Market conduct
## Market conduct

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1.1 Application and interpretation

Application and purpose

1.1.1 This chapter is relevant to all persons seeking guidance on the market abuse regime.

1.1.1A [deleted]

1.1.2 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 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 (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).
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.

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.

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.

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

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

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

[deleted]

1.2.7-A

[article 8(4) of the Market Abuse Regulation]

1.2.7A

[deleted]

1.2.8

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]
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]

In relation to the factors in MAR 1.2.12G it is not relevant that the information is only generally available outside the UK.

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.

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.

[deleted]

[deleted]

[article 7(1)(d) of the Market Abuse Regulation]

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.


1.2.20 G [deleted]

1.2.21 G [deleted]
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

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

(1) [deleted]

(2) front running/pre-positioning - that is, a transaction for a person’s own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is inside information), which takes advantage of the anticipated impact of the order on the market or auction clearing price;

(3) in the context of a takeover, an offeror or potential offeror entering into a transaction in a financial instrument, using inside information concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target company’s shares (for example, a spread bet on the target company’s share price); and

(4) in the context of a takeover, a person who acts for the offeror or potential offeror dealing for his own benefit in a financial instrument using information concerning the proposed bid.
Factors to be taken into account: "on the basis of"

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

1.3.4 E [deleted]

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

Relevant factors: legitimate business of market makers

1.3.6 C [deleted]
[Note: article 9(5) of the Market Abuse Regulation]

1.3.7 G For market makers and persons that may lawfully deal in financial instruments on their own account, pursuing their legitimate business of such dealing (including entering into an agreement for the underwriting of an issue of financial instruments) may not in itself amount to market abuse.

1.3.8 G [deleted]

1.3.9 E [deleted]

1.3.10 G The following factors maybe taken into account in determining whether or not a person's behaviour is in pursuit of legitimate business, and are indications that it is:

(1) the extent to which the relevant trading by the person is carried out in order to hedge a risk, and in particular the extent to which it neutralises and responds to a risk arising out of the person's legitimate business; or

(2) whether, in the case of a transaction on the basis of inside information about a client's transaction which has been executed, the reason for it being inside information is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or trading venue obligations; or

(3) whether, if the relevant trading by that person is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading either has no impact on the price or there has been adequate disclosure to that client that trading will take place and he has not objected to it; or

(4) the extent to which the person's behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.
1.3.11 [deleted]
[Note: article 9 of the Market Abuse Regulation]

Relevant factors: execution of client orders

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

1.3.13 [deleted]
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.

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

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.
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.

The following factor maybe 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

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.

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.

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.

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.

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.

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

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;
- the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- 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**

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* 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:
   - reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
   - 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
   - reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
   - 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
   - in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf.
3. [deleted]
Examples of unlawful disclosure

1.4.6 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 As 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 [deleted]
1.6 Manipulating transactions

1.6.1 [deleted]

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

1.6.1A [deleted]

Giving false or misleading impressions

1.6.2 [deleted]

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

1.6.3 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 [deleted]

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

Factors to be taken into account: legitimate reasons

1.6.5 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 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 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 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 [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 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

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.

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.

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 [deleted]

Examples of manipulating transactions

1.6.15

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 The following is an example of an abusive squeeze:

A trader with a long position in bond futuresbuys 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 [deleted]

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

1.7.1A [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

### Descriptions of behaviour that amount to dissemination

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.

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

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 [deleted]

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

1.9.1A [deleted]

1.9.2 [deleted]

1.9.2A (1) [deleted]

(2) [deleted]

[deleted]

1.9.2B [deleted]

Short selling in relation to financial sector companies

1.9.2C (1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

1.9.2D (1) [deleted]

(2) [deleted]

(a) [deleted]

(b) [deleted]

(2A) [deleted]

(3) [deleted]
(4) [deleted]
(5) [deleted]

1.9.2E [deleted]
1.9.3 [deleted]
1.9.4 [deleted]
1.9.5 [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):
Takeover Code provisions:

Disclosure of information which is not generally available
1(a) 2.1, 2.7, 2.11, 8 20.1 21.3, 21.4 28.1 30.1, 30.5

Standards of care
2.8 first sentence and note 4 19.1, 19.7 20.6 second sentence 23.1 plus notes 28.1

Timing of announcements, documentation and dealings
2.2, 2.6 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 note 4 only 24.1(a) 25.1(a) 31.6(d), 31.9 33 (in so far as it refers to 31.6(d) and 31.9 only)

Content of announcements
2.4 (a) and (b) 19.3

1.10.6 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 [deleted]

1.1.2 [deleted]

1.1.3 EU [deleted]

1.1.4 EU [deleted]

1.1.5 EU [deleted]

1.1.6 [deleted]

1.1.7 [deleted]

1.1.8 G The FCA accepts as “adequate public disclosure“:
   (1) disclosure through a regulatory information service or otherwise in accordance with Part 6 rules; or
   (2) the equivalent disclosure mechanism required to be used in relation to the relevant trading venue.

1.1.9 EU [deleted]

1.1.10 EU [deleted]

1.1.11 [deleted]

1.1.12 EU [deleted]

1.1.13 [deleted]
| 1.1.14  | G      | [deleted] |
Accepted Market Practices

[article 13 of the Market Abuse Regulation.]
2.1 Application and Purpose [deleted]
2.1

2.2 Stabilisation: general [deleted]
Section 2.3 : Stabilisation under the Buy-back and Stabilisation Regulation

2.3.11 [deleted]

2.3.12 [deleted]

2.3.13 [deleted]
2.4 Stabilisation when the Buy-back and Stabilisation Regulation does not apply [deleted]
2.5 The Price Stabilising Rules: overseas provisions

2.5.1 (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.
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 2.2.1R(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 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 (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 (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 (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

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:
   - which does not constitute carrying on a regulated activity; and
   - 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 UCITS qualifier; or
   - 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?

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 [deleted]

5.1.3 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

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

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
Functioning of an MTF

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.
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.

**Operation of a primary market in financial instruments not admitted to trading on a regulated market**

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**

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 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 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]

A market making agreement in 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 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 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*]

### MAR 5.3A.7

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*]

### MAR 5.3A.8

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

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:
   - *investment firms* authorised under *MiFID*; or
   - *CRD credit institutions*; or
   - third country firms providing the direct electronic access in the course of exercising rights under article 46.1 of *MiFIR*; or
   - third country firms providing the direct electronic access in the course of exercising rights under article 47.3 of *MiFIR*; or
   - third country firms providing the direct electronic access in accordance with the; exclusion in article 72 of the *RAO* or
   - 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
   - *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

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

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]

Nothing in MAR 5.3A.11 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  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  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  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  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  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  For the purpose of MAR 5.3A.17R, the regulatory technical standards made under article 50 of MiFID provide further requirements.
5.4 Finalisation of transactions

5.4.1 A firm must:

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

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

[Note: in relation to derivative transactions, MiFID RTS 26 contains requirements on the systems for the clearing of such transactions]
5.5 Monitoring compliance with the rules of the MTF

5.5.1 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 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 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 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 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 [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.

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Section 5.8: Provisions common to pre- and post-trade transparency requirements for shares [deleted]
5.9 Post-trade transparency requirements for shares [deleted]
5.10  Operation of an SME growth market

Registering an MTF as an SME growth market

A firm may apply to the FCA to have an MTF registered as an SME growth market.

[Note: article 33(1) of MiFID]

For an MTF to be eligible for registration as an SME growth market, the firm must have effective rules, systems and procedures which ensure that:

1. at least 50% of the issuers whose financial instruments are admitted to trading on the MTF are small and medium-sized enterprises at the time when the MTF is registered as an SME growth market, and in any calendar year thereafter;

2. appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers on the market;

3. on initial admission to trading of financial instruments on the market, there is sufficient information to enable investors to make an informed judgement about whether or not to invest in the financial instruments published in either:
   
   (a) an appropriate admission document; or
   
   (b) a prospectus, if the Prospectus Regulation is applicable in respect of a public offer being made in conjunction with the initial admission to trading of the financial instrument on the MTF;

4. there is appropriate ongoing periodic financial reporting by, or on behalf of, an issuer on the market, for example through audited annual reports;

5. the following comply with the Market Abuse Regulation as applicable to each of them:
   
   (a) issuers on the market as defined in point (21) of article 3(1) of the Market Abuse Regulation;
   
   (b) persons discharging managerial responsibilities as defined in point (25) of article 3(1); and
   
   (c) persons closely associated with them as defined in point (26) of article 3(1);
(6) regulatory information concerning the issuers on the market is stored and disseminated to the public; and

(7) there are effective systems and controls aiming to prevent and detect market abuse on that market as required under the Market Abuse Regulation.

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

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

5.10.3 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 (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 (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 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

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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Organised trading facilities (OTFs)

Chapter 5A

Organised trading facilities (OTFs)
5A.1 Application

Who and what?

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.

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 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 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 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 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 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 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  ■ 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  ▪ 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  ▪ 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  ▪ 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  ▪ 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  ▪ A firm must comply with the obligations under the following provisions of MiFID, in the course of operating an OTF:
Section 5A.3 : Specific requirements for OTFs

(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 2.2.2, 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.]

Report to the FCA

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]

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

Rules, procedures and arrangements

5A.4.1 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 R

A firm must:

1. ensure the OTF has at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation;

[Note: article 18(7) of MiFID]

2. provide the following to the FCA:
   a. a detailed description of the functioning of the OTF, including any links to or participation by a regulated market, an MTF or OTF or systematic internaliser owned by the same firm; and
   b. a list of its members, participants and users; and

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

3. 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

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.

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 □ 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 □ 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 □ 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**

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**

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]

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

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

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

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

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

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

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

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 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

A firm must

(1) report to the FCA any:
   (a) significant breaches of the firm’s rules;
   (b) disorderly trading conditions;
   (c) conduct that may involve market abuse; and
   (d) system disruptions in relation to a financial instrument;

(2) supply the information required under this rule without delay to the FCA and any other authority competent for the investigation and prosecution of market abuse; and

(3) provide full assistance to the FCA, and any other authority competent for the investigation and prosecution of market abuse, in its investigation and prosecution of market abuse occurring on or through the firm’s systems.

[Note: article 31(2) of MiFID, articles 81 and 82 of the MiFID Org Regulation, MiFID RTS 18 and MiFID ITS 2]
5A.9 Suspension and removal of financial instruments

5A.9.1 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 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 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 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 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 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 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 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 [deleted]

6.1.4 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 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]
6.3A Quality of execution

6.3A.1 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 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

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

(1) it makes an assessment in writing certifying that it meets the conditions specified and measures adopted under article 9 of MiFIR for the waiver; and

(2) the FCA has not objected to the assessment.
6.5  Obligations on systematic internalisers in shares to make public firm quotes [deleted]
6.6 Size and content of quotes [deleted]
Section 6.7: Prices reflecting prevailing market conditions [deleted]
6.8 Liquid market for shares, share class, standard market size and relevant market [deleted]
6.9 Publication of quotes [deleted]
6.10 Execution price of retail client orders [deleted]
Section 6.11: Execution price of professional client orders [deleted]
Section 6.12: Execution price of client orders not matching quotation sizes [deleted]
6.13 Standards and conditions for trading [deleted]
6.14 Limiting risk of exposure to multiple transactions [deleted]
MAR 6 : Systematic internalisers

Section 6.14 : Limiting risk of exposure to multiple transactions [deleted]
Chapter 7

Disclosure of information on certain trades undertaken outside a regulated market or MTF [deleted]
7.1 Application [deleted]
Section 7.2: Making post-trade information public [deleted]
Section 7.2: Making post-trade information public [deleted]
Deferred publication thresholds and delays [deleted]
MAR 7 : Disclosure of information on certain trades undertaken outside a...
Chapter 7A

Algorithmic trading
7A.1 Application

Who?

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?

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

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 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

This section applies to a firm which engages in algorithmic trading.

Systems and controls

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]

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

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)]

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

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]

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

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 This section applies to a firm which provides the services of DEA to a trading venue.

Systems and controls

7A.4.2 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 (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

**7A.4.4** 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** 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** 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
This section applies to a firm which provides the service of acting as a general clearing member.

Requirements
A firm must:

1. have clear criteria as to the suitability requirements of persons to whom clearing services will be provided;

2. apply those criteria;

3. impose requirements on the persons to whom clearing services are being provided to reduce risks to the firm and to the market; and

4. have a binding written agreement with any person to whom it is providing clearing services, detailing the essential rights and obligations of both parties arising from the provision of the services.

[Note: article 17(6) of MiFID and MiFID RTS 6 specifying the organisational requirements of investment firms acting as general clearing members]
Chapter 8

Benchmarks
8.1 Application and purpose

Application

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

Purpose

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

(1) MAR 8.4 (Third country benchmark contributors) sets out the requirements that apply to third country benchmark contributors that are not supervised entities, but would be if they were located in the EU. These rules apply requirements mirroring those which apply to benchmark contributors that are in scope of the benchmarks regulation.

(2) MAR 8.5 (Regulated benchmark administrators) sets out some handbook requirements that apply to regulated benchmark administrators (who have been authorised under the benchmarks regulation for the activity of administering a benchmark).

(3) MAR 8.6 (Responsibility for benchmark activities: benchmark contributors) sets out requirements in relation to responsibility for contributing input data to a BMR benchmark administrator.

(4) MAR 8.7 (Procedures for exercising powers in relation to critical benchmarks) sets out the procedure for imposing requirements under articles 21 and 23 of the benchmarks regulation in relation to critical benchmarks.

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

Actions for damages

8.1.3 R A contravention of a rule in MAR 8 does not give rise to a right of action by a private person under section 138D(2) of the Act (and each rule in MAR 8 is specified under section 138D(3) of the Act as a provision giving rise to no such right of action).
8.2 Requirements for benchmark submitters [deleted]
8.3 Requirements for benchmark administrators [deleted]
8.4 Third country benchmark contributors

Application

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

(a) is not a supervised entity; and

(b) would be a supervised entity if it were located in the EU.

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

Application of the benchmarks regulation

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

(1) article 16 of the benchmarks regulation, as amended or supplemented as relevant by article 26 and Annex 1 of the benchmarks regulation; and

(2) article 23(3) of the benchmarks regulation.
8.5  Regulated benchmark administrators

Application

This section applies to a regulated benchmark administrator.

Responsibility for benchmark activities: regulated benchmark administrators

(1) This rule applies to a regulated benchmark administrator other than:
   (a) an Annex II benchmark administrator;
   (b) an SMCR firm.

(2) A regulated benchmark administrator must allocate the responsibility described in (3) to a director or senior manager who is performing:
   (a) an FCA governing function other than the non-executive director function; or
   (b) the significant management function (where applicable).

(3) The responsibility referred to in (2) is responsibility for the firm’s implementation of the applicable requirements of the regulatory system (including the benchmarks regulation) in relation to its activities as a regulated benchmark administrator.

(4) A regulated benchmark administrator must promptly notify the FCA of the identity of the person who is allocated the responsibility under (2).

The rule in MAR 8.5.2R does not apply to a regulated benchmark administrator which is an SMCR firm. That is because:

(1) Most UK SMCR firms are already subject to the requirement to allocate overall responsibility for each of the activities, business areas and management functions of the firm in SYSC 26.3 (Main rules) (the table in SYSC 25 Annex 1G (Examples of the business activities and functions of a relevant authorised person an SMCR firm) refers to administering a benchmark); and

(2) overseas SMCR firms do not require authorisation to carry out the activity of administering a benchmark unless they are located in the UK. That is because that regulated activity gives effect to article 34 of
the benchmarks regulation and, for these purposes, the requirements of article 34 only apply to administrators which are located in the UK.

8.5.4

(1) This rule applies to an Annex II benchmark administrator.

(2) An Annex II benchmark administrator must promptly notify the FCA of the identity of the most senior manager(s) responsible for ensuring that the firm satisfactorily implements the requirements of the benchmarks regulation (in accordance with paragraph 14(a) of Annex II to that regulation).

8.5.5

(1) Article 19 of the benchmarks regulation states that Annex II to that regulation applies to the provision of a commodity benchmark instead of Title II to the regulation (save where Annex II is disapplied by article 19).

(2) Paragraph 14(a) of Annex II to the benchmarks regulation requires an Annex II benchmark administrator to ensure that it has in place segregated reporting lines amongst its managers, assessors and other employees and from the managers to the administrator’s most senior level management and its board to ensure:

(a) that the administrator satisfactorily implements the requirements of the benchmarks regulation; and

(b) that responsibilities are clearly defined and do not conflict or cause a perception of conflict.

8.5.6

An Annex II benchmark administrator which is an SMCR firm may comply with the requirement in MAR 8.5.4R(2) to notify the FCA of the identity of the most senior manager(s) responsible for implementing the requirements of the benchmarks regulation by including that responsibility in that person’s statement of responsibilities.

Notifications about suspected benchmark manipulation

8.5.7

(1) The guidance in (2) and (3) applies to regulated benchmark administrators other than Annex II benchmark administrators.

(2) Article 14(1) of the benchmarks regulation requires a regulated benchmark administrator to establish adequate systems and effective controls to ensure the integrity of input data in order to be able to identify and report to its competent authority any conduct that may involve manipulation or attempted manipulation of a benchmark, under the Market Abuse Regulation.

(3) For the avoidance of doubt, the FCA expects a regulated benchmark administrator to notify the FCA without delay of any notification it receives from a contributor about conduct that may involve manipulation or attempted manipulation of a benchmark under the Market Abuse Regulation.
Adequate financial resources for administrators of critical benchmarks

Notwithstanding any other financial resource requirements that may apply, a regulated benchmark administrator that administers a critical benchmark must:

1. be able to meet its liabilities as they fall due; and
2. maintain, at all times, sufficient financial resources to cover the operating costs of administering the critical benchmark for a period of at least six months.

A regulated benchmark administrator that administers more than one critical benchmark may comply with its financial resources requirements under MAR 8.5.8R(2) by holding sufficient financial resources to cover the combined operating costs for all critical benchmarks it administers.

1. MAR 8.5.8R sets out the minimum amount of financial resources a regulated benchmark administrator must hold to carry out administering a benchmark in relation to a critical benchmark.

2. The FCA expects regulated benchmark administrators administering a critical benchmark to:
   (a) normally hold sufficient financial resources to cover the operating costs of administering the critical benchmark(s) for a period of nine months; and
   (b) notify the FCA where a regulated benchmark administrator’s financial resources fall below these levels (required by MAR 8.5.13R and SUP 15.3.11R).

To meet the financial resources requirement in MAR 8.5.8R(2), the FCA expects a regulated benchmark administrator to hold both sufficient liquid financial assets and net capital to cover the operating costs of administering the critical benchmark(s). In particular:

1. net capital can include common stock, retained earnings, disclosed reserves, or other instruments generally classified as common equity tier one capital or additional tier one capital, and may include interim earnings that have been independently verified by an auditor.
2. net capital should be calculated after deductions for:
   (a) holdings of the regulated benchmark administrator’s own securities or those of any undertakings in the regulated benchmark administrator’s group;
   (b) any amount owed to the regulated benchmark administrator by an undertaking in its group under any loan or credit arrangement; and
   (c) any exposure arising under any guarantee, charge or contingent liability.
(3) liquid financial assets can include cash or liquid financial instruments held on the balance sheet of the regulated benchmark administrator where the financial instruments:

(a) have minimal market and credit risk; and
(b) are capable of being liquidated with minimal adverse price effect.

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

Notifications for breaches

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

Regulated benchmark administrators are reminded of their obligation under SUP 15.3.11R to notify the FCA of any significant breaches of rules.
8.6 Responsibility for benchmark activities: benchmark contributors

Application

8.6.1 R
(1) This section applies to benchmark contributors save as provided for in (2).

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

Responsibility for contributing input data

8.6.2 R
A benchmark contributor must promptly notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator.

8.6.3 G
(1) The FCA expects a benchmark contributor to ensure a member of its senior personnel is responsible for the process of contributing input data to a BMR benchmark administrator regardless of whether the contribution is provided from the UK or from elsewhere.

(2) The requirement in MAR 8.6.2R applies regardless of whether the benchmark contributor contributes input data from the UK or from elsewhere.

8.6.4 G
A UK benchmark contributor or third country benchmark contributor which is an SMCR firm may comply with the requirement in MAR 8.6.2R to notify the FCA of the senior personnel responsible for the process for contributing input data to a BMR benchmark administrator by including that responsibility in that person’s statement of responsibilities.
8.7 Procedures for exercising powers in relation to critical benchmarks

Application and purpose

This section applies to authorised persons and to unauthorised persons.

(1) The purpose of this section is to set out the procedures which the FCA will follow when exercising its powers under articles 21 and 23 of the benchmarks regulation.

(1) MAR 8.7.9G contains a table of definitions for the purpose of this section. Those defined terms are not shown in italics.

Compulsion powers under the benchmarks regulation

(1) The FCA has been designated as the UK competent authority for the purpose of the benchmarks regulation.

(2) The benchmarks regulation confers various directly applicable powers on competent authorities in relation to critical benchmarks. In particular:

(a) article 21(3) of the benchmarks regulation gives a competent authority the power to compel the administrator of a critical benchmark to continue publishing the critical benchmark for up to 24 months; and

(b) article 23(6) of the benchmarks regulation gives a competent authority the power to take various steps where it considers that the representativeness of a critical benchmark is put at risk. That includes the power to require supervised entities to contribute input data to the administrator of a critical benchmark for up to 24 months.

(3) The two powers in (a) and (b) above are referred to in this section as the “compulsion powers”.

Exercise of compulsion powers: general

(1) Articles 21 and 23 of the benchmarks regulation set out the circumstances in which competent authorities may exercise the compulsion powers.

(2) In some cases, the competent authority may only have a short period in which to decide whether to exercise a compulsion power.
(3) Where the FCA considers it necessary to exercise a compulsion power, it will make that decision on the basis of the information available to it at that time.

(4) The benchmarks regulation does not require a competent authority to consult on the use of compulsion powers (save that competent authorities must consult the college established under article 46 of the benchmarks regulation when exercising the compulsion power in article 23).

(5) Given that the compulsion powers may need to be exercised within short timescales, the FCA does not expect to consult on the use of its compulsion powers (other than consulting other regulatory bodies where required by the Act or the benchmarks regulation).

(6) In some cases, it may be necessary to exercise compulsion powers in relation to more than one person. In those circumstances, it may be necessary to address a written notice under this section to more than one person.

(7) The FCA will review a decision to exercise a compulsion power in the circumstances described in this section.

Decision to exercise a compulsion power

8.7.5

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

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

8.7.6

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

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

Review of the First Decision

8.7.7

1. Where P makes written representations to the FCA in relation to the First Decision in accordance with MAR 8.7.5G(4), the FCA will review that decision and will decide whether to maintain, vary or revoke it.

2. In conducting the review in (1), the matters which the FCA may have regard to include:
(a) the written representations made by P in relation to the First Decision; and
(b) any additional information relevant to the exercise of the compulsion power (whether obtained before or after the First Decision).

(3) The review in (1) will be carried out by:
(a) a senior FCA staff member who did not participate in making the First Decision; or
(b) two or more senior FCA staff members including at least one person who did not participate in making the First Decision.

(4) When the FCA has completed the review in (1), the FCA will give P a written notice which:
(a) gives details of the decision in response to the review (“the Second Decision”);
(b) states the FCA’s reasons for the Second Decision; and
(c) states the date on which the Second Decision takes effect.

Own initiative review of the exercise of compulsion powers

(1) The FCA may, on its own initiative, decide to vary or revoke a requirement imposed under a compulsion power (an Own Initiative Variation or Own Initiative Revocation).

(2) For instance, the FCA may decide to vary or revoke a requirement imposed under a compulsion power:
(a) where the FCA becomes aware of new information which is material to that requirement; or
(b) to extend the duration of the requirement in accordance with article 21(3) or article 23(6)(b) of the benchmarks regulation; or
(c) as result of a review under article 21(3) or article 23(9) of the benchmarks regulation.

(3) The FCA will treat an Own Initiative Variation as a new First Decision and will follow the procedures in Section 8.7.5G and Section 8.7.7G for the purpose of that decision.

Table of defined terms

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<td>compulsion powers</td>
<td>means the competent authority’s powers under articles 21(3) and 23(6) of the benchmarks regulation;</td>
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<td>First Decision</td>
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<tr>
<td>Second Decision</td>
<td>the FCA’s decision in MAR 8.7.7G(4).</td>
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Chapter 9

Data reporting service
9.1 Application, introduction, approach and structure

Application

9.1.1 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 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

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

The following table provides an overview of this chapter:

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9.2 Authorisation and verification

Application form and notification form for members of the management body

9.2.1 (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 ■ 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 ■ 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

A person must provide MAR 9 Annexes 1D, 2D, 3D and 4D together with supporting documentation to the FCA by:

(1) emailing MiFiDII.Applications@fca.org.uk; or

(2) posting to the FCA addressed to:

The Financial Conduct Authority
FAO The Authorisations Support Team
12 Endeavour Square
London
E20 1JN.
9.3 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 or when this is impossible within 10 working days after the change.


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
   12 Endeavour Square
   London
   E20 1JN.

9.3.5 [G] (1) To ensure the security of the FCA’s systems, the FCA requires an APA or a CTP to sign the MIS confidentiality agreement before receiving the FCA’s Market Interface Specification (MIS).
(2) Once the FCA receives the MIS confidentiality agreement from the APA or the CTP, the FCA will provide the APA or the CTP with Market Interface Specification (MIS).

9.3.6 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
12 Endeavour Square
London
E20 1JN.
9.4 Supervisory regime

Overview of supervisory approach

9.4.1 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 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 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 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 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
Q. Where can I find out information about fees to be charged in respect of data reporting services providers?
A. See 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.

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 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 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 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 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 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 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 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-yearly-notification-form.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 (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 MiFID Regulations provide for a separate regulatory framework in relation to such persons. This framework is set out in:

(a) Part 3 of the MiFID Regulations (‘Position limits and position management controls in commodity derivatives’); and

(b) Schedule 1 to the MiFID 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

(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

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

(1) The following provisions of the MiFID 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 MiFID 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 MiFID 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 MiFID 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

(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  
(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  
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  
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

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

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>a UK market operator operating a trading venue</td>
<td>MAR 10.3.2G and MAR 10.3.4G</td>
</tr>
<tr>
<td>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</td>
<td>MAR 10.3.3R to MAR 10.3.5G</td>
</tr>
</tbody>
</table>

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

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

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]
10.4 Position reporting

Application

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

<table>
<thead>
<tr>
<th>Type of firm</th>
<th>Applicable provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>UK regulated market</strong></td>
<td>MAR 10.4.2G</td>
</tr>
<tr>
<td><strong>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</strong></td>
<td>MAR 10.4.3R to MAR 10.4.6G</td>
</tr>
<tr>
<td><strong>UK MiFID investment firm</strong></td>
<td>MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G</td>
</tr>
<tr>
<td><strong>UK branch of a third country investment firm when not operating a multilateral trading facility or an OTF</strong></td>
<td>MAR 10.4.7D to MAR 10.4.9D and MAR 10.4.11G</td>
</tr>
<tr>
<td>Member, participant or a client of a UK trading venue</td>
<td>MAR 10.4.7D</td>
</tr>
<tr>
<td><strong>EEA MiFID investment firm who is a member, participant or a client of a UK trading venue</strong></td>
<td>MAR 10.4.10D to MAR 10.4.11G</td>
</tr>
</tbody>
</table>

Position reporting by UK regulated markets

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

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

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]
10.4.8  D

(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]

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 Regulation 27 of the MiFId 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 The following provisions of the MiFId 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 The following provisions of the MiFID 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 (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 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 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

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

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.

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

## Schedule 1

### Record keeping requirements

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

<table>
<thead>
<tr>
<th>Handbook Reference</th>
<th>Matter to be notified</th>
<th>Contents of Notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAR 5.3A.3R(4)</td>
<td>Market making agreements</td>
<td>Content of market making agreements</td>
<td>Upon formation of a binding written agreement</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5.3A.8R</td>
<td>Trading halts on material markets</td>
<td>Information that trading is halted in a financial instrument</td>
<td>Upon trading halt</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5.6.1R(1)</td>
<td>Non-compliant, disorderly or abusive trading</td>
<td>Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve market abuse</td>
<td>Upon occurrence of the breach, conditions or conduct</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5.6A.1R(3)</td>
<td>Suspension and removal of financial instruments</td>
<td>Information of the suspension or removal of a financial instrument and any related or referenced derivative</td>
<td>Upon suspension or removal</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5A.5.3R(4)</td>
<td>Market making agreements</td>
<td>Content of market making agreements</td>
<td>Upon formation of a binding written agreement</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5A.5.8R</td>
<td>Trading halts on material markets</td>
<td>Information that trading is halted in a financial instrument</td>
<td>Upon trading halt</td>
<td>Without delay</td>
</tr>
<tr>
<td>Handbook Reference</td>
<td>Matter to be notified</td>
<td>Contents of Notification</td>
<td>Trigger event</td>
<td>Time allowed</td>
</tr>
<tr>
<td>--------------------</td>
<td>-----------------------</td>
<td>--------------------------</td>
<td>---------------</td>
<td>--------------</td>
</tr>
<tr>
<td>MAR 5A.8.1R(1)</td>
<td>Non-compliant, disorderly or abusive trading</td>
<td>Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve market abuse</td>
<td>Upon occurrence of the breach, conditions or conduct</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5A.9.1R(3)</td>
<td>Suspension and removal of financial instruments</td>
<td>Information of the suspension or removal of a financial instrument and any related or referenced derivative</td>
<td>Upon suspension or removal</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 6.4.1R</td>
<td>Systematic internaliser status</td>
<td>Information of gaining or ceasing systematic internaliser status</td>
<td>Upon becoming or ceasing to be a systematic internaliser</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 7A.3.6R</td>
<td>Engaging in algorithmic trading</td>
<td>Information that a member of a trading venue is engaging in algorithmic trading</td>
<td>Upon engagement in algorithmic trading</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 7A.4.4R</td>
<td>Provision of DEA services</td>
<td>Information that a firm is providing DEA services</td>
<td>Upon engagement in DEA provision</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5.6.2R(1)</td>
<td>Proposal to change fee incentive scheme</td>
<td>Summary of proposal in the form set out in Annex 1</td>
<td>Proposal communicated to members</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 5.6.2R(2)</td>
<td>Change to fee incentive scheme</td>
<td>Summary of change</td>
<td>Change published or notified to members</td>
<td>Without delay</td>
</tr>
<tr>
<td>MAR 8.3.17 R</td>
<td>Reasonable possibility of not being able to hold sufficient financial resources</td>
<td>Full details together with relevant financial information</td>
<td>Occurrence</td>
<td>As soon as practicable</td>
</tr>
</tbody>
</table>
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:
   - any individual, except when acting in the course of carrying on a regulated activity; and
   - 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.

<table>
<thead>
<tr>
<th>Chapter / Appendix</th>
<th>Section / Annex</th>
<th>Paragraph</th>
<th>For Private Person?</th>
<th>Removed</th>
<th>For other person?</th>
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<tbody>
<tr>
<td><strong>MAR 1 (no rules)</strong></td>
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<td></td>
<td></td>
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<tr>
<td><strong>All rules in MAR 3 except MAR 3.5.7 E</strong></td>
<td></td>
<td></td>
<td>Yes</td>
<td>Yes MAR 3.1.5 R</td>
<td>No</td>
</tr>
<tr>
<td><strong>MAR 4 (all rules)</strong></td>
<td></td>
<td></td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>
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.