

Chapter 1

Implementation For Trading Venues & Data Reporting Service Providers

1.1 Background

- 1.1.1** **G** This guide sets out an overview of the FCA's approach to transposition of the recast Markets in Financial Instruments Directive 2 (MiFID 2) in the MAR and REC sourcebooks, by explaining how they fit within the context of the overall implementation of the legislation at a UK and EU level. This guide focuses on the regulatory regime in MiFID 2 for trading venues (as defined by article 4(1)(24) MiFID 2: this term comprises regulated markets, multilateral trading facilities and organised trading facilities but not systematic internalisers) and data reporting services providers (DRSPs).
- 1.1.2** **G** MiFID 2 is made up of MiFID (2014/65/EU) and the Markets in Financial Instruments Regulation (MiFIR - 600/2014/EU). MiFID is addressed to all Member States and being a directive is binding as to the result to be achieved, albeit leaving the choice of form and methods of implementation to national authorities. The UK has implemented the directive through a combination of primary legislation, secondary legislation and regulatory rules. As an EU regulation, MiFIR is binding in its entirety and directly applicable, its content becomes law in the UK without the need for domestic legislative intervention.
- 1.1.3** **G** 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.
- 1.1.4** **G** You can be subject to a MiFID or MiFIR requirement, even if you are not an authorised financial institution. This is the effect of article 1 MiFID and article 1 of MiFIR. In the case of article 1 MiFID, this applies algorithmic trading requirements to certain persons exempt under MiFID, where they are members of a regulated market or multilateral trading facility (article 1(5) MiFID). Similarly, article 1 MiFIR requires non-financial counterparties above the clearing threshold in article 10 of the European Market Infrastructure Regulation ('EMIR') (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, regulated markets, multilateral trading facilities (MTFs), organised trading facilities (OTFs) and permitted third country venues (article 28 MiFIR).

1.2 MiFID implementation in UK legislation and the FCA Handbook

1.2.1 **G** The UK's implementation of the directive takes the form of a combination of legislation made by HM Treasury, in the form of a number of statutory instruments, and rules contained in the FCA Handbook and the PRA Rulebook.

1.2.2 **G** The Treasury legislation is set out in the following statutory instruments (links to statutory instruments relate to the instrument when made and users may need to update their searches of the relevant legislation):

- Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 ['MiFI regulations', SI 2017/701: <http://www.legislation.gov.uk/ukSI/2017/701/contents/made>

- The Data Reporting Services Regulations 2017 ('DRS regulations'), SI 2017/699: <http://www.legislation.gov.uk/ukSI/2017/699/made>

- Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 ('RAO Amendment Order'), SI 2017/488: <http://www.legislation.gov.uk/ukSI/2017/488/contents/made>

- **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 Financial Services and Markets Act 2000 (Qualifying EU Provisions) Order 2013, SI 2013/419 is updated by the MiFI regulations so that FCA supervisory and enforcement powers under FSMA may be applied in the event of breach of MiFIR and regulations made under MiFID and MiFIR.

- **The DRS regulations create** a self-standing regime for data reporting services providers including authorisation, operating conditions, reporting and enforcement.

- **The RAO Amendment Order imposes** scope changes arising out of MiFID, notably the new investment service of operating an organised trading facility and the extension of financial instruments to include emission allowances.

1.2.3

G The amendments to the FCA Handbook complement the Treasury legislation, referred to above, so for example:

●REC contains, in REC 2, extracts of the RRRs as amended by the MiFID regulations and 'Notes' signposting further directly applicable technical standards made under MiFID or MiFIR which are relevant to recognised investment exchanges' compliance with certain RRRs. These include having adequate systems and controls for algorithmic trading (see REC 2.5), and sufficient price transparency to ensure fair and orderly trading (see REC 2.6). Where REC 2 previously copied out EU legislation which has been repealed by MiFID or MiFIR, this has now been deleted and, where appropriate, replaced with a simple reference to the equivalent MiFID or MiFIR provision.

●REC 3, which contains existing FCA rules requiring certain notifications to be made by RIEs to the FCA, has been amended to include 'Notes' signposting further new notification requirements set out in the amended RRRs or directly applicable technical standards made under MiFID or MiFIR.

●MAR 5 is amended to apply the MiFID requirements on systems and controls for algorithmic trading to MTFs, including requirements in the areas of systems resilience, algorithmic market-making, tick sizes and clock synchronisation. It is also amended to align further the organisational requirements on MTFs with those for regulated markets, in the areas of conflicts of interest and risk management, and the management of technical operations. Rules on the suspension and removal of financial instruments also align with those for regulated markets. The rules concerning pre- and post-transparency are removed, given the directly applicable nature of these requirements imposed by MiFIR, while guidance on the ability to register an MTF as an SME Growth Market is new.

●MAR 5A introduces a regime for OTFs. OTFs are distinguished from MTFs and regulated markets by the requirement for discretionary order execution and by trading only being permitted on these venues in 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 is amended to remove areas relating to systematic internalisers that are now covered by directly applicable regulations – in particular, by Title III of MiFIR. The notification requirement for systematic internalisers remains, however, and the article 27(3) MiFID execution quality publication requirement (applying to systematic internalisers, amongst other execution venues) has been incorporated as a rule (see MAR 6.3A).

●MAR 7 concerning disclosure of over-the-counter trades conducted by systematic internalisers is deleted because this subject matter is now covered by Title III of MiFIR.

●MAR 7A transposes article 17 of the recast MiFID for authorised firms. It imposes systems and controls and notification requirements on firms engaging in algorithmic trading, as well as providing for

market making obligations where a firm engages in a high-frequency algorithmic trading technique. It also imposes systems and controls and notification requirements on firms providing direct electronic access services. The services of a general clearing member are now also subject to new rules, of a similar nature.

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

●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.

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More generally, where requirements in MiFID have been transposed in FCA rules, the source of the corresponding requirement is referred to below the relevant provision, for example MAR 5A.3.5: -

5A.3.5 R A firm 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]

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Amendments to the scope of MiFID are the subject of guidance in PERG 2 and 13.



1.3 Markets in Financial Instruments Regulation ('MiFIR')

- 1.3.1** **G** Although MiFIR is a separate piece of legislation, recital 7 of the recast MiFID notes 'both instruments should form the legal framework governing the requirements applicable to investment firms, regulated markets, data reporting services providers and third country firms providing investment services or activities in the Union. The Directive should therefore be read together with that Regulation'.
- 1.3.2** **G** As MiFIR is directly applicable, we have not copied out its content into the Handbook. This means that, for example, the previous Handbook material in REC 2 and MAR 5 relating to transparency requirements for recognised investment exchanges and MTFs under the existing MiFID have been deleted and the new MiFIR provisions referenced instead in the relevant sections of REC 2 and MAR 5.
- 1.3.3** **G** MiFIR also 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 MiFID 2 technical standards and delegated acts

- 1.4.1 **G** MiFID 2 also requires the Commission, in certain places, to adopt technical standards, submitted by ESMA. These technical standards, which take the form of regulatory technical standards or implementing technical standards, are, as their names suggest, technical in nature and according to articles 10 and 15 of the ESMA regulation (1095/2010/EU) (see <http://data.europa.eu/eli/reg/2010/1095/oj>) '... shall not imply strategic decisions or policy choices'.
- 1.4.2 **G** 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]
- 1.4.3 **G** Given their directly applicable nature and length, we have not copied out the technical standards into the Handbook, but instead adopted the signposting convention illustrated above.
- 1.4.4 **G** In addition to technical standards, MiFID II also contains 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

- 1.5.1** **G** In addition to being required to submit draft technical standards to the Commission, where required by MiFID and MIFIR, ESMA may be required to issue guidelines, for example, on the requirements for the management body of a market operator and a data reporting services provider.
- 1.5.2** **G** 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.
- 1.5.3** **G** As a general practice, when the FCA decides to comply with the guidelines issued by ESMA it will signpost a reference to these by means of a note at the beginning of the relevant section of the Handbook. Although the FCA is required to notify ESMA whether it will comply or intends to comply with the guidelines, with reasons for any non-compliance, financial market participants are not required to report to ESMA (for notification of regulatory breaches by firms to the FCA, see, generally, SUP 15).

1.6 Third country firms

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G MiFIR and the EU regulations made under MiFID 2 apply to EU firms and EEA firms (when adopted by the EEA states). For the UK branches of non-EEA firms (third country firms), these regulations are not of general application and it is necessary to ensure, via domestic measures, that these branches do not receive more favourable treatment than their EU counterparts (see Recital 109 of the recast MiFID). A new rule, GEN 2.2.22A R, is included for this purpose.



1.7 Overview

- 1.7.1** **G** The diagram in M2G 1 Annex 1 provides an overview of trading venue and DRSP requirements deriving from MiFID 2 and the location of their implementation. The references to technical standards are to those described in the FCA Handbook Glossary. The technical standards can be accessed from the Commission website.
- 1.7.2** **G** In addition to MAR and other requirements noted in the overview, firms operating an MTF or OTF will be subject to other MiFID requirements applying elsewhere in the Handbook, notably in SYSC, COBS and SUP 17A.
- 1.7.3** **G** SUP 17A sets out rules and guidance for transaction reporting and supply of reference data: it also cross-refers to the relevant EU legislation in articles 26 and 27 MiFIR and MiFID RTS 22 and 23 (see Glossary (MiFID 2) Instrument 2017 (FCA 2017/36) at https://www.handbook.fca.org.uk/instrument/2017/FCA_2017_36.pdf). 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:

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