

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 specified in any Commission legislative text made pursuant to the *Market Abuse Regulation*, and any applicable guidelines made by *ESMA*.
- 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 other *EU* legislation made pursuant to the *Market Abuse Regulation* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other *EU* legislation made pursuant to the *Market Abuse Regulation* 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** **EU** [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 prescribed 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 *prescribed 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 *prescribed auction platform*; and
 - if it continues to have an effect once the *financial instruments* are offered for sale on a *prescribed 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 **EU** [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 EU [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 (1)** 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** **EU** [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

- 1.2.17 **G** [deleted]
[Note: article 7(1)(b) of the *Market Abuse Regulation*]
- 1.2.18 **UK** [deleted]
- 1.2.18A **EU** [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: the guidelines are available at [https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives.](https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives)]
- 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 EU [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 may be 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

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 *EU* or national 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:** the guidelines are available at <https://www.esma.europa.eu/document/mar-guidelines-commodity-derivatives>.]

1.4 Unlawful disclosure

1.4.1 **UK** [deleted]

1.4.1A **EU** [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

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 **EU** [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]

Examples of manipulating transactions

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 **EU** [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 **EU** [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 **EU** [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 a directly applicable *EU* regulation made under article 5 of the *Market Abuse 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):

<i>Takeover Code</i> provisions:	
Disclosure of information which is not generally available	1(a) 2.1 plus notes, 2.5, 2.6, 2.9 plus notes 8 19.7 20.1, 20.2, 20.3 28.4 37.3(b) and 37.4(a)
Standards of care	2.8 first sentence and note 4 19.1, 19.5 second sentence and note 2, 19.8 23 plus notes 28.1
Timing of announcements, documentation and dealings	2.2, 2.4(b) 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 30 31.6(c), 31.9 33 (in so far as it refers 31.6(c) and 31.9 only) 38.5
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]

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



2.3 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.

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).
 - (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) this chapter does not apply to:
 - (a) a *UCITS qualifier*; or
 - (b) an *incoming EEA firm* which has *permission* only for *cross border services* and which does not carry on *regulated activities* in the *United Kingdom*.

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) make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:
 - (a) at least on an annual basis; and
 - (b) without any charges; and

[Note: article 27(3) of *MiFID*]
- (6) provide the following to the *FCA*:
 - (a) a detailed description of the functioning of the *MTF*, including any links to or participation by a *regulated market*, an *MTF*, *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* in the *EEA*; and
- (2) trading is halted in that instrument.

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

Direct electronic access

5.3A.9 **R** A *firm* which permits *direct electronic access* to an *MTF* it operates must:

- (1) not permit members or participants of the *MTF* to provide such services unless they are:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) third country 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 article 2.1(a), (e), (i), or (j) of *MiFID* 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 R 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 article 49.3 or 49.4 of *MiFID*.

[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 any regulatory technical standards made under article 49.3 or 49.4 of *MiFID*.

[Note: article 49 of *MiFID*]

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

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

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

5.4.1

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]

5.4 Finalisation of 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** According to article 4(7) of *MiFIR*, waivers granted by *competent authorities* in accordance with articles 29(2) and 44(2) of Directive 2004/39/EC and articles 18, 19 and 20 of Regulation (EC) No 1287/2006 before 3 January 2018 shall be reviewed by *ESMA* by 3 January 2020. *ESMA* shall issue an opinion to the *competent authority*, assessing the continued compatibility of those waivers with the requirements established in *MiFIR* and any regulations made pursuant to it. The *FCA* will cooperate with *ESMA* in relation to the continued effect of existing waivers.

5.7.1C **D** A *firm* 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	G	[deleted]
5.7.7	EU	[deleted]
5.7.8	EU	[deleted]
5.7.9	EU	[deleted]
5.7.10	EU	[deleted]
5.7.11	EU	[deleted]
5.7.12	G	[deleted]

5

5.8

EU



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



5.9 Post-trade transparency requirements for shares [deleted]

5.9

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 Directive 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*]

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.doc>]

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?

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 article 27 of *MiFID*.

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

5A.3.3

G

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

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

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

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

Proprietary trading

5A.3.5 **R** A *firm* must not engage in:

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

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

5A.3.6 **R** 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. For *guidance* relating to the treatment of *matched principal trading* for the purposes of *IFPRU* prudential categorisation, see ■ PERG 13 Q61 and Q64.

Other MiFID obligations

5A.3.9 **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*]

Functioning of an OTF

5A.4.2

RA *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) make available data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments* to the public in the following manner:
 - (a) at least on an annual basis; and
 - (b) without any charges.

[Note: article 27(3) of *MiFID*]**Transferable securities traded without issuer consent**

5A.4.3

R

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

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



5A.5 Systems and controls for algorithmic trading

Systems and controls

5A.5.1 **R** A *firm* must ensure that the systems and controls, including procedures and arrangements, used in the performance of its activities are adequate, effective and appropriate for the scale and nature of its business.

5A.5.2 **R** ■ MAR 5A.5.1R applies in particular to systems and controls concerning:

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

[Note: article 48(1), (4) and (6) of *MiFID*, *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* in the *EEA*; and
- (2) trading is halted in that instrument.

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

Direct electronic access.....

5A.5.9 **R** A *firm* which permits *direct electronic access* to an *OTF* it operates must:

- (1) not permit members or participants of the *OTF* to provide such services unless they are:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) third country 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 article 2.1(a), (e), (i), or (j) of *MiFID* 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 synchronization

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

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

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

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

[Note: article 49 of *MiFID* and *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 article 49.3 or 49.4 of *MiFID*.

[Note: article 49 of *MiFID*]

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

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

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



5A.6 Finalisation of transactions

5A.6.1

R

A firm must:

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

[**Note:** article 18(6) of *MiFID*]

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



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

5A.7.1

R

A firm must:

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

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.

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.doc>]

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 internalisers* 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** A *systematic internaliser* must make available the data in  MAR 6.3A.2R to the public in the following manner:

- (1) at least on an annual basis; and
- (2) without any charges.

6.3A.2 **R**  MAR 6.3A.1R applies to data relating to the quality of execution of transactions on that venue, including details about price, costs, speed and likelihood of execution for individual *financial instruments*.

[**Note:** article 27(3) of *MiFID*, *MiFID RTS 27* and *MiFID RTS 28*]

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

6.5

R



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



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

6.9

R



6.9 Publication of quotes [deleted]

		6.10	Execution price of retail client orders [deleted]
6.10	R		

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 following if it is engaging in *algorithmic trading*:

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

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

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

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

- (6) any further information about the *firm's algorithmic trading* and systems used for that trading.

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

Record keeping

7A.3.8

R

A *firm* must:

- (1) arrange for records to be kept to enable it to meet ■ MAR 7A.3.7R; and
- (2) (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 following if it is providing *DEA* services:

- (1) the *FCA*; and
- (2) the *competent authority* of any *trading venue* in the *EEA* to which the *firm* provides *DEA* services.

[Note: article 17(5) of *MiFID* and *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** This chapter applies to every *firm* which is a *benchmark submitter* or a *benchmark administrator*.

Purpose

- 8.1.2 **G** The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*.

[**Note:** article 2(2) of the *Market Abuse Regulation*; article 12 of the *Market Abuse Regulation*; 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.]

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

Organisational and governance arrangements

- 8.2.1** **R** A *benchmark submitter* must establish and maintain adequate and effective organisational and governance arrangements for the process of making *benchmark submissions*.
- 8.2.2** **G** These arrangements should include:
- (1) appropriate oversight of the submission process by the *benchmark submitter's senior personnel*;
 - (2) appropriate oversight of the submission process by the compliance function of the *firm* to ensure compliance with the *benchmark submitter's* obligations under this section; and
 - (3) periodic internal audit reviews.
- 8.2.3** **R** A *benchmark submitter* who maintains an establishment in the *United Kingdom* must:
- (1) appoint a benchmark manager with responsibility for the oversight of its compliance with this chapter; and
 - (2) ensure that its benchmark manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.2.4** **G** The requirements in **■ MAR 8.2.3 R** apply, regardless of the place from which *benchmark submissions* are made. The *FCA* expects that a benchmark manager will be based in the *United Kingdom*.
- 8.2.5** **R** A *benchmark submitter* must:
- (1) ensure that its *benchmark submissions* are determined using an effective methodology to establish the *benchmark submission* on the basis of objective criteria and relevant information; and
 - (2) review this methodology as and when market circumstances require, but at least every quarter, to ensure that its *benchmark submissions* are credible and robust.

- 8.2.6 **G** An effective methodology for determining *benchmark submissions* in addition to quantitative criteria may include the use of qualitative criteria, such as the expert judgment of the *benchmark submitter*.

Conflict management

- 8.2.7 **R** A *benchmark submitter* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of making *benchmark submissions*.

- 8.2.8 **G** In order to identify and manage conflicts of interest as set out in **MAR 8.2.7 R** a *benchmark submitter* should:

- (1) establish, implement and maintain a *conflicts of interest policy* which
 - (a) identifies the circumstances that constitute, or may give rise to, a conflict of interest arising from its *benchmark submissions* or the process of gathering information in order to make *benchmark submissions*; and
 - (b) sets out the approach to managing such conflicts;
- (2) establish effective controls to manage conflicts of interest between the parts of the business responsible for the *benchmark submission* and those parts of the business who may use, or have an interest in, the benchmark rate; and
- (3) establish effective measures to prevent or limit any person from exercising inappropriate influence over the *benchmark submission*.

Notification of suspicions of manipulation

- 8.2.9 **R** A *benchmark submitter* who suspects that any person

- (1) is manipulating, or has manipulated, a *specified benchmark*;
- (2) is attempting, or has attempted, to manipulate a *specified benchmark*; or
- (3) is colluding, or has colluded, in the manipulation or attempted manipulation of a *specified benchmark*;

must notify the *FCA* without delay.

Record keeping

- 8.2.10 **R** A *benchmark submitter* must:

- (1) keep for at least five years:
 - (a) records of its *benchmark submissions*, as well as all information used to enable it to make a *benchmark submission*; and
 - (b) reports on the key sensitivities the *benchmark submitter* may have regarding the *specified benchmark* it is submitting to, including (but not limited to) the *benchmark submitter's*

exposure to instruments which may be affected by changes in the *specified benchmark*;

- (2) provide to the relevant *benchmark administrator* all information used to enable it to make a *benchmark submission* on a daily basis; and
- (3) provide to the relevant *benchmark administrator*, on a quarterly basis, aggregate information which will allow the *benchmark administrator* to produce statistics relevant to the *specified benchmark* as required by ■ MAR 8.3.12 R.

8.2.11 **G** The information provided to the *benchmark administrator* in accordance with ■ MAR 8.2.10R (2) should include:

- (1) a description of the methodology used to establish the *benchmark submission*; and
- (2) if applicable, an explanation of how any quantitative and qualitative criteria were used to establish the *benchmark submission*.

Auditor's report

8.2.12 **R** A *benchmark submitter* must appoint an independent auditor to report to the *FCA* on the *benchmark submitter's* compliance with the requirements of this section on a regular basis.

8.2.13 **G**

- (1) The *FCA* expects the report required under ■ MAR 8.2.12 R to be issued annually, although the *FCA* may agree a longer period depending on the *benchmark submitter's* particular circumstances, including the nature and scale of its engagement in the *specified benchmark* and the internal framework for monitoring compliance with the requirements of this chapter.
- (2) A *benchmark submitter* which proposes to appoint an auditor to report to the *FCA* under ■ MAR 8.2.12 R on a less frequent than annual basis should notify the *FCA* explaining why it believes it would be appropriate to do so.

8.3 Requirements for benchmark administrators

- 8.3.1** **R** A *benchmark administrator* must establish and maintain effective organisational and governance arrangements to enable it to carry out the activity of *administering a specified benchmark*.
- 8.3.2** **R** In discharging its duties, the *benchmark administrator* must have regard to the importance of maintaining integrity of the market and the continuity of the *specified benchmark* including the need for contractual certainty for contracts which reference the *specified benchmark*.
- 8.3.3** **R** A *benchmark administrator* must maintain and operate effective organisational and administrative arrangements to enable it to identify and manage any conflicts of interest that may arise from the process of administering a *specified benchmark*.
- 8.3.4** **G** The arrangements described in **MAR 8.3.3 R** should include measures designed to ensure the confidentiality of *benchmark submissions* and additional information received from *benchmark submitters* (to the extent that such submissions and information are not publicly available or have not been made public by mutual agreement between the *benchmark administrator* and *benchmark submitter*), for example, through confidentiality agreements for the *benchmark administrator's* employees and members of the oversight committee.
- 8.3.5** **R** A *benchmark administrator* must:
- (1) appoint a benchmark administration manager with responsibility for oversight of its compliance with this section; and
 - (2) ensure that its benchmark administration manager has a level of authority and access to resources and information sufficient to enable him to carry out that responsibility.
- 8.3.6** **R** A *benchmark administrator* must:
- (1) have effective arrangements and procedures that allow the regular monitoring and surveillance of *benchmark submissions*:

- (2) monitor the *benchmark submissions* in order to identify breaches of its practice standards (set out in ■ MAR 8.3.10R (1)) and conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers and provide to the oversight committee of the *specified benchmark* timely updates of suspected breaches of practice standards and attempted manipulation; and
- (3) notify the FCA and provide all relevant information where it suspects that, in relation to the *specified benchmark* it administers, there has been:
 - (a) a material breach of the *benchmark administrator's* practice standards (set out in ■ MAR 8.3.10R (1));
 - (b) conduct that may involve manipulation or attempted manipulation of the *specified benchmark* it administers; or
 - (c) collusion to manipulate or to attempt to manipulate the *specified benchmark* it administers.

8.3.7

G The arrangements and procedures referred to in ■ MAR 8.3.6R (1) should include (but not be limited to):

- (1) carrying out statistical analysis of *benchmark submissions*, using other relevant market data in order to identify irregularities in *benchmark submissions*; and
- (2) an effective whistle-blowing procedure which allows any person on an anonymous basis to alert the *benchmark administrator* of conduct that may involve manipulation, or attempted manipulation, of the *specified benchmark* it administers.

8.3.7A

R A *benchmark administrator* must ensure that the *specified benchmark* it administers is determined using adequate *benchmark submissions*.

8.3.7B

G To ensure it is using adequate *benchmark submissions*, a *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* should use *benchmark submissions* that are:

- (1) representative of the state of the market the *specified benchmark* references; or
- (2) made available by reliable data sources.

Oversight committee

8.3.8

R A *benchmark administrator* must establish an oversight committee (which must be a committee of the *benchmark administrator*) which includes:

- (1) (where applicable) representatives of *benchmark submitters*;
- (2) market infrastructure providers;
- (3) users of the *specified benchmark*; and

- (4) at least two independent *non-executive directors* of the *benchmark administrator* approved to carry out the *non-executive director function*.

8.3.8A **R** A *benchmark administrator* of a *specified benchmark* that does not have *benchmark submitters* must consider including in the oversight committee representatives of persons who make *benchmark submissions* available.

8.3.9 **G** The oversight committee should be responsible for:

- (1) considering matters of definition and scope of the *specified benchmark*;
- (2) exercising collective scrutiny of *benchmark submissions* if and when required; and
- (3) notifying the *FCA* of *benchmark submitters* that fail on a recurring basis to follow the practice standards (as set out in **■ MAR 8.3.10R (1)**) for the *specified benchmark*.

8.3.10 **R** The *benchmark administrator* through its oversight committee must:

- (1) develop practice standards in a published code which, for the relevant *specified benchmark*, set out the responsibilities for:
 - (a) *benchmark submitters* and (where applicable) *persons* who make *benchmark submissions* available;
 - (b) the *benchmark administrator*; and
 - (c) the oversight committee;
- (2) undertake regular periodic reviews of:
 - (a) the practice standards mentioned in **■ MAR 8.3.10R (1)**;
 - (b) the setting and definition of the *specified benchmark* it administers;
 - (c) where applicable the composition of panels of *benchmark submitters* or other persons who make *benchmark submissions* available; and
 - (d) the process of making relevant *benchmark submissions*; and
- (3) before making any changes as a result of such review:
 - (a) notify the *FCA*;
 - (b) after doing so, publish a draft of the proposed changes and a notice that representations about the proposed changes may be made to the *benchmark administrator* within a specified time; and
 - (c) have regard to any such representations.

- 8.3.10A** **G** For *specified benchmarks* that do not have *benchmark submitters*:
- (1) the practice standards in **MAR 8.3.10R (1)** should specify data standards, including data quality and the representativeness of *benchmark submissions*; and
 - (2) the process of making relevant *benchmark submissions* in **MAR 8.3.10R (2)(d)** should include processing, considering or using the *benchmark submission* to determine the *specified benchmark* it administers.
- Review of the benchmark and publication of statistics**.....
- 8.3.11** **R** The *benchmark administrator* must be able to provide to the *FCA*, on a daily basis, all *benchmark submissions* it used to determine the *specified benchmark* it administers.
- 8.3.12** **R** A *benchmark administrator* must publish quarterly aggregate statistics outlining the activity in the underlying market relevant to the *specified benchmark*.
- Record keeping**.....
- 8.3.12A** **R** A *benchmark administrator* must keep records for at least five years of:
- (1) all *benchmark submissions* used to determine the *specified benchmark* it administers; and
 - (2) the person and, where possible, the individual who made the relevant *benchmark submission*.
- 8.3.12B** **G** For a *specified benchmark* that does not have *benchmark submitters*, the records in **MAR 8.3.12AR (2)** should include, where available, information sufficient to identify the person and the individual who made the *benchmark submission* available to the relevant *benchmark administrator*.
- Adequate financial resources**.....
- 8.3.13** **R** Notwithstanding any other financial resource requirements that may apply, a *firm* whose *permitted activities* include *administering a specified benchmark* must:
- (1) be able to meet its liabilities as they fall due; and
 - (2) maintain, at all times, sufficient financial resources to be able to cover the operating costs of administering the *specified benchmark* for a period of at least six months.
- 8.3.13A** **G** A *benchmark administrator* that administers more than one *specified benchmark* may comply with its financial resources requirements under **MAR 8.3.13R (2)** by holding sufficient financial resources to cover the combined operating costs for all *specified benchmarks* it administers.

- 8.3.14** **G** (1) ■ MAR 8.3.13 R sets out the minimum amount of financial resources a *benchmark administrator* must hold to carry out *administering a specified benchmark*.
- (2) The *FCA* expects *benchmark administrators* to:
- (a) normally hold sufficient financial resources to cover the operating costs of administering the *specified benchmark* for a period of nine months; and
 - (b) notify the *FCA* where a *benchmark administrator's* financial resources fall below these levels (required by ■ MAR 8.3.17 R and ■ SUP 15.3.11 R).
- 8.3.15** **G** To meet the financial resources requirement in ■ MAR 8.3.13R (2), the *FCA* expects a *benchmark administrator* to hold both sufficient liquid financial assets and net capital to be able to cover the operating costs of administering the *specified benchmark*.
- (1) net capital can include common stock, retained earnings, disclosed reserves, 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 the *benchmark administrator's* auditor; and
 - (2) should be calculated after deductions for:
 - (a) holdings of the *firm's* own securities or those of any undertaking in the *firm's group*;
 - (b) any amount owed to the *firm* by an undertaking in its *group* under any loan or credit arrangement;
 - (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 *benchmark administrator* where:
 - (a) the financial instruments have minimal market and credit risk, and
 - (b) are capable of being liquidated with minimal adverse price effect.
- 8.3.16** **G** The *FCA* may use its powers under section 55L of the *Act* to impose on a *benchmark administrator* a requirement to hold additional financial resources to ■ MAR 8.3.13 R if the *FCA* considers it desirable to meet any of its *statutory objectives*.
- 8.3.17** **R** **Notifications for breaches**
 A *benchmark administrator* 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 *specified benchmark* for a period of nine months.
- 8.3.18** **G** *Benchmark administrators* are reminded of their obligation under ■ SUP 15.3.11 R to notify the *FCA* of any significant breaches of *rules*.

Fair, reasonable and non-discriminatory access to benchmarks

- 8.3.19** **R** (1) A *benchmark administrator* of a *specified benchmark* must ensure relevant users are granted non-discriminatory access to:
- (a) relevant price and data feeds and information on the composition, methodology and pricing of that *specified benchmark*; and
 - (b) licences or other arrangements to use that *specified benchmark*; for the purpose of clearing and trading by the relevant users.
- (2) In this section, “relevant user” means:
- (a) a *CCP*;
 - (b) an *MTF*; and
 - (c) a *regulated market*.
- 8.3.20** **R** A *benchmark administrator* must grant relevant users access for the purpose of clearing and trading to the *specified benchmark* it administers (including access to information):
- (1) on a fair, reasonable and non-discriminatory basis; and
 - (2) without undue delay, following a written request by the relevant user.
- 8.3.21** **R** (1) Where a *benchmark administrator* charges a relevant user a fee for access to the *specified benchmark*, it must grant the relevant user access at a reasonable commercial price taking into account the price at which access is granted or the intellectual property rights are licensed to other relevant users or any related persons for the purposes of clearing and trading.
- (2) Different fees can be charged to different relevant users or related persons only where this is objectively justified having regard to reasonable commercial grounds such as the quantity, scope or field of use requested.
- 8.3.22** **G** In assessing whether the terms of access to a *specified benchmark* are fair, reasonable and non-discriminatory, the factors the *FCA* may consider include:
- (1) the degree of competition and potential competition in the market for the supply of the *specified benchmark*;
 - (2) whether the aggregate of the fees charged to users of the *specified benchmark* bears a reasonable relationship to the costs and risks of producing the *specified benchmark*, including a reasonable return on capital;
 - (3) (where “A”, the *benchmark administrator* or a member of its *group*, is active on a downstream market) whether the terms of access granted for the *specified benchmark* would prevent a competitor as efficient as A’s downstream business from competing effectively on that downstream market on a lasting basis; and

- (4) whether a *benchmark administrator* applies dissimilar conditions to equivalent transactions with relevant users or different categories of relevant users, thereby placing them at a competitive disadvantage.

8.3.23

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For the purposes of ■ MAR 8.3.20R(2), the FCA would expect access to be provided within three months of a written request.

Chapter 9

Data reporting service

9.1 Application, introduction, approach and structure

Application

9.1.1

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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*;
- (3) a *UK 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*]

Introduction

9.1.2

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Title V of *MiFID* sets out harmonised market data services authorisation and supervision requirements. These are designed to ensure a necessary level of quality of trading activity information across *EU* financial markets for users, and for *competent authorities* to receive accurate and comprehensive information on relevant transactions. These requirements provide for:

- (1) *approved publication arrangements (APAs)* to:
 - (a) improve the quality of trade transparency information published in relation to *over the counter* trading; and
 - (b) contribute significantly to ensuring such data is published in a way that facilitates its consolidation with data published by *trading venues*;
- (2) *consolidated tape providers (CTPs)* to supply a comprehensive consolidated tape of *equity* and equity-like *financial instruments* data from all *APAs* and *trading venues* to make it easier for market

participants to gain access to a consolidated view of trade transparency information;

- (3) *CTPs* to enable a comprehensive consolidated tape for non-equity *financial instruments* with an extended date for the application of national measures transposing *MiFID*; and
- (4) *approved reporting mechanisms (ARMs)* to provide the service of transaction reporting on behalf of *investment firms*.

Approach to transposition

9.1.3

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The market data services authorisation and supervision requirements in Title V of *MiFID* are implemented in the *UK* through a combination of:

- (1) HM Treasury legislation in the form of:
 - (a) the *DRS Regulations* which set out a separate regulatory framework for *persons* providing one or more *data reporting service* in the *UK*; and
 - (b) the *MiFI Regulations* which set out additional provisions addressing requirements imposed by *MiFIR* and *EU regulations*;
- (2) this chapter; and
- (3) *EU regulations* including:
 - (a) *MiFID RTS 1*;
 - (b) *MiFID RTS 2*;
 - (c) *MiFID RTS 3*;
 - (d) *MiFID RTS 13*;
 - (e) *MiFID ITS 3*;
 - (f) the *MiFID Org Regulation*; and
 - (g) the *MiFIR Delegated Regulation*.

Structure

9.1.4

G

The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
MAR 9.1	Application, introduction, approach and structure
MAR 9.2	Authorisation and verification
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 *UK MiFID investment firm* operating a *trading venue* seeking verification of its rights to provide a *data reporting service* under regulation 5(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 5(d) of the *DRS Regulations*.
- (2) The forms in (1) are:
- (a) the application form at ■ MAR 9 Annex 1D; and
 - (b) the notification form for the list of members of the *management body* at ■ MAR 9 Annex 2D.

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

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** ■ MAR 9 Annex 3D requires completion of Annex I of *MiFID ITS 3* in the case of an extension of authorisation and, if relevant, Annex II of *MiFID ITS 3* if the members of the *management body* are different from the existing authorised *data reporting services provider*.

Cancellation of authorisation form

- 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
25 The North Colonnade
Canary Wharf
London E14 5HS

9.3 Notification and information

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

- 9.3.1 **D** A *data reporting services provider* must promptly complete the material change in information form at ■ MAR 9 Annex 5D to inform the *FCA* of any material change to the information provided at the time of its authorisation.

Notification to the FCA of change to membership of management body

- 9.3.2 **D** A *data reporting services provider* must promptly complete the notification form for changes to the membership of the management body form at ■ MAR 9 Annex 6D 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** ■ MAR 9 Annex 6D is derived from Annex III of *MiFID ITS 3*.

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

- 9.3.4 **D** 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 10D; and
- (2) email it to 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
 25 The North Colonnade
 Canary Wharf
 London E14 5HS.

- 9.3.5 **G** (1) To ensure the security of the *FCA's* systems, the *FCA* requires an *APA* or a *CTP* to sign 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 **D** An *APA* or a *CTP* seeking a connection to the *FCA's market data processor system* must complete the form at **MAR 9 Annex 7D** 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 **D** A *data reporting services provider* must complete the yearly notification form in **MAR 9 Annex 8D**:

- (1) within 3 *months* of the 12 *month* anniversary of the commencement of its authorisation; and
- (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 3 January 2018, the *data reporting services provider* must provide the information in **MAR 9 Annex 8D** on or before 3 April 2019 and then every year thereafter on or before 3 April of that particular year.

Ad hoc notifications to the FCA

9.3.10 **D** A *data reporting services provider* must promptly complete the ad hoc notification form in **MAR 9 Annex 9D** to notify the *FCA* in respect of all matters required by *MiFID RTS 13*.

9.3.11 **G** Information to be provided in **MAR 9 Annex 9D** 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 5D, 6D, 7D, 8D and 9D to the FCA

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

- (1) at MRT@fca.org.uk; or
- (2) by posting it to the *FCA*, addressed to:

The Financial Conduct Authority
The Markets Reporting Team
25 The North Colonnade

Canary Wharf
London E14 5HS

9.4 Supervisory regime

Overview of supervisory approach

9.4.1

G

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

G

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** **G** **Q.** Are there any grandfathering arrangements for *ARMs* or trade data monitors operating prior to *MiFID*?
- A.** No. *Persons* wishing to provide a *data reporting service* must apply to be authorised as a *data reporting services provider*.
- 9.5.2** **G** **Q.** We are a *trading venue* operator. Can you please clarify how we can provide a *data reporting service* under the derogation from needing authorisation in article 59(2) of *MiFID*?
- A.**
- (1) The derogation (or exception) in article 59(2) of *MiFID* allows Member States to allow a *trading venue* operator to provide a *data reporting service* without prior authorisation, if the operator has verified that they comply with Title V of *MiFID*.
 - (2) The *United Kingdom* has adopted this derogation in regulation 5(b) to (d) of the *DRS Regulations*.
 - (3) As a result a *trading venue* operator must apply for verification of its rights to provide 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** **G** **Q.** We are a *market operator*. Can we use the same members of our *management body*?
- A.** Yes. Where the members of the *management body* of the *APA*, the *CTP* or the *ARM* are the same as the members of the *management body* of the *regulated market* you will be deemed to have complied with the *management body* requirement in regulation 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*, 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. Article 59(3) of *MiFID* requires *ESMA* to establish a list of all *data reporting services providers*. Further, 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 and copy DRSP supervision at 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 together with instructions on how to obtain the *Market Interface Specification (MIS)* for connectivity.

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

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

Notification form for list of members of a management body

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

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.doc>

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.doc>

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.doc>

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/mifid-changes-management-body-form.docx>

FCA MDP on-boarding application form

[*Editor's note:* The form can be found at this address: https://www.fca.org.uk/publication/forms/mdp_on-boarding_application_form.doc]

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-annual-notification.doc>

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.doc>

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:
 - (a) articles 57(1) and 57(6) of *MiFID*, which require *competent authorities* or *central competent authorities* 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* or *central 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

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- (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 *Home State 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 *UK 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

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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

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- (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) Regulation 20(2) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, to modify the position limit in accordance with *ESMA's* opinion or to notify *ESMA* as to why amendment to the limit is considered to be unnecessary;
 - (i) Regulation 21(1) imposes an obligation on the *FCA* to not establish a position limit in respect of a *commodity derivative* traded on *trading venues* in the *United Kingdom*, where there is a *central competent authority* for that *commodity derivative* other than the *FCA*;

- (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 *ESMA's* methodology, 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 *ESMA's* methodology in accordance with Regulation 25(1) of the *MiFI Regulations*. The obligations are that the *FCA* must publish that position limit on its website, 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 must notify *ESMA* of the position limit and the justification for establishing it;
 - (m) Regulation 20(5) and Regulation 25(6) impose obligations on the *FCA* to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the *MiFI Regulations* respectively, it does not modify a position limit following an *ESMA* opinion incompatible with the limit; and
 - (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

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- (1) A *person* must comply at all times with *commodity derivative* position limits established by the *FCA*, published at 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*, provided that there is not a *central competent authority* established in an *EEA State* other than 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

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- (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

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Where a position limit is established by a *competent authority* or *central competent authority* other than the *FCA*, a *non-financial entity* should submit its application for exemption, in relation to the position limit, to that

competent authority or central competent authority in the manner it specifies.

[Note: article 8 of *MiFID RTS 21*]



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

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A *firm* must comply with the obligation in ■ MAR 10.3.3R(4) by completing the form available at 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>UK 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>UK 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
Member, participant or a <i>client</i> of a <i>UK trading venue</i>	MAR 10.4.7D
<i>EEA MiFID investment firm</i> who is a member, participant or a <i>client</i> of a <i>UK trading venue</i>	MAR 10.4.10D to MAR 10.4.11G

Position reporting by UK regulated markets

10.4.2 **G** A *UK 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* and *ESMA* 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 to *ESMA*]

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*.

[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 provide the report to *ESMA*; 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. This *guidance* does not affect the separate obligation for a *firm* to make the weekly report to *ESMA*.

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) Paragraph (2) above does not apply to a member, participant or a client of a *trading venue* that is an *EEA person*.

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

10.4.8

D

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

- (1) This direction applies to:
 - (a) a *UK 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]

UK MiFID investment firms and UK branches of third country investment firms: OTC reporting to EEA competent authorities other than the FCA

10.4.9

D

- (1) This direction applies to:
 - (1) a *UK 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 an *EEA competent authority* other than the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative or emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*, provide that *EEA competent authority* 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 relevant *EEA competent authority*, for each *business day*, using the form set out in Annex II of *MiFID ITS 4*, by the time specified by that *EEA competent authority*.

- (4) The obligation in (2) does not apply where the *FCA* is the *central competent authority* for that *commodity derivative*.

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

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

- (1) This direction applies to an *EEA MiFID investment firm* which is a member, participant or a *client* of a *UK trading venue*.
- (2) ■ MAR 10.4.7D applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*.
- (3) ■ MAR 10.4.8D applies to an *EEA MiFID investment firm* under (1), as if it were a *UK MiFID investment firm*, where the *EEA MiFID investment firm* trades in a *commodity derivative* or *emission allowance* outside a *trading venue*, and the *FCA* is the *competent authority* of the *trading venue* where that *commodity derivative* or *emission allowance* is traded, or the *central competent authority* for the purposes of that *commodity derivative*.
- (4) Paragraphs (2) and (3) above only apply where the *EEA MiFID investment firm* is not subject to a corresponding rule or other requirement imposed by its *Home State competent authority*.

10.4.11

G

- (1) This *guidance* applies to *persons* subject to ■ MAR 10.4.8D(2) or ■ MAR 10.4.10D(3).
- (2) A *firm* subject to ■ MAR 10.4.8D(2) or ■ MAR 10.4.10D(3) 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 on-boarding 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) or ■ MAR 10.4.10D(3) 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* or another *competent authority* 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 *EU 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 *EU 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* of which the *FCA* is the *competent authority* or *central competent authority*, 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		

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	Without delay
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

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*. However, if the *rules* incorporate requirements laid down in European directives, it will not be possible for the *FCA* to grant a waiver that would be incompatible with the *United Kingdom's* responsibilities under those directives.

