

# Market conduct

## Market conduct

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# Chapter 1

## Market Abuse

## 1.1 Application and interpretation

### Application and purpose

- 1.1.1 **G** This chapter is relevant to all *persons* seeking guidance on the *market abuse* regime.
- 1.1.1A **G** [deleted]
- 1.1.2 **G** This chapter provides *guidance* on the *Market Abuse Regulation*. It is therefore likely to be helpful to *persons* who:
- (1) want to avoid engaging in *market abuse*; or
  - (2) want to determine whether they are required by article 16 of the *Market Abuse Regulation* to report a transaction or order to the *FCA* as a suspicious one.
- 1.1.3 **G** The *FCA's* statement of policy about the imposition, duration and amount of penalties in cases of *market abuse* (required by section 124 of the *Act*) is in **■ DEPP 6** .

### Using MAR 1

- 1.1.4 **G** (1) Assistance in the interpretation of **■ MAR 1** (and the remainder of the *Handbook*) is given in the Readers' Guide to the *Handbook* and in **■ GEN 2** (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six of the Readers' Guide to the *Handbook*).



(2) [deleted]

1.1.5

**G** [deleted]

1.1.6

**G** This chapter does not exhaustively describe all types of behaviour that may indicate *market abuse*. In particular, the descriptions of behaviour should be read in the light of:

- (1) the elements specified by the *Market Abuse Regulation* as making up the relevant type of *market abuse*; and
- (2) any relevant descriptions of behaviour specified by the *Market Abuse Regulation* which do not amount to *market abuse*; and
- (3) any provisions in the *MAR Level 2 Regulations*, and any applicable guidelines made by *ESMA* in force before *IP completion day* .

1.1.7

**G** This chapter does not exhaustively describe all the factors to be taken into account in determining whether behaviour amounts to *market abuse*. The absence of a factor mentioned does not, of itself, amount to a contrary indication.

1.1.8

**G** For the avoidance of doubt, it should be noted that any reference in this chapter to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.

1.1.9

**G** References are made in this chapter to provisions in the *Market Abuse Regulation* and provisions in the *MAR Level 2 Regulations* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other provisions in the *MAR Level 2 Regulations* have not been referred to does not mean that they would not also assist readers or that they have a different status.

## 1.2 Market Abuse: general

- 1.2.1 **G** Provisions in this section are relevant to more than one of the types of behaviour which may amount to *market abuse*.
- 1.2.2 **UK** [deleted]
- 1.2.2-A **UK** [article 2, article 14 and article 15 of the *Market Abuse Regulation*]
- 1.2.2A **UK** [deleted]
- 1.2.3 **G** The *Market Abuse Regulation* does not require the *person* engaging in the behaviour in question to have intended to commit *market abuse*.
- 1.2.4 **G** [deleted]

### Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a recognised auction platform

- 1.2.5 **G** The following factors may be taken into account in determining whether or not behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a *recognised auction platform* contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:
- if it is in relation to *financial instruments*:
    - in respect of which a request for admission to trading on a *regulated market* or *MTF* is subsequently made; and
    - if it continues to have an effect once an application has been made for the *financial instrument* to be admitted for trading, or it has been admitted to trading on a *regulated market* or *MTF*, respectively ; or
  - if it is in relation to *financial instruments* :
    - which are subsequently offered for sale on a *recognised auction platform*; and
    - if it continues to have an effect once the *financial instruments* are offered for sale on a *recognised auction platform*.
- 1.2.6 **G** The following factors may be taken into account in determining whether or not refraining from action indicates behaviour which falls under the scope of the *Market Abuse Regulation*, and are indications that it does:
- if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or
  - if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.
- Insiders: factors to be taken into account**
- 1.2.7 **UK** [deleted]
- 1.2.7-A **UK** [article 8(4) of the *Market Abuse Regulation*]
- 1.2.7A **UK** [deleted]
- 1.2.8 **G** The following factors may be taken into account in determining whether or not a *person* who possesses *inside information* ought to know that it is *inside information* for the purposes of the final indent of article 8(4) of the *Market Abuse Regulation*:

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9 G For the purposes of being categorised as an *insider* in article 8(4) of the *Market Abuse Regulation*, the *person* concerned does not need to know that the information concerned is *inside information*.

**Inside information: factors to be taken into account**  
.....

1.2.10 UK [deleted]

1.2.10A UK [article 7 of the *Market Abuse Regulation*]

1.2.11 G [deleted]

- 1.2.12** **G** The following factors may be taken into account in determining whether or not information has been made public, and are indications that it has (and therefore is not *inside information*):
- (1) whether the information has been disclosed to a *prescribed market* or a *prescribed auction platform* through a *regulatory information service* or *RIS* or otherwise in accordance with the rules of that market;
  - (2) whether the information is contained in records which are open to inspection by the public;
  - (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public; and
  - (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality.
  - (5) [deleted]
- 1.2.13** **G**
- (1) In relation to the factors in **MAR 1.2.12G** it is not relevant that the information is only generally available outside the *UK*.
  - (2) In relation to the factors in **MAR 1.2.12G** it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.
- 1.2.14** **G** For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be using information which has been made public, since it is information which has been obtained by legitimate means through observation of a public event.
- 1.2.15** **UK** [deleted]
- 1.2.15A** **UK** [deleted]
- 1.2.15B** **UK** [article 7(1)(d) of the *Market Abuse Regulation*]
- 1.2.16** **G** In determining whether there is a pending order for a client in relation to article 7(1)(d) of the *Market Abuse Regulation*, a factor that may be taken into account is if a *person* is approached by another in relation to a transaction, and:
- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
  - (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

**Inside information: commodity derivatives**

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- 1.2.17 **G** [deleted]  
[Note: article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.18 **UK** [deleted]
- 1.2.18A **UK** [article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.19 **UK** [deleted]
- 1.2.19A **G** *ESMA* has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.  
[Note: *ESMA* guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN)]
- 1.2.20 **G** [deleted]
- 1.2.21 **G** [deleted]

**Recommending or inducing**.....

1.2.22 **UK** [deleted]

1.2.23 **G** The following are examples of behaviour that might fall within the scope of article 14(b) of the *Market Abuse Regulation*:

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to *sell a financial instrument* in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in behaviour which, if he himself engaged in it, would amount to *market abuse*.

## 1.3 Insider dealing

1.3.1 UK [deleted]

1.3.1A UK [article 8 of the *Market Abuse Regulation*]

### Descriptions of behaviour that amount to insider dealing

1.3.2 G The following are examples of behaviour that may amount to *insider dealing* under the *Market Abuse Regulation*, but are not intended to form an exhaustive list:

- (1) [deleted]
- (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *financial instrument*, using *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share* price); and
- (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror* dealing for his own benefit in a *financial instrument* using information concerning the proposed bid.



### Factors to be taken into account: "on the basis of"

- 1.3.3 **E** [deleted]  
[Note: article 9 of the *Market Abuse Regulation*]
- 1.3.4 **E** [deleted]
- 1.3.5 **E** [deleted]  
[Note: article 9(1)(a) of the *Market Abuse Regulation*]

### Relevant factors: legitimate business of market makers

- 1.3.6 **C** [deleted]  
[Note: article 9(5) of the *Market Abuse Regulation*]
- 1.3.7 **G** For market makers and *persons* that may lawfully deal in *financial instruments* on their own account, pursuing their legitimate business of such *dealing* (including entering into an agreement for the underwriting of an issue of *financial instruments*) may not in itself amount to *market abuse*.
- 1.3.8 **G** [deleted]
- 1.3.9 **E** [deleted]
- 1.3.10 **G** The following factors maybe taken into account in determining whether or not a *person's* behaviour is in pursuit of legitimate business, and are indications that it is:
- (1) the extent to which the relevant trading by the *person* is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the *person's* legitimate business; or
  - (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or *trading venue* obligations; or
  - (3) whether, if the relevant trading by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or
  - (4) the extent to which the *person's* behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

1.3.11 **E** [deleted]  
[Note: article 9 of the *Market Abuse Regulation*]

**Relevant factors: execution of client orders**

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1.3.12 **C** [deleted]  
[Note: article 9 of the *Market Abuse Regulation*]

1.3.13 **G** [deleted]

[Note: article 9 of the *Market Abuse Regulation*]

1.3.14 **E** [deleted]

1.3.15 **G** The following factors may be taken into account in determining whether or not a *person's* behaviour in executing an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COBS*, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person's* behaviour was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's* behaviour was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

1.3.16 **G** [deleted]

#### **Descriptions of behaviour that do not indicate insider dealing and relevant factors: takeover and merger activity**

1.3.17 **G** With reference to article 9(4) of the *Market Abuse Regulation*, examples of using *inside information* solely for the purpose of proceeding with a merger or public takeover may include:

- (1) seeking from holders of *securities*, issued by the target, irrevocable undertakings or expressions of support to accept an *offer* to acquire those *securities* (or not to accept such an *offer*);
- (2) making arrangements in connection with an issue of *securities* that are to be offered as consideration for the takeover or merger *offer* or to be issued in order to fund the takeover or merger *offer*, including making arrangements for the underwriting or placing of those *securities* and any associated hedging arrangements by underwriters or places which are proportionate to the risks assumed; and
- (3) making arrangements to offer cash as consideration for the takeover or merger *offer* as an alternative to *securities* consideration.

- 1.3.18** **G** Categories of *inside information* relevant to ■ MAR 1.3.17 G:
- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target; and
  - (2) information that an *offeror* or potential *offeror* may obtain through due diligence.
- 1.3.19** **G** The following factor may be taken into account in determining whether or not a *person's* behaviour is for the purpose of him proceeding with a merger with the target *company* or a public takeover of the target *company*, and is an indication that it is:
- (1) whether the transactions concerned are in the target *company's* shares.
  - (2) [deleted]
- Examples of insider dealing**
- 1.3.20** **G** The following descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the definition of *inside information* relating to *financial instruments* other than *commodity derivatives* or *emissions allowances* or auctioned products based thereon:
- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading. Y enters into a spread bet priced or valued by reference to the share price of B PLC based on his expectation that the price in B PLC will increase once the takeover offer is announced.
  - (2) An employee at B PLC obtains the information that B PLC has just lost a significant contract with its main customer. Before the information is announced over the *regulatory information service* the employee, whilst being under no obligation to do so, sells his shares in B PLC based on the information about the loss of the contract.
- 1.3.21** **G** The following description is intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concerns the definition of *inside information* relating to commodity derivatives.
- Before the official publication of LME stock levels, a metals trader learns (from an *insider*) that there has been a significant decrease in the level of LME aluminium stocks. This information is reasonably expected to be disclosed in accordance with market practice or custom on the LME. The trader buys a substantial number of *futures* in that metal on the LME, based upon his knowledge of the significant decrease in aluminium stock levels.
- 1.3.22** **G** The following description is intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm dealing* in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades could constitute *insider dealing*.

1.3.23 **G** The following connected descriptions are intended to assist in understanding certain behaviours which may constitute *insider dealing* under the *Market Abuse Regulation* and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A person deals, on a *trading venue*, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a *trading venue*, based on the same information, provided that the information is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the national, *EU* or Member State level, market rules, contract, practice or custom, on the relevant commodity futures market.

1.3.24 **G** ESMA has issued guidelines under article 7(5) of the *Market Abuse Regulation* which relate to the definition of *inside information* in the context of commodity derivatives.

[**Note:** ESMA guidelines: Information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives, 17 January 2017/ESMA/2016/1480 (EN).]

## 1.4 Unlawful disclosure

1.4.1 **UK** [deleted]

1.4.1A **UK** [article 10 of the *Market Abuse Regulation*]

### Descriptions of behaviour that indicate unlawful disclosure

1.4.2 **G** The following behaviours are indications of *unlawful disclosure*:

- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
- (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

### Descriptions of behaviour that does not indicate unlawful disclosure

1.4.3 **G** The following behaviour indicates that a *person* is acting in the normal exercise of their employment, profession or duties, if a *person* makes a disclosure of *inside information*:

- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
- (2) otherwise to such a body in connection with the performance of the functions of that body.

1.4.4 **G** Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) may not amount to *unlawful disclosure* .

1.4.4A **G** Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *financial instruments* is a *person discharging managerial responsibilities* or the identity of the *person discharging managerial responsibilities* or the purpose of the sale by the *person discharging managerial responsibilities* where:

the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;

(2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and

(3) the transaction could not be otherwise completed without creating a disorderly market;

may not, of itself, amount to *unlawful disclosure* .

#### **Factors to be taken into account in determining whether or not behaviour amounts to unlawful disclosure**

1.4.5 **G** The following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

(1) whether the disclosure is permitted by the rules of a *trading venue* or a *prescribed auction platform*, of the *FCA* or the *Takeover Code*; or

(2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:

(a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or

(b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or

(c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or places of *securities*); or

(d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or

(e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf.

(3) [deleted]

1.4.5A **G** [deleted]

**Examples of unlawful disclosure**

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1.4.6

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The following descriptions are intended to assist in understanding certain behaviours which may constitute *unlawful disclosure* under the *Market Abuse Regulation*:

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a *person discharging managerial responsibilities* in B PLC, asks C, a *broker*, to sell some or all of A's shares in B PLC. C discloses to a potential buyer that A is a *person discharging managerial responsibilities* or discloses the identity of A, in circumstances where the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information*.

1.4.7

G

[deleted]



## 1.6 Manipulating transactions

1.6.1 **UK** [deleted]

1.6.1-A **UK** [article 12(1)(b) of the *Market Abuse Regulation*]

1.6.1A **UK** [deleted]

### Giving false or misleading impressions

1.6.2 **E** [deleted]

[**Note:** Annex 1A of the *Market Abuse Regulation*.]

1.6.3 **G** Entering into a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, does not of itself indicate behaviour described in Annex IA(c) of the *Market Abuse Regulation*.

1.6.4 **E** [deleted]

[**Note:** Annex 1A of the *Market Abuse Regulation*.]

### Factors to be taken into account: legitimate reasons

1.6.5 **G** The following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is not:

- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a *financial instrument* ;
- (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; and
- (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.

1.6.6 **G** The following factors are to be taken into account when considering whether behaviour is for legitimate reasons in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is:

- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
- (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently;
- (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
- (4) if the transaction complied with the rules of the relevant *trading venue* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

**1.6.7** G It is unlikely that the behaviour of *trading venue* users when dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to manipulation. Such behaviour, generally speaking, improves the liquidity and efficiency of *trading venues* .

**1.6.8** G It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

**Factors to be taken into account: behaviour giving a false or misleading impression**

**1.6.9** E [deleted]  
 [Note: Annex 1A of the *Market Abuse Regulation*]

**Factors to be taken into account: behaviour securing an abnormal or artificial price level**

**1.6.10** G The following factors are to be taken into account in determining whether or not a *person's* behaviour amounts to manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:

- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the *financial instrument* ;
- (2) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and

- (3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a *financial instrument* ;

### Factors to be taken into account: abusive squeezes

- 1.6.11 **G** The following factors are to be taken into account when determining whether a *person* has engaged in behaviour referred to in Annex IA(a) or (b) of the *Market Abuse Regulation*, commonly known as an “abusive squeeze”:
- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, behaviour is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
  - (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
  - (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
  - (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.
- 1.6.12 **G** Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself likely to be abusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself likely to be abusive.
- 1.6.13 **G** The effects of an abusive squeeze are likely to be influenced by the extent to which other market users have failed to protect their own interests or fulfil their obligations in a manner consistent with the standards of behaviour to be expected of them in that market. Market users can be expected to settle their obligations and not to put themselves in a position where, to do so, they have to rely on holders of long positions lending when they may not be inclined to do so and may be under no obligation to do so.
- 1.6.14 **E** [deleted]
- 1.6.15 **G** The following are examples of behaviour that may amount to manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:

- (1) [deleted]
- (2) [deleted]
- (3) a trader holds a short position that will show a profit if a particular *financial instrument* , which is currently a component of an index, falls out of that index. The question of whether the *financial instrument* will fall out of the index depends on the closing price of the *financial instrument* . He places a large *sell* order in this *financial instrument* just before the close of trading. His purpose is to position the price of the *financial instrument* at a false, misleading, abnormal or artificial level so that the *financial instrument* will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at a false, misleading, abnormal or artificial level.

1.6.16 **G** The following is an example of an abusive squeeze:

A trader with a long position in bond *futures* buys or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit from his original position.



### 1.7 Manipulating devices

1.7.1 **UK** [deleted]

1.7.1-A **UK** [article 12(1)(b) of the *Market Abuse Regulation*]

1.7.1A **UK** [deleted]

**Descriptions of behaviour that amount to manipulating devices**

1.7.2 **E** [deleted]

[Note: Article 12(2)(d) *Market Abuse Regulation*]

**Factors to be taken into account in determining whether or not behaviour amounts to manipulating devices**

1.7.3 **E** [deleted]

[Note: Annex 1B of the *Market Abuse Regulation*]

## 1.8 Dissemination

1.8.1 **UK** [deleted]

1.8.1A **UK** [article 12(1)(c) of the *Market Abuse Regulation*]

1.8.2 **UK** [deleted]

### Descriptions of behaviour that amount to dissemination

1.8.3 **E** [deleted]

[**Note:** article 12(1)(c) of the *Market Abuse Regulation*]

### Factors to be taken into account in determining whether or not behaviour amounts to dissemination

1.8.4 **G** If a normal and reasonable *person* would know or ought to have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or ought to have known that it was false or misleading.

1.8.5 **G** If the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements, that indicates that the *person* disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

### Example of dissemination

1.8.6 **E** The following is an example of behaviour which may amount to a contravention of article 12(1)(c) of the *Market Abuse Regulation*:

- (1) a *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are *financial instruments* and the *person* knows that the information is false or misleading.

[**Note:** article 12(1)(c) of the *Market Abuse Regulation*.]



1.9 Misleading behaviour & distortion

1.9.1 UK [deleted]

1.9.1-A UK [article 12(1)(c) of the Market Abuse Regulation]

1.9.1A UK [deleted]

1.9.2 E [deleted]

1.9.2A E (1) [deleted]
(2) [deleted]
[deleted]

1.9.2B R [deleted]

Short selling in relation to financial sector companies

1.9.2C E (1) [deleted]
(2) [deleted]
(3) [deleted]
(4) [deleted]

1.9.2D E (1) [deleted]
(2) [deleted]
(a) [deleted]
(b) [deleted]
(2A) [deleted]
(3) [deleted]

(4) [deleted]

(5) [deleted]

1.9.2E **G** [deleted]

1.9.3 **C** [deleted]

1.9.4 **E** [deleted]

1.9.5 **E** [deleted]



## 1.10 Statutory exceptions

### Behaviour that does not amount to market abuse

- 1.10.1 **G** (1) *Behaviour* which conforms with article 5 of the *Market Abuse Regulation* or with the *Buy-back and Stabilisation Regulation* will not amount to *market abuse*.
- (2) [deleted]
- (3) [deleted]

### FCA rules

- 1.10.2 **G** There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*.
- (1) [deleted]
- (2) [deleted]

### Takeover Code

- 1.10.3 **G** There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 **G** Behaviour conforming with any of the rules of the *Takeover Code* about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, is unlikely to, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in ■ MAR 1.10.5G ;
- (2) the behaviour is expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant rule for these purposes); and
- (3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.

- 1.10.5 **G** Table: Provisions of the *Takeover Code* conformity with which will be unlikely to, of itself, amount to market abuse (This table belongs to ■ MAR 1.10.4G):

*Takeover Code* provisions:

Disclosure of information which is not generally available	1(a) 2.1 , 2.7, 2.11, 8 20.1 21.3, 21.4 28.1 30.1, 30.5
Standards of care	2.8 first sentence and note 4 19.1, 19.7 20.6 second sentence 23.1 plus notes 28.1
Timing of announcements, documentation and dealings	2.2, 2.6 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 note 4 only 24.1(a) 25.1(a) 31.6(d), 31.9 33 (in so far as it refers to 31.6(d) and 31.9 only)
Content of announcements	2.4 (a) and (b) 19.3

## 1.10.6

G

Behaviour conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) will be unlikely to, of itself, amount to *market abuse*, if:

- (1) the *behaviour* is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the rule for these purposes); and
- (2) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to the rule.

## Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

1.1.1	G	[deleted]
1.1.2	G	[deleted]
1.1.3	EU	[deleted]
1.1.4	EU	[deleted]
1.1.5	EU	[deleted]
1.1.6	G	[deleted]
1.1.7	G	[deleted]
1.1.8	G	The <i>FCA</i> accepts as “ <i>adequate public disclosure</i> ”: (1) disclosure through a <i>regulatory information service</i> or otherwise in accordance with <i>Part 6 rules</i> ; or (2) the equivalent disclosure mechanism required to be used in relation to the relevant <i>trading venue</i> .
1.1.9	EU	[deleted]
1.1.10	EU	[deleted]
1.1.11	G	[deleted]
1.1.12	EU	[deleted]
1.1.13	G	[deleted]

1.1.14 G [deleted]

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## Accepted Market Practices

[article 13 of the *Market Abuse Regulation*.]



# Chapter 2

# Stabilisation



**2.1 Application and Purpose [deleted]**



2.1



**2.2 Stabilisation: general [deleted]**

2

2.2



## 2.3 Stabilisation under the Buy-back and Stabilisation Regulation [deleted]

2.3

2.3.1

EU

[deleted]

2.3.2

G

[deleted]

2.3.3

R

[deleted]

2.3.4

EU

2.3.5

EU

[deleted]

2.3.6

G

[deleted]

2.3.7

G

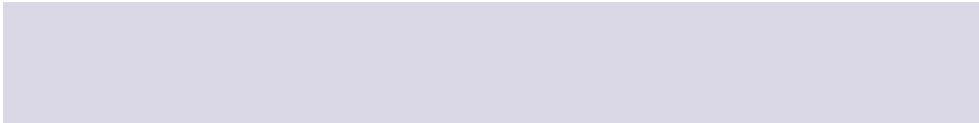
[deleted]

2.3.8

G

[deleted]

2.3.11 EU [deleted]



2.3.12 G [deleted]

2.3.13 G [deleted]

2



**2.4 Stabilisation when the Buy-back and Stabilisation Regulation does not apply [deleted]**

2.4

## 2.5 The Price Stabilising Rules: overseas provisions

2

### 2.5.1

R

- (1) A person who in any place outside the *United Kingdom* acts or engages in conduct:
  - (a) for the purposes of stabilising the price of *investments*;
  - (b) in conformity with the provisions specified in (2), (3) or (4); and
  - (c) in relation to an offer which is governed by the law of a country (or a state or territory in a country) so specified;is to be treated for the purposes of section 89(3)(a) and section 90 (9)(b) of the Financial Services Act 2012 as acting or engaging in conduct for that purpose and in conformity with the *price stabilising rules*.
- (2) In relation to the United States of America, the specified provisions are:
  - (a) Regulation M made by the Securities and Exchange Commission (17 CFR 242, # 100-105).
- (3) In relation to Japan, the specified provisions are
  - (a) The Securities and Exchange Law of Japan, (Law No 25, April 13 1948), Article 159, paragraphs 3 and 4;
  - (b) Cabinet Orders for the Enforcement of the Securities and Exchange Law of Japan (Cabinet Order 321, September 30, 1965), Articles 20 to 26;
  - (c) Ministerial Ordinance concerning the Registration of Stabilisation Trading (Ordinance of the Ministry of Finance No 43, June 14, 1971);
  - (d) Ministerial Ordinance concerning rules and otherwise governing the soundness of securities companies (Ordinance of the Ministry of Finance, No 60, November 5, 1965), Article 2.
- (4) In relation to Hong Kong, the specified provisions are:
  - (a) The Securities and Futures (Price Stabilizing) Rules, Cap. 571 W made by the Hong Kong Securities and Futures Commission.
- (5) The provisions in (2), (3) and (4) are specified as they have effect from time to time, so long as this paragraph has effect.

## 2.5.2

**R**

A person who is treated under ■ MAR 2.5.1R (1) as acting or engaging in conduct in conformity with the *price stabilising rules* is also to be treated to an equivalent extent as so acting or engaging for the purposes of:

- (1) [deleted]
- (2) Part XIV (Disciplinary measures); and
- (3) Part XXV (Injunctions and Restitution) of the Act.

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**List of specified exchanges (This is the list of other specified exchanges referred to in MAR 2.2.1 R(2)) [deleted]**





## Chapter 4

# Support of the Takeover Panel's Functions

## 4.1 Application and Purpose

### Application

4.1.1 **R** This chapter applies to every *firm* whose *permission* includes, or ought to include, any *designated investment business*, except as set out in **MAR 4.4.1 R**.

4.1.2 **G** **MAR 4.1.1 R** applies regardless of whether the *firm's* activity:

- (1) is a *regulated activity*;
- (2) is carried on from an office of the *firm* in the *United Kingdom*; or
- (3) is in respect of a *client* in the *United Kingdom*.

### Purpose

4.1.3 **G** [deleted]

4.1.4 **G** [deleted]



### 4.3 Support of the *Takeover Panel's* Functions

- 4.3.1** **R** A *firm* must not act, or continue to act, for any *person* in connection with a transaction to which the *Takeover Code* applies (including a *transaction* subject to rule 8 (Disclosure of dealings during the offer period; also indemnity and other arrangements) of the *Takeover Code*) if the *firm* has reasonable grounds for believing that the *person* in question, or his principal, is not complying or is not likely to comply with the *Takeover Code*.
- 4.3.2** **G**
- (1) The *Takeover Panel* publishes notices regarding compliance with the *Takeover Code*. It may also, from time to time, name in those notices *persons* as *persons* that, in the *Takeover Panel's* opinion, are not likely to comply with the *Takeover Code*. Any notices of this type will be available on the *Takeover Panel's* website ([www.thetakeoverpanel.org.uk](http://www.thetakeoverpanel.org.uk)).
  - (2) A *firm* should keep itself informed of *Takeover Panel* notices and take them into account in seeking to comply with **MAR 4.3.1 R**. If the *Takeover Panel* were to name such a *person* in such a notice, the *FCA* would expect a *firm* to comply with **MAR 4.3.1 R** by not acting or continuing to act for that *person*.
  - (3) The *FCA* would not regard a *firm* as in breach of **MAR 4.3.1 R** where the *Takeover Panel* has indicated that it is content for the *firm* to act in relation to that transaction.
- 4.3.3** **G**
- (1) Where a restriction under **MAR 4.3.1 R** applies, among other things the *firm* is prevented from carrying on any *designated investment business* activity, or *communicating* or *approving* any *financial promotion*, in connection with a transaction to which the *Takeover Code* applies.
  - (2) Where a restriction under **MAR 4.3.1 R** applies, the *firm* is not prevented from carrying on other activities (including *regulated activities*) in relation to that *person*. This includes *designated investment business* activity which is not in connection with a transaction to which the *Takeover Code* applies.
- 4.3.4** **G**
- (1) Where a restriction under **MAR 4.3.1 R** applies, an *authorised professional firm* is not prevented from providing professional advice or representation in any proceedings to the *person* where that falls within section 327(8) of the *Act*. This means that the *person* can obtain legal advice or representation in any proceedings from a law

firm and accounting advice from an accounting firm: see  
■ MAR 4.4.1 R (2).

- (2) While the *FCA* recognises the duty of *authorised professional firms* to act in the best interests of their clients, the duty cannot override the provisions of the *Takeover Code* so as to require the *authorised professional firm* to provide services in breach of, or enable breach of, the *Takeover Code*.

4.3.5

R

A *firm* must provide to the *Takeover Panel*:

- (1) any information and documents in its possession or under its control which the *Takeover Panel* requests to enable the *Takeover Panel* to perform its functions; and
- (2) such assistance as the *Takeover Panel* requests and as the *firm* is reasonably able to provide to enable the *Takeover Panel* to perform its functions.

4.3.6

G

In ■ MAR 4.3.5 R, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to providing documents include references to producing a copy of the information in legible form.

4.3.7

G

As a result of section 413 of the *Act* (Limitation on powers to require documents), ■ MAR 4.3.5 R does not require a *firm* or an *authorised professional firm* to produce, disclose or permit the inspection of *protected items*.

## 4.4 Exceptions

### 4.4.1

**R**

This chapter is subject to the following exceptions:

- (1) this chapter does not require an *authorised professional firm* to contravene any rule or principle of, or requirement of a published guidance note relating to, professional conduct applying generally to members of the profession regulated by its *designated professional body*;
- (2) this chapter does not prevent an *authorised professional firm* from providing professional advice, that is, in accordance with section 327(8) of the *Act*, advice:
  - (a) which does not constitute carrying on a *regulated activity*; and
  - (b) the provision of which is supervised and regulated by a *designated professional body*;
- (3) this chapter does not have effect in relation to an *authorised professional firm* in respect of *non-mainstream regulated activity*; and
- (4) [deleted]



# Chapter 5

## Multilateral trading facilities (MTFs)



## 5.1 Application

### 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**

[deleted]

5.1.3

**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*.





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 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.

## 5.3 Trading process requirements

### Rules, procedures and arrangements

#### 5.3.1

R

A *firm* must have:

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

[**Note:** articles 18(1) and 19(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[**Note:** articles 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 18(2) of *MiFID*]

- (4) published, transparent and non-discriminatory rules, based on objective criteria, governing access to its facility and which must provide that its members or participants are *investment firms*, *CRD credit institutions* or other *persons* who:

- (a) are of sufficient good repute;
- (b) have a sufficient level of trading ability, competence and experience;
- (c) where applicable, have adequate organisational arrangements; and
- (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;

[**Note:** articles 18(3), 19(2) and 53(3) 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 judgement, taking into account both the nature of the users and the types of instrument traded; and

[Note: subparagraph 2 of article 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 to its operation 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 orders against proprietary capital, or engage in *matched principal trading*;
 

[Note: article 19(5) of *MiFID*]
- (5) [deleted]
- (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*, *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 *MiFID 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 5.3.1AR(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.

5.3.2 **G** [deleted]

5.3.3 **G** [deleted]

5.3.4 **G** [deleted]

5.3.5 **G** [deleted]

5.3.6 **G** [deleted]

**Operation of a primary market in 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* of an MTF operator that operates a primary market in *financial instruments not admitted to trading on a regulated market* in order to ensure its fulfilment of the requirements in **MAR 5.3.1 R** 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 18(8) of MiFID]



## 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) 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 *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*, *MiFID RTS 7*, *MiFID RTS 9*, and *MiFID 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 which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (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 *MiFID 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 mentioned in ■ MAR 5.3A.3R(2); 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 and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[Note: article 48(3) of *MiFID* and *MiFID 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 5.3A.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*]

**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 the liquidity of trading of a *financial instrument*; 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) *MiFID investment firms*; or
  - (b) *CRD credit institutions*; or
  - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
  - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
  - (e) third country firms providing the *direct electronic access* in accordance with the; exclusion in article 72 of the *RAO* or
  - (f) a third country firm which does not come within **■ MAR 5.3A.9R(1)(d) to (f)** but is otherwise permitted to provide the *direct electronic access* under the *Act*; or
  - (g) *firms* that come within regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A permission* relating to *investment services or activities*;
- (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; and
  - (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 rules on co-location services must be transparent, fair and non-discriminatory.

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

5.3A.12

**G**

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

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



in order to reflect the additional burden on system capacity.

[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 powers conferred by *MiFIR*.

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

**5.3A.14A** **R** A firm adopting tick sizes in accordance with **MAR 5.3A.14R** may match orders large in scale at mid-point within the current bid and offer prices.

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

**5.3A.15** **R** The tick size regime referred to in **MAR 5.3A.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 *MiFID RTS 11*]

**5.3A.16** **G** Nothing in **MAR 5.3A.14R** or **MAR 5.3A.15R** requires a firm to act inconsistently with *MiFID RTS 11* or any regulatory technical standards made under powers conferred by *MiFIR*.

[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 *MiFID RTS 25*]

5.3A.18

**G**

For the purpose of ■ MAR 5.3A.17R, *MiFID RTS 25* provides further requirements.

## 5.4 Finalisation of transactions

### 5.4.1

**R** A firm must:

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

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

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

## 5.5 Monitoring compliance with the rules of the MTF

### 5.5.1

**R**

A *firm* must:

- (1) have effective arrangements and procedures, relevant to 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, system disruptions in relation to a *financial instrument*, or conduct that may involve *market abuse*.

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

## 5.6 Reporting requirements

### 5.6.1

**R**

A firm must:

- (1) report to the *FCA* any:
  - (a) significant breaches of the *firm's* rules;
  - (b) disorderly trading conditions;
  - (c) conduct that may involve *market abuse*; and
  - (d) system disruptions in relation to a *financial instrument*;
- (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* and articles 81 and 82 of the *MiFID Org Regulation*

### 5.6.2

**R**

A firm operating an *MTF* must give the *FCA* a summary of:

- (1) any proposal to introduce, amend or renew a scheme for rebating or waiving fees or charges levied on its members or participants (or any group or class of them), at the same time as the proposal is communicated to those members or participants; and
- (2) any such change, no later than the date when it is published or notified to the members or participants.

### 5.6.3

**R**

The summary referred to in ■ MAR 5.6.2R(1) must be given in the form specified in ■ MAR 5 Annex 2R.

## 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*, article 80 of the *MiFID Org Regulation*, *MiFID RTS 18* and *MiFID ITS 2*]



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

- 5.7.1 R [deleted]
  
- 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 form set out in ■ MAR 5 Annex 1D.  
[Note: articles 4 and 9 of *MiFIR*, *MiFID RTS 1* and *MiFID RTS 2*]
  
- 5.7.1B G [deleted]
  
- 5.7.1C D A *firm* intending to apply 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 apply in writing to the *FCA*.  
[Note: articles 7 and 11 of *MiFIR*, *MiFID RTS 1* and *MiFID RTS 2*]
  
- 5.7.1D G A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting a written application. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.
  
- 5.7.2 EU [deleted]
  
- 5.7.3 EU [deleted]
  
- 5.7.4 EU [deleted]
  
- 5.7.5 EU [deleted]

5.7.6	<b>G</b>	[deleted]
5.7.7	<b>EU</b>	[deleted]
5.7.8	<b>EU</b>	[deleted]
5.7.9	<b>EU</b>	[deleted]
5.7.10	<b>EU</b>	[deleted]
5.7.11	<b>EU</b>	[deleted]
5.7.12	<b>G</b>	[deleted]





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

5.8

EU

**5**

5.9



**5.9 Post-trade transparency requirements for shares [deleted]**



## 5.10 Operation of an SME growth market

### Registering an MTF as an SME growth market

- 5.10.1** **R** A firm may apply to the FCA to have an MTF registered as an SME growth market.
- [Note: article 33(1) of MiFID]
- 5.10.2** **R** For an MTF to be eligible for registration as an SME growth market, the firm must have effective rules, systems and procedures which ensure that:
- (1) at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are small and medium-sized enterprises at the time when the MTF is registered as an SME growth market, and in any calendar year thereafter;
  - (2) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;
  - (3) on initial admission to trading of financial instruments on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the financial instruments published in either:
    - (a) an appropriate admission document; or
    - (b) a prospectus, if the Prospectus Regulation is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;
  - (4) there is appropriate ongoing periodic financial reporting by, or on behalf of, an issuer on the market, for example through audited annual reports;
  - (5) the following comply with the Market Abuse Regulation as applicable to each of them:
    - (a) issuers on the market as defined in point (21) of article 3(1) of the Market Abuse Regulation;
    - (b) persons discharging managerial responsibilities as defined in point (25) of article 3(1); and
    - (c) persons closely associated with them as defined in point (26) of article 3(1);

- (6) regulatory information concerning the *issuers* on the market is stored and disseminated to the public; and
- (7) there are effective systems and controls aiming to prevent and detect *market abuse* on that market as required under the *Market Abuse Regulation*.

[Note: articles 33(2) and 33(3) of *MiFID*]

### The contents of an application for registration as an SME growth market

5.10.3

G

The requirements specified in ■ MAR 5.10.2R:

- (1) are subject to the provisions of the *MiFID Org Regulation*, further specifying the requirements laid down in article 33(3) of *MiFID*; and
- (2) do not detract from other obligations relevant to an *MTF* under this chapter, but a *firm* may impose additional requirements to those specified in ■ MAR 5.10.2R.

[Note: articles 33(4) and 33(8) of *MiFID*, and articles 78 and 79 of the *MiFID Org Regulation*]

5.10.4

G

- (1) The *FCA* expects an application for registration as an *SME growth market* to be accompanied by:
  - (a) a copy of the rules, systems and procedures supporting the applicant's compliance with the requirements specified in ■ MAR 5.10.2R; and
  - (b) such other information as the *FCA* may reasonably require to determine the application in accordance with ■ MAR 5.10.2R and ■ MAR 5.10.3R.
- (2) A *firm* intending to apply for registration as an *SME growth market* may wish to contact the Infrastructure and Trading Firms Department at the *FCA* for further advice on the preparation, timing and practical aspects of an application to register.

5.10.5

R

- (1) Where a *financial instrument* of an *issuer* is admitted to trading on one *SME growth market*, the *financial instrument* must not be traded on another *SME growth market* unless the *issuer* has been informed and has not objected.
- (2) In the case of (1), the *issuer* shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter *SME growth market*.

[Note: article 33(7) of *MiFID*]

5.10.6

G

The *issuer* of the *financial instrument* referred to in ■ MAR 5.10.5R should be informed by notice in writing that another *SME growth market* wishes to admit the instrument to trading, and should generally be given no less than 28 days to object.

**Deregistering an MTF as an SME growth market**

5.10.7

**R**

An *MTF* registered as an *SME growth market* may be deregistered by the *FCA* in the following cases:

- (1) the *firm* operating the market applies for its deregistration; or
- (2) the requirements in ■ MAR 5.10.2R are (subject to ■ MAR 5.10.3G(1)) no longer complied with.

[Note: article 33(5) of *MiFID* and article 79 of the *MiFID Org Regulation*]



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## Form in relation to pre-trade transparency

[*Editor's note:* The form can be found at this address:

<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx> ]





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**Form for reporting incentive scheme proposals (MAR 5.6.3R(1))**

**Annex 1 – Incentive Schemes (MAR 5.6.3R)**

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# Chapter 5A

## Organised trading facilities (OTFs)



## 5A.1 Application

### Who and what?

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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.3.9R** 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.3.9R also sets out how the obligations of an *investment firm* under articles 16, 24, 25, 27 and 28 (as transposed in the *FCA Handbook*) 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 operation of an *OTF* and of a *systematic internaliser* does not take place within the same legal entity, and 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 20(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 ■ COBS 11.2A (Best execution – *MiFID* provisions).

[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** For the purposes of ■ MAR 5A.3.5R(2), a “liquid market” means a market for a *financial instrument* or a class of *financial instruments*, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular *financial instrument* or of the particular class of *financial instruments*:

- (1) the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of *financial instrument*;
- (2) the number and type of market participants, including the ratio of market participants to traded instruments in a particular product; and
- (3) the average size of spreads, where available.

[Note: article 4(1)(25) of *MiFID*]

5A.3.7 **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.3.8 **G** *Matched principal trading* does not exclude the possibility of settlement risk, and, accordingly, *firms* should take appropriate steps to minimise this risk.

**Other MiFID obligations**

5A.3.9 **R** A *firm* must comply with the obligations under the following provisions of *MiFID*, 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*. The above *MiFID* provisions are transposed as follows in the *FCA Handbook*:

- (1) ■ SYSC 6.1.1, ■ SYSC 10.1.7, ■ SYSC 4.1.6, ■ SYSC 8.1.1, ■ SYSC 4.1.1(1), ■ SYSC 4.1.1(3), ■ SYSC 9.1.1A, ■ SYSC 10A, ■ CASS 6.2.1 and ■ CASS 7.12.1;
- (2) ■ COBS 2.1.1, ■ COBS 4.2.1, ■ COBS 4.3.1, ■ COBS 2.2A.2, ■ COBS 2.2A.3, ■ COBS 2.3A.5, ■ SYSC 19F.1.2 and ■ COBS 6.1ZA.16;
- (3) ■ COBS 10A.2.1, ■ COBS 10A.2.2, ■ COBS 10A.3.1, ■ COBS 10A.3.2, ■ COBS 10A.4.1, ■ COBS 8A, ■ COBS 16A.2.1 and ■ COBS 9A.3.2;
- (4) ■ COBS 11.2A; and
- (5) ■ COBS 11.3.]

### Reporting to the FCA

5A.3.10

**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.3.11

**G**

A *person operating an organised trading facility* 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

5A

### 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;

[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 judgement, 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*]

5A.4.2

R

### Functioning of an OTF

---

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; and

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

- (3) [deleted]

5A.4.3

R

### Transferable securities traded without issuer consent

---

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*, *MiFID RTS 7*, *MiFID RTS 9*, and *MiFID 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 which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
- (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 *MiFID 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 mentioned in ■ MAR 5A.5.3R(2); 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 and, where applicable, any other rights accruing to the *investment firm* as a result of participation in the liquidity scheme.

[Note: article 48(3) of *MiFID* and *MiFID 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*; 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) *MiFID investment firms*; or
  - (b) *CRD credit institutions*; or
  - (c) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
  - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
  - (e) third country firms providing the *direct electronic access* in accordance with the exclusion in article 72 of the *RAO*; or
  - (f) third country firms which do not come within **■ MAR 5A.5.9R(1)(d)** to (f) but are otherwise permitted to provide the *direct electronic access* under the *Act*; or
  - (g) *firms* that come within regulation 30(1A) of the *MiFI Regulations* and have a *Part 4A permission* relating to *investment services or activities*;
- (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; and
  - (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 rules on co-location services must be transparent, fair and non-discriminatory.

[Note: article 48(8) of *MiFID* and *MiFID 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 *MiFID 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:
  - (a) for placing an order which is cancelled than an order which is executed;
  - (b) on participants placing a high ratio of cancelled orders to executed orders; and
  - (c) on a *person* operating a *high-frequency algorithmic trading technique*,

in order to reflect the additional burden on system capacity.

[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 powers conferred by *MiFIR*.

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

**5A.5.14A** **R** A firm adopting tick sizes in accordance with **MAR 5A.5.14R** may match orders large in scale at mid-point within the current bid and offer prices.

[Note: article 49 of *MiFID* and *MiFID 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 *MiFID 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 powers conferred by *MiFIR*.

[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 *MiFID RTS 25*]

**5A.5.18** **G** For the purpose of **MAR 5A.5.17R**, *MiFID RTS 25* provides 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, MiFID RTS 26 contains requirements on the systems for clearing of such transactions]





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

5A

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, system disruptions in relation to a *financial instrument*, 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;
  - (c) conduct that may involve *market abuse*; and
  - (d) system disruptions in relation to a *financial instrument*;
- (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*, articles 81 and 82 of the *MiFID Org Regulation*, *MiFID RTS 18* and *MiFID ITS 2*]



## 5A.9 Suspension and removal of financial instruments

5A.9.1

**R**

A firm must:

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*;

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

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

[Note: article 32 of *MiFID*, article 80 of the *MiFID Org Regulation* and *MiFID 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 form set out in ■ MAR 5A Annex 1D.  
**[Note: article 9 of *MiFIR* and *MiFID RTS 2*]**



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

**5A.11.1** **D** A *firm* intending to apply to the *FCA* for deferral in accordance with article 11 of *MiFIR* (in relation to post-trade transparency for non-equity instruments) must apply in writing to the *FCA*.

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

**5A.11.2** **G** A *firm* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone by other prompt means of communication, before submitting written application. Oral notifications should be given directly to the *firm's* usual supervisory contact at the *FCA*. An oral notification left with another person or on a voicemail or other automatic messaging service is unlikely to have been given appropriately.



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## Form in relation to pre-trade transparency

[Editor's note: The form can be found at this address:<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.docx> ]





Organised trading facilities (OTFs)

## Chapter 5AA

# Multilateral systems



## 5AA.1

## Operation of a multilateral system as an MTF or OTF

5AA.1.1 **R** Where a *firm* operates a *multilateral system* from an establishment in the *United Kingdom* it must operate it as a *multilateral trading facility* or an *organised trading facility*.

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

5AA.1.2 **G** 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*. This means that a bulletin board should not be considered a *multilateral system*. The reason is that there is no reaction of one trading interest to another other within these types of facilities. However, operating such a facility may amount to performing the activity of *making arrangements with a view to transactions in investments* (see ■ PERG 2.7.7BG).

# Chapter 6

## Systematic internalisers

## 6.1 Application

### Who and what?

**6.1.1** **R** ■ MAR 6.3A (Quality of execution) and ■ MAR 6.4A (Quotes in respect of non-equity instruments) apply to the following *firms* when dealing in the *United Kingdom*:

(1) a *MiFID investment firm* which is a *systematic internaliser* ; or

(2) a *third country investment firm* which is a *systematic internaliser* .

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

**6.1.2** **R** The *systematic internaliser* reporting requirement in ■ MAR 6.4.1 R 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** [deleted]

**6.1.4** **R** ■ 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*.



## 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 internaliser*s to make available to the public data relating to the quality of execution of transactions. It also provides a *rule* (■ [MAR 6.4.1R](#)) requiring *investment firms* to notify the *FCA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to articles 15(1) and 18(4) of *MiFIR*. Finally, ■ [MAR 6.4A.1R](#) makes clear that a *firm* is not subject to the publication obligations of article 18 of *MiFIR* if it satisfies the conditions set out in that *rule*.



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

6

6.3

EU



**6.3A Quality of execution**

6.3A.1 **R** [deleted]

6.3A.2 **R** [deleted]

## 6.4 Systematic internaliser reporting requirement

**6.4.1** **R** An *investment firm* must promptly notify the *FCA* in writing of its status as a *systematic internaliser* :

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

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

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





## 6.4A Quotes in respect of non-equity instruments

### 6.4A.1

**R**

An *investment firm* is not subject to the publication obligations of article 18 of *MiFIR* if:

- (1) it makes an assessment in writing certifying that it meets the conditions specified and measures adopted under article 9 of *MiFIR* for the waiver; and
- (2) the *FCA* has not objected to the assessment.



**6.5 Obligations on systematic internalisers in shares to make public firm quotes [deleted]**

6

6.5

R



**6.6 Size and content of quotes [deleted]**

6.6

G

6

6.7

R



6.7 Prices reflecting prevailing market conditions [deleted]



**6.8** Liquid market for shares, share class, standard market size and relevant market [deleted]

6.8

G

6

6

6.9

R



6.9 Publication of quotes [deleted]

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		<b>6.10</b>	<b>Execution price of retail client orders [deleted]</b>
<b>6.10</b>	<b>R</b>		

6

6.11

R



6.11

Execution price of professional client orders [deleted]





**6.12 Execution price of client orders not matching quotation sizes [deleted]**

6.12

R

6

6.13

R



**6.13 Standards and conditions for trading [deleted]**



**6.14**      **Limiting risk of exposure to multiple transactions [deleted]**

6.14

**R**



## Chapter 7

# Disclosure of information on certain trades undertaken outside a regulated market or MTF [deleted]



**7.1 Application [deleted]**

7.1

**R**

7



**7.2 Making post-trade information public [deleted]**

7.2

**R**





**Deferred publication thresholds and delays [deleted]**



# Chapter 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 of the *MiFI Regulations* sets 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 under 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 *MiFID 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 *MiFID 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*, *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 *FCA* if it is engaging in *algorithmic trading* in the *UK* or in an *EEA State*. [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) (where 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 *MiFID 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) ensure it conducts an assessment and review of 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*;
    - (b) or may create, or contribute to, a disorderly market; or
    - (c) could be contrary to the *Market Abuse Regulation* or the rules of the *trading venue*.

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

### 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 *MiFID* and the rules of the *trading venue*.

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

### Notifications

---

**7A.4.4** **R** A *firm* must immediately notify the *FCA* if it is providing *DEA* services. [Note: article 17(5) of *MiFID* and *MiFID 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 *MiFID RTS 6* specifying the organisational requirements of *investment firms* acting as general clearing members]



# Chapter 8

## Benchmarks

## 8.1 Application and purpose

### Application

- 8.1.1 **R** ■ MAR 8.4 to ■ MAR 8.7 apply in accordance with the application provisions set out in those sections.

### Purpose

- 8.1.2 **G** The purpose of this chapter is to set out the requirements that apply to *firms* involved in the provision of, or contribution to, benchmarks, as follows:

- (1) ■ MAR 8.4 (Third country benchmark contributors) sets out the requirements that apply to *third country benchmark contributors* that are not *supervised entities*, but would be if they were *located* in the UK. These *rules* apply requirements mirroring those which apply to *benchmark contributors* that are in scope of the *benchmarks regulation*.
- (2) ■ MAR 8.5 (Regulated benchmark administrators) sets out some *Handbook* requirements that apply to *regulated benchmark administrators* (who have been authorised under the *benchmarks regulation* for the activity of *administering a benchmark*).
- (3) ■ MAR 8.6 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for *contributing input data* to a *BMR benchmark administrator*.
- (4) ■ MAR 8.7 (Procedures for exercising powers in relation to critical benchmarks) sets out the procedure for imposing requirements under articles 21 and 23 of the *benchmarks regulation* in relation to *critical benchmarks*.

[Note: articles 2(2) and 12 of the *Market Abuse Regulation* and article 15 of the *Market Abuse Regulation*, regarding the ongoing *market abuse* provisions applicable to *firms* carrying out the activities specified in ■ MAR 8.1.2G, and the *benchmarks regulation* setting out the requirements applicable to *firms* administering, contributing to and using a *benchmark*.]

### Actions for damages

- 8.1.3 **R** A contravention of a *rule* in ■ MAR 8 does not give rise to a right of action by a private person under section 138D(2) of the *Act* (and each rule in ■ MAR 8 is specified under section 138D(3) of the *Act* as a provision giving rise to no such right of action).



**8.2 Requirements for benchmark  
submitters [deleted]**

8.2

G

8.3

G



**8.3 Requirements for benchmark administrators [deleted]**





## 8.4 Third country benchmark contributors

### Application

8.4.1

**R**

(1) Subject to (2), this section applies to a *third country benchmark contributor* that:

- (a) is not a *supervised entity*; and
- (b) would be a *supervised entity* if it were *located* in the UK.

(2) This section does not apply to a *third country benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark*, the provision of which is governed by Annex II of the *benchmarks regulation* (in accordance with article 19 of that regulation).

### Application of the benchmarks regulation

8.4.2

**R**

A *third country benchmark contributor* in ■ MAR 8.4.1R must comply with the following requirements applicable to supervised contributors (as defined in the *benchmarks regulation*) as if they were *rules*:

- (1) article 16 of the *benchmarks regulation*, as amended or supplemented as relevant by article 26 and Annex 1 of the *benchmarks regulation*; and
- (2) article 23(3) of the *benchmarks regulation*.

## 8.5 Regulated benchmark administrators

### Application

8.5.1 **R** This section applies to a *regulated benchmark administrator*.

### Responsibility for benchmark activities: regulated benchmark administrators

- 8.5.2 **R**
- (1) This *rule* applies to a *regulated benchmark administrator* other than:
    - (a) an *Annex II benchmark administrator*;
    - (b) a *PRA-authorised person*.
  - (2) A *regulated benchmark administrator* must allocate the responsibility described in (3) to a *director or senior manager* other than a *non-executive director*.
  - (2A) In the case of a *limited scope SMCR benchmark firm*, the *director or senior manager* in (2) must be sufficiently senior for the function of performing that responsibility to meet the definition of a *senior management function*.
  - (3) The responsibility referred to in (2) is responsibility for the *firm's* implementation of the applicable requirements of the *regulatory system* (including the *benchmarks regulation*) in relation to its activities as a *regulated benchmark administrator*.
  - (4) A *regulated benchmark administrator* must promptly notify the *FCA* of the identity of the person who is allocated the responsibility under (2).
- 8.5.3 **G**
- (1) A *firm* may allocate the responsibility in **MAR 8.5.2R** to more than one person.
  - (2) If the *firm* does so, it should not divide the responsibility between them. Instead each person should be responsible for all aspects of the role.
  - (3) For example, the role could be allocated to more than one person:
    - (a) as part of a job share; or
    - (b) where departing and incoming senior managers work together temporarily as part of a handover.

- 8.5.3A** **G** The *FCA* expects that a person who has the responsibility in **■ MAR 8.5.2R** will:
- (a) be sufficiently senior and credible; and
  - (b) have sufficient resources and authority;
- to be able to exercise their management and oversight responsibilities effectively.
- One element of a manager's seniority is the degree to which they can and do make decisions without prior approval and exercise judgment and discretion.
- 8.5.4** **R**
- (1) This *rule* applies to an *Annex II benchmark administrator*.
  - (2) An *Annex II benchmark administrator* must promptly notify the *FCA* of the identity of the most senior manager(s) responsible for ensuring that the *firm* satisfactorily implements the requirements of the *benchmarks regulation* (in accordance with paragraph 14(a) of Annex II to that regulation).
- 8.5.5** **G**
- (1) Article 19 of the *benchmarks regulation* states that Annex II to that regulation applies to the provision of a *commodity benchmark* instead of Title II to the regulation (save where Annex II is disapplied by article 19).
  - (2) Paragraph 14(a) of Annex II to the *benchmarks regulation* requires an *Annex II benchmark administrator* to ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator's most senior level management and its board to ensure:
    - (a) that the administrator satisfactorily implements the requirements of the *benchmarks regulation*; and
    - (b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.
- 8.5.6** **G** A *firm* may comply with the requirement in **■ MAR 8.5.2R(4)** or **■ MAR 8.5.4R(2)** to notify the *FCA* of the identity of the manager(s) concerned by including that responsibility in that *person's statement of responsibilities*.
- 8.5.7** **G** **Notifications about suspected benchmark manipulation**.....
- (1) The *guidance* in (2) and (3) applies to *regulated benchmark administrators* other than *Annex II benchmark administrators*.
  - (2) Article 14(1) of the *benchmarks regulation* requires a *regulated benchmark administrator* to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to the *FCA* any conduct that may involve manipulation or attempted manipulation of a benchmark, under the *Market Abuse Regulation*.
  - (3) For the avoidance of doubt, the *FCA* expects a *regulated benchmark administrator* to notify the *FCA* without delay of any notification it

receives from a contributor about conduct that may involve manipulation or attempted manipulation of a benchmark under the *Market Abuse Regulation*.

### Adequate financial resources for administrators of critical benchmarks

- 8.5.8** **R** Notwithstanding any other financial resource requirements that may apply, a *regulated benchmark administrator* that administers a *critical benchmark* must:
- (1) be able to meet its liabilities as they fall due; and
  - (2) maintain, at all times, sufficient financial resources to cover the operating costs of administering the *critical benchmark* for a period of at least six *months*.
- 8.5.9** **G** A *regulated benchmark administrator* that administers more than one *critical benchmark* may comply with its financial resources requirements under **■ MAR 8.5.8R(2)** by holding sufficient financial resources to cover the combined operating costs for all *critical benchmarks* it administers.
- 8.5.10** **G**
- (1) **■ MAR 8.5.8R** sets out the minimum amount of financial resources a *regulated benchmark administrator* must hold to carry out *administering a benchmark* in relation to a *critical benchmark*.
  - (2) The *FCA* expects *regulated benchmark administrators* administering a *critical benchmark* to:
    - (a) normally hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*; and
    - (b) notify the *FCA* where a *regulated benchmark administrator's* financial resources fall below these levels (required by **■ MAR 8.5.13R** and **■ SUP 15.3.11R**).
- 8.5.11** **G** To meet the financial resources requirement in **■ MAR 8.5.8R(2)**, the *FCA* expects a *regulated benchmark administrator* to hold both sufficient liquid financial assets and net capital to cover the operating costs of administering the *critical benchmark(s)*. In particular:
- (1) net capital can include common stock, retained earnings, disclosed reserves, or other instruments generally classified as common equity tier one capital or additional tier one capital, and may include interim earnings that have been independently verified by an auditor.
  - (2) net capital should be calculated after deductions for:
    - (a) holdings of the *regulated benchmark administrator's* own securities or those of any undertakings in the *regulated benchmark administrator's group*;
    - (b) any amount owed to the *regulated benchmark administrator* by an undertaking in its *group* under any loan or credit arrangement; and
    - (c) any exposure arising under any guarantee, charge or contingent liability.

- (3) liquid financial assets can include cash or liquid financial instruments held on the balance sheet of the *regulated benchmark administrator* where the financial instruments:
- (a) have minimal market and credit risk; and
  - (b) are capable of being liquidated with minimal adverse price effect.

**8.5.12** **R** The *FCA* may use its powers under section 55L of the *Act* to impose on a *regulated benchmark administrator* subject to **MAR 8.5.8R** a requirement to hold additional financial resources to **MAR 8.5.8R** if the *FCA* considers that desirable to meet any of its *operational objectives*.

#### Notifications for breaches

**8.5.13** **R** A *regulated benchmark administrator* subject to **MAR 8.5.8R** must notify the *FCA*, as soon as practicable, where it identifies a reasonable possibility of not being able to hold sufficient financial resources to cover the operating costs of administering the *critical benchmark(s)* for a period of nine *months*.

**8.5.14** **G** *Regulated benchmark administrators* are reminded of their obligation under **SUP 15.3.11R** to notify the *FCA* of any significant breaches of *rules*.

## 8.6 Responsibility for benchmark activities: benchmark contributors

### Application

- 8.6.1 **R** (1) This section applies to *benchmark contributors* save as provided for in (2).
- (2) This section does not apply to a *benchmark contributor* to the extent that it is *contributing input data* in relation to a *commodity benchmark* the provision of which is governed by Annex II to the *benchmarks regulation* (in accordance with article 19 of that regulation).

### Responsibility for contributing input data

- 8.6.2 **R** A *benchmark contributor* must promptly notify the *FCA* of the *senior personnel* responsible for the process for *contributing input data* to a *BMR benchmark administrator*.
- 8.6.3 **G** (1) The *FCA* expects a *benchmark contributor* to ensure a member of its *senior personnel* is responsible for the process of *contributing input data* to a *BMR benchmark administrator* regardless of whether the contribution is provided from the *UK* or from elsewhere.
- (2) The requirement in **MAR 8.6.2R** applies regardless of whether the *benchmark contributor* contributes *input data* from the *UK* or from elsewhere.
- 8.6.4 **G** A *UK benchmark contributor* or *third country benchmark contributor* which is an *SMCR firm* may comply with the requirement in **MAR 8.6.2R** to notify the *FCA* of the *senior personnel* responsible for the process for *contributing input data* to a *BMR benchmark administrator* by including that responsibility in that *person's statement of responsibilities*.

## 8.7 Procedures for exercising powers in relation to critical benchmarks

### Application and purpose

- 8.7.1 **G** This section applies to *authorised persons* and to *unauthorised persons*.
- 8.7.2 **G**
- (1) The purpose of this section is to set out the procedures which the *FCA* will follow when exercising its powers under articles 21 and 23 of the *benchmarks regulation*.
  - (1) ■ MAR 8.7.9G contains a table of definitions for the purpose of this section. Those defined terms are not shown in italics.

### Compulsion powers under the benchmarks regulation

- 8.7.3 **G**
- (1) The *FCA* has been designated as the *UK competent authority* for the purpose of the *benchmarks regulation*.
  - (2) The *benchmarks regulation* confers various directly applicable powers on the *FCA* in relation to *critical benchmarks*. In particular:
    - (a) article 21(3) of the *benchmarks regulation* gives a the *FCA* the power to compel the administrator of a *critical benchmark* to continue publishing the critical benchmark for up to 24 months; and
    - (b) article 23(6) of the *benchmarks regulation* gives a the *FCA* the power to take various steps where it considers that the representativeness of a *critical benchmark* is put at risk. That includes the power to require *supervised entities* to contribute *input data* to the administrator of a *critical benchmark* for up to 24 months.
  - (3) The two powers in (a) and (b) above are referred to in this section as the “compulsion powers”.

### Exercise of compulsion powers: general

- 8.7.4 **G**
- (1) Articles 21 and 23 of the *benchmarks regulation* set out the circumstances in which the *FCA* may exercise the compulsion powers.
  - (2) In some cases, the *FCA* may only have a short period in which to decide whether to exercise a compulsion power.

- (3) Where the *FCA* considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.
- (4) The *benchmarks regulation* does not require the *FCA* to consult on the use of compulsion powers .
- (5) Given that the compulsion powers may need to be exercised within short timescales, the *FCA* does not expect to consult on the use of its compulsion powers (other than consulting other *regulatory bodies* where required by the *Act* or the *benchmarks regulation*).
- (6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one *person*. In those circumstances, it may be necessary to address a written notice under this section to more than one *person*.
- (7) The *FCA* will review a decision to exercise a compulsion power in the circumstances described in this section.

#### Decision to exercise a compulsion power

8.7.5

**G** If the *FCA* decides to exercise a compulsion power in respect of a *person* (P) (whether a *supervised entity* or an administrator), the *FCA* will give P a written notice which:

- (1) gives details of the decision (“the First Decision”);
- (2) states the *FCA*’s reasons for the First Decision;
- (3) states the date on which the First Decision takes effect; and
- (4) states that P may make representations to the *FCA* in relation to the First Decision within a period specified in the written notice.

8.7.6

**G** In some cases, the decision in **■ MAR 8.7.5G** may take effect immediately. This means that in some cases:

- (1) P will be required to comply with the decision from the date of the written notice; and
- (2) the decision will continue to have effect pending consideration of any representations made by P.

#### Review of the First Decision

8.7.7

**G**

- (1) Where P makes written representations to the *FCA* in relation to the First Decision in accordance with **■ MAR 8.7.5G(4)**, the *FCA* will review that decision and will decide whether to maintain, vary or revoke it.
- (2) In conducting the review in (1), the matters which the *FCA* may have regard to include:



- (a) the written representations made by P in relation to the First Decision; and
  - (b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).
- (3) The review in (1) will be carried out by:
- (a) a senior FCA staff member who did not participate in making the First Decision; or
  - (b) two or more senior FCA staff members including at least one person who did not participate in making the First Decision.
- (4) When the FCA has completed the review in (1), the FCA will give P a written notice which:
- (a) gives details of the decision in response to the review (“the Second Decision”);
  - (b) states the FCA’s reasons for the Second Decision; and
  - (c) states the date on which the Second Decision takes effect.

**Own initiative review of the exercise of compulsion powers**

8.7.8

G

- (1) The FCA may, on its own initiative, decide to vary or revoke a requirement imposed under a compulsion power (an Own Initiative Variation or Own Initiative Revocation).
- (2) For instance, the FCA may decide to vary or revoke a requirement imposed under a compulsion power:
  - (a) where the FCA becomes aware of new information which is material to that requirement; or
  - (b) to extend the duration of the requirement in accordance with article 21(3) or article 23(6)(b) of the *benchmarks regulation*; or
  - (c) as result of a review under article 21(3) or article 23(9) of the *benchmarks regulation*.
- (3) The FCA will treat an Own Initiative Variation as a new First Decision and will follow the procedures in ■ MAR 8.7.5G and ■ MAR 8.7.7G for the purpose of that decision.

**Table of defined terms**

8.7.9

G

For the purpose of this section, the terms in the first column of the table below have the meanings in the second column of that table.

Table: glossary of bespoke terms used in this section

administrator	has the meaning in article 3.1(6) of the <i>benchmarks regulation</i> ;
compulsion powers	means the <i>competent authority's</i> powers under articles 21(3) and 23(6) of the <i>benchmarks regulation</i> ;
First Decision	the FCA’s decision in MAR 8.7.5G(1);
Own Initiative Revocation	has the meaning in MAR 8.7.8G(1);

Own Initiative Variation  
Second Decision

has the meaning in MAR 8.7.8G(1);  
the FCA's decision in MAR 8.7.7G(4).

# Chapter 9

## Data reporting service

## 9.1 Application, 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 a *data reporting service*;
- (2) A *UK branch* of a *third country person* seeking authorisation to provide a *data reporting service* as an *ARM* or *APA*;
- (3) a *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(b) or (c) of the *DRS Regulations*;
- (4) a *UK RIE* seeking verification of its rights to provide a *data reporting service* under regulation 5(d) of the *DRS Regulations*; and
- (5) a *data reporting services provider*.

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

[Note: article 59 of *MiFID*]

9.1.2

G

[deleted]

### Approach

9.1.3

G

[deleted]

9.1.3A

G

[deleted]

9.1.3B

G

This regulatory framework enables the authorisation and supervision of *data reporting service providers* whose services form a key component of transparency in wholesale markets and, in the case of *approved reporting mechanisms*, a reporting service that assists in the detection and prevention of *market abuse*.

### Structure

9.1.4

G

The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
MAR 9.1	Application, approach and structure
MAR 9.2	Authorisation and verification
MAR 9.2A	<i>Consolidated tape providers</i>
MAR 9.2B	Operating requirements
MAR 9.2C	Financial resources requirements for <i>consolidated tape providers</i>
MAR 9.3	Notification and information
MAR 9.4	Supervisory regime
MAR 9.5	Frequently Asked Questions
MAR 9 Annex 1D to MAR Annex 10D	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 a *data reporting service* authorisation;
  - (b) a *MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 3(1)(b) and (c) of the *DRS Regulations*; and
  - (x) a *UK RIE* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 3(1)(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** [deleted]

### Variation of authorisation form

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

9.2.4 **G** [deleted]

### Cancellation of authorisation form

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

9.2.5B **G** As set out in the form at ■ MAR 9 Annex 4D, the *data reporting services provider* must provide in its request for cancellation a plan which sets out how it will cease all of its *data reporting services* in an orderly manner

(wind-down plan). The wind-down plan should promote and protect the integrity of the financial markets and the interests of the *data reporting services provider's* clients. The *FCA* expects at the minimum the wind-down plan to:

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

9.2.5C

G

Where a *data reporting services provider* wishes to cancel all of its *data reporting service* authorisation, it must continue to comply with the *rules* in this chapter and other regulatory obligations up until its authorisation is cancelled, in particular in relation to publishing trade reports or submitting details of transactions to the *FCA*. The *FCA* expects the *data reporting services provider* to provide a written confirmation at the end of the cancellation process confirming compliance with the *rules* in this chapter and other regulatory obligations.

9.2.5

D

If a *data reporting services provider* wishes to cancel all of its *data reporting service* authorisation it must complete the cancellation of authorisation form 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 MiFiDII.Applications@fca.org.uk; or
- (2) posting to the *FCA* addressed to:

The Financial Conduct Authority  
 FAO The Authorisations Support Team  
 12 Endeavour Square  
 London  
 E20 1JN.

## 9.2A Consolidated tape providers

### Selection of a consolidated tape provider

- 9.2A.1** **G** The *FCA* will organise a selection procedure for a single *consolidated tape provider* for the asset class of bonds, excluding exchange traded commodities and exchange traded notes.
- 9.2A.2** **G** The *FCA* will give a direction to tender for the provision of the service of a *consolidated tape for bonds* by placing a notice on the *FCA's* website inviting tenders, and providing details of the tender specification and process to be followed. As well as providing additional information to be set out in the direction to tender, tenders should include the information set out in ■ MAR 9.2A.3 and ■ MAR 9.2A.4.
- 9.2A.3** **G**
- (1) Tenders should include a programme of operations. The programme of operations should include:
    - (a) information on the organisational structure of the bidder, including an organisational chart and a description of the human, technical and legal resources allocated to its business activities;
    - (b) information on the compliance policies and procedures of the bidder, including:
      - (i) the name of the *person* or *persons* responsible for the approval and maintenance of those policies;
      - (ii) the arrangements to monitor and enforce the compliance policies and procedures;
      - (iii) the measures to be undertaken in the event of a breach which may result in a failure to meet the conditions for initial authorisation; and
      - (iv) a description of the procedure for reporting to the *FCA* any breach which may result in a failure to meet the conditions for initial authorisation; and
    - (c) a list of all outsourced functions and resources allocated to the control of the outsourced functions.
  - (2) A bidder offering services other than *data reporting services* must describe those services in the organisational chart.



- 9.2A.4 **G** A bidder should include in its tender:
- (1) a description of the processes for selection, appointment, performance evaluation and removal of *senior management* and members of the *management body*;
  - (2) a description of the reporting lines and the frequency of reporting to the *senior management* and the *management body*; and
  - (3) a description of the policies and procedures on access to documents by members of the *management body*.
- 9.2A.5 **G** After assessing each tender, the *FCA* will select a single winning bidder by applying the selection criteria in the tender documentation.
- 9.2A.6 **G**
- (1) The appointment of a *CTP* for bonds will commence on the date that an authorisation by the *FCA* of the selected bidder as the *CTP* for bonds takes effect under regulation 9(4) of the *DRS Regulations*.
  - (2) The tender contract is awarded for a maximum of 5 years, commencing from a date to be determined by the *FCA*. The tender contract term is renewable in limited circumstances for a period of no more than 2 years in accordance with regulation 6 of the *DRS Regulations*.
  - (3) Within 6 *months* before either the expiry of the tender contract term or the *FCA* cancelling an authorisation to provide a *data reporting service* as a *CTP* under regulation 10 of the *DRS Regulations*, the *FCA* will begin the process to re-tender for a *CTP* for bonds.
- 9.2A.7 **R** A *CTP* must publish information relating to its costs for establishing, maintaining and operating the *consolidated tape for bonds* in such a way as to be accessible to potential bidders in a re-tender process.
- 9.2A.8 **R** A *CTP* for bonds must take all reasonable steps to transfer without delay to a successor *CTP* the assets, data and operational information necessary to enable it to operate the consolidated tape effectively. It must also have in place agreements with its clients which enable those clients who decide to do so to transfer to a successor *CTP*.

## 9.2B Operating requirements

### Requirements for the management body of a data reporting service provider

#### 9.2B.1

**R**

The following requirements apply in respect of the *management body* of a *data reporting service provider*:

- (1) The *management body* must possess adequate collective knowledge, skills and experience to be able to understand the activities of the *data reporting service provider*.
- (2) The members of the *management body* must:
  - (a) be of sufficiently good repute;
  - (b) possess sufficient knowledge, skill and experience, and be able to commit sufficient time, to perform their duties; and
  - (c) act with honesty, integrity and independence of mind:
    - (i) to challenge effectively the decisions of the *senior management* where necessary; and
    - (ii) to oversee and effectively monitor management decision-making where necessary.
- (3) The *management body* must:
  - (a) define and oversee the implementation of governance arrangements of the *data reporting service provider* to ensure the effective and prudent management of the provider, including the segregation of duties in the provider and the prevention of conflicts of interest; and
  - (b) when doing so, act in a manner that promotes the integrity of the financial markets and the interests of its clients.
- (4) Where:
  - (a) an applicant for verification under regulation 7 of the *DRS Regulations* is a *recognised investment exchange*; and
  - (b) the *management body* of the applicant is the same as the *management body* of the exchange,
 the requirements in (1) and (2) are deemed to be met.

### Conflicts of interest

#### 9.2B.2

**R**

- (1) A *data reporting services provider* must operate and maintain effective administrative arrangements, designed to prevent conflicts

of interest with clients using its services to meet their regulatory obligations, and other entities purchasing data from *data reporting services providers*. Such arrangements must include policies and procedures for identifying, managing and disclosing existing and potential conflicts of interest and must contain:

- (a) an inventory of existing and potential conflicts of interest, setting out their description, identification, prevention, management and disclosure;
  - (b) the separation of duties and business functions within the *data reporting services provider*, including:
    - (i) measures to prevent or control the exchange of information where a risk of conflicts of interest may arise; and
    - (ii) the separate supervision of relevant *persons* whose main functions involve interests that are potentially in conflict with those of a client;
  - (c) a description of the fee policy for determining fees charged by the *data reporting services provider* and undertakings to which the *data reporting services provider* has *close links*;
  - (d) a description of the remuneration policy for the members of the *management body* and *senior management*; and
  - (e) the rules regarding the acceptance of money, gifts or favours by staff of the *data reporting services provider* and its *management body*.
- (2) The inventory of conflicts of interest referred to in (1)(a) must include conflicts of interest arising from situations where the *data reporting services provider*:
- (a) may realise a financial gain or avoid a financial loss, to the detriment of a client;
  - (b) may have an interest in the outcome of a service provided to a client, which is distinct from the client's interest in that outcome;
  - (c) may have an incentive to prioritise its own interests or the interests of another client or group of clients rather than the interests of a client to whom the service is provided; and
  - (d) receive or may receive from any *person* other than a client, in relation to the service provided to a client, an incentive in the form of money, goods or services, other than commission or fees received for the service.

### Organisational requirements regarding outsourcing

9.2B.3

R

- (1) Where a *data reporting services provider* arranges for activities to be performed on its behalf by third parties, including undertakings with which it has *close links*, it must ensure that the third-party service provider has the ability and the capacity to perform the activities reliably and professionally.
- (2) A *data reporting services provider* must specify which of the activities are to be outsourced, including a specification of the level of human and technical resources needed to carry out each of those activities.

- (3) A *data reporting services provider* that outsources activities must ensure that the outsourcing does not reduce its ability or power to perform *senior management* or *management body* functions.
- (4) A *data reporting services provider* must remain responsible for any outsourced activity and must adopt organisational measures to ensure:
  - (a) that it assesses whether the third-party service provider is carrying out outsourced activities effectively, and in compliance with applicable laws and regulatory requirements, and adequately addresses identified failures;
  - (b) the identification of the risks in relation to outsourced activities and adequate periodic monitoring;
  - (c) adequate control procedures with respect to outsourced activities, including effectively supervising the activities and their risks within the *data reporting services provider*; and
  - (d) adequate business continuity of outsourced activities.
- (5) For the purposes of (4)(d), the *data reporting services provider* must obtain information on the business continuity arrangements of the third-party service provider, assess its quality and, where needed, request improvements.
- (6) A *data reporting services provider* must ensure that the third-party service provider cooperates with the *FCA* in connection with outsourced activities.
- (7) Where a *data reporting services provider* outsources any critical function, it must provide the *FCA* with:
  - (a) the identification of the third-party services provider;
  - (b) the organisational measures and policies with respect to outsourcing and the risks posed by it as specified in (4); and
  - (c) internal or external reports on the outsourced activities.
- (8) For the purpose of ■ MAR 9.2B.3R(7), a function will be regarded as critical if a defect or failure in its performance would materially impair the continuing compliance of the *data reporting services provider* with the conditions and obligations of its authorisation or its other obligations under the *DRS Regulations* and this chapter.

#### Business continuity and back-up facilities

9.2B.4

R

- (1) A *data reporting services provider* must use systems and facilities that are appropriate and robust enough to ensure continuity and regularity in the performance of the services provided as referred to in this chapter.
- (2) A *data reporting services provider* must conduct periodic reviews, at least annually, evaluating its technical infrastructures and associated policies and procedures, including business continuity arrangements. A *data reporting services provider* must remedy any deficiencies identified during the review.

- (3) A *data reporting services provider* must have effective business continuity arrangements in place to address disruptive incidents, including:
  - (a) the processes which are critical to ensuring the services of the *data reporting services provider*, including escalation procedures, relevant outsourced activities and dependencies on external providers;
  - (b) specific continuity arrangements, covering an adequate range of possible scenarios, in the short and medium term, including system failures, natural disasters, communication disruptions, loss of key staff and an inability to use the premises regularly used;
  - (c) duplication of hardware components, allowing for failover to a back-up infrastructure, including network connectivity and communication channels;
  - (d) back-up of business-critical data and up-to-date information of the necessary contacts, ensuring communication within the *data reporting services provider* and with clients;
- (3) the procedures for moving to and operating *data reporting services* from a back-up site;
- (f) the target maximum recovery time for critical functions, which must be as short as possible and, in any case, no longer than 6 hours in the case of *approved publication arrangements (APAs)* and *consolidated tape providers (CTPs)* and until the close of business of the next working day in the case of *approved reporting mechanisms (ARMs)*; and
- (g) staff training on the operation of the business continuity arrangements, individuals' roles, including specific security operations personnel ready to react immediately to a disruption of services.
- (4) A *data reporting services provider* must set up a programme for periodically testing, reviewing and, where needed, modifying the business continuity arrangements.
- (5) A *data reporting services provider* must publish on its website and promptly inform its clients and the *FCA* of any service interruptions or connection disruptions as well as the time estimated to resume a regular service.

### Testing and capacity

9.2B.5

R

- (1) A *data reporting services provider* must implement clearly delineated development and testing methodologies, ensuring that:
  - (a) the operation of the IT systems satisfies the *data reporting services provider's* regulatory obligations;
  - (b) compliance and risk management controls embedded in IT systems work as intended; and
  - (c) the IT systems can continue to work effectively at all times.
- (2) A *data reporting services provider* must also use the methodologies referred to in (1) prior to and following the deployment of any updates of the IT systems.

- (3) A *data reporting services provider* must promptly notify the FCA of any planned significant changes to the IT systems prior to their implementation.
- (4) A *data reporting services provider* must set up an ongoing programme for periodically reviewing and, where needed, modifying the development and testing methodologies.
- (5) A *data reporting services provider* must run stress tests periodically and at least on an annual basis. A *data reporting services provider* must include in the adverse scenarios of the stress test unexpected behaviour of critical constituent elements of its systems and communications lines. The stress testing must identify how hardware, software and communications respond to potential threats, specifying systems unable to cope with adverse scenarios. A *data reporting services provider* must take measures to address identified shortcomings in those systems.
- (6) A *data reporting services provider* must:
  - (a) have sufficient capacity to perform its functions without outages or failures, including missing or incorrect data; and
  - (b) have sufficient scalability to accommodate without undue delay any increase in the amount of information to be processed and in the number of access requests from its clients.

### Security

#### 9.2B.6

**R**

- (1) A *data reporting services provider* must set up and maintain procedures and arrangements for physical and electronic security designed to:
  - (a) protect its IT systems from misuse or unauthorised access;
  - (b) minimise the risks of attacks against *information systems*;
  - (c) prevent unauthorised disclosure of confidential information; and
  - (d) ensure the security and integrity of the data.
- (2) Where a *MiFIR investment firm* ('reporting firm') uses a third party to submit information to an *ARM* on its behalf ('submitting firm'), the *ARM* must have procedures and arrangements in place to ensure that the submitting firm does not have access to any other information about, or submitted by, the reporting firm to the *ARM* which may have been sent by the reporting firm directly to the *ARM* or through another submitting firm.
- (3) A *data reporting services provider* must set up and maintain measures and arrangements to promptly identify and manage the risks identified in (1).
- (4) In respect of breaches in the physical and electronic security measures referred to in (1) to (3), a *data reporting services provider* must promptly notify:

- (a) the *FCA* and provide an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initiatives taken to prevent similar incidents; and
- (b) its clients that have been affected by the security breach.

### Record keeping

9.2B.7

**R**

- (1) A *data reporting service provider* must maintain records, in retrievable and legible form, of information that could be relevant to demonstrating its compliance or non-compliance with any requirement imposed by the *rules* in this chapter.
- (2) A *data reporting service provider* must retain the records for no less than 5 years from the date on which the records were created.

### Reporting of infringements

9.2B.8

**R**

A *data reporting service provider* must have in place effective procedures for its employees to report potential or actual infringements of:

- (1) the *rules*;
- (2) *MiFIR*, and any *onshored regulations* previously deriving from *MiFIR* or *MiFID*; and
- (3) the *DRS Regulations*,  
internally through a specific, independent and autonomous channel.

### Conditions for an ARM

9.2B.9

**R**

- (1) An *ARM* must have adequate policies and arrangements in place to enable it to report the information required from a *MiFIR investment firm* under article 26 of *MiFIR* as quickly as possible and no later than 11:59pm on the *working day* following the *day* on which the transaction took place.
- (2) The information mentioned in (1) must be reported in accordance with article 26 of *MiFIR*.
- (3) An *ARM* must:
  - (a) operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients;
  - (b) have sound security mechanisms in place designed to:
    - (i) guarantee the security and authentication of the means of the transfer of information;
    - (ii) minimise the risk of data corruption and unauthorised access;
    - (iii) prevent information leakage; and
    - (iv) maintain the confidentiality of the data at all times;
  - (c) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
  - (d) have systems which:



- (i) effectively check *transaction reports* for completeness;
  - (ii) identify omissions and obvious errors caused by the *MiFIR investment firm*;
  - (iii) communicate details of such omissions or errors to the *MiFIR investment firm* and request re-transmission of erroneous reports;
  - (iv) detect omissions or errors caused by the *ARM* itself; and
  - (v) enable the *ARM* to correct and transmit, or retransmit, correct and complete *transaction reports* to the *FCA*.
- (4) An *ARM* which is also a *recognised investment exchange* or a *MiFID investment firm* must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

### Management of incomplete or potentially erroneous information by ARMs

9.2B.10

R

- (1) An *ARM* must set up and maintain appropriate arrangements to identify *transaction reports* that are incomplete or contain obvious errors caused by clients. An *ARM* must perform validation of the *transaction reports* against the requirements established under article 26 of *MiFIR* for field, format and content of fields in accordance with Table 1 of Annex I to *MiFID RTS 22*.
- (2) An *ARM* must set up and maintain appropriate arrangements to identify *transaction reports* which contain errors or omissions caused by that *ARM* itself and to correct, including deleting or amending, such errors or omissions. An *ARM* must perform validation for field, format and content of fields in accordance with Table 1 of Annex I to *MiFID RTS 22*.
- (3) An *ARM* must continuously monitor in real time the performance of its systems, ensuring that a *transaction report* it has received has been successfully reported to the *FCA* in accordance with article 26 of *MiFIR*.
- (4) An *ARM* must perform periodic reconciliations at the request of the *FCA* between the information that the *ARM* receives from its client or generates on the client's behalf for *transaction reports* purposes and data samples of the information provided by the *FCA*.
- (5) Any corrections, including cancellations or amendments of *transaction reports* that are not correcting errors or omissions caused by an *ARM*, must only be made at the request of a client and per *transaction report*. Where an *ARM* cancels or amends a *transaction report* at the request of a client, it must provide this updated *transaction report* to the client.
- (6) Where an *ARM*, before submitting the *transaction report*, identifies an error or omission caused by a client, it must not submit that *transaction report* and must promptly notify the *MiFIR investment firm* of the details of the error or omission to enable the client to submit a corrected set of information.



- (7) Where an *ARM* becomes aware of errors or omissions caused by the *ARM* itself, it must promptly submit a correct and complete report.
- (8) An *ARM* must promptly notify the client of the details of the error or omission and provide an updated *transaction report* to the client. An *ARM* must also promptly notify the *FCA* about the error or omission.
- (9) The requirement to correct or cancel erroneous *transaction reports* or report omitted transactions must not extend to errors or omissions which occurred more than 5 years before the date that the *ARM* became aware of such errors or omissions.

### Connectivity of ARMs

9.2B.11

R

- (1) An *ARM* must have in place policies, arrangements and technical capabilities to comply with the technical specification for the submission of transaction reports required by the *FCA*.
- (2) An *ARM* must have in place adequate policies, arrangements and technical capabilities to receive *transaction reports* from clients and to transmit information back to clients. The *ARM* must provide the client with a copy of the *transaction report* which the *ARM* submitted to the *FCA* on the client's behalf.

### Conditions for an APA – organisational requirements

9.2B.12

R

- (1) An *APA* must:
  - (a) have sound security mechanisms in place designed to:
    - (i) guarantee the security of the means of the transfer of information;
    - (ii) minimise the risk of data corruption and unauthorised access; and
    - (iii) prevent information leakage before publications;
  - (b) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times; and
  - (c) have systems which can effectively:
    - (i) check trade reports for completeness;
    - (ii) identify omissions and obvious errors; and
    - (iii) request re-transmission of any erroneous reports.
- (2) An *APA* which is also a *recognised investment exchange* or a *MiFID investment firm* must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions.

### Conditions for a CTP – organisational requirements

9.2B.13

R

A *CTP* must:

- (1) have sound security mechanisms in place designed to:

- (a) guarantee the security of the means of the transfer of information; and
  - (b) minimise the risk of data corruption and unauthorised access; and
- (2) maintain adequate resources and have back-up facilities in order to offer and maintain its services at all times.

#### Other services provided by CTPs

9.2B.14

R

- (1) A *CTP* for bonds must not provide any additional service which utilises the information it receives from *UK trading venues* and *APAs* in its capacity as a *CTP*.
- (2) Where a *CTP* for bonds is a member of a *group*, a member of that *group* may provide an additional service utilising information from the consolidated tape for bonds, provided it has paid for that information in accordance with ■ MAR 9.2B.36R(1).

#### Management of incomplete or potentially erroneous information by APAs

9.2B.15

R

- (1) *APAs* must set up and maintain appropriate arrangements to ensure that they accurately publish the trade reports received from *MiFIR investment firms* without themselves introducing any errors or omitting information and must correct information where they have themselves caused the error or omission.
- (2) *APAs* must continuously monitor in real-time the performance of their IT systems ensuring that the trade reports they have received have been successfully published.
- (3) *APAs* must perform periodic reconciliations between the trade reports that they receive and the trade reports that they publish, verifying the correct publication of the information.
- (4) An *APA* must confirm the receipt of a trade report to the reporting *MiFIR investment firm*, including the transaction identification code assigned by the *APA*. An *APA* must refer to the transaction identification code in any subsequent communication with the reporting firm in relation to a specific trade report.
- (5) An *APA* must set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous. These arrangements must include automated price and volume alerts, taking into account:
  - (a) the sector and the segment in which the *financial instrument* is traded;
  - (b) liquidity levels, including historical trading levels;
  - (c) appropriate price and volume benchmarks; and
  - (d) if needed, other parameters according to the characteristics of the *financial instrument*.
- (6) Where an *APA* determines that a trade report it receives is incomplete or contains information that is likely to be erroneous, it must not

publish that trade report and must promptly alert the *MiFIR investment firm* submitting the trade report.

- (7) In exceptional circumstances, APAs must delete and amend information in a trade report on request from the entity providing the information when that entity cannot delete or amend its own information for technical reasons. APAs are not otherwise responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information.
- (8) APAs must publish non-discretionary policies on information cancellation and amendments in trade reports which set out the penalties that APAs may impose on *MiFIR investment firms* providing trade reports where the incomplete or erroneous information has led to the cancellation or amendment of trade reports.

### Conditions for an APA – policies and arrangements for publication of information

9.2B.16

R

- (1) An APA must have adequate policies and arrangements in place to make public the information required under articles 20 and 21 of *MiFIR* in as close to real time as is technically possible on a reasonable commercial basis.
- (2) The information referred to in (1) must be made available by the APA free of charge 15 minutes after the APA has first published it.
- (3) The APA must be able to disseminate efficiently and consistently the information referred to in (1):
  - (a) in a way which ensures fast access to the information on a non-discriminatory basis; and
  - (b) in a format that facilitates the consolidation of the information with similar data from other sources.
- (4) The information referred to in (1) must include the following details:
  - (a) the identifier of the *financial instrument*;
  - (b) the price at which the transaction was concluded;
  - (c) the volume of the transaction;
  - (d) the time of the transaction;
  - (e) the time the transaction was reported;
  - (f) the price notation of the transaction;
  - (g) the code for the trading venue the transaction was executed on or, where the transaction was executed on a *systematic internaliser*, the code 'SI' or, otherwise, 'OTC'; and
  - (h) if applicable, an indicator that the transaction was subject to specific conditions.

### Machine readability – APAs

9.2B.17

R

- (1) APAs must publish the information which has to be made public in accordance with ■ MAR 9.2B.16R(1) in a machine-readable way.

- (2) Information is published in a machine-readable way where all of the following conditions are met:
  - (a) it is in an electronic format designed to be directly and automatically read by a computer;
  - (b) it is stored in an appropriate IT architecture, in accordance with ■ MAR 9.2B.5R(6), that enables automatic access;
  - (c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed; and
  - (d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.
- (3) For the purposes of (2)(a), the electronic format must:
  - (a) be specified by free, non-proprietary and open standards; and
  - (b) include the type of files of messages, the rules to identify them, and the name and data type of the fields they contain.
- (4) APAs must:
  - (a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;
  - (b) make public any changes to the instructions referred to in (4)(a) at least 3 *months* before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly; and
  - (c) include a link to the instructions referred to in (4)(a) on the homepage of their website.

### Certification requirement

- 9.2B.18 **R** An APA must require each *MiFIR investment firm* to certify that it only reports transactions in a particular *financial instrument* through that APA.

### Details to be published by the APA

- 9.2B.19 **R**
- (1) An APA must make public:
    - (a) for transactions executed in respect of shares, depositary receipts, *exchange-traded funds (ETFs)*, *certificates* and other similar *financial instruments*, the details of a transaction specified in Table 2 of Annex I to *MiFID RTS 1* and use the appropriate flags listed in Table 3 of Annex I to *MiFID RTS 1*; and
    - (b) for transactions executed in respect of bonds, *structured finance products*, *emission allowances* and derivatives, the details of a transaction specified in Table 1 of Annex II to *MiFID RTS 2* and use the appropriate flags listed in Table 2 of Annex II to *MiFID RTS 2*.
  - (2) Where publishing information on when the transaction was reported, an APA must include the date and time, up to the second, it publishes the transaction.

- (3) By way of derogation from ■ MAR 9.2B.19R(2), an *APA* that publishes information regarding a transaction executed on an electronic system must include the date and time, up to the millisecond, of the publication of that transaction in its trade report.
- (4) For the purposes of (3), an 'electronic system' means a system where orders are electronically tradable or where orders are tradable outside the system, provided that they are advertised through the given system.
- (5) The timestamps referred to in (2) and (3) must, respectively, not diverge by more than one second or millisecond from the Coordinated Universal Time (UTC) issued and maintained by one of the timing centres listed in the latest Bureau International des Poids et Mesures (BIPM) Annual Report on Time Activities.

### Non-discrimination requirements for APAs

- 9.2B.20 **R** *APAs* must ensure that the information which must be made public is sent through all distribution channels at the same time, including when the information is made public, as close to real time as technically possible or 15 minutes after the first publication.

### Obligation on APAs to provide market data on a reasonable commercial basis

- 9.2B.21 **R**
- (1) For the purposes of making market data containing the information set out in articles 6, 20 and 21 of *MiFIR* available to the public on a reasonable commercial basis and in accordance with ■ MAR 9.2B.16R(1), *APAs* must comply with the obligations set out in ■ MAR 9.2B.22R to ■ MAR 9.2B.26R.
  - (2) The obligations set out in ■ MAR 9.2B.22R, ■ MAR 9.2B.23R(2), ■ MAR 9.2B.24R, ■ MAR 9.2B.25R(2) and ■ MAR 9.2B.26R do not apply to *APAs* that make market data available to the public free of charge.

### Provision of market data based on cost – APAs

- 9.2B.22 **R**
- (1) The price of market data must be based on the cost of producing and disseminating such data and may include a reasonable margin.
  - (2) The costs of producing and disseminating market data may include an appropriate share of joint costs for other services provided by *APAs*.

### Obligation to provide market data on a non-discriminatory basis – APAs

- 9.2B.23 **R**
- (1) *APAs* must make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.
  - (2) Any differentials in prices charged to different categories of customers must be proportionate to the value which the market data represent to those customers, taking into account:

- (a) the scope and scale of the market data, including the number of *financial instruments* covered and trading volume; and
- (b) the use made by the customer of the market data, including whether it is used for the customer's own trading activities, for resale or for data aggregation.

- (3) For the purposes of ■ MAR 9.2B.23R(1), APAs must have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

#### Per user fees – APAs

9.2B.24

R

- (1) APAs must charge for the use of market data on the basis of the use made by individual end-users of the market data ('per user basis'). APAs must have arrangements in place to ensure that each individual use of market data is charged only once.
- (2) By way of derogation from ■ MAR 9.2B.24R(1), APAs may decide not to make market data available on a per user basis where to charge on a per user basis is disproportionate to the cost of making market data available, having regard to the scale and scope of the market data.
- (3) APAs must provide grounds for the refusal to make market data available on a per user basis and must publish those grounds on their webpage.

#### Unbundling and disaggregating market data – APAs

9.2B.25

R

- (1) APAs must make market data available without being bundled with other services.
- (2) Prices for market data must be charged on the basis of the level of market data disaggregation provided for in article 12(1) of *MiFIR* as further specified in articles of *MiFID RTS 14*.

#### Transparency obligation – APAs

R

- (1) APAs must disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible.
- (2) The disclosure must include the following:
  - (a) current price lists and other contractual terms and conditions; and
  - (b) advance disclosure with a minimum of 90 *days'* notice of future price changes.

#### Conflicts of interest obligations for CTPs

9.2B.27

R

- (1) Where a *CTP* is a member of a *group*, the arrangements it establishes to prevent or manage conflicts of interest in accordance with ■ MAR 9.2B.2R(1) must also take into account any circumstances, of which the *CTP* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

- (2) A *CTP* must assess and periodically review, on an at least annual basis, the conflicts of interest policies and procedures established in accordance with ■ MAR 9.2B.2R(1) and must take all appropriate measures to address any deficiencies.
- (3) A *CTP* must keep and regularly update a record of the kinds of services or activity it carries on in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen, or in the case of an ongoing service or activity, may arise. *Senior management* of the *CTP* must receive on a frequent basis, and at least annually, written reports on these records and how any conflicts have been managed.

### ..... Obligations for CTPs on apportionment of responsibilities .....

**R** A *CTP* must take reasonable care to maintain a clear and appropriate apportionment of significant responsibilities among its *senior management* in such a way that:

- (1) it is clear who has which of those responsibilities; and
- (2) the business and affairs of the *CTP* can be adequately monitored and controlled by its directors, senior managers and *management body* of the *CTP*.

### ..... Outsourcing obligations for CTPs .....

9.2B.29

- R**
- (1) In addition to complying with its obligations under ■ MAR 9.2B.3R(6), a *CTP* must provide the *FCA* with a written agreement in respect of any arrangement it enters into with a third-party provider to outsource a critical function. The agreement must contain a clear allocation of the respective rights and obligations of the *CTP* and the third-party provider.
  - (2) In relation to the arrangement referred to in (1), the *CTP* must take the necessary steps to ensure it is able to:
    - (a) terminate that arrangement where necessary, with immediate effect, without detriment to the continuity and quality of its provision of services; and
    - (b) cooperate with the *FCA*, including providing information to the *FCA* on request, and putting in place arrangements enabling the *FCA* to seek information from the third-party provider.

### ..... Non-discrimination obligations for CTPs .....

9.2B.30

**R** Any of the following *persons* who are also a *CTP* must treat all information collected in a non-discriminatory fashion and must operate and maintain appropriate arrangements to separate different business functions:

- (1) a *recognised investment exchange*;
- (2) an *APA*;
- (3) an *investment firm*;



- (4) a *data vendor*; or
- (5) a *firm* whose *shares* or voting rights are at least 20% owned by a *person* referred to in (1) to (4) or who shares a business function with such a *person*.

### Management of incomplete or potentially erroneous information by CTPs

9.2B.31 **R**

- (1) A *CTP* must set up and maintain appropriate arrangements to ensure that it accurately publishes the trade reports received from *MiFIR investment firms*, *regulated markets* and *APAs* without itself either:
  - (a) introducing any errors that would affect the accuracy and completeness of the data contained in those reports; or
  - (b) omitting any information from those reports, except where such omission is a deliberate one in accordance with the *CTP's* regulatory and contractual obligations.
- (2) A *CTP* must correct information where it has itself introduced an error or made a non-deliberate omission as referred to in (1).
- (3) A *CTP* must perform periodic reconciliations between the trade reports it receives and the trade reports it publishes, verifying the correct publication of the information.

### Obligations of CTPs to ensure data quality and report information

9.2B.32 **R**

- (1) A *CTP* must continuously monitor in real time the performance of its IT systems and ensure that the trade reports it has received have been successfully published.
- (2) A *CTP* must set up and maintain appropriate arrangements to identify on receipt trade reports that are incomplete or contain information that is likely to be erroneous, and must inform the provider of the trade report in each instance.
- (3) In exceptional circumstances, a *CTP* must delete and amend information in a trade report on request from the entity providing the information when that entity cannot delete or amend its own information for technical reasons. *CTPs* are not otherwise responsible for correcting information contained in published reports where the error or omission was attributable to the entity providing the information.
- (4) The *CTP* must submit a report to the *FCA* every 6 *months* on the quality of the data that it has received during that period. The report must include at least the following information:
  - (a) the timeliness of the receipt of data from data contributors;
  - (b) the timeliness of publication of information by the *CTP*;
  - (c) details of the trade reports that are incomplete or contain information that is likely to be erroneous that have been identified;



- (d) whether the *CTP* has correctly published the information it has received;
- (e) the performance of the *CTP's* IT systems; and
- (f) the usage of the consolidated tape.

### Consolidation of data by CTPs

9.2B.33

R

A *CTP* must:

- (1) ensure that the data it makes available publicly is consolidated from all *UK trading venues* and *APAs* into a continuous electronic data stream;
- (2) ensure that the information which must be made public is sent through all distribution channels at the same time, including when the information is made public, as close to real time as technically possible or 15 minutes after the first publication; and
- (3) provide the *FCA* with direct and immediate access to the *consolidated tape for bonds*.

### Scope of the consolidated tape for bonds and publication of information

9.2B.34

R

- (1) The *CTP* for bonds must have adequate policies and arrangements in place to:
  - (a) receive the information made public in accordance with articles 10 and 21 of *MiFIR* by all *UK trading venues* and *APAs* in respect of bonds excluding exchange traded commodities and exchange traded notes; and
  - (b) make that information available to the public in as close to real time as is technically possible or 15 minutes after the first publication.
- (2) The *CTP* for bonds must have adequate policies and arrangements in place to make *historical data* available in response to a request for it in accordance with ■ MAR 9.2B.35R(2).
- (3) The information referred to in (1) must include the details of a transaction specified in Table 1 of Annex II to *MiFID RTS 2* and use the appropriate flags listed in Table 2 of Annex II to *MiFID RTS 2*.
- (4) Following the appointment of a provider of a *consolidated tape for bonds*, *UK trading venues* and *APAs* must:
  - (a) connect to the *CTP* for bonds before commencing or continuing operations; and
  - (b) send to the *CTP* for bonds, in as close to real time as is technically possible using the means established in ■ MAR 9.2B.34R(5) by the *CTP*, the information referred to in (1)(a).
- (5) The *CTP* for bonds must operate an open-source Application Programming Interface (API) in order to receive the information referred to in (1)(a) from *UK trading venues* and *APAs*.

- (6) The *CTP* for bonds must be able to disseminate the information referred to in (1)(a) efficiently, consistently and in way that:
  - (a) ensures fast access to the information on a non-discriminatory basis; and
  - (b) is in a generally accepted format that is interoperable, easily accessible and utilisable for market participants.
- (7) When a new *UK trading venue* or *APA* starts operating, the *CTP* for bonds must include the information referred to in (1)(a) made public by that *UK trading venue* or *APA* in the electronic data stream of its consolidated tape as soon as possible after the start of the operations of the *UK trading venue* or *APA*.
- (8) The *CTP* for bonds must not consolidate trade reports with the code "DUPL" in the reprint field.

### Machine readability and required formats for CTPs for bonds

9.2B.35

R

- (1) The *CTP* for bonds must publish the information referred to in ■ MAR 9.2B.34R(1) in Graphical User Interface (GUI) and at least 2 machine-readable formats: Application Programming Interface (API) and Comma Separated Value (CSV).
- (2) The *CTP* for bonds must make *historical data* available in response to a request for it in GUI and one machine-readable format.
- (3) Information is published in a machine-readable format where all of the following conditions are met:
  - (a) it is in an electronic format designed to be directly and automatically read by a computer;
  - (b) it is stored in an appropriate IT architecture, in accordance with ■ MAR 9.2B.5R(6), that enables automatic access;
  - (c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed; and
  - (d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.
- (4) For the purposes of ■ MAR 9.2B.35R(3)(a), the electronic format must be specified by free, non-proprietary and open standards, and include the type of files or messages, the rules to identify them, and the name and data type of the fields they contain.
- (5) The *CTP* for bonds must:
  - (a) make instructions available to the public, explaining how and where to easily access and use the data, including identification of the electronic format;
  - (b) make public any changes to the instructions referred to in (5)(a) at least 3 *months* before they come into effect, unless there is an urgent and duly justified need for changes in instructions to take effect more quickly; and
  - (c) include a link to the instructions referred to in (5)(a) on the homepage of their website.

### Obligation for the CTP for bonds to provide market data on a non-discriminatory basis

- 9.2B.36 **R**
- (1) The *CTP* for bonds must make market data available at the same price and on the same terms and conditions to all customers falling within the same category in accordance with published objective criteria.
  - (2) The *CTP* for bonds must charge for the use of *historical data* when it is requested separately from the use of market data, except where it is provided in a machine-readable form through an API.
  - (3) For the purposes of **MAR 9.2B.36R(1)**, the *CTP* for bonds must have scalable capacities in place to ensure that customers can obtain timely access to market data at all times on a non-discriminatory basis.

9.2B.37 **R** [deleted]

### Unbundling market data for the CTP for bonds

- 9.2B.38 **R** The *CTP* for bonds must make market data available without being bundled with other services.

### Transparency obligations for the CTP for bonds

- 9.2B.39 **R**
- (1) The *CTP* for bonds must disclose and make easily available to the public the price and other terms and conditions for the provision of the market data in a manner which is easily accessible.
  - (2) The disclosure must include the following:
    - (a) current price lists and other contractual terms and conditions; and
    - (b) advance disclosure with a minimum of 90 *days'* notice of future price changes.

### Governance obligations for the CTP

- 9.2B.40 **R**
- (1) The *CTP* must establish a consultative committee composed of a representative range of its users and data producers. *CTP* users and data producers may apply to the *CTP* to be members of the committee.
  - (2) The membership of the committee established in (1) must be renewed at least once during the period of tender for the *CTP*. At all times, users must comprise the majority of members on the committee.
  - (3) The committee must meet at least every 6 *months*, and its chair must make the meeting agenda and minutes public.
  - (4) The *CTP* must share with the committee, at a minimum, information on the following:
    - (a) its operating costs, including providing regular updates about those costs;
    - (b) its operational performance;

- 
- (c) its fee and user policies, including any changes to those policies usage of its services;
  - (d) usage of its services;
  - (e) any data quality issues; and
  - (f) any technology updates.
- (5) The committee may make recommendations to the *CTP*. The chair must make public information on how the *CTP* is taking forward the recommendations of the committee, including on its performance and operation. If the *CTP* decides not to take forward a recommendation, it must provide the committee with reasons for its decision.

## 9.2C Financial resources requirements for consolidated tape providers

- 9.2C.1** **R** A *CTP* must at all times have sufficient financial resources for the proper performance of its obligations as a *CTP*.
- 9.2C.2** **G** In assessing whether a *CTP* has at all times sufficient financial resources for the proper performance of its obligations as a *CTP*, the *FCA* may have regard to:
- (1) the operational and other risks to which the *CTP* is exposed;
  - (2) the amount and composition of the *CTP's* capital, liquid financial assets and other financial resources (such as insurance policies and guarantees, where appropriate);
  - (3) the financial benefits, liabilities, risks and exposures arising from the *CTP's* connection with any *person*, including but not limited to, its connection with:
    - (a) any *undertaking* in the same *group* as the *CTP*;
    - (b) any other *person* with a significant shareholding or stake in the *CTP*;
    - (c) any other *person* with whom the *CTP* has made a significant investment, whether in the form of equity, debt, or by means of any guarantee or other form of commitment; and
    - (d) any *person* with whom the *CTP* has a significant contractual relationship;
  - (4) the extent to which the *CTP's* ability to fulfil its obligations as a *CTP* under this chapter may be impacted by any *regulated activities* and other *unregulated activities* it undertakes; and
  - (5) the extent to which, after allowing for the financial resources necessary to cover operational and other risks to which the *CTP* is exposed, the *CTP's* financial resources are sufficient and sufficiently liquid to ensure that it would be able to complete an orderly closure or transfer of the services it provides as a *CTP* without being prevented from doing so by insolvency or lack of available funds.
- 9.2C.3** **G** The obligation set out in **MAR 9.2C.1R** applies in addition to any other requirements in respect of *regulated activities* undertaken by the *CTP*.

### 9.2C.4

**G**

The *CTP* may find it useful to refer to the *FCA's* guidance in FG 20/1 (Our framework: assessing financial resources) and the Wind-down Planning Guide when considering how it meets the obligation set out in ■ MAR 9.2C.1R.

## 9.2D Complaints concerning the performance of a CTP

### 9.2D.1

**R**

- (1) A *CTP* must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its functions as a *CTP* under the rules in this chapter and other regulatory obligations. A *CTP* must make public how such a complaint may be raised.
- (2) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a *complaints investigator* independent of the *CTP*, and for the *complaints investigator* to report the result of the investigation to the *CTP* and to the complainant.
- (3) The arrangements must confer on the *complaints investigator* the power to recommend, if the *complaints investigator* thinks appropriate, that the *CTP* remedies the matter complained of.
- (4) ■ MAR 9.2D.1R(3) is not to be taken as preventing the *CTP* from making arrangements for the initial investigation of a complaint to be conducted by the *CTP*.
- (5) Where a *CTP* has investigated a complaint arising in connection with the performance of, or failure to perform, any of its functions as a *CTP* under the *rules* in this chapter and other regulatory obligations, and the *complaints investigator* has made a recommendation in respect of that complaint that the *CTP* should remedy the matter which was the subject of that complaint, the *CTP* must immediately:
  - (a) notify the *FCA* of that event; and
  - (b) give the *FCA* a copy of the *complaints investigator's* report and particulars of the *complaints investigator's* recommendation as soon as that report or the recommendation is available to it.

## 9.3 Notification and information

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

- 9.3.1 **R** A *data reporting services provider* must promptly complete the material change in information form at ■ MAR 9 Annex 5R 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 **R** A *data reporting services provider* must promptly complete the notification form for changes to the membership of the management body form at ■ MAR 9 Annex 6R to inform the *FCA* of any change to the membership of its *management body* before any change to the membership of its *management body* or when this is impossible within 10 working days after the change.

- 9.3.3 **G** [deleted]

### Notification to the FCA by an APA or a CTP of compliance with connectivity requirements

- 9.3.4 **R** As soon as possible and within 2 weeks of being authorised as an *APA* or a *CTP*, an *APA* or a *CTP* seeking a connection to the *FCA's market data processor system* must:

(1) sign the *MIS confidentiality agreement* at ■ MAR 9 Annex 10R; and

(2) email it to [MDP.onboarding@fca.org.uk](mailto:MDP.onboarding@fca.org.uk) or post an original signed copy to the *FCA* addressed to:

The Financial Conduct Authority  
 FAO The Markets Reporting Team  
 12 Endeavour Square  
 London  
 E20 1JN.

- 9.3.5 **G** (1) To ensure the security of the *FCA's systems*, the *FCA* requires an *APA* or a *CTP* to sign the *MIS confidentiality agreement* before receiving the *FCA's Market Interface Specification (MIS)*.



(2) Once the *FCA* receives the *MIS confidentiality agreement* from the *APA* or the *CTP*, the *FCA* will provide the *APA* or the *CTP* with *Market Interface Specification (MIS)*.

**9.3.6** **R** An *APA* or a *CTP* seeking a connection to the *FCA's market data processor system* must complete the form at **MAR 9 Annex 7R** as soon as possible and no later than 4 weeks following authorisation as an *APA* or a *CTP*.

**9.3.7** **G** 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 the provision of data to the *FCA* as required by article 22 of *MIFIR*.

### Yearly notifications to the FCA

**9.3.8** **R** A *data reporting services provider* must complete the yearly notification form in **MAR 9 Annex 8R**:

- (1) A *data reporting services provider* must complete the yearly notification form in **MAR 9 Annex 8D**:
- (2) then every year within 3 *months* of the same date.

**9.3.9** **G** For example, if a *data reporting services provider's* authorisation commences on 8 April 2024, the *data reporting services provider* must provide the information in **MAR 9 Annex 8R** on or before 8 July 2025 and then every year thereafter on or before 8 July of that particular year.

### Ad hoc notifications to the FCA

**9.3.10** **R** (1) A *data reporting services provider* must promptly complete the ad hoc notification form in **MAR 9 Annex 9R** to notify the *FCA* in respect of all matters required by the *rules* in **MAR 9.2B.5R(3)**, **MAR 9.2B.6R(4)**, **MAR 9.2B.10R(8)** and **MAR 9.3.10R(2)**

- (2) A *data reporting services provider* must notify the *FCA* as soon as reasonably practicable if it considers that it is unable to comply with any *rule* in this chapter or other regulatory obligation, explaining the reasons why it is unable to comply.

**9.3.11** **G** Information to be provided in **MAR 9 Annex 9R** includes information relating to breaches in physical and electronic security measures and service interruptions or connection disruptions.

### Provision of the forms in MAR 9 Annexes 5R, 6R, 7R, 8R and 9R to the FCA

**9.3.12** **R** A *data reporting services provider* must promptly provide the forms in **MAR 9 Annexes 5R**, **6R**, **7R**, **8R** and **9R** and supporting documentation to the *FCA*:

- (1) at [MRT@fca.org.uk](mailto:MRT@fca.org.uk); or

(2) by posting it to the *FCA*, addressed to:

The Financial Conduct Authority

The Markets Reporting Team

12 Endeavour Square

London

E20 1JN.

## 9.4 Supervisory regime

### Overview of supervisory approach

9.4.1

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The *FCA* expects to have an open, cooperative and constructive relationship with *data reporting services providers* to enable it to understand and evaluate *data reporting services providers'* activities and their ability to meet the requirements in the *DRS Regulations*. As part of that relationship the *FCA* expects a *data reporting services provider* to provide it with information about any proposed restructuring, reorganisation or business expansion which could have a significant impact on the *data reporting services provider's* risk profile or resources.

The *FCA* will, when necessary, arrange meetings between the *FCA* and key individuals of the *data reporting services provider* for this purpose.

The *FCA* expects the *data reporting services provider* to take its own steps to assure itself that it will continue to satisfy the *data reporting services provider* organisational requirements when considering any changes to its business operations.

### Overview of supervisory tools

9.4.2

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The *FCA* will use a variety of tools to monitor whether a *data reporting services 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 services 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 a *data reporting service*; and
- (12) imposing individual requirements.

## 9.5 Frequently Asked Questions

9.5.1

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[deleted]

9.5.2

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Q.We are a *trading venue* operator. Can you please clarify how we can provide a *data reporting service* under the derogation from needing authorisation in regulation 5(b) to (d) of the *DRS Regulations*?

A.

- (1) The derogation (or exception) in article 59(2) of *MiFID* allowed Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator verified that they complied with Title V of *MiFID*.
- (2) The *United Kingdom* 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 a *data reporting service* 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

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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 13(1)(a) and (b) of the *DRS Regulations*. You will only be required to complete the full name and personal national identification number or equivalent thereof fields of [MAR 9 Annex 2D](#) for each of these members of the *management body*. For any additional members of the *management body* of the *APA*, the *CTP* or the *ARM* that are not the same as the members of the *management body* of the *regulated market*, you must notify us of these persons by completing all

fields of ■ MAR 9 Annex 2D. You must notify us of any change in membership using ■ MAR 9 Annex 6D.

9.5.4

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**Q.**Where can I find out information about fees to be charged in respect of *data reporting services providers*?

**A.**See ■ FEES 3.2.7R and ■ FEES 4 Annex 11R.

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; and
  - (b) the notification form for the list of members of the *management body* at ■ MAR 9 Annex 2D.
- (2) You should sign the *MIS confidentiality agreement* at ■ MAR 9 Annex 10D.
- (3) You should provide the documents referred to in:
  - (a) (1)(a) and (b) together with supporting documentation to the *FCA* as set out in ■ MAR 9.2.6D; and
  - (b) (2) to the *FCA* as set out in ■ MAR 9.3.4D.
- (4) After receiving the documents referred to in (3) and subject to our review of them, we will provide you with a copy of our *Market Interface Specification (MIS)*.
- (5) If you consider that you can meet our specifications you should obtain the *FCA MDP on-boarding application form* at ■ MAR 9 Annex 7D and provide the completed form and any relevant documents to us together with the associated fee in ■ FEES 3.2.7R and ■ FEES 4 Annex 11R. Our consideration of your application for authorisation as an *ARM* is dependent on us reviewing a completed *FCA MDP on-boarding application form*.
- (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 *DEPP* applies.

(10) If we approve your application for authorisation or verification, we will confirm your authorised status.

9.5.6

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**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* or a *third country investment firm* subject to a similar obligation pursuant to ■ GEN 2.2.22AR,

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 *MIS confidentiality agreement* with us, to satisfy connectivity requirements and to undertake testing associated with connecting to our systems. For the associated costs please see ■ FEES 3.2.7R for relevant on-boarding costs. 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

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**Q.** Where can I find a list of *data reporting services providers*?

**A.** Regulation 6 of the *DRS Regulations* requires the *FCA* to maintain a register of *data reporting services providers*.

9.5.8

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**Q.** I am a *data reporting services provider* and am experiencing technical issues. What do I do?

**A.** In the first instance please contact Market Data Processor support at [MDP.technicalOnboarding@soprasteria.com](mailto:MDP.technicalOnboarding@soprasteria.com) and copy DRSP supervision at [MRT@fca.org.uk](mailto:MRT@fca.org.uk) with a succinct summary of the technical issue(s) encountered.

9.5.9

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**Q.** Can any *trading venue* report *transactions* for the purposes of article 26 of *MiFIR* to the *FCA* using an *ARM*?

**A.** Yes. The ability of a *trading venue* to submit data to an *ARM* is consistent with the definition of an *ARM* which enables a *trading venue* to submit information, on its own behalf, to an *ARM*. It is also consistent with paragraph 2 of article 9 [Security] of *MiFID RTS 13*, which enables a third party to submit information to an *ARM* on behalf of others. More generally, it supports the purpose underlying *MiFIR* and *MiFID* of facilitating the detection of cases of *market abuse*.

9.5.10

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**Q.** Can a group of *investment firms* aggregate their reporting via an internal hub?

**A.** Yes. A group of *investment firms* may use a hub to assist with aggregating transaction reporting data for each legal entity that is an *investment firm* in the group for the purposes of article 26 of *MiFIR* provided that the hub is either an *ARM* or the hub uses an *ARM* to report the transaction data to the *FCA*. Paragraph 2 of article 9 [Security] of *MiFID RTS 13* confirms that an

*investment firm* ('reporting firm') may use a third party ('submitting firm') to submit information to an *ARM*.

**9.5.11** **G** **Q.** Which form should I use if I wish to cancel some, but not all, of my *data reporting service*?

**A.** You should use the form at ■ **MAR 9 Annex 3D**. If you expect the wind-down (run-off) of the service that you wish to cancel to take longer than six *months* you should discuss this with your usual supervisory contact.

**9.5.12** **G** **Q.** I intend to apply to be authorised to provide the *data reporting service* of an *APA*. May I establish connectivity requirements while my application for authorisation is being considered?

**A.** Yes. The *MIS confidentiality agreement* is available on our website at [www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp](http://www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp) together with instructions on how to obtain the *Market Interface Specification (MIS)* for connectivity.



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## **Application form to provide the service of ARM and/or APA and/or CTP**

The form can be found at this address: <https://www.fca.org.uk/publication/forms/mifid-data-reporting-services-form.docx>



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## Notification form for list of members of a management body

The form can be found at this address: <https://www.fca.org.uk/publication/forms/mifid-management-body-members-form.docx>



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## Variation of Authorisation of a Data Reporting Services Provider (DRSP)

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-variation-authorisation-form.docx>



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## Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-cancellation-form.docx>





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## Material Change in information for a Data Reporting Services Provider (DRSP)

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-material-change-notification.docx>



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## Notification form for changes to the membership of the management body

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-changes-to-management-body-members.docx>



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## FCA MDP on-boarding application form

The form can be found at this address: [https://www.fca.org.uk/publication/forms/mdp\\_on-boarding\\_application\\_form.doc](https://www.fca.org.uk/publication/forms/mdp_on-boarding_application_form.doc)



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## Yearly Notification Form for a Data Reporting Service Provider (DRSP)

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-yearly-notification-form.docx>





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## **Data Reporting Services Provider (DRSP) Ad hoc notification**

The form can be found at this address: <https://www.fca.org.uk/publication/forms/drsp-ad-hoc-change-notification.docx>



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## MIS confidentiality agreement

[*Editor's note:* The form can be found at this address: <https://www.fca.org.uk/publication/forms/mis-confidentiality-agreement.docx>]



# Chapter 10

## Commodity derivative position limits and controls, and position reporting

## 10.1 Application

### Introduction

10.1.1

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- (1) The purpose of this chapter is to implement articles 57 and 58 of *MiFID* by setting out the necessary directions, *rules* and *guidance*.
- (2) In particular, this chapter sets out the *FCA's* requirements in respect of provisions derived from:
  - (a) articles 57(1) and 57(6) of *MiFID*, which require it to establish limits, on the basis of a methodology determined by *ESMA*, on the size of a net position which a *person* can hold, together with those held on the *person's* behalf at an aggregate group level, at all times, in *commodity derivatives* traded on *trading venues* and *economically equivalent OTC contracts* to those *commodity derivatives*;
  - [**Note:** articles 3 and 4 of *MiFID RTS 21*]
  - (b) article 57(8) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* to apply position management controls;
  - (c) article 58(1) of *MiFID*, which requires *MiFID investment firms* and *market operators* operating a *trading venue* which trades *commodity derivatives* or *emission allowances* to provide the *competent authority* with reports in respect of such positions held; and
  - (d) article 58(2) of *MiFID*, which requires *investment firms* trading in *commodity derivatives* or *emission allowances* outside a *trading venue* to provide the *competent authority* with reports containing a complete breakdown of their positions held through such contracts traded on a *trading venue* and *economically equivalent OTC contracts*, as well as of those of their *clients* and the clients of those clients until the end client is reached.
- (3) The position limit requirements apply to both *authorised persons* and *unauthorised persons*. As such, the *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This framework is set out in:
  - (a) Part 3 of the *MiFI Regulations* ('Position limits and position management controls in commodity derivatives'); and
  - (b) Schedule 1 to the *MiFI Regulations* ('Administration and enforcement of Part 3, 4 and 5'), which provides for the administration and enforcement of position limits established by

the *FCA*, and of the reporting of positions in *commodity derivatives, emission allowances and economically equivalent OTC contracts*.

This chapter complements and adds to the regulatory framework in the *MiFI Regulations* by establishing the applicable position limits.

## Scope and territoriality

10.1.2

G

- (1) The scope of this chapter is as follows: In respect of position limit requirements in ■ MAR 10.2, a *commodity derivative* position limit established by the *FCA* in accordance with ■ MAR 10.2.2D(1) applies regardless of the location of the *person* at the time of entering into the position and the location of execution.

[Note: article 57(14)(a) of *MiFID*]

- (2) In respect of position management controls requirements:
  - (a) the requirements contained or referred to in ■ MAR 10.3 apply to *persons* operating a *trading venue* which trades *commodity derivatives* in respect of which the *FCA* is the *competent authority*; and
  - (b) in the case of a *UK branch* of a *third country investment firm* operating an *MTF* or *OTF*, ■ MAR 10.3 applies in the same way as it does to a *UK firm* operating a *multilateral trading facility* or an *OTF*.
- (3) In respect of position reporting requirements:
  - (a) the position reporting requirements in ■ MAR 10.4 apply to:
    - (i) a *regulated market*; and
    - (ii) a *UK firm* or a *UK branch* of a *third country investment firm* operating a *multilateral trading facility* or an *OTF*, when operating a *trading venue* which trades *commodity derivatives* or *emission allowances*; and
  - (b) the position reporting requirements in ■ MAR 10.4 apply to an *investment firm* regardless of its location at the time of entering into the position and the location of execution.

## Structure

10.1.3

G

This chapter is structured as follows:

- (1) ■ MAR 10.1 sets out an introduction to ■ MAR 10, a description of the application of ■ MAR 10 to different categories of *person*, an explanation of the approach taken to the *UK* transposition of articles 57 and 58 of *MiFID*, the scope and territoriality of this chapter, and the structure of this chapter.
- (2) ■ MAR 10.2 sets out the position limit requirements.
- (3) ■ MAR 10.3 sets out the position management controls requirements.
- (4) ■ MAR 10.4 sets out the position reporting requirements.

- (5) ■ MAR 10.5 sets out other reporting, notification and information requirements.



## 10.2 Position limit requirements

### Establishing, applying and resetting position limits

10.2.1

G

- (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
  - (a) Regulation 16(1) imposes an obligation on the *FCA* to establish position limits in respect of *commodity derivatives* traded on *trading venues* in the *United Kingdom* and *economically equivalent OTC contracts*;
  - (b) Regulation 16(2) imposes an obligation on the *FCA* to establish position limits on the basis of all positions held by a *person* in the contract to which the limit relates and those held on the *person's* behalf at an aggregate group level;
  - (c) Regulation 16(4) imposes an obligation on the *FCA* to publish the position limits it establishes in a manner which the *FCA* considers appropriate;
  - (d) Regulation 18 imposes an obligation on the *FCA* to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a *commodity derivative* that a *person* can hold;
  - (e) Regulation 19(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA's* methodology, unless an exceptional case exists under Regulation 25 of the *MiFI Regulations*;
  - (f) Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
  - (g) Regulation 19(3) imposes an obligation on the *FCA* to establish a new position limit following its review if it believes that the limit should be reset;
  - (h) [deleted]
  - (i) [deleted]
  - (j) Regulation 23 imposes general obligations on the *FCA* in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to *persons*, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading;
  - (k) Regulation 25(1) prohibits the *FCA* from establishing position limits which are more restrictive than permitted under *MiFID RTS 21* unless in exceptional cases where more restrictive position limits are objectively justified and proportionate;

(l) Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *MiFID RTS 21* in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, and not apply that position limit for more than six *months* from the date of publication unless further subsequent six-*month* application periods for that limit are objectively justified and proportionate; and

(m) [deleted]

(n) Regulation 27 empowers the *FCA* to require a *person* to provide information on, or concerning, a position the *person* holds, or trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates.

(2) *MiFID RTS 21* provides a methodology for the calculation of position limits on *commodity derivatives*, and rules for the calculation of the net position held by a *person* in a *commodity derivative*.

(a) *MiFID RTS 21* provides that the *FCA* can establish different position limits for different times within the spot month period or other months' period of a *commodity derivative*, and for the spot month period, those position limits shall decrease towards the maturity of the *commodity derivative*, and shall take into account the position management controls of *trading venues*.

[Note: article 57 of *MiFID*]

**Application of position limits**

10.2.2

D

(1) A *person* must comply at all times with *commodity derivative* position limits established by the *FCA*, published at [www.fca.org.uk](http://www.fca.org.uk).

(2) A direction made under (1) applies where a *commodity derivative* is traded on a *trading venue* in the *United Kingdom*.

(3) Position limits established under (1) shall apply to the positions held by a *person* together with those held on its behalf at an aggregate

group level (subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*).

- (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.
- (5) Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.

[Note: articles 57(1) and 57(14) of *MiFID*; and *MiFID RTS 21* in respect of *ESMA's* methodology for *competent authorities* to calculate position limits]

**Non-financial entity exemption**

10.2.3

G

- (1) Regulation 17 of the *MiFI Regulations* regulates the position limit exemption applicable to positions in a *commodity derivative* held by or on behalf of a *non-financial entity* which are objectively measurable as reducing risks directly relating to the commercial activity of that *non-financial entity*, and which is approved by the *FCA* in accordance with the relevant criteria and procedures. Regulation 17(1) imposes an obligation on the *FCA* to disregard such positions, when calculating the position held by such entities in respect of a *commodity derivative* to which a position limit applies.
- (2) Regulation 17(2) of the *MiFI Regulations* enables the *FCA* to receive applications from *non-financial entities* for the purposes of obtaining an exemption from the position limits which it sets and in such form as the *FCA* may direct.
- (3) *MiFID RTS 21* stipulates detail on positions qualifying as reducing risks directly related to commercial activities, and the application for the exemption from position limits.
- (4) *MiFID RTS 21* clarifies that a *non-financial entity* shall notify the *FCA* if there is a significant change to the nature or value of that *non-financial entity's* commercial activities, or its trading activities in *commodity derivatives*. The obligation arises where the change is relevant to the description of the nature and value of the *non-financial entity's* trading and positions held in *commodity derivatives* and their *economically equivalent OTC contracts* in a position limit exemption application it has already submitted. In this case, a *non-financial entity* must submit a new application if it intends to continue to make use of the exemption.

[Note: article 57(1) of *MiFID*]

**Non-financial entity exemption application**

10.2.4

D

A *non-financial entity* must complete the application form in ■ MAR 10 Annex 1D for approval to be exempt from compliance with position limits established by the *FCA* in accordance with ■ MAR 10.2.2D(1).

10.2.5

G

[deleted]

**10.3 Position management controls**

**Application**

**10.3.1** **G** The application of this section is set out in the following table:

Type of firm	Applicable provisions
a UK market operator operating a trading venue	MAR 10.3.2G and MAR 10.3.4G
a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF	MAR 10.3.3R to MAR 10.3.5G

**Position management controls applicable to UK market operators operating a trading venue**

**10.3.2** **G** A UK market operator operating a trading venue which trades commodity derivatives must apply position management controls on that trading venue, in accordance with paragraph 7BA of the Schedule to the Recognition Requirements Regulations, as inserted by the MiFI Regulations.

[Note: article 57(8) to 57(10) of MiFID]

**Position management controls applicable to UK firms and UK branches of third country investment firms operating an MTF or OTF**

**10.3.3** **R** This rule applies to a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.

A firm must apply position management controls which enable an MTF or OTF at least to:

- monitor the open interest positions of persons;
- access information, including all relevant documentation, from persons about:
  - the size and purpose of a position or exposure entered into;
  - any beneficial or underlying owners;
  - any concert arrangements; and
  - any related assets or liabilities in the underlying market;

require a *person* to terminate or reduce a position on a temporary or permanent basis and unilaterally to take appropriate action to ensure the termination or reduction if the *person* does not comply; and

require a *person* to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large and dominant position.

The position management controls in paragraph (2) must take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading and must:

be transparent;

be non-discriminatory; and

specify how the controls apply to *persons*.

A *firm* must inform the *FCA* of the details of the position management controls in relation to each *MTF* or *OTF* it operates which trades *commodity derivatives*.

[Note: article 57(8) to 57(10) of *MiFID*]

**Supervision of position management controls**

10.3.4

G

An operator of a *trading venue* referred to in ■ MAR 10.3.1G may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of compliance with its position management controls obligations.

**Position management controls: Procedure for informing the FCA**

10.3.5

G

A *firm* must comply with the obligation in ■ MAR 10.3.3R(4) by completing the form available at [www.fca.org.uk](http://www.fca.org.uk).

**10.4 Position reporting**

**Application**

**10.4.1** **G** The application of this section is set out in the following table:

Type of firm	Applicable provisions
<i>Regulated market</i>	MAR 10.4.2G
<i>UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF</i>	MAR 10.4.3R to MAR 10.4.6G
<i>MiFID investment firm</i>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
<i>UK branch of a third country investment firm when not operating a multilateral trading facility or an OTF</i>	MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G
<i>Member, participant or a client of a UK trading venue</i>	MAR 10.4.7D

**Position reporting by UK regulated markets**

**10.4.2** **G** A regulated market which trades commodity derivatives or emission allowances must provide position reports in accordance with paragraph 7BB of the Schedule to the *Recognition Requirements Regulations*, as inserted by the *MiFI Regulations*.

[Note: article 58(1) of *MiFID*]

**Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: Reports**

- 10.4.3** **R**
- (1) This rule applies to a UK firm operating a multilateral trading facility or an OTF and a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.
  - (2) A firm must make public and provide to the FCA a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives or emission allowances traded on the trading venue, where those instruments meet the criteria of article 83 of the *MiFID Org Regulation*, specifying:
    - (a) the number of long and short positions held by such categories;
    - (b) changes in those positions since the previous report;

- (c) the percentage of the total open interest represented by each category; and
  - (d) the number of *persons* holding a position in each category, as specified in ■ MAR 10.4.4R.
- (3) The *firm* must provide the *FCA* with a complete breakdown of the positions held by all *persons*, including the members or participants and *clients*, as well as those of their clients until the end client is reached, on the *trading venue* on a daily basis.
- (4) For the weekly report mentioned in (2) above, the *firm* must differentiate between:
- (a) positions which in an objectively measurable way reduce risks directly relating to commercial activities; and
  - (b) other positions.
- [Note: article 58(1) of *MiFID*, *MiFID ITS 4* on position reporting and *MiFID ITS 5* on the format and timing of weekly position reports]

**Position reporting by UK firms and UK branches of third country investment firms operating an MTF or OTF: classification of persons holding positions in commodity derivatives or emission allowances**

10.4.4

**R**

A *firm* must classify *persons* holding positions in *commodity derivatives* or *emission allowances* according to the nature of their main business, taking account of any applicable authorisation or registration, as:

- (1) *investment firms* or *credit institutions*; or
- (2) investment funds, either as a *UCITS*, or an *AIF* or an *AIFM*; or
- (3) other financial institutions, including:
  - (a) insurance undertakings and reinsurance undertakings as defined in the *Solvency II Directive*; and
  - (b) institutions for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement; or
- (4) commercial undertakings; or
- (5) in the case of *emission allowances*, operators with compliance obligations under the *Emission Allowance Trading Directive* or the *trading scheme order 2020*.

[Note: article 58(4) of *MiFID*]

**Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Procedure for reporting to the FCA**

10.4.5

**D**

- (1) This direction applies to:
  - (a) a *UK firm operating a multilateral trading facility* or an *OTF*; and



- (b) a UK branch of a third country investment firm operating a multilateral trading facility or an OTF.
  - (2) A firm shall report to the FCA:
    - (a) (where it meets the minimum threshold as specified in article 83 of the *MiFID Org Regulation*) the weekly report referred to in ■ MAR 10.4.3R(2), by using the form set out in Annex I of *MiFID ITS 4*, and publish it on its website; and
    - (b) in respect of the daily report referred to in ■ MAR 10.4.3R(3):
      - (i) by using the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>; and
      - (ii) in each case, the report must be provided to the FCA by 21:00 GMT the following *business day*.
- [Note: *MiFID ITS 4* on position reporting]

**Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting**

- 10.4.6 G For the purposes of making the weekly report referred to under ■ MAR 10.4.3R(2), the FCA will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the FCA at [COT\\_reports@fca.org.uk](mailto:COT_reports@fca.org.uk).

**Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting**

- 10.4.7 D
- (1) This direction applies to a member, participant or a *client* of a *trading venue*.
  - (2) A *person* in (1) must report to the relevant operator of a *trading venue* the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.
  - (3) [deleted]

[Note: article 58(3) of *MiFID*]

**MiFID investment firms and UK branches of third country investment firms: OTC reporting to the FCA**

- 10.4.8 D
- (1) This direction applies to:
    - (a) a *MiFID investment firm*; and
    - (b) a *UK branch of a third country investment firm*.
  - (2) An *investment firm* in (1) trading in a *commodity derivative* or *emission allowance* outside a *trading venue* must, where the FCA is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, provide the FCA with a report containing a complete breakdown of:
    - (a) their positions taken in those *commodity derivatives* or *emission allowances* traded on a *trading venue*;
    - (b) *economically equivalent OTC contracts*; and



(c) the positions of their *clients* and the clients of those clients until the end client is reached, in accordance with article 26 of *MiFIR*.

(3) The report in (2) must be submitted to the *FCA*, for each *business day*, by 21:00 GMT the following *business day*, using the form set out in Annex II of *MiFID ITS 4* available at <https://www.fca.org.uk/markets/mifid-ii/commodity-derivatives>.

(4) The obligation in (2) does not apply where there is a *central competent authority* for the *commodity derivative* other than the *FCA*.

[Note: 58(2) of *MiFID*, and *MiFID ITS 4* on position reporting]

10.4.9 **D** [deleted]

**EEA MiFID investment firms who are members, participants or clients of UK trading venues: trading venue participant reporting and OTC reporting to the FCA**

10.4.10 **D** [deleted]

10.4.11 **G**

(1) This *guidance* applies to *persons* subject to ■ MAR 10.4.8D(2).

(2) A *firm* subject to ■ MAR 10.4.8D(2) may use a third party technology provider to submit to the *FCA* the report referred to in ■ MAR 10.4.8 D(2) provided that it does so in a manner consistent with *MiFID*. It will retain responsibility for the completeness, accuracy and timely submission of the report and should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification. It should be the applicant for, and should complete and sign, the *FCA MDP onboarding application form*.

(3) ■ MAR 10.4.11.G(2) applies to a *trading venue* subject to ■ MAR 10.4.

(4) A *firm* subject to ■ MAR 10.4.8D(2) may arrange for the *trading venue* where that *commodity derivative* or *emission allowance* is traded to provide the *FCA* with the report provided that it does so in a manner consistent with *MiFID*. The *firm* will retain responsibility for the completeness, accuracy and timely submission of the report, submitted on its behalf. The *firm* should populate field 5 of *MiFID ITS 4* Annex II with its own reporting entity identification.



## 10.5 Other reporting, notifications and information requirements

### Information requirement

- 10.5.1 **G** Regulation 27 of the *MiFI Regulations* provides the *FCA* with the power to:
- (1) require a *person* to provide information including all relevant documentation, on, or concerning:
    - (a) a position the *person* holds in a contract to which a position limit relates; and
    - (b) trades the *person* has undertaken, or intends to undertake, in a contract to which a position limit relates; and
  - (2) require an operator of a *trading venue* to provide information including all relevant documentation on, or concerning, trades a *person* has undertaken, or intends to undertake in a contract to which a position limit relates.

[Note: article 69(2)(j) of *MiFID*]

### Power to intervene

- 10.5.2 **G** The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:
- (1) Regulation 28 provides that the *FCA* may, if it considers necessary, limit the ability of any *person* to enter into a contract for a *commodity derivative*, restrict the size of positions a *person* may hold in such a contract, or require any *person* to reduce the size of a position held, notwithstanding that the restriction or reduction would be more restrictive than the position limit established by the *FCA* in accordance with article 57 of *MiFID* to which the contract relates; and
  - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.

[Note: article 69(2)(o) and 69(2)(p) of *MiFID*]

**Reporting requirements**

- 10.5.3 **G** The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to impose reporting requirements in respect of positions taken in *commodity derivatives* and *emission allowances*:
- (1) Paragraph 8 of Schedule 1 provides that a *person* must provide the *FCA* with information in respect of its compliance or non-compliance with position limit requirements, as the *FCA* may direct; and
  - (2) Paragraph 5 of Schedule 1 provides that the *FCA* must maintain arrangements designed to enable it to determine whether *persons* on whom the *FCA* imposes position limit requirements are complying with those requirements, and also maintain arrangements for enforcing the position limits requirements on such *persons*.
- [Note: article 69(2)(j) of *MiFID*]

**Breaches of MAR 10 by unauthorised persons**

- 10.5.4 **D**
- (1) An *unauthorised person* to which this chapter applies must notify the *FCA* of:
    - (a) a breach of a direction in this chapter;
    - (b) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
    - (c) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.
  - (2) Notifications under (1) must be made immediately if the *person* becomes aware, or has information which reasonably suggests, that any of the breaches referred to in (1) have occurred, may have occurred or may occur in the foreseeable future.

**Notifications by unauthorised persons: non-financial entity exemption applications**

- 10.5.5 **G** ■ SUP 15.3.13G and ■ SUP 15.3.14G apply to notifications of an application by an *unauthorised person* for the *non-financial entity* exemption under regulation 17 of the *MiFI Regulations* as if the *person* is a *firm* to which ■ SUP 15.3.11R applies.

**Breaches of MAR 10 by authorised persons**

- 10.5.6 **G** *Firms* should refer to ■ SUP 15.3 (General notification requirements) generally, and in particular ■ SUP 15.3.11R, in respect of the following:
- (1) a breach of a *rule* or *direction* in this chapter;
  - (2) a breach of a directly applicable provision imposed by *MiFIR* or any *onshored regulation* adopted under *MiFID* or *MiFIR*; and
  - (3) a breach of any requirement imposed by or under the *MiFI Regulations* which relates to this chapter.

**Territoriality**

- 10.5.7 **G** The powers of the *FCA* referred to in ■ MAR 10.5.1G to ■ MAR 10.5.3G can be applied to a *person* regardless of whether the *person* is situated or operating in the *UK* or abroad, where the relevant position relates to a *commodity derivative* or *emission allowance* for which the *FCA* is responsible for setting a position limit, or *economically equivalent OTC contracts*.

**Decision and appeal procedures**

- 10.5.8 **G** The power of the *FCA* referred to in ■ MAR 10.5.2G is exercisable subject to the decision-making procedures in ■ DEPP 2 Annex 2G (Supervisory notices) (and other provisions in *DEPP*, as appropriate).

**Application form for a non-financial entity for an exemption from  
compliance with position limits**

*[Editor's Note: To follow]*



## Market conduct

### MAR TP 1 Transitional Provisions

*GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

#### 1) Transitional Provisions for MAR 1 (Market abuse) (known previously as the Code of Market Conduct)

There are no transitional provisions for MAR 1 (Market Abuse).

#### 2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)

[deleted]

#### 3) Transitional provisions for MAR 6 (systematic internaliser reporting requirements)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	MAR 2	R	Expired		
2	MAR 6	R	Expired		
3	MAR 8.3		This section as it was in force on 28 June 2018 continues to apply to a <i>benchmark administrator</i> in relation to a <i>specified benchmark</i> until that administrator becomes authorised or registered under the <i>benchmark regulation</i> , or ceases to be authorised for <i>administering a specified benchmark</i> .	From 29 June 2018	Already in force
4	MAR 8.4.2	R	This <i>rule</i> only applies to a <i>benchmark contributor</i> from the point at which the administrator of the <i>benchmark</i> to which it contributes becomes authorised or registered under the <i>benchmarks regulation</i> .	From 29 June 2018	29 June 2018
6	MAR 8.6.2	R	This <i>rule</i> only applies to a <i>benchmark contributor</i> from the point at which the administrator of the <i>benchmark</i> to which it contributes becomes authorised or registered under the <i>benchmarks regulation</i> .	From 29 June 2018	29 June 2018





## Market conduct

### Schedule 1 Record keeping requirements

#### Sch 1.1 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MAR 7A.3.8R	Algorithmic and high-frequency <i>algorithmic trading</i>	Records necessary to meet MAR 7A.3.7R, and high-frequency <i>algorithmic trading</i> records and quotes	On initiation of algorithmic and high-frequency <i>algorithmic trading</i> strategies	5 years, or as otherwise provided for high-frequency <i>algorithmic trading</i> records and quotes in <i>MiFID RTS 6</i>
MAR 7A.4.6R	<i>Direct electronic access providers' systems and controls</i>	Records necessary to meet MAR 7A.4.2R and MAR 7A.4.5R	On initiation of <i>direct electronic access</i> provision	5 years
MAR 8.2.10 R	<i>Benchmark submissions</i>	Information in MAR 8.2.10 R and MAR 8.2.11 G	When making a <i>benchmark submission</i>	5 years
MAR 8.3.12A R	<i>Benchmark submissions</i>	Information in MAR 8.3.12A R and MAR 8.3.12B G	When using a <i>benchmark submission</i> to determine a <i>specified benchmark</i>	5 years



## Market conduct

### Schedule 2 Notification requirements

#### Sch 2.1 G

This schedule outlines the notification requirements detailed in *MAR* where notifications should be provided to the *FCA*.

#### Sch 2.2 G

Notification requirements

Handbook Reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
MAR 5.3A.3R(4)	Market making agreements	Content of market making agreements	Upon formation of a binding written agreement	Without delay
MAR 5.3A.8R	Trading halts on material markets	Information that trading is halted in a <i>financial instrument</i>	Upon trading halt	Without delay
MAR 5.6.1R(1)	Non-compliant, disorderly or abusive trading	Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve <i>market abuse</i>	Upon occurrence of the breach, conditions or conduct	Without delay
MAR 5.6A.1R(3)	Suspension and removal of <i>financial instruments</i>	Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i>	Upon suspension or removal	Without delay
MAR 5A.5.3R(4)	Market making agreements	Content of market making agreements	Upon formation of a binding written agreement	
MAR 5A.5.8R	Trading halts on material markets	Information that trading is halted in a <i>financial instrument</i>	Upon trading halt	Without delay

Handbook Reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
MAR 5A.8.1R(1)	Non-compliant, disorderly or abusive trading	Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve <i>market abuse</i>	Upon occurrence of the breach, conditions or conduct	Without delay
MAR 5A.9.1R(3)	Suspension and removal of <i>financial instruments</i>	Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i>	Upon suspension or removal	Without delay
MAR 6.4.1R	<i>Systematic internaliser</i> status	Information of gaining or ceasing <i>systematic internaliser</i> status	Upon becoming or ceasing to be a <i>systematic internaliser</i>	Without delay
MAR 7A.3.6R	Engaging in <i>algorithmic trading</i>	Information that a member of a <i>trading venue</i> is engaging in <i>algorithmic trading</i>	Upon engagement in <i>algorithmic trading</i>	Without delay
MAR 7A.4.4R	Provision of <i>DEA</i> services	Information that a <i>firm</i> is providing <i>DEA</i> services	Upon engagement in <i>DEA</i> provision	Without delay
MAR 5.6.2R(1)	Proposal to change fee incentive scheme	Summary of proposal in the form set out in Annex 1	Proposal communicated to members	Without delay
MAR 5.6.2R(2)	Change to fee incentive scheme	Summary of change	Change published or notified to members	Without delay
MAR 8.3.17 R	Reasonable possibility of not being able to hold sufficient financial resources	Full details together with relevant financial information	Occurrence	As soon as practicable
MAR 9.2B.5 (3)	Any planned significant changes to IT systems	Summary of changes	Decision to make the planned change	Without delay
MAR 9.2B.6(4)	Breaches of the physical and electronic security measures referred to in MAR 9.2B.6 R(1) to MAR 9.2B.6 R(3)	Full details of the breach, including an incident report, indicating the nature of the incident, the measures adopted to cope with the incident and the initi	Occurrence	Without delay

Handbook Reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
MAR 9.2B.10R(8)	Errors or omissions in <i>transaction reports</i>	Summary of the error or omission	Occurrence	Without delay
MAR 9.3.10R(2)	Non-compliance with any <i>rule</i> in MAR 9 or other regulatory obligation	Reasons for non-compliance	Occurrence	As soon as reasonably practicable



## Market conduct

### Schedule 3 Fees and other required payments

#### Sch 3.1 G

There are no requirements for fees or other payments in *MAR*.





## Market conduct

### Schedule 4 Powers Exercised

**Sch 4.1 G**  
[deleted]

**Sch 4.2 G**  
[deleted]



## Market conduct

### Schedule 5 Rights of action for damages

#### Sch 5.1 G

1. The table below sets out the *rules* in *MAR* contravention of which by an *authorised person* may be actionable under section 138D of the *Act* (Actions for damages) by a *person* who suffers loss as a result of the contravention.
2. If a "yes" appears in the column headed "For private person?", the *rule* may be actionable by a "*private person*" under section 138D unless a "yes" appears in the column headed "Removed". A "yes" in the column headed "Removed" indicates that the *FCA* has removed the right of action under section 138D(3) of the *Act*. If so, a reference to the *rule* in which it is removed is also given.
3. In accordance with the Financial Services and Markets Act 2000 (Rights of Action) Regulations 2001 (SI 2001/2256), a "*private person*" is:
  - i. any individual, except when acting in the course of carrying on a *regulated activity*; and
  - ii. any *person* who is not an individual, except when acting in the course of carrying on business of any kind; but does not include a government, a local authority or an international organisation.
4. The column headed "For other person?" indicates whether the rule is actionable by a *person* other than a *private person*, in accordance with those Regulations. If so, an indication of the type of *person* by whom the *rule* is actionable is given.

#### Sch 5.2 G

Chapter / Appendix	Section / Annex	Paragraph	For Private Person?	Removed	For other person?
MAR 1 (no rules)					
All <i>rules</i> in MAR 3 except MAR 3.5.7 E			Yes	Yes MAR 3.1.5 R	No
MAR 4 (all <i>rules</i> )			Yes	No	No



## Market conduct

### Schedule 6 Rules that can be waived

#### Sch 6.1 G

As a result of section 138A of the *Act* (Modification or waiver of rules) the *FCA* has power to waive all its *rules*, other than *rules* made under section 137O (Threshold condition code), section 247 (Trust scheme rules), section 248 (Scheme particular rules), section 261I (Contractual scheme rules) or section 261J (Contractual scheme particulars rules) of the *Act*.

