

Chapter 1

Onshoring for Trading Venues & Data Reporting Service Providers

1.1 Background

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This guide sets out an overview of the FCA’s approach to onshoring of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks. . “Onshoring”, for these purposes, refers to the process by which law deriving from EU legislation at IP completion day is retained or adapted, post IP completion day. This guide focuses on the regulatory regime in MiFID 2 for UK trading venues (as defined by 2(16A) MiFIR: this term comprises UK regulated markets, multilateral trading facilities and organised trading facilities but not systematic internalisers) and UK data reporting services providers (DRSPs)).
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MiFID 2 enables the Commission to make secondary legislation in several places. That legislation takes the form of a combination of delegated acts (for example as provided for in article 4(2) MIFID to specify elements of the definitions), regulatory technical standards (RTS) and implementing technical standards (ITS). Delegated acts under MiFID 2 are both drafted and made by the Commission, after it receives advice from the European Securities and Markets Authority (ESMA), and may take the form of either directives or directly applicable regulations. As for RTS and ITS, these are prepared in draft by ESMA and subject to public consultation, before endorsement and making by the Commission; both take the form of regulations and so are directly applicable. RTS and ITS feature, in particular, in the MiFID 2 provisions relating to trading venues and DRSPs. After IP completion day, in the United Kingdom, in broad terms, the former role of the Commission is discharged by the Treasury and ESMA’s functions are performed by the FCA. For further details, see the Financial Regulators’ Powers (Technical Standards etc.) (Amendment etc.) (EU Exit) Regulations 2018.
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You can be subject to a MiFID derived or MiFIR requirement, even if you are not an authorised financial institution. regulation 30 of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation (‘EMIR’) (Regulation 648/2012/EU. See our EMIR webpage (<https://www.fca.org.uk/markets/emir>) for further details about non-financial counterparties and the clearing threshold) to comply with the obligations in

Title V MiFIR. This means trading certain classes of derivatives on organised venues only, UK regulated markets, UK multilateral trading facilities (MTFs), UK organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR). EEA venues are treated as third country venues for these purposes.

1.1 A Transitional onshoring provisions




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G Each of these pieces of legislation is subject to the power in section 8 of the European Union (Withdrawal) Act 2018 to deal with deficiencies arising out of the United Kingdom’s withdrawal from the EU. The Treasury has exercised this power in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the ‘Exit Regulations’) to amend each of the following:

- MiFIR;
- MiFID Org Regulation;
- MiFIR Delegated Regulation;
- Data Reporting Services Regulations; and
- The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017.

A reference to any of the above in the remaining text of this guide is to the legislation as amended by the Exit Regulations.

1.2 MiFID onshoring in UK legislation and the FCA Handbook

- 1.2.1  The UK's onshoring of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.
- 1.2.2  The Treasury legislation is set out in the following statutory instruments as amended by the Exit Regulations:
- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ('MiFI regulations'), SI 2017/701
 - The Data Reporting Services Regulations 2017 ('DRS regulations'), SI 2017/699
 - Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ('RAO'), SI 2001/544
 - **The MiFI regulations amend** Part XVIII FSMA and the Recognition Requirements Regulations ('RRR') applying to recognised investment exchanges. This includes implementing the regulatory regimes relating to a market operator operating an organised trading facility and data reporting services, as well as obligations in regard to the management body and systems and controls. It also includes applying algorithmic trading requirements in relation to unauthorised entities and position management requirements for trading venues on which commodity derivatives are traded.
 - **The DRS regulations create** a self-standing regime for data reporting services providers including authorisation, operating conditions, reporting and enforcement.
 - **The RAO reflects** scope changes arising out of MiFID, notably the new investment service of operating an organised trading facility and the extension of "financial instruments" to include emission allowances. The onshoring amendments to Part 1 of Schedule 2 to the RAO essentially preserve the pre-IP completion day scope of regulation relating to physically-settled power forward contracts.
- 1.2.3  The FCA Handbook complements the Treasury legislation, referred to above, so for example:

●REC contains, in REC 2, extracts of the RRRs and 'Notes' signposting technical standards which are relevant to recognised investment exchanges' compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6).

●REC 3, which contains FCA rules requiring certain notifications to be made by RIEs to the FCA, also includes 'Notes' signposting notification requirements set out in the RRRs or technical standards.

●MAR 5 applies the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It also aligns further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The chapter contains guidance on the ability to register an MTF as an SME Growth Market.

●MAR 5A imposes a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in bonds, structured finance products, emission allowances or derivatives. Restrictions on proprietary and matched principal trading applicable to MTFs and regulated markets are more relaxed for OTFs. In other respects, however, the regulation of these venues aligns with that for MTFs, and also, therefore, substantially with that for regulated markets.

●MAR 6 relates to systematic internalisers and the article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues). This requirement has been preserved as part of onshoring as a rule (see MAR 6.3A).

●MAR 7A corresponds to article 17 of the recast MiFID. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are also subject to rules of a similar nature.

●MAR 9 provides directions and guidance applicable to the operation of the data reporting services regime, set out in the DRS regulations.

●MAR 10 comprises requirements and guidance relating to the setting of position limits in respect of commodity derivatives traded on trading venues, position management obligations relating to the venues themselves and position reporting by trading venues and investment firms.

- 1.2.4 G More generally, where requirements in MiFID correspond to FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: -
- 5A.3.5 R A firm must not engage in:
- 5A.3.5R (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*, where the client has consented; or
- 5A.3.5R (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*]
- 1.2.5 G The scope of MIFID is the subject of guidance in PERG 2 and 13.

1.3 Markets in Financial Instruments
Regulation (‘MiFIR’)

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- MiFIR as onshored provides for delegated acts and technical standards on amongst other things:
 - price transparency for equity and derivative instruments, see REC 2, MAR 5 and MAR 5A;
 - straight-through processing of clearing for derivative instruments, see REC 2, MAR 5 and MAR 5A; and
 - transaction reporting, see SUP 17A.



1.4 Technical standards and delegated acts

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Technical standards, submitted by ESMA. These technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature.
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Where an FCA rule is amplified by a technical standard, the source is referred to below the relevant provision, for example, in MAR 5A.5.10

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

[Note: article 48(8) of MiFID and MiFID RTS 10]
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We have not copied out the onshored technical standards into the Handbook, but instead adopted the signposting convention illustrated above.
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In addition to enabling the FCA and PRA to make technical standards, the Exit Regulations also onshore delegated acts prepared by the Commission, itself, in the form of regulations (see, for example, references to the MiFID Org Regulation (Commission Delegated Regulation (EU) 2017/565) and the MiFIR Delegated Regulation (EU) 2017/567).

1.5 ESMA Guidelines

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- ESMA guidelines are subject to the ‘comply or explain’ process in article 16 Regulation 1095/2010 (establishing ESMA) and are addressed to competent authorities or, as the case may be, market participants. Under article 16(3) Regulation 1095/2010 (establishing ESMA) competent authorities and financial market participants must make every effort to comply with these.
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- As a general practice, when the FCA decided to comply with the guidelines issued by ESMA it signposted a reference to these by means of a note at the beginning of the relevant section of the Handbook. The FCA have issued non-handbook guidance setting out the FCA’s approach to ESMA guidelines after IP completion day. The guide can be found on the FCA website at [URL to be added].

1.6 Third country firms

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- G** MiFIR and the onshored regulations forming part of “retained EU law” (see M2G 1.1A.1G) apply to UK firms. For the UK branches of non-UK firms (third country firms), these regulations are not of general application and it is necessary to ensure that these branches do not receive more favourable treatment than their UK counterparts. GEN 2.2.22AR is included for this purpose.
- G** MiFIR, the MiFIR Delegated Regulation and the MiFID Org Regulation apply to EEA firms with temporary Part 4A permissions to the extent specified in the Exit Regulations. Technical standards deriving from MiFID apply to these firms to the extent provided for by GEN 2.2.29R.

1.7 Overview

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- The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements and the location of their implementation. The references to “technical standards” are to those described in the FCA Handbook Glossary.
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- In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.
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- SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refers to the relevant legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23. It further confirms that we will allow operators of trading venues and investment firms to use third party technology providers when supplying financial instrument reference data to the FCA.

MiFID and Market Infrastructure: An Overview

An overview of MiFID and Market Infrastructure:
MiFID and Market Infrastructure: An Overview

