

Chapter 1

Implementation For Trading Venues & Data Reporting Service Providers

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 MiFI 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.

1.2.4 **G** 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]

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