorisation;
 - (b) a *UK MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide *data reporting services* under regulation 5(b) and (c) of the *DRS Regulations*; and

¹ Each of these technical standards can be accessed, in draft form, at <https://www.esma.europa.eu/content/Consultation-Paper-Draft-implementing-technical-standards-under-MiFID-II> and <http://www.esma.europa.eu/documents/overview/10?page=9> and https://www.esma.europa.eu/sites/default/files/library/2015-1858 - final_report - draft_implementing_technical_standards_under_mifid_ii.pdf

- (c) a *UK RIE* operating a *trading venue* seeking verification of its rights to provide *data reporting services* under regulation 5(d) of the *DRS Regulations*.

(2) The forms in (1) are:

- (a) the application form at *MAR 9 Annex 1D*; and
- (b) the notification form for the list of members of the *management body* at *MAR 9 Annex 2D*.

9.2.2 G *MAR 9 Annex 1D* and *MAR 9 Annex 2D* are derived from Annex I and Annex II respectively of *ITS 3*.

Extension of or variation of authorisation form

9.2.3 D If a *data reporting service provider* wishes to extend or otherwise vary its *data reporting services* authorisation it must complete the application form at *MAR 9 Annex 3D*.

9.2.4 G *MAR 9 Annex 3D* is derived from Annex I of *ITS 3*.

Cancellation of authorisation form

9.2.5 D If a *data reporting service provider* wishes to cancel its *data reporting services* authorisation it must complete the form for cancellation at *MAR 9 Annex 4D*.

Provision of the forms in *MAR 9 Annexes 1D, 2D, 3D and 4D* to the *FCA*

9.2.6 D A *person* must provide *MAR 9 Annexes 1D, 2D, 3D and 4D* together with supporting documentation to the *FCA* by:

- (1) emailing [insert department email address]; or
- (2) posting to the *FCA* addressed to
The Financial Conduct Authority
[insert department]
25 The North Colonnade
Canary Wharf
London E14 5HS.

9.3 Notification and information

Notification to the *FCA* of material changes in information provided at time of authorisation

9.3.1 D A *data reporting service provider* must promptly complete the form at *MAR 9 Annex 5D* to inform the *FCA* of any material change to the information

provided at the time of its authorisation.

Notification to the FCA of change to membership of management body

9.3.2 D A *data reporting service provider* must promptly complete the form at *MAR 9 Annex 6D* to inform the *FCA* of any change to the membership of its *management body*.

9.3.3 G *MAR 9 Annex 6D* is derived from Annex III of *ITS 3*.

Notification to the FCA by an APA or a CTP of agreement to non-disclosure and compliance with connectivity requirements

9.3.4 D Within 2 weeks of being authorised as an *APA* or a *CTP*, an *APA* or a *CTP* must:

(1) sign the non-disclosure agreement at *MAR 9 Annex 10D*; and

(2) post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority

[insert department]

25 The North Colonnade

Canary Wharf

London E14 5HS.

9.3.5 G (1) To ensure the security of the *FCA*'s systems, the *FCA* requires an *APA* or a *CTP* to sign a non-disclosure agreement before receiving the *FCA*'s technical specifications for connectivity.

(2) Once the *FCA* receives the non-disclosure agreement from the *APA* or the *CTP*, the *FCA* will provide the *APA* or the *CTP* with:

(a) the technical specifications; and

(b) a request for the *APA* or the *CTP* to confirm to the *FCA* that the *APA* or the *CTP* can satisfy these specifications.

(3) The *FCA* expects an *APA* or a *CTP* to deal with it in an open and co-operative way in order to establish a technology connection for provision of data to the *FCA* as required by article 22 *MiFIR*.

Notification to the FCA by an APA or a CTP of its ability to meet FCA connectivity requirements

9.3.6 D An *APA* or a *CTP* must within 4 weeks of receipt from the *FCA* of its technical specifications for connectivity complete the form at *MAR 9 Annex 7D*.

Yearly notifications to the FCA

9.3.7 D A *data reporting service provider* must provide the information in *MAR 9*

Annex 8D:

- (1) within 10 business days after the 12 month anniversary of the commencement of its authorisation; and
- (2) then every year within 10 business days after the same date.

Ad hoc notifications to the FCA

- 9.3.8 D A *data reporting service provider* must promptly provide the information in MAR 9 Annex 9D to notify the *FCA* in respect of all matters required by RTS 13.
- 9.3.9 G Information to be provided in MAR 9 Annex 9D includes information relating to planned significant changes to a *data reporting service provider's* IT system, breaches in physical and electronic security measures and service interruptions or connection disruptions.

Provision of the forms in MAR 9 Annexes 5D, 6D, 7D, 8D and 9D to the FCA

- 9.3.10 D A *data reporting service provider* must promptly provide the forms in MAR 9 Annexes 5D, 6D, 7D, 8D and 9D and supporting documentation to the *FCA*:
- (1) at [insert department email address]; or
 - (2) by posting it to the *FCA*, addressed to:
The Financial Conduct Authority
[insert department]
25 The North Colonnade
Canary Wharf
London E14 5HS

9.4 Supervisory regime

Overview of supervisory approach

- 9.4.1 G (1) The *FCA* expects to have an open, cooperative and constructive relationship with *data reporting service providers* to enable it to understand and evaluate *data reporting service providers' activities* and their ability to meet the requirements in the *DRS Regulations*.
- (2) The *FCA* will, when necessary, arrange meetings between the *FCA* and key individuals of the *data reporting service provider* for this purpose.
- (3) The *FCA* expects the *data reporting service provider* to take its own steps to assure itself that it will continue to satisfy the *data reporting service provider* organisational requirements when considering any

changes to its business operations.

Overview of supervisory tools

- 9.4.2 G The *FCA* will use a variety of tools to monitor whether a *data reporting service provider* complies with its regulatory requirements. These tools include (but are not limited to):
- (1) desk based reviews;
 - (2) liaison with other regulators;
 - (3) meetings with management and other representatives of a *data reporting service provider*;
 - (4) on-site visits;
 - (5) use of auditors;
 - (6) use of a skilled person;
 - (7) reviews and analysis of periodic returns and notifications;
 - (8) transaction monitoring;
 - (9) making recommendations for preventative or remedial action;
 - (10) giving individual guidance;
 - (11) restrictions on permission to carry on *data reporting services*; and
 - (12) imposing individual requirements.

9.5 Frequently Asked Questions

- 9.5.1 G Q. Are there any grandfathering arrangements for ARMs or trade data monitors operating prior to *MiFID*?
- A. No. *Persons* wishing to provide *data reporting services* must apply to be authorised as a *data reporting services provider*.
- 9.5.2 G Q. We are a *trading venue* operator. Can you please clarify how we can provide *data reporting services* under the derogation from needing authorisation in article 59(2) *MiFID*?
- A. (1) The derogation (or exception) in article 59(2) *MiFID* allows Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator has verified that they comply with Title V *MiFID*.

- (2) The *United Kingdom* has adopted this derogation in regulation 5(b) to (d) of the *DRS regulations*.
- (3) As a result a *trading venue* operator must apply for verification of its rights to provide *data reporting services* using the form in *MAR 9 Annex 1D*.
- (4) The application process for a *trading venue* operator to become a *data reporting services provider* is the same as for a *person* to become a *data reporting services provider*, except for the requirements for the *management body* of a *market operator* addressed in *MAR 9.5.3G* below.
- (5) Successful applicants will become *data reporting services providers* and will be required to comply with the regulatory framework in *MAR 9.1.3G*. They will be subject to fees charged by the *FCA* in *MAR 9.5.4G*.
- 9.5.3 G Q. We are a *market operator*. Can we use the same members of our *management body*?
- A. Yes. Where the members of the *management body* of the *APA*, the *CTP* or the *ARM* are the same as the members of the *management body* of the *regulated market* you will be deemed to have complied with the *management body* requirement in regulation 12(1)(a) and (b) of the *DRS Regulations*. *MAR 9 Annex 1D* will not require you to provide unnecessary information on the members of the *management body*. You must notify us of all persons appointed to the *management body* using *MAR 9 Annex 2D* and notify us of any change in its membership using *MAR 9 Annex 6D*.
- 9.5.4 G Q. Where can I find out information about fees to be charged in respect of *data reporting service providers*?
- A. [To be inserted following the making of rules subject to consultation as part of *FCA CP 15/34 Regulatory fees and levies: policy proposals for 2016/17 in respect of the FEES (Market Data Reporting) Instrument 2016*.]
- 9.5.5 G Q. How do we go about applying to be an *ARM*?
- A. In summary:
- (1) You should complete:
- (a) all of the questions in the application form at *MAR 9 Annex 1D*, other than those questions relating to your compliance with requirements for *ARMs* to connect to the *FCA*; and
- (b) the notification form for the list of members of the

management body at MAR 9 Annex 2D.

- (2) You should sign the non-disclosure agreement at MAR 9 Annex 10D.
- (3) You should post an original signed copy of the documents referred to in (1) and (2) and addressed to the FCA :
The Financial Conduct Authority
[insert department]
25 The North Colonnade
Canary Wharf
London E14 5HS.
- (4) After receiving the documents referred to in (3) and subject to our review of these documents, we will provide you with a copy of our technical specifications.
- (5) If you consider that you can meet our specifications you should:
 - (a) complete the outstanding questions relating to compliance with requirements for *ARMs* to connect to the FCA using your partly completed form MAR 9 Annex 1D; and
 - (b) provide it and any relevant documents to us together with the associated fee in [*to be inserted following the making of rules subject to consultation as part of FCA CP 15/34 Regulatory fees and levies: policy proposals for 2016/17 in respect of the FEES (Market Data Reporting) Instrument 2016*].
- (6) We may at any time request additional information to proceed with the assessment of the application.
- (7) During our consideration of your application for authorisation or verification, we will normally invite you to work with us to undertake the appropriate testing required for you to establish connection to us.
- (8) Having obtained and examined the necessary information we require from you, we will do one of three things in relation to your application for authorisation:
 - (a) authorise you as an *ARM*; or
 - (b) issue a *warning notice* that we propose to authorise you as an *ARM* with the imposition of a requirement on your authorisation; or

- (c) issue a *warning notice* that we propose to refuse the application for authorisation.
- (9) If we issue a *warning notice*, the procedure in [*reference to be included in subsequent consultation when DEPP is updated to incorporate procedures in relation to decision-making under the DRS Regulations*] applies.
- (10) If we approve your application for authorisation or verification, we will confirm your authorised status.
- 9.5.6 G Q. Does an *investment firm* need to be authorised as an *ARM* to send *transaction reports* to the *FCA*?
- A. No. If you are a *MiFID investment firm* that wishes to send *transaction reports* to us to satisfy your own transaction reporting obligations under *MiFIR*, you do not need to become authorised as an *ARM*. You are permitted to connect directly to us although there will be a requirement to sign a non-disclosure agreement with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please refer to [*To be inserted following the making of rules subject to consultation as part of FCA CP 15/34 Regulatory fees and levies: policy proposals for 2016/17 in respect of the FEES (Market Data Reporting) Instrument 2016.*] If you want to connect to us to send reports on behalf of other *investment firms* then you must become authorised as an *ARM*.
- 9.5.7 G Q. Where can I find a list of *data reporting service providers*?
- A. A list is provided at [insert link to ESMA website].
- 9.5.8 G Q. I am a *data reporting service* provider and experience technical issues. What do I do?
- A. In the first instance please contact Market Data Processor support at [insert department email address] and copy DRSP supervision at [insert department email address] with a succinct summary of the technical issue(s) encountered.

After MAR 9 insert the following forms as separate Annexes. [Each Annex consists of a link to a form.]

9
Annex
1D Application form to provide service of *ARM* and/or *APA* and/or *CTP*

[insert link]

9 Notification form for list of members of a management body
Annex
2D

[insert link]

9 Application form for extension of or variation of authorisation
Annex
3D

[insert link]

9 Application form for cancellation of authorisation
Annex
4D

[insert link]

9 Material change in information provided at time of authorisation
Annex
5D

[insert link]

9 Notification form of changes to membership of management body
Annex
6D

[insert link]

9 Connectivity to FCA notification by APAs and/or CTPs form
Annex
7D

[insert link]

9 Yearly notification to FCA form
Annex
8D

[insert link]

9 Ad hoc notification to FCA form
Annex
9D

[insert link]

9 Non-Disclosure Agreement
Annex

10D

[insert link]

...

Sch 1 Record Keeping requirements

Sch 1.1 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>MAR 2.7R</u>	Price stabilising action	Full details as noted in <u>MAR 2.7.2R</u>	On initiation of stabilising action	3 years
<u>MAR 7A.3.8R</u>	<u>Algorithmic and high-frequency algorithmic trading</u>	Records necessary to meet <u>MAR 7A.3.7R</u> , and <u>high-frequency algorithmic trading records and quotes</u>	On initiation of <u>algorithmic and high-frequency algorithmic trading strategies</u>	Five years, or as otherwise provided for <u>high-frequency algorithmic trading records and quotes in RTS 6</u>
<u>MAR 7A.4.6R</u>	<u>Direct electronic access providers' systems and controls</u>	Records necessary to meet <u>MAR 7A.4.2R</u> and <u>7A.4.5R</u>	On initiation of <u>direct electronic access provision</u>	Five years
...				

Sch 2 Notification requirements

...

Sch 2.2 G Notification requirements

Handbook reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
<u>MAR 5.3A.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a binding written agreement</u>	<u>Without delay</u>
<u>MAR 5.3A.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a financial instrument</u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5.6.1R(1)</u>	<u>Non-compliant,</u>	<u>Information of the occurrence</u>	<u>Upon occurrence of</u>	<u>Without delay</u>

	<u>disorderly or abusive trading</u>	<u>of significant breaches of rules, disorderly trading or conduct that may involve market abuse</u>	<u>the breach, conditions or conduct</u>	
<u>MAR 5.6A.1R(3)</u>	<u>Suspension and removal of financial instruments</u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>
<u>MAR 5A.5.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a binding written agreement</u>	<u>Without delay</u>
<u>MAR 5A.5.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a <i>financial instrument</i></u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5A.8.1R(1)</u>	<u>Non-compliant, disorderly or abusive trading</u>	<u>Information of the occurrence of significant breaches of rules, disorderly trading or conduct that may involve market abuse</u>	<u>Upon occurrence of the breach, conditions or conduct</u>	<u>Without delay</u>
<u>MAR 5A.9.1R(3)</u>	<u>Suspension and removal of <i>financial instruments</i></u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>
<u>MAR 6.4.1R</u>	<u><i>Systematic internaliser</i> status</u>	<u>Information of gaining or ceasing <i>systematic internaliser</i> status</u>	<u>Upon becoming or ceasing to be a <i>systematic internaliser</i></u>	<u>Without delay</u>
<u>MAR 7A.3.6R</u>	<u>Engaging in <i>algorithmic trading</i></u>	<u>Information that a member of a <i>trading venue</i> is engaging in <i>algorithmic trading</i></u>	<u>Upon engagement in <i>algorithmic trading</i></u>	<u>Without delay</u>

<u>MAR 7A.4.4R</u>	<u>Provision of DEA services</u>	<u>Information that a firm is providing DEA services</u>	<u>Upon engagement in DEA provision</u>	<u>Without delay</u>
...				

Annex E

Amendments to the Supervision manual (SUP)

In this Annex, for the purposes of SUP 13 and its Annexes, underlining indicates new text and striking through indicates deleted text, unless otherwise stated. SUP 17 is deleted in its entirety and the deleted text is not shown.

13 Exercise of passport rights by UK firms

...

13.3 Establishing a branch in another EEA State

What constitutes a branch

- 13.3.1 G (1) *Guidance* on what constitutes a *branch* is given in SUP App 3.
- (2) (a) Note that if a *UK MiFID investment firm* is seeking to use a *tied agent* established in another *EEA State*, ~~the rules in SUP 13 will apply as if that firm were seeking to establish a branch in that EEA State unless the firm has already established a branch in that EEA State (paragraph 20A of Schedule 3 to the Act)~~ the tied agent is assimilated into the branch.
- (b) As such, the appointment of a tied agent established in another EEA State amounts to the exercise of establishment rights and leads to the application of conduct requirements to the tied agent's business, as if it was the branch of a UK MiFID investment firm.
- (c) See SUP 13.3.9G for details of the MiFID branch forms.

[Note: article 35(2) of MiFID]

...

MiFID branch forms

- 13.3.9 G (1) (a) A UK MiFID investment firm wishing to use a tied agent established in another EEA State is required to complete the form in Annex VII of ITS 4 and send it to the FCA.
- [Note: article 14(1) of ITS 4]**
- (b) A UK MiFID investment firm which intends to establish a branch in another EEA State is required to complete the form in Annex VI of ITS 4 and send it to the FCA.

[Note: article 13(1) of ITS 4]

- (c) A UK MiFID investment firm that intends to establish a branch which in turn intends to use tied agents is required to complete the form in Annex VII of ITS 4 and send it to the FCA.

[Note: article 13(2) of ITS 4]

- (2) (a) Each of the forms in ITS 4 referred to in SUP 13.3.9G(1)(a) to (c) is replicated in SUP 13 Annex 1R.
- (b) These versions should be used for the purposes of notifications to the FCA.

...

13.4 Providing cross border services into another EEA State

...

The conditions for providing cross border services into another EEA State

...

- 13.4.2D G (1) A MiFID investment firm that wishes to obtain a passport for the activity of operating an MTF or operating an OTF should follow the procedures described in this chapter.
- (2) A UK market operator that operates a recognised investment exchange, a recognised auction platform (pursuant to the RAP regulations, the definition of regulated market in the Act is read for these purposes as including a recognised auction platform), or an MTF or an OTF and wishes to provide cross border services into another EEA State should follow the procedure described in REC 4.2B.

...

MiFID services forms

- 13.4.8 G (1) A UK MiFID investment firm is required to submit an investment services and activities passport notification to the FCA by completing the form in Annex I of ITS 4.
- [Note: article 4(1) of ITS 4]
- (2) A UK MiFID investment firm wishing to provide investment services or activities through a tied agent established in the UK is required to send an investment services and activities passport notification to the FCA by completing the parts of the form in Annex I of ITS 4 that are relevant to a tied agent.

[Note: article 4(3) of ITS 4]

- (3) A UK MiFID investment firm operating an MTF or OTF that intends to provide appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants in another EEA State, is required to send the details of the Host State in which it intends to provide such arrangements to the FCA by completing the form in Annex IV of ITS 4.

[Note: article 9 of ITS 4]

- (4) (a) Each of the forms in ITS 4 referred to in SUP 13.4.8G(1) to (3) is replicated in SUP 13 Annex 2R.
- (b) These versions should be used for the purposes of notifications to the FCA.

...

13.6 Changes to branches

- 13.6.1 G (1) Where a UK firm is exercising an EEA right, other than under the Insurance Mediation Directive (see SUP 13.6.9AG) or the Reinsurance Directive (see SUP 13.6.9BR) or the CRD, and has established a branch in another EEA State, any changes to the details of the branch are governed by the EEA Passport Rights Regulations.
- (2) References to regulations in this section are to the EEA Passport Rights Regulations.
- (3) (a) A UK firm which is not an authorised person should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence.
- (b) It is a defence, however, for the UK firm to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (4) Where a UK MiFID investment firm exercises an EEA right under MiFID and has established a branch in another EEA State, any changes to the details of the branch are also governed by RTS 3A and ITS 4.

...

Firms passporting under MiFID

...

- 13.6.5C G A UK MiFID investment firm is also required to notify the FCA of changes to a branch or tied agent in accordance with:
- (1) article 7 (Information to be notified concerning the change of

branch or tied agent particulars) of RTS 3A;

- (2) article 18 (submission of the change of branch particulars notification) of ITS 4; and
- (3) article 19 (submission of the change of the tied agent particulars notification) of ITS 4.

13.6.5D G If any of the details in a *branch passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA* by completing the form in Annex VI of *ITS 4*.

[Note: article 18(1) of *ITS 4*]

13.6.5E G If any of the details in a *tied agent passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA*, by completing the form in Annex VII of *ITS 4*.

[Note: article 19(1) of *ITS 4*]

13.6.5F G If a *UK MiFID investment firm* closes a *branch* or stops using a *tied agent*, it is required to notify the *FCA* using the form in Annex X of *ITS 4*.

[Note: articles 18(4) and 19(4) of *ITS 4*]

13.6.5G G (1) Each of the forms in *ITS 4* referred to in *SUP 13.6.5DG* to *SUP 13.6.5FG* is replicated in *SUP 13 Annex 1R*.

(2) These versions should be used for the purposes of notifications to the *FCA*.

...

The process: MiFID investment firms

13.6.17 G (1) When the *appropriate UK regulator* receives a notice from a *UK MiFID investment firm* (see *SUP 13.6.5BG* (1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable.

(2) The *FCA* is required to use the forms in Annex XI, Annex XII or Annex XIII of *ITS 4*, as applicable.

(3) The *firm* in question may make the change once the period of one *month* beginning with the day on which it gave notice has elapsed.

...

13.7 Changes to cross border services

13.7.1 G (1) Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives* or *AIFMD* and is

providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*.

- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence.
- (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (2) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* to provide *cross border services*, any changes to the details of the services are also governed by *RTS 3A* and *ITS 4*.

...

Firms passporting under MiFID

...

- 13.7.3C G A *UK MiFID investment firm* is also required to notify the *FCA* of any changes to the information in its *investment services and activities passport notification* in accordance with:
- (1) article 4 (Information to be notified concerning the change of investment services and activities particulars) of *RTS 3A*; and
- (2) article 7 (submission of the change of investment services and activities particulars notification) of *ITS 4*.
- 13.7.3D G (1) If any of the details in an *investment services and activities passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA* by completing the form in Annex I of *ITS 4*.
- [**Note:** article 7(1) of *ITS 4*]
- (2) When communicating a change to *investment services and/or activities, ancillary services* or *financial instruments*, the *firm* is required to list all:
- (a) the *investment services and/or activities* and *ancillary services* that it currently provides or intends to provide in the future; and
- (b) the *financial instruments* that are relevant to those activities and services.

13.7.3E G If any of the details in the notification for the provision of arrangements to facilitate access to an *MTF* or an *OTF* change, the *investment firm* operating the *MTF* or the *OTF* is required to notify the *FCA* by completing the form in Annex IV of *ITS 4*.

[**Note:** article 11(1) of *ITS 4*]

13.7.3F G (1) Each of the forms in *ITS 4* referred to in *SUP 13.7.3DG* and *SUP 13.7.3EG* is replicated in *SUP 13 Annex 2R*.

(2) These versions should be used for the purposes of notifications to the *FCA*.

13 **Passporting: Notification of intention to establish a branch in another EEA state²**
Annex
1R

...

13 **Passporting: Markets in Financial Instruments Directive³ [deleted]**
Annex
2R

The form in SUP 13 Annex 2R is deleted in its entirety. The text is not shown.

...

13A **Qualifying for authorisation under the Act**

...

13A **Application of the Handbook to Incoming EEA Firms⁴**
Annex
1G

13A **Matters reserved to a Home State regulator**
Annex
2G

...	...
Requirements under MiFID and MiFIR	
9.	Article 31(1) <u>Article 34(1)</u> of <i>MiFID</i> prohibits Member States from

² The revised forms based on Annex VI, VII, and X of *ITS 4* (replacing section 4 of the form in SUP 13 Annex 1R relating to MiFID) will be consulted upon, in due course, when the final technical standards are made.

³ The revised forms based on Annexes I and IV of *ITS 4* (replacing the form in SUP 13 Annex 2R) will be consulted upon, in due course, when the final technical standards are made.

⁴ This part of the FCA Handbook will be updated when other changes to be made to the Handbook- including those to be made as a result of the MiFID 2 Delegated Acts – are made in the next MiFID Handbook consultation.

	imposing additional requirements on a <i>MiFID investment firm</i> in relation to matters covered by <i>MiFID</i> if the <i>firm</i> is providing services on a cross-border basis. Such firms will be supervised by their Home State regulator.
10.	Article 32 Article 35(8) of <i>MiFID</i> requires the FSA <u>FCA</u> as the <i>Host State regulator</i> to apply certain obligations to an <i>incoming EEA firm</i> with an establishment in the <i>UK</i> . In summary, these are Articles <u>articles</u> :
	(1) 19 (conduct of business obligations) <u>24 of <i>MiFID</i> (General principles and information to clients);</u>
	(2) 21 (execution of orders on terms most favourable to the client) <u>25 of <i>MiFID</i> (Assessment of suitability and appropriateness and reporting to clients);</u>
	(3) 22 (client order handling) <u>27 of <i>MiFID</i> (Obligation to execute orders on terms most favourable to the client);</u>
	(4) 25 (upholding the integrity of markets, reporting transactions and maintaining records) <u>28 of <i>MiFID</i> (client order handling rules);</u>
	(5) 27 (making public firm quotes) <u>14 to 23 of <i>MiFIR</i> (transparency for systematic internalisers and investment firms trading OTC); and</u>
	(6) 28 (post-trade disclosure) <u>24 to 26 of <i>MiFIR</i> (transaction reporting).</u>
	The remaining obligations under <i>MiFID</i> and <i>MiFIR</i> are reserved to the Home State regulator.
11.	<i>MiFID</i> is more highly harmonising than other <i>Single Market Directives</i> . Article 4 of the <i>MiFID implementing Directive</i> permits Member States to impose additional requirements only where certain tests are met. The <i>FSA</i> has made certain requirements that fall within the scope of Article 4. These requirements apply to an <i>EEA MiFID investment firm</i> with an establishment in the <i>United Kingdom</i> as they apply to a <i>UK MiFID investment firm</i> , in the circumstances contemplated by article 32(7) <i>MiFID</i> . ⁵
...	

...

App 3 Guidance on passporting issues

...

App 3.9 Mapping of MiFID, CRD, AIFMD, UCITS Directive and Insurance Mediation Directive to the Regulated Activities Order

⁵ This paragraph will be updated in the next MiFID Handbook consultation.

...

App 3.9.5 G **Services set out in Annex 1 to MiFID**

		Table 2: <i>MiFID investment services and activities</i>	Part II RAO Investments	Part III RAO Investments
		<i>A MiFID investment services and activities</i>		
		1. Reception and transmission of orders in relation to one or more financial instruments	Article 25	Article 76-81, <u>82B</u> , 83-85, 89
		2. Execution of orders on behalf of clients	Article 14, 21	Article 76-81, <u>82B</u> , 83-85, 89
		3. Dealing on own account	Article 14	Article 76-81, <u>82B</u> , 83-85, 89
		4. Portfolio management	Article 37 (14, 21, 25 - see Note 1)	Article 76-81, <u>82B</u> , 83-85, 89
		5. Investment advice	Article 53	Article 76-81, <u>82B</u> , 83-85, 89
		6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Article 14, 21	Article 76-81, <u>82B</u> , 83-85, 89
		7. Placing of financial instruments without a firm commitment basis	Article 21, 25	Article 76-81, <u>82B</u> , 83-85, 89
		8. Operation of Multilateral Trading Facilities	Article 25D (see Note 2)	Article 76-81, <u>82B</u> , 83-85, 89
		<u>9. Operation of Organised Trading Facilities</u>	<u>Article 25DA</u> (see Note 3)	<u>Article 76-81, 83-85, 89</u>
		Ancillary services	Part II RAO Activities	Part III RAO Investments
		1. Safekeeping and administration of	Article 40, 45,	Article 76-81, <u>82B</u> , 83-

			financial instruments for the account of clients, including custodianship and related services such as cash/collateral management	64	85, 89
		2.	Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the relevant instruments where the firm granting the credit or loan is involved		
		3.	Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings	Article 14, 21, 25, 53, 64	Article 76-80, <u>82B</u> , 83-85, 89
		4.	Foreign exchange services where these are connected with the provision of investment services	Article 14, 21, 25, 53, 64	Article 83-85, 89
		5.	Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments	Article 53, 64	Article 76-81, <u>82B</u> , 83-85, 89
		6.	Services related to underwriting	Article 25, 53, 64	Article 76-81, <u>82B</u> , 83-85, 89
		7.	Investment services and activities as well as	Article 14, 21, 25, 25D, 37, 53,	Article 83 and 84

		ancillary services of the type included under Section A or B of Annex I related to the underlying of the derivatives included under Section C 5, 6, 7 and 10-where these are connected to the provision of investment or ancillary services.	64	
		Note 1. A <i>firm</i> may also carry on these other activities when it is <i>managing investments</i> .		
		Note 2. A <i>firm</i> operating an <i>MTF</i> under article 25D does not need to have a <i>permission</i> covering other <i>regulated activities</i> , unless it performs other <i>regulated activities</i> in addition to <i>operating an MTF</i> .		
		<u>Note 3. A <i>firm</i> operating an <i>OTF</i> under article 25DA does not need to have a <i>permission</i> covering other <i>regulated activities</i>, unless it performs other <i>regulated activities</i> in addition to <i>operating an OTF</i>.</u>		

SUP 17 is deleted in its entirety and the deleted text is not shown.

- 17** **Transaction reporting** [deleted]
- 17.1** **Application** [deleted]
- 17.2** **Making transaction reports** [deleted]
- 17.3** **Reporting channels** [deleted]
- 17.4** **Information in transaction reports** [deleted]
- 17** **Minimum content of a transaction report** [deleted]
- Annex 1**

After SUP 17 (deleted) insert the following new chapter. The text is new and is not underlined.

- 17A** **Transaction reporting and supply of reference data**

17A.1 Application

17A.1.1 R This chapter applies to:

- (1) a *MiFID investment firm* (excluding a *collective portfolio management investment firm*) which:
 - (a) *executes transactions* in a *reportable financial instrument*; and
 - (b) is required under article 26(1) of *MiFIR* to report its *transactions* to the *FCA*;
- (2) an operator of a *trading venue*:
 - (a) through whose systems and platforms a *transaction* in a *reportable financial instrument* is *executed* by a person not subject to *MiFIR*; and
 - (b) which is required under article 26(5) of *MiFIR* to report such transactions to the *FCA*;
- (3) a *third country investment firm* which *executes transactions* in a *reportable financial instrument*; and
- (4) a *systematic internaliser* or an operator of a *trading venue* which is required under article 27 of *MiFIR* to supply identifying reference data relating to *financial instruments* traded on its system or *trading venue* to the *FCA*.

[**Note:** article 26 of *MiFIR* and *RTS 22* contain requirements regarding transaction reporting that are directly applicable to a *firm* in *SUP* 17A.1.1.R(1) or (2), and to an *ARM* or an operator of a *trading venue* who acts on behalf of a *MiFID investment firm* subject to article 26(1) *MiFIR*.]

17.1.2 G *GEN 2.2.22A* has the effect of requiring *third country investment firms* to comply with the transaction reporting requirements in article 26 of *MiFIR* and *RTS 22* as though they were *MiFID investment firms*.

[**Note:** article 27 of *MiFIR* and *RTS 23* contain requirements about the supply of reference data that are directly applicable to a *systematic internaliser* in relation to *financial instruments* traded on its system or a *trading venue* in relation to *financial instruments admitted to trading* on a *regulated market* or traded on an *MTF* or *OTF*.]

17A.2 Connectivity with FCA systems

17A.2.1 R The following *firms* or operators of *trading venues* must deal with the *FCA* in an open and co-operative way to establish a technology connection with the *FCA* for submission of transaction reports and/or supply of reference data:

- (1) a *firm* in SUP 17A.1.1R(1) or 17A.1.1R(3) that chooses to submit its reports directly to the *FCA* instead of using an *ARM*;
 - (2) an operator of a *trading venue* in SUP 17A.1.1R(2), other than a *UK RIE* that is not itself an *ARM*;
 - (3) a *firm* or operator of a *trading venue* in SUP 17A.1.1R(4), other than a *UK RIE*.
- 17A.2.2 R To ensure the security of the *FCA*'s systems, a *firm* or operator of a *trading venue* in SUP 17A.2.1R must sign a non-disclosure agreement with the *FCA* before it receives the *FCA*'s technical specifications for connectivity.
- 17A.2.3 G Once the *FCA* receives the non-disclosure agreement from the *firm* or operator of a *trading venue*, the *FCA* will:
- (1) provide the *firm* or operator with the technical specifications; and
 - (2) request the *firm* or operator to confirm to the *FCA* that it can satisfy these specifications.
- 17A.2.4 R The *firm* or operator of a *trading venue* must confirm to the *FCA* that it can satisfy the *FCA*'s technical specifications before it can establish a technology connection with the *FCA* for submission of *transaction* reports and/or supply of reference data.
- 17A.2.5 G Where an *ARM* is used to satisfy a *MiFID investment firm*'s or a *third country investment firm*'s transaction reporting obligations in accordance with article 26 *MiFIR* or *GEN 2.2.22AR*, *MAR 9* applies.

Annex F

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

[*Editor's Note:* In this Annex, certain “EU” provisions are deleted and have been replaced with Notes signposting readers to the relevant EU Regulations.]

1 Introduction

1.1 Application

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See www.esma.europa.eu/system/files/esma_2012_122_en.pdf]~~

1.1.1 G (1) The rules and *guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under *the RAP regulations*.

(2) The recognition requirements and guidance in REC 2 relate primarily to UK RIEs which are recognised, or applying to be recognised, to operate a regulated market in the United Kingdom.

(3) While some recognition requirements in REC 2 apply to other trading venues operated by UK RIEs, guidance in respect of those venues is set out in MAR 5 and 5A.

...

1.1.2 G (1) *UK RIEs* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).

(2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirement Regulations*. *UK RIEs* must also satisfy the ~~*MiFID implementing requirements*~~ *MIFID/MiFIR requirements*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to

requirements under the ~~MiFID regulation~~ MiFID/MIFIR requirements. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

- (3) *UK RIEs* must also comply with the following:
- (a) notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*; and
 - (b) any rules made under the *FCA*'s rule-making power in regulation 11 of the *Recognition Requirements Regulations*.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* ~~and the *MiFID implementing requirements*~~ are set out, with *guidance* in *REC 2*. The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in *REC 2A*.

(1A) Key relevant *MiFID/MiFIR requirements* directly applicable to *UK recognised bodies* are signposted as *Notes*.

...

1.2 Purpose, status and quotations/notes/references

1.2.1 ...

Status

1.2.2 G (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from *UK* statute or statutory instruments are marked with the letters "~~*UK UK*~~" unless they form part of a piece of *guidance*. ~~Quotations from the directly applicable *MiFID* Regulation are marked with the letters "EU".~~ Other informative text regarding provisions of EU directives or directly applicable EU regulations which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word "Note". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.

...

Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirement Regulations*, the *RAP regulations* and, the Companies Act 1989 and the ~~*MiFID Regulation*~~ and, where necessary, words have been added to, or substituted for, the text of the provisions to facilitate understanding.

...

2 Recognition Requirements

2.1 Introduction

- 2.1.1 G (1) This chapter contains the *recognition requirements* for *UK RIEs* (other than *RAPs*) and sets out *guidance* on those requirements. Except for *REC 2.5A*, references to *recognised body* or *UK recognised bodies* in the rest of this chapter shall be read as referring to *UK RIEs*.
- (2) This chapter also contains ~~the *MiFID implementing requirements* for *UK RIEs*~~ “Notes” with informative text in relation to *MiFID/MiFIR requirements applicable directly to UK RIEs operating trading venues*.
- (3) This chapter directs *UK RIEs* to certain *recognition requirements* and *guidance* on those requirements found in other parts of the *Handbook*.

...

- 2.1.4 G Location of recognition requirements and guidance

Recognition Requirement Regulations	Subject	Section in REC 2 / other parts of the <i>Handbook</i>
Regulation 6	Method of satisfying recognition requirements	2.2
Part 1 of the Schedule	UK RIE recognition requirements	

Paragraph 1	Financial Resources	2.3
Paragraph 2	Suitability	2.4
<u>Paragraphs 2A and 2B</u>	<u>Management Body</u>	<u>2.4A</u>
Paragraph 3	Systems and controls	2.5
Paragraphs 4(1) and 4(2)(aa)	General safeguards for investors	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(b)	Proper markets	2.12
Paragraph 4(2)(c)	Availability of relevant information	2.12
Paragraph 4(2)(d)	Settlement	2.8
Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
Paragraph 4B	Provision of post-trade information about share trading	2.6
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph <u>Paragraphs 7A and 11 (regulated markets only); excl. 11(6) & 11(7)</u>	Admission of financial instruments to trading	2.12

Paragraph <u>Paragraphs 7B, 11(6) (regulated markets only) and 7C</u>	Access to facilities	2.7
<u>Paragraphs 7BA & 7BB</u>	<u>Position management and position reporting re. commodity derivatives</u>	<u>2.7A / [MAR 10]⁶</u>
Paragraph 7D	<u>Settlement and clearing facilitation services</u>	2.8
Paragraph <u>Paragraphs 7E and 7F</u>	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
Paragraph <u>Paragraphs 9A and 9ZA, and Paragraphs 12-17</u>	Operation of a multilateral trading facility <u>or an organised trading facility</u>	<u>2.16A/ MAR 5 and MAR 5A</u>
<u>Paragraph 10 (regulated markets only)</u>	<u>Orders execution</u>	<u>2.6</u>
<u>Paragraph 11(7) (regulated markets only)</u>	<u>Settlement and clearing facilitation services</u>	<u>2.8</u>
<u>Paragraph 18</u>	<u>Operation of a data reporting services provider</u>	<u>2.16B/ MAR 9</u>
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

- 2.1.5 G ~~Recital and articles from the *MiFID Regulation* (and the association guidance) relevant to market transparency are set out in *REC 2.6*. Articles from the *MiFID Regulation* relevant to admission to trading are set out in *REC 2.12*. [deleted]~~

2.2 Method of satisfying the recognition requirements

...

⁶ The FCA is considering inserting this new module in the Handbook, and will be consulting on these further changes in due course.

Outsourcing

- 2.2.3 G It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. ...
- ...
- 2.2.4 G If a *UK recognised body* makes arrangements for functions to be performed on its behalf by persons who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.
- [Note: RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions.]
- ...
- 2.2.6 G In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on his behalf:
- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
 - (2) has adequate systems and controls to manage that function and to report its performance to the *UK recognised body*;
 - (3) is managed by persons of sufficient skill, competence and integrity;
 - (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under *the Act*; and
 - (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act*.
- [Note: RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions.]
- 2.2.7 G In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this

chapter, to the arrangements made to exercise control over the performance of the function, including:

- (1) the contracts (and other relevant documents) between the *UK recognised body* and the *person* who performs the delegated function;
- (2) the arrangements made to monitor the performance of that function; and
- (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

[Note: RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions.]

...

2.4 Suitability

2.4.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 2

(1)	The [UK RIE] must be a fit and proper <i>person</i> to perform the [relevant functions] of a [UK RIE].
(2)	In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person.
(3)	The persons who effectively direct the business and operations on the <i>management body</i> of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it <u>possess sufficient knowledge, skill and experience to perform their duties.</u>
(4)	The <i>persons</i> who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

...

- 2.4.3 G In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to:

- (1) the commitment shown by the *UK recognised body's governing body management body* to satisfying the *recognition requirements* and to complying with other obligations in or under the *Act*;
- (2) ...
- (3) the extent to which its constitution and organisation provide for effective governance;
[Note: RTS 7 contains further governance requirements for a trading venue whose systems enable algorithmic trading.]
- (4) the arrangements made to ensure that its *governing body management body* has effective oversight of the *UK recognised body's relevant functions*;
- (5) the access which its regulatory department has to the *governing body management body*;
- (6) ~~the size and composition of its governing body, including:~~
 - (a) ~~the number of members of the governing body who represent members of the UK recognised body or other persons and the types of person whom they represent;~~
 - (b) ~~the number and responsibilities of any members of the governing body with executive roles within the UK recognised body; and~~
 - (c) ~~the number of independent members of the governing body;~~
[deleted]
- (7) ~~the structure and authorisation of its governing body, including any distribution of responsibilities among its members and committees;~~
[deleted]
- (8) ~~the integrity and competence of its governing body and key individuals;~~ [deleted]

...

2.4.4 G In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to its connections with:

...

- (3) any *person* who has the right to appoint or remove *members of the*

~~governing body, management body or other key individuals;~~

- (4) any person who is able in practice to appoint or remove *members of the ~~governing body, management body or other key individuals;~~*
- (5) any person in accordance with whose instructions the ~~governing body, management body or any key individual~~ is accustomed to act;

...

2.4.5 G In assessing whether its connection with any *person* could affect whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to:

...

- (5) the extent to which the *UK recognised body's governing body management body* is responsible for its day-to-day management and operations;

After REC 2.4 insert the following new section. The text is not underlined.

2.4A Management body

2.4A.1 UK Schedule to the Recognition Requirements Regulations, paragraph 2A

(1)	The composition of the <i>management body</i> of a [UK RIE] must reflect an adequately broad range of experience.		
(2)	The <i>management body</i> must possess adequate knowledge, skills and experience in order to understand the [UK RIE's] activities and main risks.		
(3)	Persons on the <i>management body</i> must -		
	(a)	commit sufficient time to perform their functions on the <i>management body</i>;	
	(b)	act with honesty, integrity and independence of mind; and	
	(c)	effectively-	
		(i)	assess and challenge, where necessary, the decisions of the senior management; and
		(ii)	oversee and monitor decision making.

(4)	The <i>management body</i> of a [UK RIE] must-	
	(a)	define and oversee the implementation of the governance and authorisation arrangements of the [UK RIE] that ensure effective and prudent management of [the UK RIE], including the segregation of duties in the [UK RIE] and the prevention of conflicts of interest and in a manner that promotes the integrity of the market; and
	(b)	monitor and periodically assess the effectiveness of the [UK RIE's] governance arrangements and take appropriate steps to address any deficiencies.
(5)	A [UK RIE] must-	
	(a)	devote adequate human and financial resources to the induction and training of persons on the <i>management body</i>;
	(b)	ensure that the <i>management body</i> has adequate access to the information it requires to perform its functions;
	(c)	engage a broad set of qualities and competences when recruiting members to the <i>management body</i> and have a policy promoting diversity on the <i>management body</i>; and
	(d)	notify the FCA of the identity of all <i>persons</i> on its <i>management body</i>.

2.4A.2 UK Schedule to the Recognition Requirements Regulations, paragraph 2B

(1)	If the [UK RIE] is significant the following requirements apply to the <i>management body</i> -	
	(a)	persons of the <i>management body</i> must not at the same time hold positions exceeding more than one of the following combinations –
	(i)	one executive directorship with two non-executive directorships; or
	(ii)	four non-executive directorships; and
	(b)	the <i>management body</i> must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
(2)	For the purposes of sub-paragraph 1(a) -	
	(a)	any directorship in which the person represents the United Kingdom is not counted;

	(b)	executive or non-executive directorships held within the same group where the [UK RIE] holds a qualifying holding within the meaning of Article 4.1.31 of <i>MiFID</i> shall be counted as a single directorship; and
	(c)	any directorship in an organisation which does not predominantly pursue commercial objectives is not counted.
(3)	For the purposes of sub-paragraph (1)(b), the nomination committee must -	
	(a)	be composed of <i>persons</i> on the <i>management body</i> who do not perform an executive function in the [UK RIE];
	(b)	identify and recommend to the [UK RIE] persons to fill <i>management body</i> vacancies;
	(c)	at least annually assess the structure, size, composition and performance of the <i>management body</i> and make recommendations to the <i>management body</i> with regard to any changes;
	(d)	periodically review the policy of the <i>management body</i> for the selection and appointment of senior management and make recommendations to the <i>management body</i> ; and
	(e)	be able to use any forms of resource it deems appropriate, including external advice.
(4)	In performing its functions under sub-paragraph 3, the nomination committee must to the extent possible and on an ongoing basis take account of the need to ensure that the <i>management body's</i> decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the [UK RIE] as a whole.	
(5)	In performing its function under sub-paragraph 3(b) the nomination committee must -	
	(a)	evaluate the balance of knowledge, skills, diversity and experience of the management body;
	(b)	prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
	(c)	decide on a target for the representation of the underrepresented gender in the management body

		and prepare a policy on how to meet that target;
	(d)	engage a broad set of qualities and competences; and
	(e)	have a policy promoting diversity on the <i>management body</i>.

- 2.4A.3 G The *FCA* will assess an application under section 299AB of the *Act* for a person on a *management body* to hold an additional non-executive directorship on a case-by-case basis, having regard to the person's ability to commit sufficient time to perform their functions on the *management body* and the complexity, nature and scale of operations of the *UK RIE*.

Amend the following as shown.

2.5 Systems and controls and conflicts

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraph 3

(1)	The [UK RIE] must ensure that the systems and controls, <u>including procedures and arrangements</u>, used in the performance of its [<i>relevant functions</i>] are adequate, <u>effective</u> and appropriate for the scale and nature of its business.
(2)	Sub-paragraph (1) applies in particular to systems and controls concerning -
...	
(e)	(where relevant) the safeguarding and administration of assets belonging to users of the [UK RIE's] <u>facilities</u>;
(f)	<u>the resilience of its trading systems;</u> [Note: RTS 7 contains requirements on the resilience of trading systems operated by <i>trading venues</i> that enable <i>algorithmic trading</i> .]
(g)	<u>the ability to have sufficient capacity to deal with peak order and message volumes;</u> [Note: RTS 7 contains requirements on the adequacy of capacity of trading systems operated by <i>trading venues</i> that enable <i>algorithmic trading</i> .]
(h)	<u>the ability to ensure orderly trading under conditions of severe market stress;</u>

	<u>(i)</u>	<u>the effectiveness of business continuity arrangements to ensure the continuity of the [UK RIE's] services if there is any failure of its trading systems including the testing of the [UK RIE's] systems and controls;</u>
	<u>(j)</u>	<u>the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;</u>
	<u>(k)</u>	<u>the ability to ensure <i>algorithmic trading</i> systems cannot create or contribute to disorderly trading conditions on trading venues operated by the exchange;</u>
	<u>(l)</u>	<u>the ability to ensure disorderly trading conditions which arise from the use of <i>algorithmic trading</i> systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the [UK RIE's] trading system by a member or participant are able to be managed;</u> [Note: RTS 9 contains requirements on the ratio of unexecuted orders to transactions to be taken into account by a <i>trading venue</i> that operates electronic continuous auction order book, quote-driven or hybrid trading systems.]
	<u>(m)</u>	<u>the ability to ensure the flow of orders is able to be slowed down if there is a risk of system capacity being reached;</u>
	<u>(n)</u>	<u>the ability to limit and enforce the minimum tick size which may be executed on its <i>trading venues</i>; and</u>
	<u>(o)</u>	<u>the requirement for members and participants to carry out appropriate testing of algorithms.</u> [Note: RTS 7 contains requirements on the appropriate testing of algorithms to ensure that trading systems, when they enable <i>algorithmic trading</i> , cannot create or contribute to disorderly trading conditions.]
<u>(3)</u>	<u>For the purposes of sub-paragraph 2(o), the [UK RIE] must provide environments to facilitate such testing.</u>	
<u>(4)</u>	<u>The [UK RIE] must -</u>	
	<u>(a)</u>	<u>have written agreements with all <i>investment firms</i> pursuing a market making strategy on <i>trading venues</i> operated by it;</u>
	<u>(b)</u>	<u>have schemes, appropriate to the nature and scale of a <i>trading venue</i>, to ensure that a sufficient number of</u>

	<p><u>investment firms enter into such agreements;</u> <u>[Note: RTS 8 contains requirements on trading venues' market making agreements and market making schemes.]</u></p>
	<p><u>(c) monitor and enforce compliance with the written agreements mentioned in paragraph (a);</u></p>
	<p><u>(d) inform the FCA about the content of a written agreement entered into for the purposes of paragraph (a); and</u></p>
	<p><u>(e) provide the FCA with any information it requests which it reasonably requires to satisfy itself that a written agreement entered into for the purposes of paragraph (a) complies with this sub-paragraph [3(4)].</u></p>
<u>(5)</u>	<p><u>The written agreement mentioned in sub-paragraph 4(a) must at least specify -</u></p>
	<p><u>(a) the obligations of the investment firm in relation to the provision of liquidity and where applicable any other obligation arising from the participation in a scheme mentioned in sub-paragraph 4(b); and</u></p>
	<p><u>(b) any incentives in terms of rebates or otherwise offered by the [UK RIE] to the investment firm in order for it to provide liquidity to the [UK RIE's] regulated market on a regular and predictable basis and where applicable any other rights accruing as a result of participation in a scheme mentioned in sub-paragraph 4(b).</u></p>
<u>(6)</u>	<p><u>The [UK RIE] must be able to temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period and in exceptional cases be able to cancel, vary, or correct any transaction.</u></p>
<u>(7)</u>	<p><u>For the purposes of paragraph 6, the [UK RIE] must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account the liquidity of different asset classes and subclasses, the nature of the trading venue market model and the types of users to ensure the parameters are sufficient to avoid significant disruptions to the orderliness of trading.</u></p>
<u>(8)</u>	<p><u>The [UK RIE] must report the parameters mentioned in sub-paragraph (6) to the FCA in a format to be specified by the FCA to ensure consistent and comparable reporting.</u></p>

(9)	<p><u>If a regulated market operated by the [UK RIE] is material in terms of liquidity of the trading of a financial instrument in the EEA and trading is halted in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.</u></p> <p>[Note: RTS 12 contains requirements for when a regulated market is material in terms of liquidity in a financial instrument for purposes of trading halt notifications.]</p>												
(10)	<p><u>Where the [UK RIE] permits direct electronic access to a trading venue it operates, it must -</u></p> <table border="1" data-bbox="496 645 1375 1682"> <tr> <td data-bbox="496 645 587 857">(a)</td> <td data-bbox="592 645 1375 857"> <p><u>ensure that members or participants of that trading venue are only permitted to provide such services if they are investment firms authorised in accordance with MiFID or are credit institutions authorised in accordance with CRD;</u></p> </td> </tr> <tr> <td data-bbox="496 864 587 1003">(b)</td> <td data-bbox="592 864 1375 1003"> <p><u>ensure that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided;</u></p> </td> </tr> <tr> <td data-bbox="496 1010 587 1182">(c)</td> <td data-bbox="592 1010 1375 1182"> <p><u>ensure that the member or participant retains responsibility for orders and trades executed using the direct electronic access service in relation to the requirements of MiFID;</u></p> </td> </tr> <tr> <td data-bbox="496 1189 587 1290">(d)</td> <td data-bbox="592 1189 1375 1290"> <p><u>set appropriate standards regarding risk controls and thresholds on trading through direct electronic access;</u></p> </td> </tr> <tr> <td data-bbox="496 1296 587 1509">(e)</td> <td data-bbox="592 1296 1375 1509"> <p><u>be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from other orders or trading by the member or participant providing the direct electronic access; and</u></p> </td> </tr> <tr> <td data-bbox="496 1516 587 1682">(f)</td> <td data-bbox="592 1516 1375 1682"> <p><u>have arrangements in place to suspend or terminate the provision of direct electronic access on that market by a member or participant in the case of non-compliance with this sub-paragraph.</u></p> </td> </tr> </table> <p>[Note: RTS 7 contains requirements on direct electronic access permitted through a trading venue's systems.]</p>	(a)	<p><u>ensure that members or participants of that trading venue are only permitted to provide such services if they are investment firms authorised in accordance with MiFID or are credit institutions authorised in accordance with CRD;</u></p>	(b)	<p><u>ensure that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided;</u></p>	(c)	<p><u>ensure that the member or participant retains responsibility for orders and trades executed using the direct electronic access service in relation to the requirements of MiFID;</u></p>	(d)	<p><u>set appropriate standards regarding risk controls and thresholds on trading through direct electronic access;</u></p>	(e)	<p><u>be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from other orders or trading by the member or participant providing the direct electronic access; and</u></p>	(f)	<p><u>have arrangements in place to suspend or terminate the provision of direct electronic access on that market by a member or participant in the case of non-compliance with this sub-paragraph.</u></p>
(a)	<p><u>ensure that members or participants of that trading venue are only permitted to provide such services if they are investment firms authorised in accordance with MiFID or are credit institutions authorised in accordance with CRD;</u></p>												
(b)	<p><u>ensure that appropriate criteria are set and applied regarding the suitability of persons to whom such access may be provided;</u></p>												
(c)	<p><u>ensure that the member or participant retains responsibility for orders and trades executed using the direct electronic access service in relation to the requirements of MiFID;</u></p>												
(d)	<p><u>set appropriate standards regarding risk controls and thresholds on trading through direct electronic access;</u></p>												
(e)	<p><u>be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from other orders or trading by the member or participant providing the direct electronic access; and</u></p>												
(f)	<p><u>have arrangements in place to suspend or terminate the provision of direct electronic access on that market by a member or participant in the case of non-compliance with this sub-paragraph.</u></p>												
(11)	<p><u>The [UK RIE's] rules on colocation services must be transparent, fair and non-discriminatory.</u></p> <p>[Note: [article 2 of] RTS 10 contains requirements to ensure colocation services are fair and non-discriminatory.]</p>												
(12)	<p><u>The [UK RIE's] fee structure, for all fees it charges and</u></p>												

	<u>rebates it grants, must -</u>
<u>(a)</u>	<u>be transparent, fair and non-discriminatory;</u> [Note: [article 3] of <i>RTS 10</i> contains requirements to ensure fee structures are fair and non-discriminatory.]
<u>(b)</u>	<u>not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and</u> [Note: [article 4] of <i>RTS 10</i> contains requirements concerning prohibited fee structures]
<u>(c)</u>	<u>impose market making obligations in individual <i>shares</i> or suitable basket of <i>shares</i> for any rebates that are granted.</u>
<u>(13)</u>	<u>Nothing in sub-paragraph 12 prevents the [UK RIE] from -</u>
<u>(a)</u>	<u>adjusting its fees for cancelled orders according to the length of time which the order was maintained;</u>
<u>(b)</u>	<u>calibrating its fees to each <i>financial instrument</i> to which they apply;</u>
<u>(c)</u>	<u>imposing a higher fee for placing an order which is cancelled than an order which is executed;</u>
<u>(d)</u>	<u>imposing a higher fee on participants placing a high ratio of cancelled orders to executed orders; or</u>
<u>(e)</u>	<u>imposing a higher fee on a person operating a <i>high-frequency algorithmic trading technique</i>.</u>
<u>(14)</u>	<u>The [UK RIE] must require members and participants of <i>trading venues</i> operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the different algorithms used for the creation of orders and the persons initiating those orders.</u>
<u>(15)</u>	<u>The [UK RIE] must adopt tick size regimes in respect of <i>trading venues</i> operated by it in -</u>
<u>(a)</u>	<u><i>shares, depositary receipts, exchange-traded funds, certificates</i> and other similar <i>financial instruments</i> traded on each <i>trading venue</i>; and</u> [Note: <i>RTS 11</i> contains requirements on the tick size regime for <i>shares, depositary receipts, exchange-traded funds</i> and <i>certificates</i> .]

	(b)	<u>any financial instrument as required by a regulated technical standard made under article 49(3) or (4) of [MiFID] which is traded on that trading venue.</u> <u>[Note: RTS 11]</u>
(16)	<u>The tick size regime -</u>	
	(a)	<u>must be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and</u>
	(b)	<u>must adapt the tick size for each financial instrument appropriately.</u>
(17)	<u>Nothing in sub-paragraph (15) or (16) requires the [UK RIE] to act inconsistently with any regulatory technical standards made under article 49.3 or 4 of MiFID.</u> <u>[Note: RTS 11]</u>	
(18)	<u>The [UK RIE] must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards made under article 50 of MiFID.</u> <u>[Note: RTS 25]</u>	

2.5.1A UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that – appropriate arrangements are made to -	
(i)	identify conflicts between the interests of the [UK RIE], its owners and operators and the interests of the persons who make use of its facilities or the interests of the financial markets trading venues operated by it; and
(ii)	manage such conflicts so as to avoid adverse consequences for the operation of the financial markets trading venues operated by the [UK RIE] and for the persons who make use of its facilities.

2.5.2 UK {deleted}

R In paragraph 3(8) of the Schedule to the Recognition Requirements Regulations, under which a UK RIE must report the parameters for halting trading to the FCA, such information must be provided to the FCA in writing and delivered by any one of the methods in REC 3.2.3R.

2.5.3 G In assessing whether the systems and controls used by a *UK recognised body* in the performance of its relevant functions are adequate, effective and appropriate for the scale and nature of its business, the *FCA* may have regard to the *UK recognised body's*:

- (1) arrangements for managing, controlling and carrying out its *relevant functions*, including:
 - (a) the distribution of duties and responsibilities among ~~its key individuals~~ the members of the management body and the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (b) (where the staffing requirements in RTS 7 do not apply to the UK RIE) the staffing and resources of the departments of the *UK recognised body* responsible for performing its *relevant functions*; and
 - (c) the arrangements made to enable ~~key individuals~~ members of the management body to supervise the departments or functions for which they are responsible;
 - (d) ~~the arrangements for appointing and supervising the performance of key individuals (and their departments); and [deleted]~~
 - (e) ~~the arrangements by which the governing body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of key individuals under review; [deleted]~~
- (2) arrangements for the identification and management of conflicts of interest;
- (3) arrangements for internal and external audit; and
- (4) information technology systems.

2.5.4 G ~~The following paragraphs~~ REC 2.5.5G to REC 2.5.20G set out other matters to which the *FCA* may have regard in assessing the UK RIE's systems and controls used for the transmission of information, risk management, ~~the~~

~~effecting and monitoring of transactions~~, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the *Recognition Requirements Regulations*) ~~and~~, the safeguarding and administration of assets and certain other aspects of its operations.

- 2.5.4A G Where the *MiFID/MiFIR Systems Regulations* apply to a *UK RIE*, the *FCA* will, in assessing the *UK RIE*'s systems and controls, additionally have regard to the *UK RIE*'s satisfaction of any relevant requirements in those regulations. Of particular importance is *RTS 7*, which will apply where a trading venue allows or enables *algorithmic trading*.

...

~~Effecting and monitoring of transactions and operation~~ Operation of settlement arrangements and effecting and monitoring of transactions

- 2.5.8 G In assessing a *UK RIE*'s systems and controls for ~~the effecting and monitoring of transactions, and for~~ the operation of settlement arrangements, the *FCA* may have regard to the totality of the arrangements and processes through which the *UK RIE*'s transactions are ~~effected, cleared, and settled, including:~~
- (1) ~~(in relation to non-derivatives transactions)~~ a *UK RIE*'s ~~arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its~~ arrangements with another person under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or *clearing house*;
 - (2) ~~(in relation to non-derivatives transactions and if relevant),~~ a *UK RIE*'s arrangements under which instructions relating to a transaction, to be cleared by another person by means of a *clearing facilitation service*, are entered into its systems by the relevant other person and transmitted to the other person; and
 - (3) the arrangements made by the *UK RIE* for monitoring and reviewing the operation of these systems and controls.

[Note: In relation to *derivative* transactions, *RTS 26* contains requirements on the systems for clearing of such transactions.]

- 2.5.8A G Where the requirements of *RTS 7* in respect of effecting and monitoring transactions do not apply to a *UK RIE*, the *FCA* may, in addition, assess the *UK RIE*'s systems and controls for the effecting and monitoring of transactions. In doing so, it will have regard to the *UK RIE*'s arrangements under which orders are received and matched, and its arrangements for trade

and transaction reporting.

Safeguarding and administration of assets

2.5.9 G ...

Management of conflicts of interest

2.5.10 G A conflict of interest arises in a situation where a *person* with responsibility to act in the interests of one *person* may be influenced in his action by an interest or association of his own, whether personal or business or employment related. Conflicts of interest can arise both for the *employees* of *UK recognised bodies* and for the *members* (or other *persons*) who may be involved in the decision-making process, for example where they belong to committees or to the ~~*governing body*~~ *management body*. Conflicts of interest may also arise for the *UK recognised body* itself as a result of its connection with another *person*.

...

2.5.13 G The *FCA* may have regard to the arrangements a *UK recognised body* makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

- (1) the size and composition of the ~~*governing body*~~ *management body* and relevant committees;
- (2) the roles and responsibilities of ~~*key individuals*~~ *members of the management body*, especially where they also have responsibilities in other organisations;
- (3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
- (4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

...

2.5.15 G The *FCA* may also have regard to the contracts of employment, staff rules, letters of appointment for members of the ~~*governing body*~~ *management body*, members of relevant committees ~~and other *key individuals*~~ and other guidance given to individuals on handling conflicts of interest. Guidance to

individuals may need to cover:

...

...

Information technology systems

2.5.18 G ~~Information technology is likely to be a major component of the systems and controls used by an *UK recognised body*. In assessing the adequacy of the information technology used by a *UK recognised body* to perform or support its relevant functions~~ Where *RTS 7* applies to the *UK RIE*, the *FCA* may, in assessing the adequacy of the *UK recognised body's* information technology systems, have regard to:

- (1) the organisation, management and resources of the information technology department within the *UK recognised body*;
- (2) the arrangements for ~~controlling and~~ documenting the design, development, implementation and use of information technology systems; and
- (3) ~~the performance, capacity and reliability of information technology systems~~ the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including the procedures for the evaluation and selection of information technology systems.

2.5.19 G Where *RTS 7* does not apply to a *UK RIE*, the *FCA* may in addition have regard to the performance, capacity and reliability of its systems. The *FCA* may also have regard in these cases to the arrangements for maintaining, recording and enforcing technical and operational standards and specification for information technology systems, including:

...

...

2.6 **General safeguards for investors, ~~provision of pre and post-trade information about share trading and~~ suspension and removal of financial instruments from trading and order execution on regulated markets**

...

2.6.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –	
it has transparent and non-discretionary rules and procedures -	
(i)	to provide for fair and orderly trading, and
(ii)	to establish objective criteria for the efficient execution of orders;

2.6.3 UK Schedule to the Recognition Requirements Regulations, Paragraph 4A

(1)	The [UK RIE] must have arrangements for-	
	(a)	current bid and offer prices for <i>shares</i> , and
	(b)	the depth of trading interest in <i>shares</i> at the prices which are advertised through its systems,
	to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7EU and REC 2.6.21EU to REC 2.6.24EU)].	
(2)	If [a UK RIE] decides to give <i>investment firms and credit institutions</i> required to publish their quotes in <i>shares</i> -	
	(a)	in accordance with Article 27 of [MiFID], or
	(b)	by the [FCA],
	access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.	
(3)	The [FCA] may waive the requirements of sub-paragraph (1) in the circumstances specified-	
	(a)	in the case of <i>shares</i> to be traded on a multilateral trading facility operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)]; or

	(b)	in the case of <i>shares</i> to be traded on a regulated market operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)]. [deleted]
<u>[Note: the MiFI Regulations amending the Recognition Requirement Regulations]</u>		

2.6.4 UK **Schedule to the Recognition Requirements Regulations, Paragraph 4B**

(1)	The [UK RIE] must make arrangements for the price, volume and time of transactions executed in <i>shares</i> to be made available to the public as soon as possible after the time of transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.15EU and REC 2.6.21EU to REC 2.6.24EU)].	
(2)	If [a UK RIE] decides to give investment firms and credit institutions required to make public details of their transactions in <i>shares</i>-	
	(a)	in accordance with Article 28 of [MiFID], or
	(b)	by the [FCA],
	access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.	
(3)	The [FCA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-	
	(a)	in the case of <i>shares</i> to be traded on a multilateral trading facility operated by [a UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18EU); or
	(b)	in the case of <i>shares</i> to be traded on a regulated market operated by [a UK RIE], in Article 45.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18EU)]. [deleted]
<u>[Note: the MiFI Regulations amending the Recognition Requirement Regulations]</u>		

Regulations]

2.6.5 G Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. [deleted]

2.6.6 UK **Schedule to the Recognition Requirement Regulations, Paragraph 7E**

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a *regulated market trading venue* operated by it any *financial instrument* which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

2.6.6A UK **Schedule to the Recognition Requirement Regulations, Paragraph 7F**

(1)	<u>Where the [UK RIE] suspends or removes any <i>financial instrument</i> from trading on a <i>trading venue</i> it operates it must also suspend or remove from trading on that venue any <i>derivative</i> that relates to or is referenced to that <i>financial instrument</i> where that is required to support the objectives of the suspension or removal of trading of that <i>financial instrument</i>.</u>
(2)	<u>Where the [UK RIE] suspends or removes any <i>financial instrument</i> from trading on a <i>trading venue</i> it operates, including any <i>derivative</i> in accordance with sub-paragraph (1), it must make that decision public and notify the <i>FCA</i>.</u>
(3)	<u>Where the [UK RIE] lifts a suspension or re-admits any <i>financial instrument</i> to trading on a <i>trading venue</i> it operates, including any <i>derivative</i> suspended or removed from trading in accordance with sub-paragraph (1), following a decision made under sub-paragraph (1), it must make that decision public and notify the <i>FCA</i>.</u>
<u>[Note: <i>RTS 18</i> contains requirements on suspension and removal of financial instruments from trading]</u>	

2.6.6B UK **Schedule to the Recognition Requirement Regulations, Paragraph 10**

[**Note:** This paragraph is relevant to *regulated markets* only. See *REC 2.16A* regarding *MTFs* or *OTFs*]

<u>A [UK RIE] must -</u>	
<u>(a)</u>	<u>have non-discretionary rules for the execution of orders on a regulated market operated by it; and</u>
<u>(b)</u>	<u>not on a regulated market operated by it –</u>
	<u>(i) execute any client orders against its proprietary capital;</u> <u>or</u>
	<u>(ii) engage in matched principal trading.</u>

2.6.7 EU **Article 17 of the MiFID Regulation**

<u>Pre-trade transparency obligation</u>	
<u>(1)</u>	<u>A ... market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8EU)], make public the information set out in paragraphs 2 to 6.</u>
<u>(2)</u>	<u>Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.</u>
<u>(3)</u>	<u>Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.</u>
	<u>The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.</u>

	In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
(4)	Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
(5)	Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.
	In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
(6)	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see REC 2.6.8EU)] [deleted]
[Note: article 3 of <i>MiFIR</i>]	

2.6.8 EU **Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see REC 2.6.9EU)**

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
continuous auction order book trading system	a system that by means of an order book and a trading algorithm operated	the aggregate number of orders and the shares they represent at each price level, for

	without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	at least the five best bid and offer price levels.
quote-driven trading system	a system where <i>transactions</i> are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	the best bid and offer by price of each market maker in that share together with the volumes attaching to those prices
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than	adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of

	that applicable to the types of system covered by [the] first three rows	each market maker in the share, if the characteristics of the price discovery mechanism so permit [deleted]
<p>[Note: <i>RTS 1</i> on transparency requirements for trading venues in respect of <i>shares, depositary receipts, exchange traded funds, certificates</i> and other similar <i>financial instruments</i> and the obligation for <i>investment firms</i> to execute <i>transactions</i> in certain <i>shares</i> on a <i>trading venue</i> or a <i>systematic internaliser</i>]</p>		

2.6.9 EU **Recital 14 to the MiFID Regulation**

<p>A waiver from pre-transparency obligations arising under Articles 29 and 44 of [MiFID] [see REC 2.6.3UK] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID]. [deleted]</p>
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2.6.10 EU **Article 18 of the MiFID Regulation**

Waivers based on market model and type of order or transaction	
(1)	Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)] maybe granted by the [FCA] for systems operated by an MTF or a regulated market, if those systems satisfy one of the following criteria:
	(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
	(b) they formalise negotiated transactions [(see REC 2.6.11EU)], each of which meets one of the following criteria:
	(i) it is made at or within the current volume weighted spread reflected on the order book or

			the quotes of the market makers of the <i>regulated market</i> or <i>MTF</i> operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
		(ii)	it is subject to conditions other than the current market price of the share [see <i>REC 2.6.12EU</i>].
	For the purposes of point (b), the other conditions specified in the rules of the <i>regulated market</i> or <i>MTF</i> for a transaction of this kind must also have been fulfilled.		
	In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.		
(2)	Waivers in accordance with Articles 29(2) and 44(2) of [<i>MiFID</i>] [(see <i>REC 2.6.3UK</i>)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the <i>regulated market</i> or <i>MTF</i> pending their being disclosed to the market. [deleted]		
<u>[Note: articles 4 and 5 of <i>MiFIR</i>, <i>RTS 1</i> and <i>RTS 3</i> on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations]</u>			

2.6.11 EU **Article 19 of the MiFID Regulation**

References to negotiated transaction	
For the purposes of Article 18(1)(b) [(see <i>REC 2.6.10EU</i>)] a negotiated transaction shall mean a transaction involving members or participants of a <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:	
(a)	dealing on own account with another member or participant who acts for the account of a <i>client</i>;
(b)	dealing with another member or participant, where both are executing orders on own account;

(e)	acting for the account of both the buyer and seller;
(d)	acting for the account of the buyer, where another member or participant acts for the account of the seller;
(e)	trading for own account against a <i>client</i> order. [deleted]
[Note: article 5 of <i>MiFIR</i> , and <i>RTS 3</i>	

2.6.11A EU [Note: article 8 of *MiFIR*]

2.6.11B EU [Note: *RTS 2* with regard to regulatory technical standards on transparency requirements for trading venues with respect to bonds, *structured finance products*, emission allowances and *derivatives*]

2.6.11C EU [Note: article 9 of *MiFIR*]

2.6.12 EU **Article 3 of the MiFID Regulation**

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions	
(1)	A transaction related to an individual share in a <i>portfolio trade</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.
(2)	A volume weighted average price <i>transaction</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.

[deleted]

2.6.13 EU **Article 20 of the MiFID Regulation**

Waivers in relation to transactions which are large in scale
An order shall be considered to be large in scale compared with

~~normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see REC 2.6.14EU)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.~~

[deleted]

2.6.14 EU **Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size**

Class in terms of average daily turnover	ADT < €500 000	€500 000 < ADT < €1 000 000	€1 000 000 < ADT < €25 000 000	€25 000 000 < ADT < €50 000 000	ADT < €50 000 000
Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000

[deleted]

2.6.15 EU **Article 27(1) of the MiFID Regulation**

Post-trade transparency obligation	
(1)	... regulated markets, and ... market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets concluded ... within their systems, make public the following details:
(a)	the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16EU)]

	(b)	an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17EU)];
	(e)	an indication that the trade was a negotiated trade, where applicable;
	(d)	any amendments to previously disclosed information, where applicable.
	Those details shall be made public either by reference to each <i>transaction</i> or in a form aggregating the volume and price of all <i>transactions</i> in the same share taking place at the same price at the same time. [deleted]	
[Note: article 6 of <i>MiFIR</i>]		

2.6.16 EU **Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation**

2.	Trading Day	The trading day on which the <i>transaction</i> was executed
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
6.	Instrument Identification	This shall consist in:
		— a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is subject of the <i>transaction</i>;
		— if the [share] in question does not have a unique identification code, the report must include the name of the [share]...
16.	Unit Price	The price per [share] excluding commission and (where relevant) accrued interest. ...
17.	Price	The currency in which the price is expressed ...

	Notation	
18.	Quantity	The number of units of the [shares].
21.	Venue identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i>'s] ... unique harmonised identification code;
		... [deleted]
<u>[Note: RTS 1]</u>		

2.6.17 EU **Article 3 of the MiFID Regulation**

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions	
1.	A <i>transaction</i> related to an individual share in a <i>portfolio trade</i>... shall ... be considered, for the purposes of Article 27(1)(b) [(see <i>REC 2.6.15EU</i>)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.
2.	A volume weighted average price <i>transaction</i> ... shall be considered, for the purposes of Article 27(1)(b) [(see <i>REC 2.6.15EU</i>)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.

[deleted]

2.6.18 EU **Article 28 of the MiFID Regulation**

Deferred publication of large transactions	
The deferred publication of information in respect of <i>transactions</i> may be authorised, for a period no longer than the period specified in Table 4 in Annex II [(see <i>REC 2.6.20EU</i>)] for the class of share and <i>transaction</i> concerned, provided the following criteria are satisfied:	
(a)	the <i>transaction</i> is between [a <i>MiFID investment firm</i>] <i>dealing on own account</i> and a <i>client</i> of the firm;
(b)	the size of that <i>transaction</i> is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II

~~[(see *REC 2.6.20EU*)].~~

~~In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33. [deleted]~~

~~[Note: article 7 of *MiFIR*]~~

2.6.18A EU ~~[Note: article 10 of *MiFIR*]~~

2.6.18B EU ~~[Note: *RTS 22*]~~

2.6.18C EU ~~[Note: article 11 of *MiFIR*]~~

2.6.19 EU ~~Article 29(3), second sentence of the *MiFID* Regulation~~

~~Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see *REC 2.6.18EU*).~~

~~[deleted]~~

2.6.20 EU ~~Table 4 in Annex II to the *MiFID* Regulation: Deferred publication thresholds and delays~~

~~The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.~~

		Class of share in terms of average daily turnover (ADT)			
		ADT < €100 000	€100 000 < ADT < €1 000 000	€1 000 000 < ADT < €50 000	ADT < €50 000

				000	
Minimum qualifying size of transaction for permitted delay					
Permitted delay for publication	60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
	180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 12 hours of trading day)		€45 000	Greater of 25% of ADT and €100 000	Lower of 25% of ADT and €10 000 000	Lower of 30% of ADT and €30 000 000
Until end of trading day next after trade		€60 000	Greater of 50% of ADT and €100 000	Greater of 50% of ADT and €1 000 000	100% of ADT
Until end of second trading day next after trade		€80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third trading day next after trade			250% of ADT	250% of ADT	

[deleted]

2.6.21 EU **Article 29 of MiFID Regulation**

Publication and availability of pre- and post-trade transparency data	
1.	<i>A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal</i>

	trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.
2.	Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.
3.	Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
4.	Post-trade information referring to transactions taking place on a [regulated market or MTF] but outside its normal trading hours shall be made public before the opening of the next trading day of the [regulated market or MTF] on which the transaction took place.

[deleted]

2.6.22 EU Recital to the MiFID Regulation

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time.
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[deleted]

2.6.23 EU Article 30 of the MiFID Regulation

Public availability of pre- and post-trade information
... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

(a)	the facilities of a <i>regulated market</i> or <i>MTF</i>;
(b)	the facilities of a third party;
(c)	proprietary arrangements.

[deleted]

2.6.24 EU **Article 32 of the MiFID Regulation**

Arrangements for making information public	
Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see <i>REC</i> 2.6.23EU)] ... shall satisfy the following conditions:	
(a)	it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
(b)	it must facilitate the consolidation of the data with similar data from other sources;
(c)	in must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

[deleted]

...

Orderly markets

...

2.6.29 G In determining whether a *UK RIE* is ensuring that business conducted by means of its facilities is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to whether the *UK RIE*'s arrangements and practices:

- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
- (2) ~~ensure:~~ demonstrate that the *UK RIE* is able to satisfy:
 - (a) ~~sufficient pre-trade transparency in the *UK RIE*'s markets taking account of the practices in those markets and the trading systems used; and either or both of the following:~~

- (i) (for shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments traded on its trading venues) satisfy the pre-trade transparency requirements in article 3 of MiFIR, unless waived by the FCA under article 4 of MiFIR in which case the FCA will have regard to the UK RIE's ability to demonstrate that it is able to satisfy article 5(7) of MiFIR; or
 - (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) satisfy the pre-trade transparency requirements in article 8 of MiFIR, unless waived or temporarily suspended by the FCA under article 9 of MiFIR; and
- (b) ~~sufficient post trade transparency in the UK RIE's markets taking into account the nature and liquidity of the specified investments traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for members and clients for whom they act, and the needs of different markets participants for timely price information either or both of the following:~~
- (i) (for shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments traded on its trading venues) satisfy the post-trade transparency requirements set out in article 6 of MiFIR, unless the FCA has provided for deferred publication in accordance with article 7 of MiFIR; or
 - (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) satisfy the directly applicable post-trade transparency requirements set out in article 10 of MiFIR, unless the FCA has provided for deferred publication or temporarily suspended such post-trade transparency requirements in accordance with article 11 of MiFIR. In the event the FCA has provided for deferred publication of the post-trade transparency requirements, regard would be had to the UK RIE's ability to demonstrate that it is able to satisfy any other requests made by the FCA pursuant to article 11(3) of MiFIR; and

- (c) (for all *financial instruments* traded on its trading venue) satisfy the obligation to make pre-trade and post-trade data available separately and on a reasonable commercial basis in accordance with articles 12 and 13 of *MiFIR*, and *RTS 14* on the specification of the offering of pre-trade data and post-trade data and the level of disaggregation.
- (2A) ~~(2) does not apply to a *UK RIE*'s markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE*'s markets for shares admitted to trading on a *regulated market*, see in particular *REC 2.6.3UK* and *REC 2.6.4UK* and *REC 2.6.7EU* to *EU 2.6.24EU*; [deleted]~~
- (3) ~~include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and [deleted]~~
- (4) ~~if they include arrangements to support or encourage liquidity:~~
- (a) ~~are transparent;~~
- (b) ~~are not likely to encourage any *person* to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any *client* for whom he acts);~~
- (c) ~~are consistent with a reliable, undistorted price formation process; and~~
- (d) ~~alleviate dealing or other identified costs associated with trading on the *UK RIE*'s markets and do not subsidise a market position of a user of its *facilities*. [deleted]~~
- 2.6.29A G In addition to the matters set out in *REC 2.6.29G*, the *FCA* may have regard to the *UK recognised body*'s compliance with relevant requirements of *RTS 7* on the prevention of disorderly trading conditions.
- 2.6.30 G (1) ~~The *FCA* accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a *UK RIE*, subject to any necessary safeguards, where appropriate.~~

- (2) (1) does not apply to a *UK RIE's* markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE's* markets for shares admitted to trading on a *regulated market*, see in particular *REC 2.6.3UK* and *REC 2.6.4UK* and *REC 2.6.7EU* to *REC 2.6.24EU*. [deleted]

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

- 2.6.31 G The *FCA* has exercised its power referred to in *REC 2.6.3UK(3)* to waive the pre-trade transparency requirements referred to in *REC 2.6.3UK(1)*. The waivers granted are those based on market model (See *REC 2.6.10EU1*), type of order (see *REC 2.6.10EU2*) and *transactions* which are large in scale (see *REC 2.6.13EU*). These waivers apply to all *regulated markets* and *MTFs* operated by *UK RIEs*. [deleted]
- 2.6.32 G The *FCA* has exercised its power referred to in *REC 2.6.4UK(3)* to permit the deferral of the post-trade transparency requirements referred to in *REC 2.6.4UK(1)*. This permission is with respect to large transactions (see *REC 2.6.17EU*). This permission applies to all *regulated markets* and *MTFs* operated by *UK RIEs*. [deleted]

Arrangements for making information public

- 2.6.33 G The *FCA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *REC 2.6.24EU(a)*), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen prices should be reasonable and proportionate in relation to the business. [deleted]
- 2.6.34 G (1) In respect of arrangements facilitating the consolidation of data as required in *REC 2.6.24EU(b)*, the *FCA* considers information as being made public in accordance with *REC 2.6.24EU(b)*, if it:
- (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and

- (e) ~~is accompanied by instructions outlining how users can access the information.~~
- (2) ~~The FCA considers that an arrangement fulfils the ‘machine-readable’ criteria where the data:~~
 - (a) ~~is in a physical form that is designed to be read by a computer;~~
 - (b) ~~is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and~~
 - (c) ~~is in a format that is known in advance by the party wishing to access the data.~~
- (3) ~~The FCA considers that publication on a non-machine readable website would not meet the MiFID requirements.~~
- (4) ~~The FCA considers that information that is made public in accordance with REC 2.6.24EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use. [deleted]~~

2.7 Access to facilities

2.7.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

Access to the [UK RIE’s] facilities is subject to criteria designed to protect the orderly functioning of the market its trading venues and the interests of investors and is in accordance with paragraph 7B;

2.7.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7B

(1)	The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.
(2)	In particular those rules must specify the obligations for users or members of its facilities arising from -

	(a)	the constitution and administration of the [UK RIE];
	(b)	rules relating to transactions on the market <u>its trading venues</u> ;
	(c)	its professional standards for staff of any <i>investment firm</i> or <i>credit institution</i> having access to or membership of a financial market operated by the [UK RIE];
	(d)	conditions established under sub-paragraph 3(c) for access to or membership of a financial market <u>trading venue</u> operated by the [UK RIE] by persons other than <i>investment firms</i> or <i>credit institutions</i> ; and
	(e)	the rules and procedures for clearing and settlement of transactions concluded on a financial market <u>trading venue</u> operated by the [UK RIE].
(3)	Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only-	
	(a)	an investment firm;
	(b)	a credit institution;
	(c)	a person who:
	(i)	is fit and proper,
	(ii)	has a sufficient level of trading ability and competence,
	(iii)	where applicable, has adequate organisational arrangements, and
	(iv)	has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).
		[deleted] [Note: the <i>MiFI Regulations</i> amending the <i>Recognition Requirement Regulations</i>]
(4)	Rules under this paragraph must enable -	
	(a)	an <i>investment firm</i> authorised under Article 5 of [MiFID], or

	(b)	a <i>credit institution</i> authorised under the [CRD],
		by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have direct or remote access to or membership of, any financial market <i>trading venue</i> operated by the [UK RIE] on the same terms as a <i>UK firm</i> .
(5)		The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or members of its <i>facilities</i> .
(6)		This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B UK ...

2.7.1C UK **Schedule to the Recognition Requirement Regulations, Paragraph 11(6)**

[Note: This sub-paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*.]

(1)	<u>The rules of the [UK RIE] about access to, or membership of, a regulated market operated by it must permit the [UK RIE] to give access to or admit membership to (as the case may be) only -</u>	
	(a)	<u>an [investment firm] authorised under article 5 of [MiFID];</u>
	(b)	<u>a [credit institution]; or</u>
	(c)	<u>a person who –</u>
	(i)	<u>is fit and proper;</u>
	(ii)	<u>has a sufficient level of trading ability and competence;</u>
	(iii)	<u>where applicable, has adequate authorisation requirements; and</u>
	(iv)	<u>has sufficient resources for the role they are to perform taking account of the [UK RIE's] arrangements under sub-paragraph [11(7)].</u>

2.7.3 G In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FCA* may have regard to whether:

(1) ...

(d) ...; and

(3) ~~indirect access to the *UK recognised body's facilities* is subject to suitable criteria, remains the responsibility of a *member* of the *UK recognised body* and is subject to its rules; and [deleted]~~

(4) ...

2.7.3A G ...

~~Electronic access~~

2.7.4 G ~~The *FCA* may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:~~

- ~~(1) the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;~~
- ~~(2) the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;~~
- ~~(3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;~~
- ~~(4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and~~
- ~~(5) procedures to determining whether to suspend trading by those systems or access to them by or through individual *members*.
[deleted]~~

After REC 2.7 insert the following new section. The text is not underlined.

2.7A Position management and position reporting re. commodity derivatives

- 2.7A.1 G The recognition requirements and associated *rules* relating to position management and position reporting for commodity derivatives are extracted in [MAR 10 (set out title)]. A UK RIE offering trading of such *financial instruments* on its *trading venues* should have regard to [MAR 10]⁷.

Amend the following as shown.

2.8 Settlement and clearing facilitation services

- 2.8.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d) 11(7)**

[Note: This sub-paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*.]

Without prejudice to the generality of sub-paragraph [4(1), the [UK RIE] must ensure that –

satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on a *regulated market* operated by the [UK RIE] (being rights and liabilities in relation to those transactions);

[Note: article 29 of *MiFIR* and *RTS 26* contain requirements for the clearing of *derivative* transactions for operators of *regulated markets*.]

...

- 2.8.3 G In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *regulated markets*, the FCA may have regard to ~~the UK~~ *recognised body's*:

(1A) the UK recognised body's ability to demonstrate that such transactions are cleared by a CCP in accordance with article 29(1) of *MiFIR*;

(1B) (in relation to transactions in *derivatives* which are to be cleared pursuant to article 29(1) of *MiFIR* or under article 4 of *EMIR*) the UK recognised body's ability to demonstrate that its *regulated markets* ensure such transactions are submitted and accepted for

⁷ The FCA is considering inserting this new module in the Handbook, and will be consulting on these further changes in due course.

clearing as quickly as technologically practicable using automated systems in accordance with article 29(2) of MiFIR and RTS 26; and

- (1C) (in relation to other types of transactions effected on the UK recognised body's regulated markets) the following factors:
- (1) (a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;
 - (2) (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 - (3) (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
 - (4) (d) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
 - (5) (e) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
 - (6) (f) arrangements for monitoring its *members'* settlement performance; and
 - (7) (g) (where appropriate) *default rules* and default procedures.

2.8.4 G ...

2.9 Transaction recording

2.9.1 UK **Schedule to the Recognition Requirements Regulations, paragraph 4(2)(c)**

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

satisfactory arrangements are made for recording transactions effected on the [UK RIE], and transactions (whether or not effected on the [UK RIE]) which are cleared or to be cleared by means of its facilities;

[Note: article 25 of *MiFIR* requires the operator of a *trading venue* to keep relevant data relating to all orders in *financial instruments* which are advertised through their systems at the disposal of the *FCA*.]

...

- 2.9.3 G In determining whether a *UK recognised body* has satisfactory arrangements for recording the transactions effected on its ~~facilities~~ facilities, or cleared or to be cleared by another person by means of, its facilities, the *FCA* may have regard to:
- (1) whether the *UK recognised body* has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least ~~three years~~ (five years ~~in respect of transactions carried out by members who are not incorporated in the United Kingdom if the *UK recognised body* is a regulated market~~); and
 - (2) the type of information recorded and the extent to which the record includes; ~~details for each transaction of:~~
 - (a) ~~the name of the *investment* (and, if relevant, the underlying asset) and the price, quantity and date of the transaction; for each transaction traded on or completed through its *facilities* which the *UK recognised body* is responsible for reporting in accordance with article 26 of *MiFIR*, the details set out in:~~
 - (i) article 26(3) of *MiFIR*;
 - (ii) *RTS 22* on the reporting of transactions to competent authorities);
 - (iii) article 27(1) of *MiFIR*; and
 - (iv) *RTS 23* on the data standards and formats for *financial instrument* reference data;
 - (b) ~~the identities and, where appropriate, the roles of the counterparties to the transaction; for other transactions effected on the *UK recognised body's facilities*, details of:~~
 - (i) the name of the *investment* (and if relevant, the underlying asset) and the price, quantity and date of the transaction;
 - (ii) the identities and, where appropriate, the roles of the counterparties to the transaction;

(iii) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and

(iv) the date and manner of settlement of the transaction.

~~(e) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and~~

~~(d) the date and manner of settlement of the transaction.~~

...

2.12 Availability of relevant information and admission of financial instruments to trading ~~(UK RIEs only)~~

2.12.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(c)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

- (a) appropriate arrangements are made for *relevant information* to be made available (whether by the [UK RIE] or, where appropriate, by *issuers* of the ([*specified investments*]) to *persons engaged in dealing* in [*specified investments*] on the [UK RIE];

2.12.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(3)

In sub-paragraph [4(2)(c)],
“*relevant information*” means information which is relevant in determining the current value of the [*specified investments*].

2.12.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 7A

(1)	<p>The [UK RIE] must make clear and transparent rules concerning the admission of <i>financial instruments</i> to trading on any financial market <i>trading venue</i> operated by it.</p> <p>[Note: RTS 17 specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>.]</p>
(2)	<p>The rules must ensure that all <i>financial instruments</i> admitted to trading on any <i>regulated market</i> operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable). [deleted]</p> <p>[Note: the <i>MiFI Regulations</i> amending the <i>Recognition Requirement Regulations</i>]</p>
(3)	<p>The rules must ensure that -</p>
(a)	<p>all <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and</p>
(b)	<p>all contracts for derivatives admitted to trading on a <i>regulated market</i> operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions. [deleted]</p>
(4)	<p>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a <i>multilateral trading facility</i> operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded. [deleted]</p>
(5)	<p>The [UK RIE] must maintain effective arrangements to verify that issuers of <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by it comply with the <i>disclosure obligations</i>. [deleted]</p>
(6)	<p>The [UK RIE] must maintain arrangements to assist users of a <i>regulated market</i> operated by it to obtain access to information made public under the <i>disclosure obligations</i>. [deleted]</p>
(7)	<p>The [UK RIE] must maintain arrangements regularly to review whether the <i>financial instruments</i> admitted to trading on a <i>regulated market</i> operated by it comply with the admission requirements for those instruments. [deleted]</p>
(8)	<p>The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a</p>

	<i>regulated market</i> operated by it a <i>transferable security</i> which has been admitted to trading on another <i>regulated market</i>, the [UK RIE]-
(a)	must inform the issuer of that security as soon as is reasonably practicable; and
(b)	may not require the issuer of that security to demonstrate compliance with the <i>disclosure obligations</i>. [deleted]
(9)	The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>multilateral trading facility</i> operated by it a <i>transferable security</i> which has been admitted to trading on a <i>regulated market</i>, it may not require the issuer of that security to demonstrate compliance with the <i>disclosure obligations</i>. [deleted]
(10)	[deleted]
(11)	This paragraph is without prejudice to the generality of paragraph 4. [deleted]

2.12.2A UK
A

Schedule to the Recognition Requirements Regulations, Paragraph 11

[Note: this paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*.]

(1)	<u>The rules of the [UK RIE] must ensure that -</u>
(a)	<u>all <i>financial instruments</i> admitted to trading on a <i>regulated market</i> operated by it are capable of being traded in a fair, orderly and efficient manner;</u>
(b)	<u>all <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by it are freely negotiable; and</u>
(c)	<u>all contracts for <i>derivatives</i> admitted to trading on a <i>regulated market</i> operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.</u>
	[Note: <i>RTS 17</i> specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>]
(2)	<u>The rules of the [UK RIE] must provide that where the [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>regulated market</i> operated by it a <i>transferable</i></u>

	<u>security which has been admitted to trading on another regulated market, the [UK RIE] -</u>
(a)	<u>must inform the issuer of that security as soon as is reasonably practicable; and</u>
(b)	<u>may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(3)	<u>The [UK RIE] must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.</u>
(4)	<u>The [UK RIE] must maintain arrangements to assist users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.</u>
(5)	<u>The [UK RIE] must maintain arrangements to regularly review whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.</u> [Note: see RTS 17]
(8)	<u>In this paragraph -</u>
	<u>“the disclosure obligations” are the initial ongoing and ad hoc disclosure requirements contained in the relevant articles and which are not directly applicable given effect -</u>
(a)	<u>in the United Kingdom by Part 6 of the [Financial Services and Markets Act 2000] and Part 6 rules (within the meaning of section 73A of the Act); or</u>
(b)	<u>in another EEA State by legislation transposing the relevant articles in that State;</u>
	<u>“the relevant articles” means -</u>
(a)	<u>articles 17, 18 and 19 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);</u>
(b)	<u>articles 3, 5, 7, 8, 10, 14 and 16 of the [Prospectus Directive];</u>
(c)	<u>articles 4 to 6, 14, 16 to 19 and 30 of the [Transparency Directive]; and</u>

	(d)	<u>Community legislation made under the provisions mentioned in paragraphs (a) to (c).</u>
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2.12.2B EU ~~Article 35 of the MiFID Regulation~~

Transferable securities	
1.	Transferable securities shall be considered freely negotiable for the purposes of Article 49(1) of [MiFID] [(see REC 2.12.2AUK)] if they can be traded between the parties to a transaction, and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible.
2.	Transferable securities which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.
3.	Transferable securities that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.
4.	When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:
	(a) the distribution of those shares to the public; and
	(b) such historical information, information about the issuer, and information providing a business overview as is required to be prepared under [the PD], or is or will be otherwise publicly available.
5.	A transferable security that is officially listed in accordance with [CARD], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.
6.	For the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2AUK)], when assessing whether a transferable security referred to in Article 4(1)(18)(e) of [MiFID] is capable of being

	traded in a fair, orderly and efficient manner, the <i>regulated market</i> shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:	
	(a)	the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
	(b)	the price or other value measure of the underlying is reliable and publicly available;
	(c)	there is sufficient information publicly available of a kind needed to value the security;
	(d)	the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;
	(e)	where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying. [deleted]
[Note: article 1 of <i>RTS 17</i>]		

2.12.2C EU **Recital 19 to the MiFID Regulation**

For the purposes of the provisions of [the <i>MiFID Regulation</i>] as to the admission to trading on a <i>regulated market</i> of a <i>transferable security</i> as defined in article 4(1)(18)(c) of [<i>MiFID</i>], [(see <i>REC 2.12.2BEU6(e)</i>)], in the case of a security within the meaning of [the <i>PD</i>], there should be considered to be sufficient information publicly available of a kind needed to value that <i>financial instrument</i>. [deleted]

2.12.2D EU **Article 36 of the MiFID Regulation**

Units in collective investment undertakings	
1.	A <i>regulated market</i> shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the <i>UCITS Directive</i>], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the

	marketing of the collective investment undertaking in the jurisdiction of the <i>regulated market</i>.
2.	Without prejudice to [the <i>UCITS Directive</i>] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a <i>regulated market</i>.
3.	When assessing whether units in an open-ended investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], the <i>regulated market</i> shall take the following aspects into account:
	(a) the distribution of those units to the public;
	(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;
	(c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.
4.	When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], the <i>regulated market</i> shall take the following aspects into account:
	(a) the distribution of those units to the public;
	(b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value. [deleted]
[Note: article 2 of <i>RTS 17</i>]	

2.12.2E EU **Article 37 of the MiFID Regulation**

Derivatives	
1.	When admitting to trading a <i>financial instrument</i> of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], regulated markets shall verify that the following conditions are satisfied:
(a)	the terms of the contract establishing the <i>financial instrument</i> must be clear and unambiguous, and enable a correlation between the price of the <i>financial instrument</i> and the price or other value measure of the underlying;
(b)	the price or other value measure of the underlying must be reliable and publicly available;
(c)	sufficient information of a kind needed to value the derivative must be publicly available;
(d)	the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;
(e)	where the settlement of the derivative requires or provides for the possibility of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.
2.	Where the <i>financial instruments</i> concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:
(a)	the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
(b)	the <i>regulated market</i> must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such <i>financial instruments</i>;
(c)	the <i>regulated market</i> must ensure that settlement and

		delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those <i>financial instruments</i>. [deleted]
[Note: article 3 of <i>RTS 17</i>]		

...

Proper information

- 2.12.11 G ~~In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing in specified investments admitted to trading* on the *UK RIE*, the *FCA* may have regard to:~~
- ~~(1) the extent to which *members* and *clients* for whom they act are able to obtain information about those *specified investments*, either through accepted channels for dissemination of information or through regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those *specified investments* in a timely fashion;~~
 - ~~(2) what restrictions, if any, there are on the dissemination of *relevant information* to the *UK RIE's* *members* and *clients* for whom they act; and~~
 - ~~(3) whether *relevant information* is or can be kept in restricted groups of *persons* in such a way as to facilitate or encourage *dealing in* contravention of the *Code of Market Conduct* (see *MAR 1*). [deleted]~~

Own means of dissemination

- 2.12.12 G ~~*UK RIEs* do not need to maintain their own arrangements for disseminating news or information about *specified investments* (or underlying assets) to their *members* where they have made adequate arrangements for other *persons* to do so on their behalf or there are other effective and reliable arrangements for this purpose. [deleted]~~

...

Rules concerning admission of financial instruments to trading on a multilateral trading facility

- 2.12.14 G ~~In determining whether a *UK RIE* has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the *FCA* considers that it is reasonable that the rules~~

be based on criteria designed to promote fair and orderly trading (see *REC* 2.6.2UK). In determining whether the rules are based on such criteria, the *FCA* may have regard to:

- (1) ~~whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;~~
- (2) ~~the extent to which there are any limitations on the *persons* who may hold or deal in the *financial instrument*, or the amounts of the *financial instrument* which may be held; and~~
- (3) ~~whether the *UK RIE* has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that *financial instrument*. [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

(1)	[A <i>UK RIE</i>] operating a <i>multilateral trading facility</i> <u>or an organised trading facility</u> must also operate a <i>regulated market</i> .
(2)	[A <i>UK RIE</i>] operating a <i>multilateral trading facility</i> <u>or an organised trading facility</u> must comply with those requirements of <u>provide the <i>FCA</i> with a detailed description of -</u>
(a)	Chapter 1 of Title II of [<i>MiFID</i>]; <u>the functioning of the <i>multilateral trading facility</i> or <i>organised trading facility</i>;</u> and
(b)	<i>MiFID implementing Directive</i>, of any links to another trading venue owned by the same [<i>UK RIE</i>] <u>and a list of their members and users;</u>
	which are applicable to a market operator...operating such a facility. <u>[Note: <i>ITS 19</i> prescribes the content and format of the description of the functioning of a <i>MTF</i> or <i>OTF</i> to be provided to the <i>FCA</i>.]</u>
(3)	The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).

	<u>Any multilateral trading facility or an organised trading facility operated by the [UK RIE] must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.</u>
--	--

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 9ZA**

<u>[A UK RIE] must only operate a multilateral system as a regulated market, a multilateral trading facility or an organised trading facility.</u>

Specific MTF requirements

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 12 B**

<u>A [UK RIE] must -</u>	
<u>(a)</u>	<u>have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it; and</u>
<u>(b)</u>	<u>not on a multilateral trading facility operated by it –</u>
<u>(i)</u>	<u>execute any client orders against its proprietary capital; or</u>
<u>(ii)</u>	<u>engage in matched principal trading.</u>

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 13 C**

<u>(1)</u>	<u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, that the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
<u>(2)</u>	<u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgments, taking into account both the nature of the users and the types of instruments traded.</u>
<u>(3)</u>	<u>The rules of the [UK RIE] about access to, or membership of, a multilateral trading facility operated by it must permit the [UK RIE] to give access to or admit to membership to (as the case may be) only -</u>
<u>(a)</u>	<u>an investment firm authorised under Article 5 of</u>

		<u>[MiFID];</u>
	<u>(b)</u>	<u>a credit institution;</u>
	<u>(c)</u>	<u>a person who –</u>
	<u>(i)</u>	<u>is fit and proper;</u>
	<u>(ii)</u>	<u>has a sufficient level of trading ability and competence;</u>
	<u>(iii)</u>	<u>where applicable, has adequate organisational requirements; and</u>
	<u>(iv)</u>	<u>has sufficient resources for the role they are to perform, taking account of the [UK RIE's] arrangements under sub-paragraph [13(4)].</u>
<u>(4)</u>	<p><u>The [UK RIE] must ensure that it has satisfactory arrangements, which comply with paragraph [7D], to secure the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on a multilateral trading facility operated by the [UK RIE] (being rights and liabilities in relation to those transactions).</u></p> <p><u>[Note: See REC 2.8 (Settlement and clearing facilitation services) for a quotation of paragraph 7D]</u></p>	
<u>(5)</u>	<p><u>In this paragraph [13] “the disclosure obligations” and “the relevant articles” have the same meaning as in paragraph [11(8)].</u></p> <p><u>[Note: See REC 2.12 (Availability of relevant information and admission of financial instruments to trading (UK RIEs only)) for a quotation of paragraph 11(8)]</u></p>	

2.16A.1 G
D

In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *multilateral trading facility*, the FCA may have regard to:

- (1) (in relation to transactions in *derivatives* which are to be cleared pursuant to article 4 of *EMIR* or otherwise agreed by the relevant transacting parties to be cleared) the *UK recognised body's* ability to demonstrate that its *multilateral trading facility* ensures such transactions are submitted and accepted for clearing as quickly as technologically practicable in accordance with article 29(2) of *MiFIR* and *RTS 26*; and
- (2) (in relation to other types of transactions effected on the *UK*

recognised body's multilateral trading facility) the following factors:

- (a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;
- (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
- (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
- (d) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
- (e) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
- (f) arrangements for monitoring its *members'* settlement performance; and
- (g) where relevant, default rules and default procedures.

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 14**

E

A [UK RIE] operating a multilateral trading facility may register that facility as an SME growth market in accordance with Article 33 of [MiFID] if it complies with rules made by the FCA for that purpose.

Specific OTF requirements

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 15**

F

<u>(1)</u>	<u>[A UK RIE] operating an <i>organised trading facility</i> must, on that facility -</u>
<u>(a)</u>	<u>execute orders on a discretionary basis in accordance with sub-paragraph [15(4)];</u>
<u>(b)</u>	<u>not execute any client orders against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the [UK RIE]</u>

		<u>unless in accordance with sub-paragraph [15(2)];</u>
	(c)	<u>ensure that the <i>organised trading facility</i> does not connect with another <i>organised trading facility</i> or with a <i>systematic internaliser</i> in a way which enables orders in the different <i>organised trading facility</i> or <i>systematic internaliser</i> to interact.</u>
(2)	<u>A[UK RIE] may only engage in -</u>	
	(a)	<u><i>matched principal trading</i> on an <i>organised trading facility</i> operated by it in respect of <i>bonds, structured finance products, emission allowances and derivatives</i> which have not been declared subject to the clearing obligation in accordance with [EMIR] where the client has consented to that; or</u>
	(b)	<u><i>dealing on own account</i> on an <i>organised trading facility</i> operated by it, otherwise than in accordance with [15(2)(a)], in respect of <i>sovereign debt instruments</i> for which there is not a liquid market.</u>
(3)	<u>If the [UK RIE] engages in <i>matched principal trading</i> in accordance with sub-paragraph [15(2)(a)] it must establish arrangements to ensure compliance with the definition of <i>matched principal trading</i>.</u>	
(4)	<u>The discretion which the [UK RIE] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph [15(5)] or in sub-paragraph [15(6)] or both.</u>	
(5)	<u>The first discretion is whether to place or retract an order on the <i>organised trading facility</i>.</u>	
(6)	<u>The second discretion is whether to match a specific client order with other orders available on the <i>organised trading facility</i> at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the <i>client</i> and in accordance with the [UK RIE's] obligations under article 27 of [MiFID].</u>	
(7)	<u>Where the <i>organised trading facility</i> crosses <i>client</i> orders the [UK RIE] may decide if, when and how of two or more orders it wants to match.</u>	
(8)	<u>Subject to the requirements of this paragraph [15], the [UK RIE] may facilitate negotiation between <i>clients</i> so as to bring together two or more comparable trading interests in a <i>transaction</i>.</u>	

(9)	<u>The [UK RIE] must comply with rules made by the FCA as to how articles 16, 24, 25, 27 and 28 of [MiFID] apply to its operation of an <i>organised trading facility</i>.</u>
(10)	<u>Nothing in this paragraph [15] prevents [a UK RIE] from engaging an <i>investment firm</i> to carry out market making on an independent basis on an <i>organised trading facility</i> operated by it provided the <i>investment firm</i> does not have close links with the [UK RIE].</u>
(11)	<u>For the purposes of sub-paragraph [15(10)] “close links” has the same meaning as in article 4.1.35 of [MiFID].</u>

2.16A.1 R For the purposes of compliance with paragraph 15(9) of the Schedule to
G the *Recognition Requirement Regulations*, MAR 5A.3.8R applies to a UK RIE as though it was an *investment firm*.

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 16**
H

(1)	<u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of an <i>organised trading facility</i> operated by it to form investment judgments, taking into account both the nature of the users and the types of instruments traded.</u>
(2)	<u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on an <i>organised trading facility</i> operated by it a <i>transferable security</i> which has been admitted to trading on a <i>regulated market</i> the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(3)	<u>In this paragraph [16], “the disclosure obligations” and “the relevant articles” have the same meaning as in paragraph [11(8)].</u> <u>[Note: See REC 2.12 (Availability of relevant information and admission of financial instruments to trading (UK RIEs only) for a quotation of paragraph 11(8)]</u>

2.16A.1 UK **Schedule to the Recognition Requirements Regulations, Paragraph 17**
I

(1)	<u>The FCA may at any time require a [UK RIE] to provide in respect of an <i>organised trading facility</i> operated by it, or such a facility it proposes to operate, a detailed explanation of -</u>
(a)	<u>why the <i>organised trading facility</i> does not correspond to and cannot operate as a <i>multilateral trading facility</i>, a</u>

	<u>regulated market or a systematic internaliser;</u>
(b)	<u>how discretion will be exercised in executing client orders; and</u>
(c)	<u>its use of matched principal trading.</u>
(2)	<u>Any information required under sub-paragraph [17(1)] must be provided to the FCA in the manner which it considers appropriate.</u>

- 2.16A.1 R J In paragraphs 17(1) and (2) of the Schedule to the *Recognition Requirements Regulations* where the *UK RIE* must provide information in respect of an *organised trading facility* operated by it, such information must be provided to the *FCA* in writing and delivered by any one of the methods set out in *REC 3.2.3R*.
- 2.16A.2 G In determining whether a *UK RIE* operating a *multilateral trading facility* (including an *SME growth market*) or *organised trading facility* complies with those requirements of Chapter I of Title II of *MiFID* and the *MiFID implementing Directive* which are applicable to a *market operator* operating such a facility this chapter, the *FCA* will have regard to the compliance of the *UK RIE* with equivalent *recognition requirements*. A *UK RIE* operating such facilities should also have regard to the guidance set out in *MAR 5* (Multilateral trading facilities (MTFs)) and *MAR 5A* (Organised trading facilities (OTFs)).

After REC 2.16A insert the following new section. The text is not underlined.

2.16B Operation of a data reporting service

- 2.16B.1 G A *UK RIE* offering, or applying to offer, the operation of a *data reporting service* should have regard to the *recognition requirements* and associated *guidance* relating to such service in *MAR 9*.

Amend the following as shown.

3 Notification rules for UK recognised bodies

...

3.4 **Key individuals** Members of the management body and internal organization

Purpose

3.4.1 G The purpose of *REC* 3.4 is to enable the *FCA* to monitor ~~the changes in the arrangements~~ a *UK recognised body* makes in the arrangements for the carrying out of its *relevant functions* ~~or for overseeing the work of key individuals or departments responsible for its *relevant functions*.~~

...

3.4.2A R Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a ~~key individual~~ member of the management body, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this rule in *REC* 3.4.4AR to the *FCA*.

[**Note:** Article ~~45(8)~~ 37(1), paragraph 1, second sentence of *MiFID*]

3.4.2B R Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a ~~key individual~~ member of the management body, that *UK RIE* must immediately give notice of that event, and give ~~the name of the person~~ the information specified for the purposes of this rule in *REC* 3.4.4AR to the *FCA*.

[**Note:** Article ~~37(1), paragraph 1, second sentence~~45(8) of *MiFID*]

3.4.3 G

- (1) ~~Key individuals~~ Members of the management body include the *persons* who, under the operational or managerial arrangements of the *UK recognised body*, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A *person* appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a ~~key individual~~ member of the management body.
- (2) A ~~key individual~~ member of the management body need not be an *employee* of a *UK recognised body*. For example, an *employee* of an *undertaking* in the same *group* or a self-employed contractor of a *UK recognised body* might be a ~~key individual~~ member of the management body, depending on the role he plays in that body.
- (3) A department of a *UK recognised body* should be regarded as responsible for carrying out a *relevant function* if it is responsible for any activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the

performance of a *relevant function*.

- (4) The *FCA* does not need to be notified where minor changes are made to the responsibilities of a ~~*key individual*~~ *member of the management body*, but where a major change in responsibilities is made which amounts to a new appointment, the *FCA* should be notified under *REC 3.4.2AR*.

3.4.4 R [deleted]

3.4.4A R The following information is specified for the purposes of *REC 3.4.2AR*:

- (1) that *person's* name;
- (2) his date of birth;
- (3) where applicable, a description of the responsibilities which he will have in the post to which he is to be appointed or elected, including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body;
- (4) where applicable, a description of the responsibilities in the post from which he resigned or otherwise ceased to act, including for a *UK RIE* which operates an *RAP* where the *person* had responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he had in respect of each body; and
- (5) the information necessary for the *FCA* to assess whether the *UK RIE* complies with *REC 2.4.1UK*, *REC 2.4AUK.1* and *REC 2.4A.2UK* in relation to the *member of the management body's* appointment, election, resignation or otherwise ceasing to act.

[~~Note: Article 37(1), paragraph 1, second sentence 45(8) of *MiFID*~~]

...

3.5 **Disciplinary action and events relating to ~~key individuals~~ members of the management body**

Disciplinary action

- 3.5.1 R Where any ~~*key individual*~~ *member of the management body* of a *UK recognised body*:

- (1) is the subject of any disciplinary action because of concerns about his alleged misconduct;
- (2) resigns as a result of an investigation into his alleged misconduct; or
- (3) is dismissed for misconduct;

that body must immediately give the *FCA* notice of that event, and give the information specified for the purposes of this *rule* in *REC 3.5.2R*.

3.5.2 R The following information is specified for the purposes of *REC 3.5.1R*:

- (1) the name of the ~~*key individual*~~ *member of the management body* and his responsibilities within the *UK recognised body*;
- (2) details of the acts or alleged acts of misconduct by that ~~*key individual*~~ *member of the management body*; and
- (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that ~~*key individual*~~ *member of the management body*.

Other events

3.5.3 R Where a *UK recognised body* becomes aware that any of the following events has occurred in relation to a ~~*key individual*~~ *member of the management body*, it must immediately give the *FCA* notice of that event:

- (1) a petition for bankruptcy is presented (or similar analogous proceedings under the law of a jurisdiction outside the *United Kingdom* are commenced) against that ~~*key individual*~~ *member of the management body*; or
- (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him; or
- (3) he enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his creditors.

...

3.13 Delegation of relevant functions

Application

- 3.13.1-A R This section applies to a *UK RIE* where it is not outsourcing its operational functions in relation to systems allowing or enabling *algorithmic trading*.
- 3.13.1-B G The notification requirements in *RTS 7*, specifying organisational requirements of regulated markets allowing *algorithmic trading* through their systems, apply to a *UK RIE* where those operational functions are to be outsourced.
- 3.13.1 G (1) The purpose of *REC 3.13* is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* or, in relation to an *RAP*, under regulation 13 of the *RAP regulations*. See *REC 2.2* and *REC 2A.2*).

...

...

3.14 Products, services and normal hours of operation

...

- 3.14.2A R When a *UK RIE* removes a *financial instrument* from trading on a ~~*regulated market trading venue*~~, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument*, any *derivative* that is also removed from trading that relates or is referenced to that *financial instrument*, and the reasons for the action taken.

[~~Note: Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of *MiFID*. *REC 2.6.6AR(3)* requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.14A Operation of a ~~regulated market or MTF~~ trading venue

Purpose

- 3.14A.1 G The purpose of *REC 3.14A* is to ensure that the *FCA* is informed of planned

changes to a *UK RIE's* markets and their regulatory status as either a *regulated market*, ~~or~~ *MTF* or *OTF*.

[Note: RTS 3 and ITS 4, Annex IV provide for the format for notification by the operator of an *MTF* or *OTF* to its *Home State competent authority* of any arrangements to facilitate access to and trading on the *trading venue* by remote users, members or participants within the territory of another *EEA State*.]

...

Operation of an *MTF* or *OTF*

3.14A.4 R Where a *UK RIE* proposes to operate a new *MTF* or *OTF* or close an existing *MTF* or *OTF* it must give the *FCA* notice of that event and the information specified for the purposes of this *rule* in *REC* 3.14A.5R, at the same time as that proposal is first formally communicated to its *members* or *shareholders* (or any group or class of them).

3.14A.5 R The following information is specified for the purposes of *REC* 3.14A.4R:

(1) ~~where the *UK RIE* proposes to operate a new *MTF*:~~

(a) ~~a description of the *MTF*; and~~

(b) ~~a description of the *specified investments* which will be admitted to trading on that *MTF*. [deleted]~~

[Note: *REC* 2.16A.1(2) requires the *FCA* to be provided with a detailed description of the operation of an *MTF* or *OTF*. The description must be provided in the form set out in *ITS 19*]

(2) where the *UK RIE* proposes to close a *MTF* or *OTF*, the name of that *MTF* or *OTF*.

...

3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1 G (1) The purpose of *REC* 3.15.2R to *REC* 3.15.5G is to enable the *FCA* to obtain information where a *UK recognised body* decides to suspend the provision of its services in relation to particular *investments* or (for an *RAP*) decides to cancel an auction. Planned changes to the

provision of services should be notified to the *FCA* under *REC 3.14*.

- (2) *REC 3.15.6R* to *REC 3.15.7R* provide for notification to the *FCA* where a *UK recognised body* is unable to operate or provide its *facilities* for reasons outside its control or where it decides to extend its hours of operation in an emergency.
- (3) *REC 3.15.8R* to *REC 3.15.9G* provide for notification to the *FCA* where an *RAP* has to cancel an auction in specified circumstances.

[Note: *REC 2.5.1(8)* also requires a *UK RIE* to report its parameters for halting trading to the *FCA*.]

Suspension of services

- 3.15.2 R Where, for any reason, an *RIE*: halts trading in a *financial instrument* on a *trading venue* which is material in terms of liquidity in that *financial instrument*
- (1) ~~suspends trading in any *derivative* (other than an *option* in relation to a *security*), in any type of *security* or in any type of *option* in relation to a *security*; or~~
- (2) ~~temporarily calls a trading halt in respect of any type of *security* or in any type of *option* in relation to a *security*;~~

it must immediately give the *FCA* notice of that event, particulars of that ~~*derivative*, type of *security* or type of *option* in relation to a *security*~~, as the case may be *financial instrument*, and the reasons for the action taken.

[Note: article 48(5) and *RTS 12*]

- 3.15.2A R When a *UK RIE* suspends trading on a ~~*regulated market trading venue*~~ in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: ~~Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of *MiFID*. *REC 2.6.6A(3)* requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.16 Information technology systems

- 3.16.1 G The purpose of *REC 3.16* is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the *documents* containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

[Note: *RTS 7* requires that the operator of a *trading venue* assess whether the capacity of its trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, the operator of the *trading venue* must inform its *competent authority* about any measures planned to expand capacity or add new capabilities, and the timeframe for such measures. *RTS 7* also requires the operator to report to its *competent authority* any severe trading interruption not due to market volatility and any other material connectivity disruptions.]

...

3.18 Membership

- 3.18.1 G (1) The purpose of *REC 3.18* is to enable the *FCA* to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the *FCA* has notice of foreign jurisdictions in which the *members* of *UK recognised bodies* are based. *UK recognised bodies* may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition requirements* or (for *RAPs*) *RAP recognition requirements* continue to be met.
- (2) *REC 3.18.2R* focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for an *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. *REC 3.18.3R* focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an *RAP*) *RAP recognition requirements* can be met.
- (3) The information required under *REC 3.18* is relevant to the *FCA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It

is also relevant to the *FCA's* broader responsibilities concerning integrity of the *UK financial system* and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both *REC 3.18.2R* and *REC 3.18.3R*, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FCA*.

[Note: *REC 2.5.1R(4)(d)* requires a *UK RIE* to inform the *FCA* about the content of a written agreement entered into with a member investment firm pursuing a market making strategy on a trading venue operated by the *UK RIE*].

...

3.21 Criminal offences and civil prohibitions

- 3.21.1 R Where a *UK recognised body* has evidence tending to suggest that any *person* has:
- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or
 - (2) been engaged in *market abuse*; or
 - (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
 - (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (Insider dealing); or
 - (5) committed a criminal offence under the *Money Laundering Regulations*;

it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.

[Note: ~~Article 26(2)~~ article 31(2), first sentence (part) and ~~Article 43(2)~~ article 54(2), first sentence (part) of *MiFID*. The rest of ~~Article 26(2)~~ article 31(2), first sentence (in so far as it relates to *market operators* operating an

MTF or OTF) and ~~Article 43(2)~~ article 54(2), first sentence of *MiFID* is implemented by *REC 3.25.1R*]

...

3.24 Transfers of ownership

3.24.1 R When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

- (1) give the name of the *person(s)* concerned; and
- (2) give details of the transfer.

[**Note:** ~~Article 38(2)(b)~~ article 46(2)(b) of *MiFID*]

...

3.25 Significant breaches of rules and disorderly trading conditions

3.25.1 R A *UK RIE* and an *RAP* must immediately notify the *FCA* of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets or auctions.

[**Note:** ~~Article 26(2)~~ article 30(2), first sentence (part) and ~~Article 43(2)~~ article 54(2), first sentence (part) of *MiFID*. The rest of ~~Article 26(2)~~ article 30(2), first sentence (in so far as it relates to *market operators* operating an *MTF or OTF*) and ~~Article 43(2)~~ article 54(2), first sentence of *MiFID* is implemented by *REC 3.21.1R(2)*]

...

4 Supervision

...

4.2 The supervisory relationship with UK recognised bodies

- 4.2.1 G ... The *FCA* will usually arrange meetings between the ~~Markets Division~~ Infrastructure and Trading Firms Department and key individuals members of the management body of the *UK recognised body* for this purpose. ...

4.2A Publication of information by UK RIEs and RAPs

...

- 4.2A.3 G Under subsection 292A(5) of the *Act*, a *UK RIE* must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it, or lift a suspension or readmit the instrument, as the *FCA* may reasonably require.

4.2B Exercise of passport rights by a UK RIE

- 4.2B.1 G Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market, multilateral trading facility, organised trading facility* or *auction platform* operated by it, it must give the *FCA* written notice of its intention to do so. The notice must:

- (1) describe the arrangements; and
- (2) identify the *EEA State* in which the *UK RIE* intends to make them.

[Note: RTS 3 and ITS 4, Annex IV provide for the format for notification by the operator of an MTF or OTF to its Home State competent authority of any arrangements to facilitate access to and trading on the trading venue by remote users, members or participants within the territory of another EEA State.]

...

4.2D Suspension and removal of financial instruments from trading by the FCA

...

- 4.2D.4 G Under section 313C(2) of the *Act*, if the *FCA* receives notice from a *UK RIE* that the *UK RIE* has suspended or removed a *financial instrument* from

trading on a *regulated market* operated by it, the *FCA* must inform the competent authorities of all other *EEA States* of the action taken by the *UK RIE*, including any decision whether or not to remove from trading a derivative that relates to or is referenced by that financial instrument.

4.2D.5 G Under sections 313C(3) and (4) of the *Act*, if the *FCA* receives notice pursuant to article 52.2 of *MiFID* from the competent authority of another *EEA State* that that authority, ~~pursuant to Article 41.2 of *MiFID*~~ has required the suspension of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to suspend the instrument from trading on any ~~*regulated market or multilateral trading facility*~~ *trading venue* or *systematic internaliser* operated by the *UK RIE* unless such a step would be likely to cause significant damage to the interests of investors or to the orderly functioning of the financial markets.

4.2D.6 G Under sections 313C(3) and (54) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* pursuant to article 52.2 of *MiFID* that that authority, ~~pursuant to Article 41.2 of *MiFID*~~ has required the removal of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to remove the instrument from trading on any ~~*regulated market or multilateral facility*~~ *trading venue* or *systematic internaliser* operated by the *UK RIE* unless such a step would be likely to cause significant damage to the interests of investors or to the orderly functioning of the financial markets.

...

4.3 Risk assessment for UK recognised bodies

...

4.3.3 G ... The *FCA* expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with ~~key individuals~~ members of the management body of the *UK recognised body*. ...

...

4.8 The section 298 procedure

...

4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will usually

discuss its intention, and the basis for this, with the ~~key individuals~~ members of the management body or other appropriate representatives of the *recognised body*. ...

...

6 Overseas Investment Exchanges

6.1 Introduction and legal background

6.1.1 G The *Act* prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

- (1) obtain a *Part 4A permission* from the *FCA*;
- (2) (in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or
- (3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under ~~Articles 31(5) and 31(6)~~ article 34(6) of MiFID (in the case of arrangements relating to a *multilateral trading facility* or *organised trading facility*) or ~~Article 42(6)~~ article 53(6) of MiFID (in the case of arrangements relating to a *regulated market*); or
- (4) obtain *exempt person* status by being declared by the *FCA* to be an *ROIE*.

...

6.2 Applications

...

6.2.2 G A prospective applicant may wish to contact the ~~Markets Division~~ Infrastructure and Trading Firms Department at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.

- 6.2.3 G Applicants for *authorised person* status should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation>. Applications for recognition as an *overseas recognised body* should be addressed to:
- The Financial Conduct Authority (~~Markets Division~~ Infrastructure and Trading Firms Department)
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

...

6.3 Recognition requirements

...

- 6.3.2 UK Sections 292(3) and 292(4) state:

Section 292(3)	
	The requirements are that-
(a)	investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with <i>recognition requirements</i> <u>and requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation</u> other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph;
(b)	there are adequate procedures for dealing with a <i>person</i> who is unable, or likely to become unable, to meet his obligations in respect of one or more <i>market contracts</i> connected with the [ROIE]
(c)	the applicant is able and willing to co-operate with the[FCA] by the sharing of information and in other ways; and
(d)	adequate arrangements exist for co-operation between the[FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

Section 292(4)	
	In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the[FCA] is to have regard to-
(a)	the relevant law and practice of the country or territory in which the applicant's head office is situated;
(b)	the rules and practices of the applicant.

...

6A EEA market operators in the United Kingdom

...

6A.2 Removal of passport rights from EEA market operator

6A.2.1 G Under section 312B of the *Act*, the *FCA* may prohibit an *EEA market operator* from making or, as the case may be, continuing arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* or *organised trading facility* operated by the operator if:

- (1) the *FCA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement; and
- (2) the *FCA* has first complied with sections 312B(3) to (9) of the *Act*.

...

6A.2.6 G The operator's right to make arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* or *organised trading facility*, operated by the operator may be reinstated (together with its *exempt person* status) if the *FCA* is satisfied that the contravention which led the *FCA* to exercise its prohibition power has been remedied.

...

Sch 2 Notification requirements

Sch 2.1 G The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in REC 3 Notification rules for UK recognised bodies and *REC 6.7* and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the Companies ~~Act~~ Act 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FCA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *ROIEs* is given in *REC 6.6*.

Sch 2.2 G

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>UK RIEs</i>				
The <i>Act</i> s293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay
The <i>Act</i> s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
The <i>Act</i> s293(6)(a)	Changes to arrangements for <i>clearing facilitation services</i> in respect of <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The <i>Acts</i> 293(6)(b)	Changes to criteria determining	Details of change	Change to criteria	Without delay

	to whom it will provide <i>clearing facilitation services</i>			
<i>RAPs</i>				
The <i>auction regulation</i> article 7(7)	Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i>	See <i>REC</i> 3.15	Event concerned	Without delay
<i>Notification rules for UK recognised bodies (see REC 3 Notification rules for UK recognised bodies)</i>				
<i>REC</i> 3.4	<i>Key individuals</i> <u>Members of the management body</u> and internal organisation	Details of change	See <i>REC</i> 3.4	See <i>REC</i> 3.4
<i>REC</i> 3.5	Disciplinary action and events relating to <i>key individuals</i> <u>members of the management body</u>	Details of disciplinary action or event	Disciplinary action or awareness of event	Immediately
<i>REC</i> 3.6	Constitution and governance	Details of proposals to amend constitution, amendments to constitution and agreements	Communication of proposal to amend constitution, making amendment to constitution	Immediately

		relating to constitution	or awareness of agreement relating to constitution	
<i>REC 3.7</i>	Auditors	Details of removal or appointment of auditors	Removal or appointment of auditors	Immediately
<i>REC 3.8</i>	Financial and other information	See <i>REC 3.8</i>	See <i>REC 3.8</i>	See <i>REC 3.8</i>
<i>REC 3.9</i>	Fees and incentive schemes	Summary of proposals to change fees and charges and changes to fees and charges	Communication to <i>members</i>	Immediately
<i>REC 3.10</i>	Complaints	Copy of adverse report and details of recommendations from <i>complaints investigator</i>	Availability of report or recommendations	Immediately
<i>REC 3.11</i>	Insolvency events	Notice of insolvency event	Insolvency event	Immediately
<i>REC 3.12</i>	Legal proceedings	Details of legal proceedings commenced against <i>UK recognised body</i>	Institution of proceedings	Immediately
<i>REC 3.13</i>	Delegation of <i>relevant functions</i>	Details of offers or agreements to delegate <i>relevant functions</i> and offers or agreements	Making offer or agreement to delegate	Immediately

		to undertake relevant functions on behalf of another <i>recognised body</i>		
<i>REC 3.14</i>	Products, services and normal hours of operation or (for <i>RAPs</i>) the timing, frequency or duration of its bidding windows	See <i>REC 3.14</i>	See <i>REC 3.14</i>	Immediately
<i>REC 3.14A</i>	Operation of a <i>regulated market</i> or <i>MTF trading venue</i>	Details of proposal to operate a new <i>regulated market</i> or <i>MTF trading venue</i> or close an existing <i>regulated market</i> or <i>MTF trading venue</i>	Communication of proposal to <i>members</i> or shareholders	Immediately
<i>REC 3.15</i>	Suspension of services and inability to operate <i>facilities</i> or (for <i>RAPs</i>) the cancellation of an auction	See <i>REC 3.15</i>	Event concerned	Immediately
<i>REC 3.16</i>	Information technology systems	Details of business continuity plans and details of	Changes to business continuity plans and failure of	Immediately

		failure of reserve information technology system	reserve information technology system	
<i>REC 3.17</i>	Inability to discharge <i>regulatory functions</i>	Details of inability to discharge a <i>regulatory functions</i>	Event concerned	Immediately
<i>REC 3.18</i>	Membership	Information regarding new types of <i>member</i> and reasons for considering the <i>recognition requirements</i> or (for <i>RAPs</i>) the <i>RAP recognition requirement</i> in regulation 20 can still be met	Admission of new type of non- <i>authorised person</i> or <i>person</i> from new non-UK jurisdiction to membership	Immediately
<i>REC 3.19</i>	Investigations	Notice of appointment of person to investigate use of <i>facilities</i> or provision of services	Awareness of appointment	Immediately
<i>REC 3.20</i>	Disciplinary action	Details of person against whom disciplinary action taken	Taking disciplinary action	Immediately
<i>REC 3.21</i>	Criminal offences and civil prohibitions	Evidence tending to suggest <i>contravention</i>	Having evidence concerned	Immediately

		ns of the <i>general prohibition</i> , certain criminal offences or <i>market abuse</i>		
<i>REC 3.22</i>	Restriction or instruction to close out, open positions or (for <i>RAPs</i>) restriction on maximum bid size or other remedial measures	Details of decision to restrict member's open position or instruction to close out position or (for <i>RAPs</i>) details of the event and remedial measures proposed	Decision to take action or (for <i>RAPs</i>) proposal to take action	Immediately
<i>REC 3.23</i>	Default	Notice of decision to put <i>member</i> into default	Communicating decision to <i>member</i> concerned or any other member	Immediately
<i>REC 3.24</i>	Transfers of ownership	Details of transfer of ownership	When the <i>UK RIE</i> becomes aware of the transfer of ownership	Immediately
<i>REC 3.25</i>	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Immediately
<i>REC 3.26</i>	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay

<i>ROIEs</i>				
The Act s295	Report to FCA	Statement as to whether events have occurred which would affect the FCA's assessment of whether the <i>recognition requirements</i> are met	Not applicable	Once a year
<i>Notification rules for ROIEs (see REC 6.7)</i>				
REC 6.7.3R	Events which might affect the FCA's assessment of whether the <i>recognition requirements</i> are met	Particulars of event	Not applicable	Include in report under s295
REC 6.7.4R	Inclusion of certain matters in report	See REC 6.7.4R	Not applicable	Include in report under s295
REC 6.7.5R	First report	See REC 6.7.5R	Not applicable	Include in report under s295
REC 6.7.7R	Changes of address	Details of new addresses	Decision to change address	14 <i>days</i> in advance of change of address
REC 6.7.8R and REC 6.7.9R	Revocation or modification of home territory licence etc	Details of revocation or modification	Awareness of revocation or modification	Immediately

...

Annex G

Amendments to the Perimeter Guidance manual (PERG)

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

2 Authorisation and regulated activities

...

2.3 The business element

...

2.3.2 G There is power in the *Act* for the Treasury to change the meaning of the business element by including or excluding certain things. They have exercised this power (see the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001 (SI 2001/1177), ~~the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No.2) Order 2003 (SI 2003/1476), the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2005 (SI 2005/922), the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) (Amendment) Order 2011 (SI 2011/2304) and the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) (No 2) Order 2013~~ as amended from time to time). The result is that the business element differs depending on the activity in question. This in part reflects certain differences in the nature of the activities:

...

- (2) Except as stated in *PERG 2.3.2G(2A)* and *PERG 2.3.2G(3)*, the business element is not to be regarded as satisfied for any of the following regulated activities unless a person carries on the business of engaging in one or more of them:
- (a) regulated activities carried on in relation to *securities* or *contractually based investments*;
 - (b) ~~(or for those regulated activities~~ carried on in relation to 'any property');
 - (c) the regulated activities covering structured deposits listed in PERG 2.6.4-BG;
 - (d) ~~unless a person carries on the business of engaging in one or more of the activities. This also applies to the regulated activities of advising on a home finance transaction and arranging a home finance transaction.~~

~~This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.~~

This is a narrower test than that of carrying on *regulated activities* by way of business (as required by section 22 of the *Act*), as it requires the *regulated activities* to represent the carrying on of a business in their own right.

...

...

2.5 Investments and activities: general

...

Investment services and activities

...

2.5.4A G The *UK* has exercised the optional exemption in article 3 of *MiFID*. Further information about this exemption is contained in Q48 to 53 in *PERG* 13.5. ~~It is a requirement of article 3 *MiFID* that the activities of firms relying on the exemption are "regulated at national level".~~ The investment services to which article 3 apply (namely reception and transmission of orders and investment advice in relation to either *transferable securities* or units in collective investment undertakings) correspond to *regulated activities* (see *PERG* 13 Annex 2 Tables 1 and 2).

2.5.5 G ... These relate to the exclusions concerned with:

...

(2A) issuing own securities (see *PERG* 2.8.4G(4));

...

(3A) arranging for the issue of your own securities *PERG* 2.8.6AG(11);

...

...

2.6 Specified investments: a broad outline

...

Deposits

...

- 2.6.4 G ...
- 2.6.4-A G (1) A structured deposit is a kind of deposit.
- (2) A structured deposit is a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices; or
- (b) a financial instrument or combination of financial instruments; or
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates.
- (3) A variable rate deposit whose return is directly linked to an interest rate index such as Euribor or Libor is not a structured deposit under paragraph (2)(a).
- (4) The exclusion in (3) applies whether or not the interest is predetermined and whether it is fixed or variable.
- 2.6.4-B G The reason why there is a definition of a structured deposit is that there are a number of regulated activities that apply to structured deposits that do not apply to other kinds of deposit. See PERG 2.7.2-BG for a list.
- 2.6.4-C G Although the definition of a structured deposit specifically requires that the principal amount be fully repayable, that does not imply that this feature only applies to structured deposits. In the FCA's view, capital certainty is a feature of any kind of deposit.

...

Greenhouse gas emissions allowances

- 2.6.19D G ~~This specified investment~~ There are two specified investments relating to the scheme for greenhouse gas emissions allowance trading within the EU:
- (1) The first kind comprises emissions allowances that are auctioned as financial instruments or two-day emissions spots (together, emissions auction products).
- (2) The second kind is an emission allowance itself, subject to (3).
- (3) If (1) does not apply, an emission allowance is only a specified investment if a MiFID investment firm or one of the other persons listed in PERG 2.6.20G(2) provides or performs one of the activities

or services listed in *PERG 2.6.20G(2)* in relation to it.

(4) An emission allowance can also be the underlying for an option, future or contract for differences.

2.6.19E G ~~¶~~ The emissions auction product specified investment relates only to the regulated activity of bidding in emissions auctions (whereby a bid is received, transmitted and submitted on an *auction platform*) and captures the two forms of allowance products that may be auctioned under article 4(2) of the *auction regulation*: a two-day spot or a five-day future.

2.6.19F G For the purposes of the *RAO*, this *specified investment* is not a *security*, *contractually-based investment* or a *relevant investment*. [Note: This paragraph is to be reviewed and so is not being consulted on for now]

2.6.19G G ~~This~~ The emissions auction product and the emission allowance specified investment investments incorporates definitions from other *EU* directives or regulations which can be summarised as follows:

...

(3) A *financial instrument* is defined as any instrument listed in Section C of Annex I to *MiFID*. ~~Recital 14 of the auction regulation explains that a two-day spot is not a financial instrument whereas a five-day future is (see PERG 13.4, Q34). A five-day future is defined in article 3(4) of the auction regulation as an allowance auctioned as a financial instrument for delivery at an agreed date no later than the fifth trading day from the day of the auction~~ There is further guidance about the emissions auction product and the emission allowance specified investments in PERG 13.4, Q34A.

Options

2.6.20 G The *specified investment* category of *options* comprises:

...

(2) options to acquire or dispose of other property and falling within paragraphs 5, 6, 7 or 10 of Annex 1 to *MiFID* (see article 83(2) of the *Regulated Activities Order* and *PERG 13*, Q32 to Q34 for guidance about these instruments), but only where they are options in relation to which:

(a) a *MiFID investment firm* or a *third country investment firm* provides or performs *investment services and activities* on a professional basis; or

(b) a UCITS investment firm is providing certain investment services and activities under article 6.3 of the UCITS Directive (provision of services in addition to UCITS management); or

- (c) a market operator (or someone who would be a market operator if it was based in the EEA) is providing the investment services and activities of operating a multilateral or organised trading facility (these activities are described in Q24 and Q24A in PERG 13.3); or
- (d) an AIFMD investment firm is providing services under articles 6.4 and 6.5 of the AIFMD (provision of services in addition to AIF management); and

(3)...

- 2.6.20A G It follows therefore that options not falling within *PERG 2.6.20G(1)*, for example physically settled options on non-precious metals, such as copper options, will not be *options* unless they meet the conditions in *PERG 2.6.20G(2)*. Moreover, where the option in question is one to which *PERG 2.6.20G(2)* applies, it will be an *option* only in relation to the *investment services and activities, or ancillary services where relevant or other services referred to in PERG 2.6.20G(2)*, provided by that *person*. The same applies in the case of options falling within *PERG 2.6.20G(3)*, for example an option on a physically settled copper option traded on a *regulated market*.

Futures

...

- 2.6.22A G As with *options*, there is an additional category of instruments which are *futures* only ~~when they are the object of investment services or activities provided or performed by certain persons in limited circumstances~~. These are contracts as described in *PERG 2.6.21G*:
- (1) that would not be regarded as having been entered into for investment purposes because they fail one of the tests mentioned in *PERG 2.6.22G*;
 - (2) that fall within paragraphs 5, 6, 7 or 10 of Annex 1 to *MiFID* (see *PERG 13, Q32 to Q34* for *guidance* about these derivatives); and
 - (3) in relation to which a *MiFID investment firm* or ~~a third country investment firm~~ one of the other persons listed in PERG 2.6.20G(2) provides or performs ~~investment services and activities on a professional basis~~ any of the activities or services listed in PERG 2.6.20G(2).

...

Contracts for differences

- 2.6.23 G The *specified investment* category of *contracts for differences* covers:

...

- (3) other derivative contracts (not within (1) or (2)) falling within paragraph 8 of Annex 1 to *MiFID*, that is derivative instruments for the transfer of credit risk (see *PERG* 13, Q30 to Q31 for *guidance* about these instruments), but only where a *MiFID investment firm* or ~~a *third country investment firm*~~ one of the other *persons* listed in *PERG* 2.6.20G(2) provides or performs ~~*investment services and activities on a professional basis*~~ any of the activities or services listed in *PERG* 2.6.20G(2).

...

...

2.7 Activities: a broad outline

...

Accepting deposits

2.7.2 G ...

2.7.2-A G In general, *accepting deposits* is the only *regulated activity* that applies to *deposits*, except for those *regulated activities* that can apply to property or assets that are not *specified investments*. However, *structured deposits* are an exception to this, as explained in *PERG* 2.6.4-BG.

2.7.2-B G The following *regulated activities* apply to *deposits* that are *structured deposits* in addition to the *regulated activity* of *accepting deposits*:

- (1) *dealing in investments as agent*;
- (2) *arranging (bringing about) deals in investments*;
- (3) *making arrangements with a view to transactions in investments*;
- (4) *managing investments*; and
- (5) *advising on investments*.

2.7.2-C G The activities in *PERG* 2.7.2-BG may be carried out by the *person* accepting the *structured deposit* or another *person*. However the activities in *PERG* 2.7.2-BG(1) to (3) are unlikely to be relevant to the *person* accepting the *structured deposit* because:

- (1) the *dealing activity* in *PERG* 2.7.2-BG(1) only applies to an agent; and
- (2) the exclusion described in *PERG* 2.8.6AG(3) (*arranging transactions to which the arranger is to be a party*) may apply to the activities in *PERG* 2.7.2-BG(2) and (3).

...

Dealing in investments (as principal or agent)

...

- 2.7.6 G Both the activities of *dealing in investments as principal* and *dealing in investments as agent* are defined in terms of 'buying, selling, subscribing for or underwriting' certain *investments*. These *investments* are:

...

- (2) for *dealing in investments as agent*, securities, structured deposits and *relevant investments* (except rights under a *funeral plan contract*).

...

Bidding in emissions auctions

...

- 2.7.6E G As explained in PERG 2.6, both an *emission allowance* and an *emissions auction product* are *specified investments*. The *Regulated Activities Order* deals with this as follows.

[Note: This interaction will be consulted on later]

Arranging deals in investments and arranging a home finance transaction

...

- 2.7.7A G There are ten arranging activities that are *regulated activities* under the *Regulated Activities Order*. These are:
- (1) *arranging (bringing about) deals in investments* which are *securities, relevant investments, structured deposits* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(1));
 - (2) *making arrangements with a view to transactions in investments* which are *securities, relevant investments, structured deposits* or the *underwriting capacity of a Lloyd's syndicate* or *membership of a Lloyd's syndicate* (article 25(2));

...

...

Operating a multilateral trading facility

- 2.7.7D G *Guidance* on the *MiFID investment service* of *operating a multilateral*

trading facility is given in PERG 13, Q24. ~~So far as~~ An activity that comes within the regulated activity of operating a multilateral trading facility is concerned, this does not comprise the activities come within the regulated activities of dealing in investments as agent, dealing in investments as principal, or arranging deals in investments. Where a firm carries on one or more of these activities in addition to operating a multilateral trading facility, these are separate regulated activities for which it requires permission.

2.7.7DA G The definition of a multilateral trading facility covers:

- (1) a multilateral trading facility as defined by MiFID operated by an investment firm, a credit institution or a market operator; or
- (2) a facility which:
 - (a) is operated by an investment firm, a credit institution or a market operator that is set up outside the EEA; and
 - (b) would come within the MiFID definition if its operator was set up in the EEA.

Operating an organised trading facility

2.7.7DB G Guidance on the MiFID investment service of operating an organised trading facility is given in PERG 13, Q24A. An activity that comes within the regulated activity of operating an organised trading facility does not come within the regulated activities of dealing in investments as agent, dealing in investments as principal or arranging deals in investments.

2.7.7DC G The definition of an organised trading facility covers:

- (1) an organised trading facility as defined by MiFID operated by an investment firm, a credit institution or a market operator; or
- (2) a facility which:
 - (a) is operated by an investment firm, a credit institution or a market operator that is set up outside the EEA; and
 - (b) would come within the MiFID definition if its operator was set up in the EEA.

2.7.7DD G (1) The regulated activity of operating an organised trading facility only covers a trading facility on which non-equity MiFID instruments are traded.

(2) Subject to (3) and (4), a non-equity MiFID instrument means:

- (a) a debenture, an alternative debenture, a government and public security, a warrant, a certificate representing certain securities, a unit, an option, a future or a contract for

differences; or

(b) rights to or interests in investments relating to anything in (a).

(3) However, a product in (2) is only a non-equity MiFID investment if it also falls into one of the following categories:

(a) a bond; or

(b) a structured finance product; or

(c) an instrument falling within section C4 to C10 of Annex 1 of MiFID (these are described in PERG 13.4).

(4) An emission allowance is also a non-equity MiFID instrument.

...

Managing investments

2.7.8 G The *regulated activity* of *managing investments* includes several elements.

...

(3) Third, the property that is managed must consist of (or include) *securities, structured deposits or contractually based investments*. Alternatively, discretionary management will generally be caught if it is possible that the property could consist of or include such ~~*securities or investments*~~ products. This is the case even if there never has been any investment in ~~*securities or contractually based investments*~~ these products, as long as there have been representations that there would be.

...

Advising on investments

2.7.15 G The *regulated activity* of *advising on investments* under article 53 of the *Regulated Activities Order* applies to advice on *securities, structured deposits or relevant investments*. It does not, for example, include giving advice about *deposits (except structured deposits)*, or about things that are not *specified investments* for the purposes of the *Regulated Activities Order*.

...

...

2.8 Exclusions applicable to particular regulated activities

...

Dealing in investments as principal

...

- 2.8.4C G The exclusions referred to in *PERG 2.8.4G*(1), (2), (4), (5) and (6)(b), (c) and (d) will not be available to *persons* who, when carrying on the activity of *dealing in investments as principal*, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).

...

Arranging deals in investments and arranging a home finance transaction

...

- 2.8.6B G The exclusions referred to in *PERG 2.8.6AG*(4), *PERG 2.8.6AG*(11) and *PERG 2.8.6AG*(13)(b), (c), (d), (e) and (l) will not be available to *persons* who, when carrying on an *arranging* activity, are *MiFID investment firms* or *third country investment firms* (see *PERG 2.5.4G* to *PERG 2.5.5G* (Investment services and activities)).

...

2.9 Regulated activities: exclusions applicable in certain circumstances

- 2.9.1 G The various exclusions outlined below deal with a range of different circumstances.
- (1) Each set of circumstances described in *PERG 2.9.3G* to *PERG 2.9.17G* has some application to several *regulated activities* relating to *securities*, *structured deposits*, *relevant investments* or *home finance transactions*. ...

...

...

Overseas persons

- 2.9.15 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(3B) ...

(3C) *operating an organised trading facility*;

...

...

Insolvency practitioners

2.9.25 G This group of exclusions applies, in specified circumstances, to the *regulated activities* of:

...

(5) ...

(5A) *operating an organised trading facility;*

...

...

2 Annex 2 Regulated activities and the permission regime

...

2 Table

Table 1: Regulated Activities (excluding PRA-only activities) [See note 1 to Table 1]	
Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
...	
Designated investment business [see notes 1A, 1B and 1C to Table 1]	
(d) <i>dealing in investments as principal</i> (article 14) [see note 2 to Table 1]	...
(e) <i>dealing in investments as agent</i> (article 21) [see notes 1B and 2 to Table 1] [<u>also see Section of Table 1 headed 'Activities relating to structured deposits'</u>]	
(f) <i>arranging (bringing about) deals in investments</i> (article 25(1)) [see note 1B to Table 1] [<u>also see Sections of Table 1 headed 'The Lloyd's market' and 'Regulated mortgage activity' and 'Activities relating to structured deposits'</u>]	
(g) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) [see note 1B to Table 1] [<u>also</u>	

see Sections of Table 1 headed 'The Lloyd's market' <u>and</u> , 'Regulated mortgage activity' <u>and</u> 'Activities relating to structured deposits']	
(ga) operating a <i>multilateral trading facility</i> (article 25D) [see note 2A]	...
(gb) operating an <i>organised trading facility</i> (article 25DA) [see note 2A]	<u>certain kinds of securities or contractually based investments which are financial instruments. PERG 2.7.7DDG lists the securities and contractually based investments covered.</u>
(h) <i>managing investments</i> (article 37) [see note 3 to Table 1] [also see Section of Table 1 headed 'Activities relating to structured deposits']	
...	...
(j) <i>advising on investments</i> (article 53) [see note 1B to Table 1] [also see Sections of Table 1 headed 'Regulated mortgage activity' <u>and</u> 'Activities relating to structured deposits']	
...	
(zaf) <i>providing credit references</i> (article 89B)	...
<u>Activities relating to structured deposits</u>	
(zag) <i>dealing in investments as agent</i> (article 21) (zah) <i>arranging (bringing about) deals in investments</i> (article 25(1)) (zai) <i>making arrangements with a view to transactions in investments</i> (article 25(2)) (zaj) <i>managing investments</i> (article 37) [see note 3 to Table 1] (zak) <i>advising on investments</i> (article 53)	<i>structured deposits</i>

3 Table

Notes to Table 1

...

Note 3:

The *regulated activities of managing investments* (article 37) and *safeguarding and administering investments* (article 40) may apply in relation to any assets, in particular circumstances, if the assets being managed or safeguarded and administered include, (or may include), any *security, structured deposit* or *contractually based investment*.

...

4 Table

Table 1A: PRA-only regulated Activities [See notes 1 and 2 to Table 1A]
--

Regulated activity	Specified investment in relation to which the regulated activity (in the corresponding section of column one) may be carried on
Accepting deposits	
(a) <i>accepting deposits</i> (article 5)	<i>deposit</i> (article 74) <u>See note (3)</u>
...	

5 Table

Notes to Table 1A

...

Note 3:

Accepting deposits is not the only regulated activity relating to deposits. For a deposit that is a structured deposit, certain other regulated activities apply. These are listed in Table 1.

...

7 Table

Table 3: Securities, contractually based investments and relevant investments [see notes 1 and 2 to Table 3]
--

Security (article 3(1))	Contractually based investment (article 3(1))	Relevant investments (article 3(1))

...	...	
<i>personal pension scheme</i> (article 82(2));		
<u><i>emission allowance</i></u> (article 82B)		
...		

...

13 Guidance on the scope of MiFID and CRD IV

13.1 Introduction

~~**Note:** ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering ‘The application of the definitions in Sections C6 and C7 of Annex I of Directive 2004/39/EC (MiFID)’. See https://www.esma.europa.eu/system/files/2015-05-06_final_guidelines_c6_and_7.pdf.~~

[Note: To be updated if required]

The purpose of this chapter is to help UK firms consider:

- whether they fall within the scope of the Markets in Financial Instruments Directive ~~2004/39/EC~~ 2014/65/EU (‘MiFID’) and therefore are subject to its requirements;

...

- If so, which category of investment firm they are for the purposes of the transposition of the recast CAD or *CRD* and the *EU CRR*.

This chapter is mostly aimed at questions that are relevant to someone who wants to know whether they need to be authorised under the *Act*. This means that this chapter does not cover those types of persons for whom MiFID requirements are applied outside the authorisation regime under the *Act*, such as:

- a data reporting service provider (which means a provider of an approved publication arrangement, a consolidated tape provider or a provider of an approved reporting mechanism);
- those subject to position limit requirements in derivatives markets;
- those subject to an obligation to trade in derivatives on a regulated market, OTF or MTF; or
- benchmark providers and central counterparties subject to the requirements about non-discriminatory access for financial instruments.

Background

MiFID replaces the Markets in Financial Instruments Directive 2004/39/EC (MiFID 1), which in turn replaced the Investment Services Directive (ISD). It expands the kinds of business which must be regulated in the UK to include, in particular, activities relating to a wider range of commodity and other non-financial derivatives. As a result of MiFID, the categories of firm which can exercise passporting rights and the categories of business for which the passport is available are wider than under the ISD. In particular, whereas investment advice was a non-core service under ISD, it is an investment service in its own right under MiFID and so can be provided on a cross-border basis as a standalone business.

MiFID is complemented by regulation (EU) No. 600/2014 on markets in financial instruments ('MiFIR'). MiFID is and MiFIR are supplemented by "Level 2 measures" Commission Regulation (EC) No 1287/2006 (MiFID Regulation) and Commission Directive 2006/73/EC (MiFID Implementing Directive) [Note: Details to follow]. These implementing measures amplify and supplement certain of the concepts and requirements specified in MiFID and MiFIR.

...

13.2 General

Q1. Why does it matter whether or not we fall within the scope of MiFID?

Depending on whether or not you fall within the scope of MiFID, you may be subject to:

- domestic legislation implementing MiFID (for example, FCA rules);
- directly applicable legislation made by the European Commission (~~the~~ MiFID Regulation and MiFIR, EU CRR and the other EU regulations referred to in PERG 13.1); and
- domestic legislation implementing the CRD (see PERG 13.6).

...

Q3. How much can we rely on these Q and As?

...

Moreover, although MiFID and the CRD and the EU CRR set out most of the key provisions and definitions relating to scope, some provisions may be subject to further legislation by the European Commission. In addition to FCA guidance, MiFID's scope provisions may also be the subject of guidance or communications by the European Commission or the European Securities and Markets Authority ('ESMA'). Similarly, the CRD and the EU CRR provisions may be the subject of technical standards and guidance or communications by the European Commission or the European Banking Authority ('EBA').

...

Q5. We are a credit institution. How does MiFID apply to us?

If you are an EEA credit institution, article ~~4.2~~ 1.3 MiFID provides that selected MiFID provisions apply to you, including organisational and conduct of business requirements, when you are providing investment services to your clients or performing investment activities. In our view, MiFID will apply when you are providing ancillary services in conjunction with investment services. Where you provide ancillary services on a standalone basis, MiFID will not apply in relation to those services. Article ~~4.2~~ 1.3 MiFID is reflected in paragraph (2) of the *Handbook* definition of “MiFID investment firm”.

In addition, article 1.4 MiFID provides that additional MiFID provisions apply when selling or advising clients about structured deposits (see Q34B).

...

Q7. We provide investment services to our clients. How do we know whether we are an investment firm for the purposes of article 4.1(1) MiFID?

...

Where you are a firm with more than one business, you can still be an investment firm. ~~We expect that the vast majority of firms which were subject to the requirements of the ISD are subject to MiFID requirements where they continue to provide the same investment services. We also expect some firms that were not subject to the ISD (for example, certain commodity dealers) to be investment firms for the purposes of MiFID and subject to MiFID based requirements.~~ What amounts to a “professional basis” depends on the individual circumstances and in our view relevant factors will include the existence or otherwise of a commercial element and the scale of the relevant activity.

Q8. We do not provide investment services to others but we do buy and sell financial instruments (for example, shares and derivatives) on a regular basis. Are we an investment firm for the purposes of MiFID?

Yes, if you are trading in MiFID financial instruments for your own account as a regular occupation or business on a “professional basis”. You can be an investment firm even if you are not providing investment services to others; ~~this is a change from the position under the ISD, arising~~ arises from the fact that you are also an investment firm under MiFID where you perform investment activities on a professional basis.

Even if you are an investment firm you may still be able to rely on one or more exemptions in article 2 MiFID, in which case MiFID will not apply (see *PERG* 13.5 and in particular article 2.1(d) (see Q40 and Q41)), ~~2.1(i) (see Q44 and Q45) and 2.1(k)(j) (see Q46).~~

...

Q11. How will we know whether we are a tied agent (article 4.1(25)(29))?

...

Assuming your principal is an investment firm to which MiFID applies, if you are registered as an *appointed representative* on the *Financial Services Register* and carry on the activities of *arranging (bringing about) deals in investments* or *advising on investments*, in either case in relation to MiFID financial instruments, you are likely to be a tied agent for the purposes of article 4.1(25)(29).

...

13.3 Investment Services and Activities**Introduction****Q.12. Where do we find a list of MiFID services and activities?**

In Section A of Annex 1 to MiFID. There are ~~eight~~ nine investment services and activities in Section A (A1 to A8 A9), ~~four of which are further defined in article Article 4 MiFID. Those activities that are further defined are~~ defines some of them in more detail:

- ...
- portfolio management (article 4.1(9)(8) MiFID).

A further provision relating to investment advice is contained in article ~~52~~ of the *MiFID implementing Directive* [Note: to follow].

Q12A. We carry out the activity of bidding in emissions auctions. Is this a MiFID service or activity? [deleted]

~~Article 6(5) of the auction regulation deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument (the 'five-day future' auction product – see PERG 2.6.19GG(3)) on an auction platform by an investment firm to which MiFID applies or a CRD credit institution. It does not specify which investment service or activity. In the FCA's view, it is likely to be the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients or dealing on own account.~~

~~As a result of some of bidding in emissions auctions being MiFID business, the regulated activity of bidding in emissions auctions is divided for the purposes of the Handbook, and the different requirements that apply, into two parts: MiFID business bidding and auction regulation bidding.~~

Reception and transmission**Q13. When might we be receiving and transmitting orders in relation to one or more financial instruments? (A1 and recital ~~20~~ 44)?**

...

The extended meaning of the service only applies if the firm brings together two or more investors, ~~and a~~ A person issuing new securities, including a collective investment undertaking, should not be considered to be an 'investor' for ~~this the~~ the purpose of this extended meaning. This limitation does not apply though to However, an issuer may be an investor for the purpose of the general definition of the service. Accordingly whilst an arrangement whereby a person, on behalf of a client, receives and transmits an order to an issuer will, in our view, amount to reception and transmission, one in which it simply brings together an issuer with a potential source of funding for investment in a company, will not.

...

~~Where you are receiving, transmitting and submitting bids on an auction platform in relation to financial instruments on behalf of your clients, you may be receiving and transmitting orders in relation to one or more financial instruments.~~

...

Executing orders

Q15. When might we be executing orders on behalf of clients? (A2, article 4.1(5) and recital ~~21~~ 45)?

...

~~Where you bid on behalf of your client on an auction platform for a financial instrument, you may be executing orders on behalf of clients. This activity includes the issue of their own financial instruments by an investment firm or a credit institution.~~

Q15A. Is every issue of financial instruments a MiFID investment service?

No. Although the answer to Q15 says that executing client orders includes issuing your own financial instruments, not every issue of financial instruments amounts to the MiFID investment service of execution of orders on behalf of clients. This is explained in more detail in the rest of this answer.

One difficult question is whether the extension of the executing orders service only applies to firms that are already investment firms because of other services and activities they provide or whether this part of the definition is also relevant to someone who is deciding whether they are an investment firm in the first place.

In the FCA's view, this part of the definition is not limited to someone that is already an investment firm because of its other activities and services. This is because the risks that recital 45 of MiFID says this part of the definition is aimed at apply whether or not the issuer is already an investment firm for another reason. For example, there is no reason why a firm that issues its own complicated securities to the retail market should not need authorisation if a firm that distributes ones issued by another firm requires authorisation.

On the other hand, it cannot be the case that raising capital by issuing its own capital causes an ordinary commercial company to become an *investment firm*. The reasons why this should not be the case include the following:

- If you do not issue *financial instruments* on a professional basis and do not otherwise execute orders on behalf of clients, you will generally not need permission or authorisation to do this. See Q8 for more information.
- The investor may not be your *client*. For example, an ordinary commercial company issuing debt securities to financial investors is unlikely to be providing a service; it is more likely to be receiving one.
- Recital 45 of MiFID confirms that the definition is intended to catch issuers when distributing their own *financial instruments*. Thus if you get another investment firm or credit institution to distribute your *financial instruments*, you will not be executing client orders.

Dealing on own account

Q16. What is dealing on own account? (A3 and, article 4.1(6) and recital 24)?

Dealing on own account is trading against proprietary capital resulting in the conclusion of transactions in one or more MiFID financial instruments. ~~In most cases, if you were a firm who was dealing for own account under the ISD, the FCA would expect you to be dealing on own account for the purposes of MiFID if you continue to perform the same activities.~~

...

If a firm executes client orders by standing between clients on a matched principal basis (back-to-back trading), it is both dealing on own account and executing orders on behalf of clients. In our view, where you are a A firm which is still dealing on own account under MiFID if it meets all of the conditions of article 29(2) of CRD (see Q61) or article 5.2 of the recast CAD, as applicable under the CRD and the EU CRR to certain firms (see Q58A), you will not be dealing on own account. However, a firm which meets all the conditions of these articles of CRD or the recast CAD will not be considered as dealing on own account when determining which category of firm it is for the purposes of the FCA's base own funds requirements (see PERG 13.6).

~~Where you bid for your own account on an *auction platform* for a *financial instrument*, you may be *dealing on own account*.~~

Portfolio management

Q17. What is portfolio management under MiFID? (A4 and article 4.1(9 8))?

...

Investment advice

Q18. What is investment advice under MiFID? (A5 and article 4.1(4))?

...

Q19. What is a ‘personal recommendation’ for the purposes of MiFID (article 52 of the MiFID implementing Directive)?

[Note: Amendments to Questions 19, 20 and 21 to follow]

...

Underwriting and firm commitment placing

Q22. What is underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis? (A6)?

...

Placing without a firm commitment

Q23. When might placing of financial instruments without a firm commitment basis arise (A7)?

...

Operating a multilateral trading facility

Q24. What is a multilateral trading facility? (A8, article 4.1(15 22) and recital 6 7 of MiFIR)?

The concept of a multilateral trading facility (MTF) draws on standards, issued by CESR (now known as ESMA), on which the FSA’s previous alternative trading system regime was based. It includes A multilateral trading facility involves a multilateral trading systems (for example, a trading platforms) operated either by an investment firms firm or by a market operators operator which bring together multiple buyers and sellers of financial instruments.

See Q24B for what a multilateral system is.

~~As was the case with the alternative trading systems regime, in our view a A multilateral trading facility does not include bilateral systems where an investment firm enters into every trade on own account (as opposed to acting as a riskless counterparty interposed between the buyer and the seller).~~

For there to be an MTF, the buying and selling of MiFID financial instruments in these systems must be governed by non-discretionary rules in a way that results in contracts. As the rules must be non-discretionary, once orders and quotes are received within the system an MTF operator must have no discretion in determining how they interact. The MTF operator instead must establish rules governing how the system operates and the characteristics of the quotes and orders (for example, their price and time of receipt in the system) that determine the resulting trades. An MTF may be contrasted with an OTF (see Q24A for

OTFs) in this regard, because the operator of an OTF is required to carry out order execution on a discretionary basis.

In our view, a firm can be an MTF operator whether or not it performs any other MiFID investment service or activity listed in A1 to A7.

Operating an organised trading facility

Q24A. What is an organised trading facility (A9, article 4.1(23) and recitals 8 and 9 of MiFIR)?

An OTF is a multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interests in certain products are able to interact in the system in a way that results in a contract.

Only bonds, *structured finance products*, emissions allowances and derivatives may be traded. Equity instruments may not be traded on an OTF.

See Q24B for what a multilateral system is.

Order execution must be carried out on an OTF on a discretionary basis. By contrast with the operation of an MTF or regulated market, the operator of the OTF must exercise discretion in either of, or both:

- placing/retracting client orders; or
- matching client orders.

In exercising its discretion, the operator must comply with the requirement under article 18 of MiFID to establish objective criteria for the efficient execution of orders, and must also comply with the best execution requirements under article 27 of MiFID. [Note: this material may be expanded in the light of Level 2 legislation]

Multilateral system

Q24B. What is a multilateral system (article 4.1(19))?

This is a fundamental part of the definition of an MTF (Q24) and OTF (Q24A). It means a system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system. Multilateral systems may be contrasted with ‘bilateral systems’ where an investment firm enters into every trade on own account.

For any system to be a multilateral system it suffices that trading interests are able to interact – without necessarily resulting in a contract under the system. Any system or platform is a multilateral system where more than one market participant has the ability to interact with more than one other market participant on that system or platform.

In our view, any system that merely receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices should not be considered a

multilateral system. That means that a bulletin board should not be considered a multilateral system. This is because there is no reaction of one trading interest to another other within these types of facilities.

In addition, neither the service of *portfolio compression*, which reduces non-market risks in derivative portfolios without changing the market risk, nor post-trade confirmation services, constitutes a multilateral system by itself. However, if a firm operates a system that comes within the definition of a multilateral system without taking into account these activities, any *portfolio compression* or post-trade confirmation services that it provides for that system can form part of the multilateral system that the firm is operating.

In our view, interaction in a system or facility occurs when the system or facility allows trading interests to exchange information relevant to any of the essential terms of a transaction in financial instruments (being price, quantity, subject-matter). The information exchanged need not be complete contractual offers, but may be simply invitations to treat or ‘indications of interest’.

In particular, a platform will be considered a multilateral system (and hence be required to operate as a regulated market, an MTF or an OTF in accordance with article 1(7) of MiFID) if the system provides the ability for trading interests to interact by:

- allowing multiple participants to see such information about trading interest in financial instruments, or to submit such information about trading interest in financial instruments for matching; and
- enabling them, through technical systems or other facilities, to take steps to initiate a transaction, or be informed of a match.

The definition of a multilateral system goes beyond the definitions of an OTF and MTF and of the systems operated by regulated markets. [Note: material on UK implementation of article 1.7 to follow if necessary]

...

13.4 Financial Instruments

Introduction

Q27. Where do we find a list of MiFID financial instruments?

In Section C of Annex 1 to MiFID. There are ~~ten~~ eleven categories of financial instruments in Section C (C1 to ~~C10~~ C11). Transferable securities (C1) and money market instruments (C2) are defined in article 4. Further provisions relating to certain ~~derivatives under C7 and C10~~ of these products are contained in ~~articles 38 and 39 of the MiFID Regulation.~~ [Note: to follow]

Transferable securities

Q28. What are transferable securities? (C1 and article 4.1~~(18)~~(44))?

...

Money market instruments**Q28A. What are money market instruments? (C2 and article 4.1(17))?**

This means those classes of instruments which are normally dealt in on the money market. Examples include treasury bills, certificates of deposit and commercial paper. A money market instrument does not include an instrument of payment. [Note: this material may be expanded in the light of Level 2 legislation]

Collective investment undertakings**Q29. What are units in collective investment undertakings (C3)?**

This category of *financial instrument* includes *units* in regulated and unregulated *collective investment schemes* and ~~units~~ units or *shares* in an *AIF* (whether or not the *AIF* is also a *collective investment scheme*). In our view, in accordance with article 1.2(a) and 2.1(o) of the *Prospectus Directive*, ~~units~~ units or *shares* in an *AIF* include shares in closed-ended corporate schemes, such as shares in investment trust companies, and so are also ~~units~~ units in collective investment undertakings for this purpose (as well as being transferable securities). There is guidance on what an AIF is in chapter 16 of PERG (Scope of the Alternative Investment Fund Managers Directive).

Derivatives: general**Q30. Which types of financial derivative fall within MiFID scope (C4, C8 and C9)?**

The scope of ~~financial~~ derivatives under MiFID is ~~wider than under the ISD and~~ includes the following:

- ~~derivative instruments relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or measures, that may be settled physically or in cash (C4), emission allowances or certain other things (see Q31A);~~
- commodity derivatives (see Q32);
- ~~derivative instruments for the transfer of credit risk (C8) (see Q31); and~~
- ~~financial contracts for differences (C9). (see Q31A); and~~
- derivatives on miscellaneous underlyings (see Q34).

The scope of C4, C8 and C9 does not extend to spot transactions, transactions which are not derivatives (such as forwards entered into for commercial purposes) and sports spread bets. In our view, neither C4 nor C9 comprise forward foreign exchange instruments unless they are caught by the scope of the Regulated Activities Order (see *PERG 2.6.22BG*). A non-deliverable currency forward which is not a “future” for the purposes of the Regulated Activities Order because

it is made for commercial purposes will likewise fall outside the scope of MiFID.

[Note: This paragraph is to be reviewed and so is not being consulted on for now]

Credit derivatives

Q31. What are derivative instruments for the transfer of credit risk (C8)?

...

General financial and emissions derivatives (C4 and C9)

Q31A. Which types of financial derivative fall within this heading?

[Note: to follow]

Commodity derivatives

Q32. Which types of commodity derivative fall within MiFID scope?

[Note: to follow]

...

Miscellaneous derivatives (C10)

Q34. Are there any other derivatives subject to MiFID regulation What types of derivatives fall into this category?

[Note: to follow]

Emission allowances

Q34A. How are emission allowances treated?

They are covered in four ways:

- Article 6(5) of the *auction regulation* deems as an investment service or activity the reception, transmission and submission of a bid for a financial instrument (the “five-day future” auction product) on an *auction platform* by an investment firm to which MiFID applies or a *CRD credit institution*.
- The *auction regulation* also regulates bids for allowances in the form of two-day spot contracts.
- An *emission allowance* is itself a financial instrument (C11).
- An option, future, swap, forward rate agreement or any other derivative contract relating to emission allowances is included as a C4 derivative when it may be settled physically or in cash.

There is no explanation about how all this overlapping legislation fits together but in the FCA’s view, they work like this:

- (1) An emission allowance auctioned as a five-day future or a two-day spot contract is regulated under the auction regulation.
- (2) The five-day future auction product is a financial instrument and is regulated under MiFID. It is included under C[4] and C11.
- (3) The two-day spot contract product is also a financial instrument. It is included under C11. It is therefore also regulated under MiFID.
- (4) In the FCA's view an emission allowance (including when auctioned under the auction regulation) will not come within C1.
- (5) The auction regulation covers the reception, transmission and submission of a bid. This corresponds to the MiFID activities of the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients and dealing on own account.
- (6) The auction regulation provides certain exemptions for aircraft operators and others. These exemptions continue to apply whether or not a MiFID exemption is available, but only for bidding activities covered by the auction regulation.
- (7) The MiFID activities that apply to a product covered by the auction regulation are not limited to the MiFID activities listed in paragraph (5) of this list. All the MiFID investment services and activities apply to emission allowances auctioned as a financial instrument. Therefore, for example, advising on bids for emission allowances auctioned as a five-day future is covered by MiFID.

[To be reviewed, including in the light of the article 2 exemptions]

Structured deposits

Q34B. How are structured deposits covered?

Article 1.4 of MiFID applies certain provisions of MiFID to an investment firm or credit institution that sells or advises on structured deposits.

A structured deposit is not a financial instrument (unless, perhaps unusually, it is a transferable security under C1). This means, for example, that a firm does not become a MiFID firm by advising on or selling them.

13.5 Exemptions from MiFID

Introduction

Q35. Where do we find a list of MiFID exemptions?

...

Q35A. Can you give me a complete list of exemptions?

<u>Description of exemption</u>	<u>MiFID reference</u>	<u>Guidance in this chapter</u>
<u>Insurers</u>	<u>article 2.1(a)</u>	<u>Q36</u>
<u>Intra-group services</u>	<u>article 2.1(b)</u>	<u>Q37 and Q38</u>
<u>Services complementary to other professional activities</u>	<u>article 2.1(c)</u>	<u>Q39</u>
<u>Own account dealing (except in commodities)</u>	<u>article 2.1(d)</u>	<u>Q40 and Q41</u>
<p><u>An operator with compliance obligations under Directive 2003/87/EC (Emissions Trading Scheme) who, when dealing in emission allowances, does not:</u></p> <ul style="list-style-type: none"> ● <u>execute client orders; or</u> ● <u>provide any investment services; or</u> ● <u>perform any investment activities other than dealing on own account.</u> <p><u>This exemption does not apply to someone who applies a high-frequency algorithmic trading technique.</u></p>	<u>article 2.1(e)</u>	<u>None</u>
<u>Employee share schemes and pension schemes</u>	<u>article 2.1(f) and (g)</u>	<u>Q42</u>
<p><u>The following public financial institutions:</u></p> <ul style="list-style-type: none"> ● <u>members of the European System of Central Banks;</u> ● <u>other national bodies performing similar functions in the EU;</u> 	<u>article 2.1(h)</u>	<u>None</u>

<ul style="list-style-type: none"> ● <u>other public bodies charged with or intervening in the management of the public debt in the EU; or</u> ● <u>international financial institutions established by two or more Member States of the EU which have the purpose of mobilising funding and providing financial assistance to the benefit of their members that are experiencing or threatened by severe financing problems.</u> 		
<u>Collective investment undertakings</u>	<u>article 2.1(i)</u>	<u>Q43</u>
<u>Own account dealing in commodity derivatives</u>	<u>article 2.1(j)</u>	<u>Q44 to Q46</u>
<u>Persons providing investment advice in the course of providing another professional activity not covered by MiFID</u> <u>This only applies if the provision of such advice is not specifically remunerated.</u>	<u>article 2.1(k)</u>	<u>None</u>
<u>Transmission system operators as defined in article 2(4) of Directive 2009/72/EC or article 2(4) of Directive 2009/73/EC (Directives about common rules for the internal markets in electricity and natural gas). This exemption is subject to various detailed conditions</u>	<u>article 2.1(n)</u>	<u>None</u>
<u>Central securities depositories when providing services explicitly listed in Sections A and B of EU Regulation 909/2014 (Securities settlement and central securities depositories regulation)</u>	<u>article 2.1(o)</u>	<u>None</u>
<u>Optional article 3 exemption</u>	<u>article 3</u>	<u>Q48 to Q50</u>

<u>Exemptions relevant to Italy, Denmark and Finland</u>	<u>articles 2.1(l) and (m)</u>	<u>None</u>
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Insurance

Q36. We are an insurer. Does MiFID apply to us?

...

Intra-group activities

Q37. We are a non-financial services group company providing investment services to other companies in the same group. Are we exempt under the group exemption in article 2.1(b)?

...

Q38. We also buy and sell financial instruments for ourselves. Are we still able to use the group exemption?

[Note: This answer is outside the scope of this consultation]

Incidental services as part of a professional activity

Q39. We provide investment services as a complement to our main professional activity. Are we exempt?

Yes, you will be exempt under article 2.1(c) MiFID if you provide these services in an incidental manner in the course of your professional activity, and that activity is regulated by legal or regulatory provisions or a code of ethics that do not exclude the provision of investment services. ~~The meaning of ‘incidental’ is potentially subject to further Commission legislation pursuant to article 2.3 MiFID.~~ *[Note: more material on meaning of incidental may follow]*

This exemption is relevant, for example, to firms belonging to *designated professional bodies*, such as accountants, actuaries and solicitors, to whom Part XX of the *Act* applies. It could also apply to *authorised professional firms* which provide investment services in an incidental manner in the course of their professional activity. In our view, the criteria set out in *PROF 2.1.14G* in relation to section 327(4) of the *Act* are also relevant to considering whether a firm can rely on the exemption in article 2.1(c) MiFID, ~~as they were in relation to the corresponding ISD exemption.~~

...

Own account

Q40. We regularly buy and sell financial instruments ourselves but never as a service to third parties. Are there any exemptions which might apply to us?

Yes, you could fall within the article 2.1(d) MiFID exemption but not if you:

- are a market maker (please see Q41 below); or
- ~~deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them. A system for these purposes might include a trading platform, website or other mechanism that functions on the basis of a set of rules.~~ are a member of, or a participant in, a regulated market or an MTF or you have direct electronic access to a trading venue;
- apply a high-frequency algorithmic trading technique (see Q41A); or
- deal on own account when executing client orders.

This exemption does not apply to dealing on own account in commodity derivatives, emission allowances derivatives or derivatives on either of those products.

[Note: remainder of this answer outside the scope of this consultation]

Q41. What is a market maker?

A market maker is “a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against ~~his~~ that person’s proprietary capital at prices defined by ~~him~~ that person” (article 4.1(8 7) MiFID). ~~This is likely to be the case if you are recognised or registered as a market maker on an investment exchange. However, in~~ In our view anyone who satisfies the definition will be a market maker for the purposes of MiFID, even if they are not under an obligation to make quotes; ~~for example retail service providers who make a market in shares traded on the Stock Exchange Electronic Trading Service (‘SETS’) but without doing so as registered market makers under the rules of the London Stock Exchange.~~ However, in practice, a market maker is likely to be someone who is a participant in a market making scheme under articles 48.2 and 48.3 of MiFID or the corresponding requirements under article 18. It may also include a firm engaging in algorithmic trading that is pursuing a market making strategy under article 17.4 of MiFID (see Q41A for what algorithmic trading means).

Q41A. What is a high-frequency algorithmic trading technique?

It is a type of algorithmic trading technique.

Algorithmic trading means trading in financial instruments where a computer algorithm automatically determines individual parameters of orders such as:

- whether to initiate the order;

- the timing, price or quantity of the order; or
- how to manage the order after its submission;

with limited or no human intervention.

Algorithmic trading does not include any system that is only used for:

- routing orders to one or more trading venues;
- processing of orders involving no determination of any trading parameters;
- confirmation of orders; or
- the post-trade processing of executed transactions.

Article 4.1(40) defines a high-frequency algorithmic trading technique as an algorithmic trading technique characterised by:

- infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry:
 - co-location;
 - proximity hosting; or
 - high-speed direct electronic access;
- system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and
- high message intraday rates which constitute orders, quotes or cancellations.

Employee share and company pension schemes

Q42. Is there an exemption, ~~as there was under the ISD~~, relating to employee share schemes and company pension schemes?

Yes, there is an exemption in article 2(1)(~~e~~)(f) MiFID for persons providing investment services consisting exclusively in the administration of employee-participation schemes, for example employee share schemes and company pension schemes. In our view, whilst administration for these purposes could extend to services comprising reception and transmission or execution of orders on behalf of clients or placing, it would not include *personal recommendations* in relation to, or managing, the assets of employee share schemes or company pension schemes.

This exemption can also be combined with the “group exemption” in article 2.1(b) MiFID, by virtue of article 2.1(~~e~~) (f) MiFID. [*Note: the following sentence is outside the scope of this consultation:*] In our view, it may also be combined with the exemption in article 2.1(i) MiFID if a firm is dealing on own account in financial instruments as an ancillary activity to its main business, or, as the case

may be, the main business of its group.

Collective investment undertakings

Q43. Are we right in thinking that MiFID does not apply to collective investment undertakings and their operators?

... To the extent that it also provides investment services or performs investment activities in a different capacity, for example, if it provides investment advice to, or manages the assets of, an individual third party, these services and activities fall outside the scope of ~~the article 2.1(h)~~ this exemption.

...

[Note: Questions 44 to 46 outside the scope of this consultation]

Locals

Q47. We traded on an investment exchange as a local firm and were exempt from the ISD MiFID 1. Are we exempt under MiFID?

~~Yes. If you fell within the exemption in article 2.2(j) ISD for local firms and continue to perform the same services and activities, you should generally fall within the exemption in article 2.1(l) MiFID. If you provide personal recommendations in relation to MiFID financial instruments, however, you will not be able to rely upon the exemption in article 2.1(l) MiFID. The exemption for locals in MiFID 1 no longer applies. It is unlikely that the own account exemption in article 2.1(d) will be available as that exemption does not apply to members of, or participants in, a regulated market (see Q40).~~

The article 3 exemption

Q48. Article 3 is an optional exemption. Will the exemption apply to UK firms?

...

Q49. Which firms might fall within this exemption?

The exemption applies to persons who meet all the following conditions:

- they do not hold clients' funds or securities and do not, for that reason, at any time, place themselves in debt with their clients;

...

- they transmit orders only to one or more of the following:

...

- branches of third country investment firms or credit institutions ~~complying~~ which are subject to, and comply with, prudential rules

considered by the ~~FCA~~ appropriate regulator to be at least as stringent as those laid down in MiFID, ~~or the CRD and~~ or the EU CRR;

...

Where you provide *personal recommendations* or receive and transmit orders in relation to derivatives which are MiFID financial instruments but not transferable securities, you will fall outside the scope of this exemption. In our view, this would be the case, for example, if you provided either or both of these investment services in relation to OTC derivatives concluded by a confirmation under an ISDA master agreement (see *PERG 13 Annex 2 Table 2*).

Articles 3.1(d) and (e) of MiFID provide additional optional exemptions, but they have not been implemented in the UK.

...

Q53. What is the practical effect of exercising the optional exemption for those firms falling within its scope?

You are not a firm to which MiFID applies and so are not a *MiFID investment firm* for the purposes of the Handbook. As such you are not subject to the requirements of the *CRD* as transposed in the Handbook and the *EU CRR* and cannot exercise passporting rights.

Article 3.2 of MiFID applies certain MiFID requirements to firms making use of the article 3 exemption. These are implemented in the Handbook and the Act.

...

13.6 CRD IV

...

Q55. Are we subject to the CRD and the EU CRR?

...

Despite being subject to the requirements of MiFID, broadly speaking, if you are one of the following investment firms, *CRD* and the *EU CRR* will only apply to you in a limited way:

...

- a firm that:

...

- is not authorised to provide the following ~~investment~~ investment services: (a) to deal in any *financial instruments* for its own account; (b) to underwrite issues of *financial instruments* on a firm commitment basis; (c) to place *financial instruments* without a firm commitment

basis; ~~and~~ (d) to operate a multilateral trading facility; and (e) to operate an organised trading facility;

...

...

There is also a ~~special~~ an exemption under the *EU CRR* for ~~locals that do not fall within the exemption for local firms under MiFID (see Q47). However, we do not think that UK regulated firms that were subject to the regulatory regime for locals prior to MiFID implementation are likely to fall within the exemption under the *EU CRR*. This is because they are likely to fall within article 2.1(1) MiFID local firms.~~

...

Q58. How do we know whether we are an exempt CAD firm and what does this mean in practice?

...

If you are an *exempt CAD firm* which has opted into MiFID legislation (see Q52), you will need to consider whether you are subject to the audit requirements of companies legislation (see Part VII of the Companies Act 1985 and Part 16 of the Companies Act 2006). You can benefit from the auditing exemption for small companies in companies legislation if you fulfil the conditions of regulation 4C(3) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments Regulations) 2007. In other words, if you continue to meet the conditions of the article 3 *MiFID* exemption (notwithstanding that you are an *exempt CAD firm*), you can benefit from the auditing exemption for small companies, as provided for in companies legislation. For further details, see The Markets in Financial Instruments Directive (Consequential Amendments) Regulations 2007 (SI 2007/2932). The same regulations also contain a transitional regime which has the effect of exempting *exempt CAD firms* from statutory audit requirements in relation to a financial year beginning before 1 November 2007 and ending on or after that date, where the *exempt CAD firm* was not an *ISD investment firm*.

Q58A. How do we know whether we are a BIPRU firm and what does that mean in practice?

This category may be relevant to you if you have permission to execute orders on behalf of clients and/or carry out portfolio management in relation to MiFID financial instruments. In summary, a *BIPRU firm*:

...

- is not authorised to provide the ~~investment~~ investment services of dealing in any *financial instruments* for its own account, underwriting issues of *financial instruments* on a firm commitment basis, placing ~~financial instruments~~ financial instruments without a firm commitment basis ~~and~~, operating a *multilateral trading facility* or operating an organised trading

facility;

...

Q64. Are we a limited licence firm?

A *limited licence firm* is one that is not authorised to:

...

- underwrite and/or place financial instruments on a firm commitment basis (see Q22).

For the purpose of the definition of a *limited licence firm*, a firm does not deal on own account when executing client orders by matching them on a matched principal basis (back-to-back trading) if its activities are consistent with the conditions of article 29(2) of CRD (see Q61) or article 5.2 of the recast CAD (see Q58A).

...

Generally, you cannot be a *limited licence firm* if you are an *IFPRU 730K firm*. However, you may be a *limited licence firm* if you operate a multilateral trading facility or an organised trading facility (and therefore are an *IFPRU 730K firm*) and do not have a *dealing in investments as principal* permission enabling you to deal on own account or to underwrite or place financial instruments on a firm commitment basis.

...

Delete PERG 13.7 in its entirety. The deleted text is not shown.

13.7 The territorial application of MiFID [deleted]

~~**Q67. What is the territorial application of MiFID? [deleted]**~~

~~**Q68. What is the ‘prudential regulation’ and ‘conduct of business regulation’ in this context? [deleted]**~~

~~**Q69. What does this mean for my firm? [deleted]**~~

~~**Q70. How are the high level standards, like the Principles, affected by MiFID? [deleted]**~~

~~**Q71. What is the position in relation to record keeping in branches? [deleted]**~~

~~**Q72. Will a branch need to report to the competent authority of the Member State where it is located? [deleted]**~~

13 Annex 2 Table 1 - MiFID Investment services and activities and the Part 4A permission regime

MiFID Investment Services and Activities	Part 4A permission	Comments
A1- Reception and transmission of orders in relation to one or more financial instruments	Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>) Bidding in emissions auctions (article 24A <i>RAO</i>)	This was an ISD service. Generally speaking, only firms with permission to carry on the activity of arranging (bringing about) deals in investments in relation to securities and contractually based investments which are financial instruments can provide the service of reception and transmission. This is because a service must bring about the transaction if it is to amount to reception and transmission of orders. The activity of arranging (bringing about) deals in investments is wider than A1, so a firm carrying on this regulated activity will not always be receiving and transmitting orders. See Q12A, Q13 and Q14 for further guidance.
A2- Execution of orders on behalf of clients	Dealing in investments as agent (article 21 <i>RAO</i>) Dealing in investments as principal (article 14 <i>RAO</i>) Bidding in emissions auctions (article 24A <i>RAO</i>)	This was an ISD service. Usually, where a firm executes orders on behalf of clients it will need permission to carry on the activity of dealing in investments as agent. Where a firm executes client orders on a true back-to-back basis or by dealing on own account, it also needs permission to carry on the activity of dealing in investments as principal. See Q12A and Q15 for further guidance.
A3- Dealing on own account	Dealing in investments as	Dealing on own account falls within the ISD, but only where a service is

	principal (article 14 RAO)	provided. Under MiFID, dealing on own account is caught even if no service is provided. Where a firm is dealing on own account, it needs permission to carry on the activity of dealing in investments as principal. See Q12A and Q16 for further guidance.
A4- Portfolio management	Managing investments (article 37 RAO) Dealing in investments as principal (article 14 RAO) Dealing in investments as agent (article 21 RAO) Arranging (bringing about) deals in investments (article 25(1) RAO) Making arrangement with a view to transactions in investments (article 25(2))	This was an ISD service. A firm performing the portfolio management service needs a permission to carry on the activity of managing investments. Firms may also need permission to perform other regulated activities to enable them to give effect to decisions they make as part of their portfolio management (see adjacent column). See Q6, Q17 and Q43 for further guidance.
A5- Investment advice	Advising on investments (article 53 RAO)	This was an ISD non-core service. A firm providing investment advice will need permission to carry on the activity of advising on investments. See Q18 and Q19 for further guidance.
A6- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis	Dealing in investments as principal (article 14 RAO) Dealing in investments as agent (article 21 RAO)	This corresponds broadly to the service of underwriting and/or placing described in Section A4 of the Annex to ISD. Where a firm underwrites an issue of financial instruments and holds them on its books before they are sold or offered to third parties, it needs

	<i>RAO</i>)	<p>permission to carry on the activity of dealing in investments as principal.</p> <p>Where an underwriting firm sells the relevant instruments as agent for the issuer and then purchases any remaining instruments as principal, it needs permission to carry on the activity of dealing in investments as agent in relation to its selling activity and of dealing in investments as principal in relation to its purchase of the remaining instruments.</p> <p>See Q22 for further guidance.</p>
A7- Placing of financial instruments without a firm commitment basis	<p>Dealing in investments as agent (article 21 <i>RAO</i>)</p> <p>Arranging (bringing about) deals in investments (article 25(1) <i>RAO</i>)</p>	<p>This corresponds in part to the service in Section A4 of the Annex to ISD outlined in the commentary to A6.</p> <p>Where a firm arranges the placement of financial instruments with another entity, it needs permission to carry on the activity of arranging (bringing about) deals in investments.</p> <p>Where a firm sells the relevant instruments on behalf of the issuer, it also needs permission to carry on the activity of dealing in investments as agent.</p> <p>See Q22 for further guidance.</p>
A8- Operation of Multilateral Trading Facilities	Operating a multilateral trading facility (article 25D <i>RAO</i>)	<p>This service replaces the ATS operators regime.</p> <p>Firms performing this service will need permission to carry on the regulated activity of operating a multilateral trading facility. Broadly speaking, any authorised person who operated an alternative trading system prior to 1 November 2007 was automatically granted permission to operate a multilateral trading facility, unless it notified the FSA to the contrary by 1 October 2007.</p> <p>Firms will not require permission to carry on any other regulated activities if all they do is operate a multilateral trading facility. If they carry on additional regulated activities, they</p>

		<p>should ensure that their permission properly reflects this.</p> <p>See Q24 for further guidance.</p>
<u>A9- Operation of organised trading facilities</u>	<u>Operating an organised trading facility (article 25DA RAO)</u>	<p><u>Firms performing this service will need permission to carry on the regulated activity of operating an organised trading facility.</u></p> <p><u>Firms will not require permission to carry on any other regulated activities if all they do is operate an organised trading facility. If they carry on additional regulated activities, they should ensure that their permission properly reflects this.</u></p> <p><u>See Q24A for further guidance.</u></p>
<p>Note: The activity of <i>bidding in emissions auctions</i> can form part of A1, A2 or A3. In terms of the <i>permission</i> regime, <i>bidding in emissions auctions</i> does not form part of any other <i>regulated activity</i> (see <i>PERG 2.7.7CG</i>) and so a <i>firm</i> must have a separate <i>permission</i> to undertake that activity.</p>		

Table 2 - MiFID financial instruments and the Part 4A permission regime

MiFID financial instrument	Part 4A permission category	Commentary
C1- Transferable securities	share (article 76) debenture (article 77) alternative debenture (article 77A) government and public security (article 78) warrant (article 79) certificate representing certain securities (article 80) unit (article 81) option (excluding a	<p>Transferable securities are securities negotiable on the capital market excluding instruments of payment and include:</p> <p>(a) shares in companies; (b) bonds; (c) depositary receipts; (d) warrants; and (e) miscellaneous securitised derivatives.</p> <p>Transferable securities comprise <u>comprise also include</u> various categories of derivatives in the permission regime; for example, options (excluding commodity options and options</p>

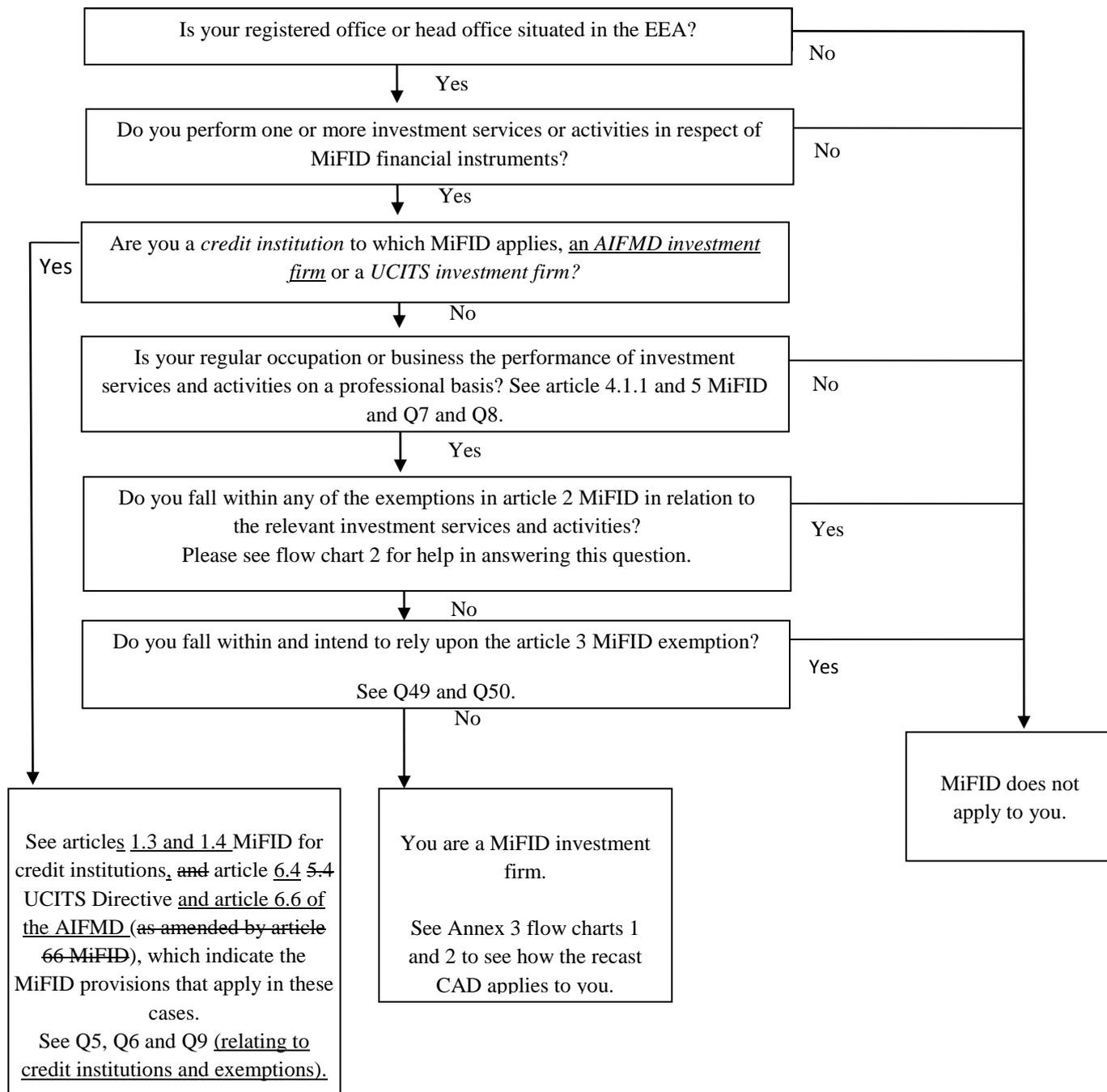
	<p>commodity option and option on a commodity future)</p> <p>future (excluding a commodity future and a rolling spot forex contract)</p> <p>contract for differences (excluding a spread bet and a rolling spot forex contract)</p> <p>spread bet</p>	<p>on commodity futures); futures (excluding commodity futures and rolling spot forex contracts); contracts for differences (excluding spread bets and rolling spot forex contracts) (see column 2 headed Part 4A permission category).</p> <p>The permission investment categories above, however, are wider than the MiFID definition of transferable securities, as they comprise both securitised and non-securitised instruments. Firms with permissions containing these investment categories will fall outside the article 3 MiFID exemption as transposed in domestic legislation, where they provide investment services in relation to financial instruments which are non-securitised investments (for example, OTC derivatives concluded by a confirmation under an ISDA master agreement).</p> <p>For further guidance on the article 3 exemption see Q49; for further guidance on transferable securities see Q28.</p>
C2- Money market instruments	<p>debenture (article 77)</p> <p>alternative debenture (article 77A)</p> <p>government and public security (article 78)</p> <p>certificate representing certain securities (article 80)</p>	<p>The definition in article 4.1(19) MiFID refers to <u>Money market instruments</u> are classes of instruments normally dealt in on the money markets.</p> <p><u>For further guidance on money market instruments see Q28A.</u></p>
C3- Units in a collective investment undertaking	<p>unit (article 81)</p> <p>shares (article 76)</p>	<p>C3 includes units in regulated and unregulated collective investment schemes. This</p>

		category also includes closed-ended corporate schemes, such as investment trust companies (hence the reference to shares in the adjacent column). For further guidance, see Q29.
C4- Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, <u>emission allowances</u> or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash	option (excluding a commodity option and an option on a commodity future) commodity option and option on a commodity future future (excluding a commodity future and a rolling spot forex contract) rolling spot forex contract contract for differences (excluding a spread bet and a rolling spot forex contract) spread bet	C4 includes the financial instruments in sections B3-6 of the Annex to the ISD and in our view derivatives relating to commodity derivatives, for example options on commodity futures. For further guidance, see Q30 and Q32. Note that for the purposes of the permission regime, commodity options and options on commodity futures are treated as a single permission category. (see <i>PERG 2 Annex 2G Table 2</i>).
<i>[Note: material on C5, C6 and C7 to follow]</i>		
C8- Derivative instruments for the transfer of credit risk	option (excluding a commodity option and an option on a commodity future) contract for differences (excluding spread bet and rolling spot forex contract) spread bet rolling spot forex contract	C8 derivatives are financial instruments designed to transfer credit risk, often referred to as credit derivatives. For further guidance see Q31.
C9- Financial contracts for differences	contract for differences (excluding spread bet and rolling spot forex contract) spread bet	In our view, C9 derivatives could include those contracts for differences with a financial underlying, for

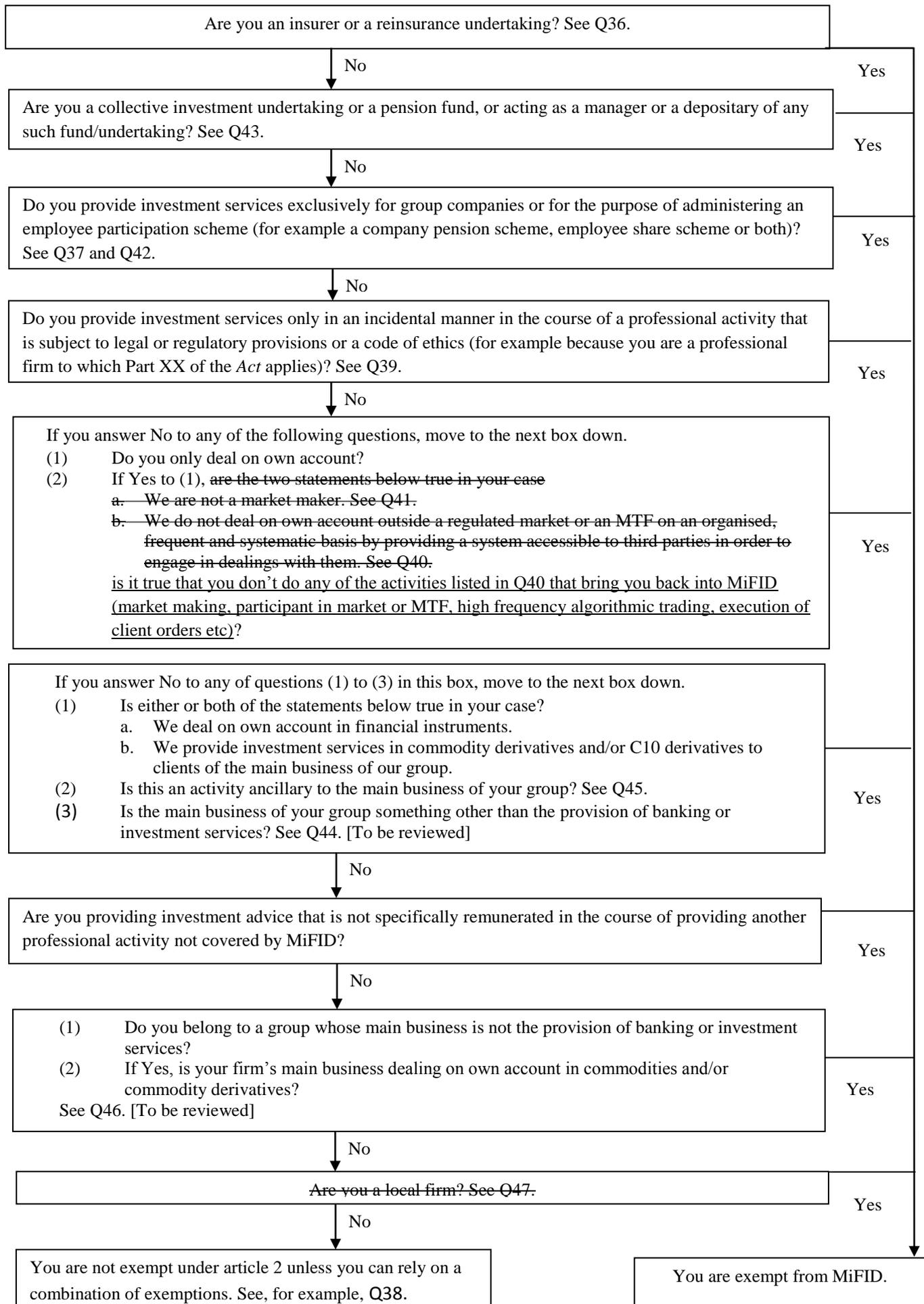
	rolling spot forex contract	example the FTSE index.
<i>[Note: material on C10 to follow]</i>		
<u>C11- Emission allowances</u>	<u>Emission allowances</u>	<u>See Q34A</u>
<p>Note:</p> <p>In our view, the categories of financial instrument in C1 to C10 <u>C11</u> are not mutually exclusive, so a financial instrument may fall within more than one category. For example, an interest in an investment trust company falls within C1 and C3.</p>		

ANNEX 1

Flow chart 1 – Does MiFID apply to us?

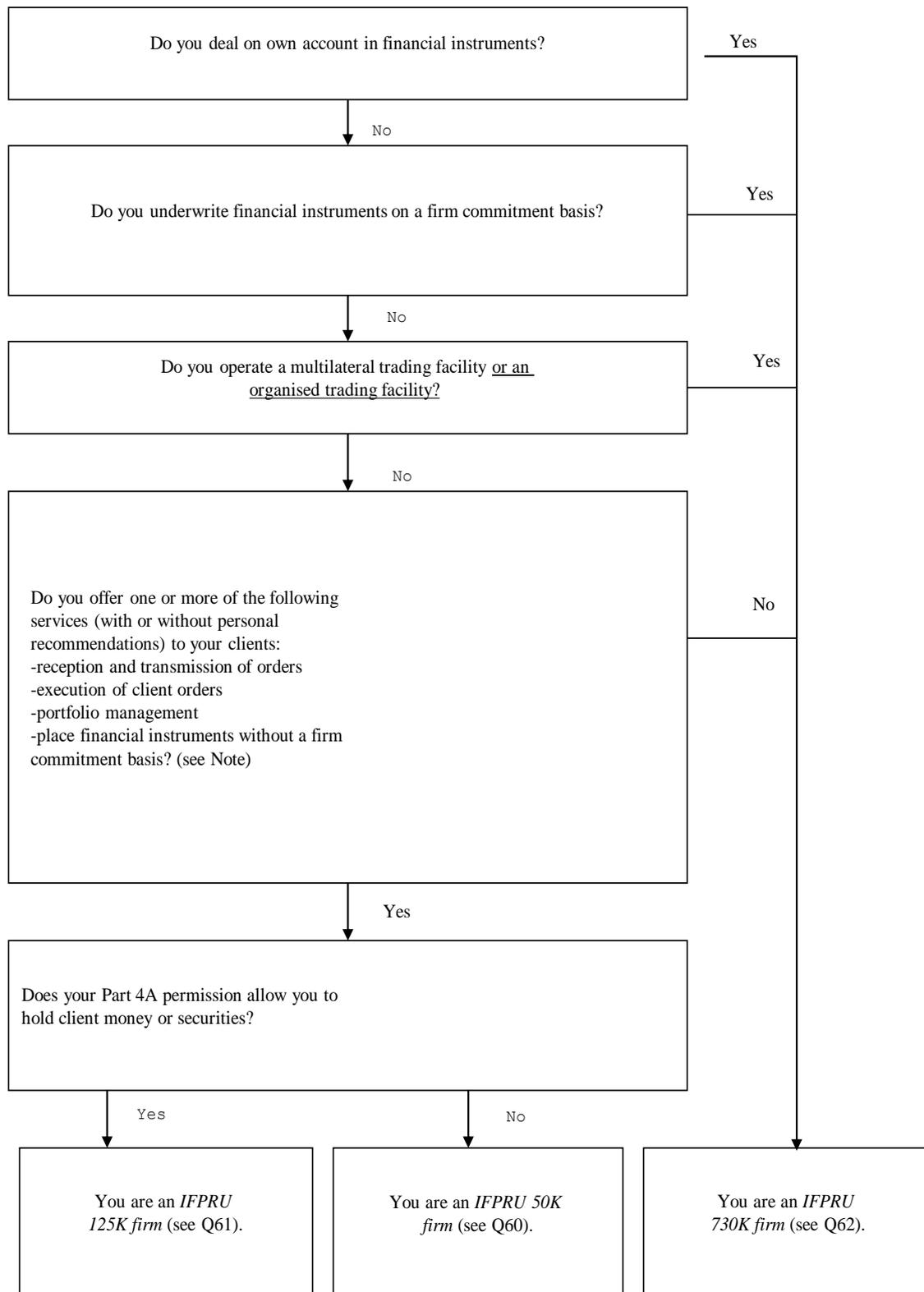


Flow chart 2- Am I exempt under article 2 MiFID?



13 Annex 3 Flow chart 2 – IFPRU investment firms (excluding collective portfolio management investment firms)

Are we an *IFPRU 50K firm*, an *IFPRU 125K firm* or an *IFPRU 730K firm*?



Note

It is possible, in principle, that an *IFPRU investment firm* may only provide the *investment service* of investment advice and hold client funds or securities, in which case the starting point is generally that it is an *IFPRU 730K firm*. In practice, if such a firm wishes to benefit from a lower capital treatment (for example euro 125,000), it may wish to add an *arranging (bringing about) deals in investments* element to its permission to enable it to receive and transmit orders in relation to MiFID instruments.

Annex H

Amendments to the Service Companies Handbook Guide (SERV)

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

1.2 Parts of the Handbook applicable to service companies

...

1.2.2 G Parts of the Handbook applicable to service companies

This table belongs to *SERV* 1.2.1G

	Part of Handbook	Applicability to service companies
...		
Business Standards	...	
	Market Conduct sourcebook (<i>MAR</i>)	<p><i>MAR</i> 1 (Code of market conduct), <i>MAR</i> 2 (Price stabilising rules) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i>.</p> <p><i>MAR</i> 5 (Multilateral Trading Facilities), <u><i>MAR</i> 5A (Organised Trading Facilities)</u>, and <i>MAR</i> 6 (Systematic Internalisers) and <i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or <i>MTF</i>) do not apply to <i>service companies</i>.</p>
	...	
...		

Appendix 2: MiFID Guide

MIFID II Implementation for Trading Venues & Data Reporting Service Providers

Background

This guide sets out an overview of the FCA's approach to transposition of the Markets in Financial Instruments Directive II (MiFID II) in the MAR and REC sourcebooks, by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level. This guide focuses on the regulatory regime in MiFID II for trading venues and data reporting service providers⁵⁴ (DRSPs).

MiFID II is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR – 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK implements the directive via a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention.

MiFID II enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MiFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID II are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID II provisions relating to trading venues and DRSPs.

You can be subject to a MiFID or MiFIR requirement, even if you are not an authorised financial institution. This is the effect of article 1 MiFID and article 1 of MiFIR. In the case of article 1 MiFID, this applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation ('EMIR')⁵⁵ to comply with the obligations in Title V MiFIR. This means trading certain classes of derivatives on organised venues only, regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR).

⁵⁴ When the FCA rules relating to commodity derivatives position limits, reporting and management controls are made, as part of transposition of Title IV MiFID, this guide will be extended to consider their impact on trading venues.

⁵⁵ Regulation 648/2012/EU. See our EMIR webpage for further details about non-financial counterparties and the clearing threshold.

MiFID implementation in UK legislation and the FCA Handbook

The UK's implementation of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

The relevant Treasury legislation is set out in the following statutory instruments (currently in draft form)⁵⁶:

- FSMA (Markets in Financial Instruments) Regulations 2016 [‘MiFI regulations’]
- FSMA 2000 (Data Reporting Services) Regulations 2016 [‘DRS regulations’]
- FSMA 2000 (Regulated Activities) (Amendment) Order 2016 [‘RAO Amendment Order’]
- FSMA 2000 (Qualifying EU Provisions) (Amendment) Order 2016 [‘Qualifying EU Provisions Order’]
- **The MiFI regulations amend** Part XVIII FSMA and the Recognition Requirements Regulations (‘RRRs’) applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to operating an organised trading facility and data reporting services, as well as obligations in regard to management bodies and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities.
- **The DRS regulations create** a self-standing regime for data reporting service providers including authorisation, operating conditions, reporting and enforcement.
- **The RAO Amendment Order imposes** scope changes arising out of MiFID, notably the new investment service of operating an organised trading facility and the extension of financial instruments to include emission allowances.
- **The Qualifying EU Provisions Order is updated** so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.

The amendments to the FCA Handbook complement the Treasury legislation, referred to above, so for example:

- REC 2, contains, in REC 2, extracts of the RRRs as amended by the MiFI regulations and ‘Notes’ signposting further directly applicable technical standards made under the recast MiFID or MiFIR which are relevant to recognised investment exchanges’ compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). Where REC 2 previously copied out EU legislation which has been repealed by the recast MiFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent recast MiFID or MiFIR provision.
- REC 3, which contains existing FCA rules requiring certain notifications to be made by RIEs to the FCA, has been amended to include ‘Notes’ signposting further new notification

⁵⁶ See <https://www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii>

requirements set out in the amended RRRs or directly applicable technical standards made under the recast MiFID or MiFIR.

- MAR 5 is amended to apply the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It is also amended to align further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The rules concerning pre- and post- transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, while guidance on the ability to register an MTF as an SME Growth Market is new.
- MAR 5A introduces a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in certain non-equity instruments. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.
- MAR 6 is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations – in particular, by Title III of MiFIR. The notification requirement for systematic internalisers remains, however, and the article 27(3) MiFID best execution publication requirement (applying to systematic internalisers, amongst other execution venues) has been incorporated as a rule (see MAR 6.3A).
- MAR 7 concerning disclosure of over-the-counter trades conducted by Systematic Internalisers is deleted because this subject matter is now covered by Title III of MiFIR.
- MAR 7A transposes article 17 of the recast MiFID for authorised firms. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are now also subject to new rules, of a similar nature.
- MAR 9 provides directions and guidance applicable to the operation of the new data reporting services regime, set out in the DRS regulations.

More generally, where requirements in the recast MiFID have been transposed in FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5:

- 5A.3.5 R A firm operating an OTF may only engage in:
- (1) *matched principal trading* on an OTF operated by it in respect of bonds, *structured finance products, emission allowances and derivatives* which have not been declared subject to the clearing obligation in accordance with Article 5 of *EMIR*, where the client has consented to that; or
 - (2) dealing on own account on an OTF operated by it, otherwise than in accordance with paragraph [1], in respect of *sovereign debt* instruments for which there is not a liquid market
[Note: Article 20(2) and (3) of MiFID]

Amendments to the scope of MiFID are the subject of guidance in PERG 2 and 13. This includes guidance on what is a ‘multilateral system’ for the purposes of the recast MiFID. All multilateral systems in financial instruments, to which MiFID applies, shall only take the form of MTFs, OTFs or regulated markets, in accordance with Titles II and III of the recast MiFID.

MiFID II technical standards

MiFID II also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature and according to articles 10 and 16 of the ESMA regulation [1093/2010/EU] ‘... shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based’.

Where an FCA rule is amplified by a technical standard, the source is referred to below the relevant provision, for example, in MAR 5A.4.8

5A.5.10 R Where the *firm* permits colocation in relation to the *OTF*, its colocation services must be transparent, fair and non-discriminatory.
[Note: Article 48(8) of *MiFID* and RTS 10]

Given their directly applicable nature and length, we have not copied out the technical standards into the Handbook, but instead adopted the signposting convention illustrated above.

Markets in Financial Instruments Regulation (‘MiFIR’)

Although MiFIR is a separate legal instrument, recital 7 of the recast MiFID notes ‘both instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation’.

As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5.

MiFIR also provides for delegated acts and technical standards on:

- price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
- straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
- transaction reporting, see SUP 17.

ESMA Guidelines

In addition to being required to submit draft technical standards to the Commission, where required by MiFID and MiFIR, ESMA is required to issue guidelines on the requirements for the management body of a market operator and a data reporting services provider.

ESMA guidelines are subject to the ‘comply or explain’ process in article 16 Regulation 1095/2010 (establishing ESMA) and are addressed to competent authorities or, as the case may be, market participants. Under article 16(3) Regulation 1095/2010 (establishing ESMA)

competent authorities and financial market participants must make every effort to comply with these.

As a general practice, when the FCA decides to comply with the guidelines issued by ESMA it will signpost a reference to these by means of a note at the beginning of the relevant section of the Handbook. Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA⁵⁷.

Third country firms

MiFIR and the EU regulations made under MiFID II apply to EU firms and EEA firms (when adopted by the EEA states). For the UK branches of non-EEA firms (third country firms), these regulations are not of general application and it is necessary to ensure, via domestic measures, that these branches do not receive more favourable treatment than their EU counterparts (see Recital 109 of the recast MiFID). A new rule, GEN 2.2.22A R, is included for this purpose.

Overview

The diagram in the next section provides an overview of trading venue and DRSP requirements deriving from MiFID II and the location of their implementation. The references to technical standards are to the drafts of the technical standards listed below.

Drafts of the technical standards on transparency, microstructural issues, data publication and access, requirements applying on and to trading venues and market data reporting [RTS 1-18 & 20-28 & ITS 19] are available at <https://www.esma.europa.eu/news/ESMA-readies-MiFID-II-MAR-and-CSDR?t=326&o=home> – see link to ‘2015/1464 –Annex I –Draft Technical standards on MiFID II/MiFIR’.

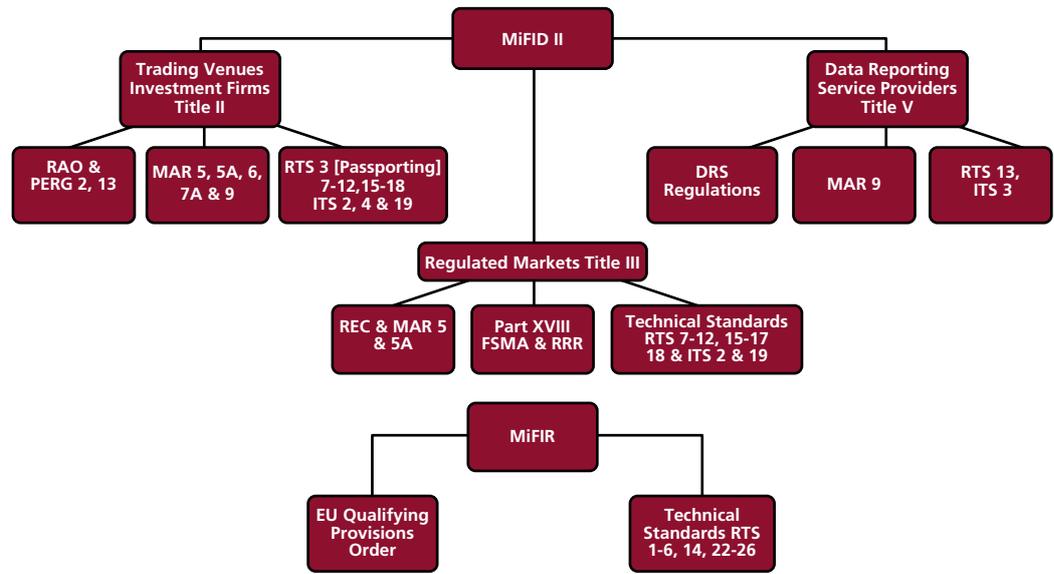
Drafts of the technical standards relating to passporting [RTS 3- passporting & ITS 4] are available at <https://www.esma.europa.eu/content/Final-Report-MiFID-II-MiFIR-draft-technical-standards-authorisation-passporting-registration>.

Drafts of the technical standards relating to further data reporting services measures and suspension and removal of financial instruments [ITS 2& ITS 3] are available at https://www.esma.europa.eu/sites/default/files/library/2015-1858_-_final_report_-_draft_implementing_technical_standards_under_mifid_ii.pdf

In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other MiFID requirements applying elsewhere in the Handbook, notably in SYSC and COBS.

⁵⁷ For notification of regulatory breaches by firms to the FCA, see, generally, SUP 15.

MiFID and Market Infrastructure: An Overview





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