MARKETS (MiFID) (CONSEQUENTIAL AMENDMENTS) INSTRUMENT 2007

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

(1) section 138 (General rule-making power);
(2) section 156 (General supplementary powers);
(3) section 157(1) (Guidance); and
(4) paragraph 17 of Schedule 1 (Fees).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 1 November 2007.

Amendments to the Handbook

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

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<th>(2)</th>
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Citation

E. This instrument may be cited as the Markets (MiFID) (Consequential Amendments) Instrument 2007.

By order of the Board
26 July 2007
Annex A
Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

 alternatively trading system a system that brings together multiple buying and selling interests in designated investments (other than life policies, personal pension schemes, stakeholder pension schemes or rights to or interests in any of those investments), in the system and according to non-discretionary rules set by the system's operator in a way that results in a contract but does not include:
(a) a system that is operated by a RIE or that is a regulated market or an EEA commodities market; or
(b) a bilateral system.

ATS alternative trading system.

ATS operator a firm that operates an ATS or that has accepted responsibility for the operation of an ATS by an appointed representative.

bilateral system a system that brings together buying and selling interests in the way described in the definition of an alternative trading system, where a single person enters into one side of every transaction effected using the system, on his own account and not merely as a central counterparty interposed between a buyer and seller, or would enter into every trade in that way but for client orders that are crossed occasionally. This definition includes such a system where, rather than a single person, it is one of a number of persons in the same group that enters into one side of every transaction effected using the system.

CESR ATS standards the Standards for the Regulation of Alternative Trading Systems published by the Committee of European Securities Regulators.

large order, quote or transaction (in relation to an ATS) an order, quote or transaction relating to an investment traded on an ATS, the publication of details of which at the time of the order, quote or transaction might significantly affect the price of the relevant investment to the detriment of the person placing the order, providing the quote or entering into the transaction (as the case may be).

price taking system an ATS that facilitates transactions by reference to prices established on a market or another ATS.
Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Late Payments

2.2.1 R If a person does not pay the total amount of a periodic fee (including fees relating to transactions reported to the FSA using the FSA's Transaction Reporting System (see SUP 17)), FOS levy or case fee, or share of the FSCS levy, on the date on which it is due, under the relevant provision in FEES 4, 5 or 6, that person must pay an additional amount as follows: …
Annex C

Amendments to Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2.2.68 G Counterparty risk rules only partially capture the risk of settlement failure as the quantification of risk is only based on mark-to-market values and does not take account of the volatility of the securities over the settlement period. A securities firm's assessment of its exposure to counterparty risk should take into account:

(1) …

(2) the types of execution venues which it uses; for example, the London Stock Exchange or a retail service provider (RSP) have more depth than alternative trading systems (ATS) multilateral trading facilities; and

…
Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

11.4.4 G  *MAR 5.8.2EU* sets out the conditions required for an arrangement to make *client limit the orders* public under this section. *MAR 5.8.3G* and *MAR 5.8.4G* provide guidance on these conditions.
Annex E

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Disapplication of the pre-trade transparency requirements

5.7.1 R (1) Unless disapplication of this rule under MAR 5.7.6 G is relevant, Unless (2),(3) or (4) applies, in respect of shares admitted to trading on a regulated market, a firm operating an MTF must make public, on reasonable commercial terms and on a continuous basis during normal trading hours:

(1- (a) the current bid and offer prices which are advertised through its systems; and
(2- (b) the depth of trading interests at those prices.

[Note: Article 29(1) of MiFID]

(2) Paragraph (1) does not apply to systems operated by an MTF to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):

(a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;

(b) they formalise negotiated transactions, each of which meets the criteria in (i) and (ii), subject to the provisions in (iii) and (iv):

(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;

(ii) it is subject to conditions other than the current market price of the share;

(iii) For the purposes of (b), the other conditions specified in the rules of the MTF for a transaction of this kind must also have been fulfilled.

(iv) Negotiated transaction has the meaning given in Article 19 of the MiFID Regulation.

[Note: Article 19 of the MiFID Regulation is reproduced in MAR 5.7.9]
EU.

(c) In the case of systems having functionality other than as described in (a) or (b), the disapplication does not apply to that other functionality.

(3) Paragraph (1) does not apply in relation to orders held in an order management facility maintained by the MTF pending their being disclosed to the market.

(4) (a) Paragraph (1) does not apply in relation to orders that are large in scale compared to normal market size for the share or type of share in question.

(b) An order will be considered to be large in scale if it meets the criteria set out in Article 20 of the MiFID Regulation.

[Note: Article 20 of the MiFID Regulation is reproduced in MAR 5.7.10EU.]

…

5.7.6 G The obligation in MAR 5.7.1R(1) to make public certain pre-trade information will not be is disapplied in MAR 5.7.1R(2) based on the market model or the type and size of orders in the cases identified in the MiFID Regulation, and as reproduced for reference in MAR 5.7.8EU …. In particular, the obligation will not be is disapplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

…

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

5.8.2 EU …

5.8.3 G The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see MAR 5.8.2EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

5.8.4 G (1) In respect of arrangements facilitating the consolidation of data as required in MAR 5.8.2EU(b), the FSA considers information as being made public in accordance with MAR 5.8.2EU(b), if it:

(a) is accessible by automated electronic means in a machine-readable way:
(b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and

(c) is accompanied by instructions outlining how users can access the information.

(2) The FSA considers that an arrangement fulfils the 'machine-readable' criteria where the data:

(a) is in a physical form that is designed to be read by a computer;
(b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
(c) is in a format that is known in advance by the party wishing to access the data.

(3) The FSA considers that publication on a non-machine-readable website would not meet the MiFID requirements.

(4) The FSA considers that information that is made public in accordance with MAR 5.8.2EU should conform to a consistent and structured format based on industry standards. Firms operating an MTF can choose the structure that they use.

...
market must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the MiFID Regulation.

Note: Table 4 of Annex II of the MiFID regulation is reproduced in MAR 7 Annex 1.

5.9.6A G The deferred publication of information, referred to in MAR 5.9.6EU, is authorised by the FSA, to the extent set out in that provision, and, in particular, is given effect in MAR 5.9.1 R(2).

…

6.9.6 G For the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see MAR 6.9.5EU(a)), and in respect of arrangements facilitating the consolidation of data as required in MAR 6.9.5EU(b), the guidance in MAR 5.8.3G and 5.8.4G applies equally to firms falling within this chapter, and should be read as if references to provisions and types of firm in MAR 5 were references to the corresponding provisions and types of firm in this chapter.

…

Deferred publication of large transactions

7.2.1 R (1) Unless (2) applies, The information required by MAR 7.1.2R shall be made public as close to real time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

[Note: article 28(1) of MiFID]

(2) A firm may defer publication of trade information required in (1), for no longer than the period specified in Table 4 in Annex II of the MiFID Regulation for the class of share and transaction concerned, provided that the criteria in (a) and (b) are satisfied, subject to the provision in (c):

(a) the transaction is between an investment firm dealing on own account and a client of that firm;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

(c) In order to determine the relevant minimum qualifying size for the purposes of (b), all shares admitted to trading on a regulated market must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the MiFID
Arrangements for making information public

7.2.12 EU …

7.2.12A G (1) The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see MAR 7.2.12EU(a)), and in respect of arrangements facilitating the consolidation of data as required in MAR 7.2.12EU(b), the guidance in MAR 5.8.3G and MAR 5.8.4G (subject to additional guidance in (2)) applies equally to firms falling within this chapter, and should be read as if references to provisions and types of firm in MAR 5 were references to the corresponding provisions and types of firm in this chapter.

(2) In addition to MAR 5.8.4G, as applied to firms in this chapter under (1), for the purposes of facilitating the consolidation of transparency data with similar data from other sources, the FSA considers information as being made public in accordance with MAR 7.2.12EU(b), if, in addition to MAR 5.8.4G(1)(a) to (c), each trade is published through only one primary publication channel.
Annex F

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

SUP 13A Annex 1G Application of the Handbook to Incoming EEA Firms

<table>
<thead>
<tr>
<th>(1) Module of Handbook</th>
<th>(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
<th>(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom</th>
</tr>
</thead>
<tbody>
<tr>
<td>…</td>
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<tr>
<td>MAR</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>MAR 5 (Alternative Trading Systems Multilateral Trading Facilities)</td>
<td>Does not apply (MAR 5.1.1G).</td>
<td>Does not apply (MAR 5.1.1G).</td>
</tr>
</tbody>
</table>

SUP TP 1.2

<table>
<thead>
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<tr>
<td>…</td>
<td>…</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>15 SUP-17</td>
<td>R Transaction Reporting</td>
<td>From commencement</td>
<td>Commencement</td>
</tr>
<tr>
<td>(1) A firm: to whom SUP-17 applies under SUP 17.1.1(1)(c); and</td>
<td></td>
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<tr>
<td>(2) which was authorised under the Financial Services Act 1986 immediately before commencement otherwise than through membership of the SFA,</td>
<td></td>
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<tr>
<td>must comply with SUP-17 as if it were:</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>(1) an investment</td>
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</tbody>
</table>
management firm, if it was a member of IMRO immediately before commencement, or

(2) a personal investment firm, otherwise, [deleted]

<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>
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</tr>
<tr>
<td>SUP 17</td>
<td>Transaction reporting</td>
<td>A transaction report as specified in SUP 17.6, 17.1.4R, SUP 17.4.1EU and SUP 17.4.2R.</td>
<td>Entering into a reportable transaction (as defined in SUP 17.5), whether on its own account or on behalf of another, subject to exceptions in SUP 17.4 Executing a transaction, subject to the exceptions in SUP 17.2.1R and SUP 17.2.3R.</td>
<td>As soon as practicable and in any event before the end of the next business day after the day on which the firm entered into the transaction, subject to SUP 17.7.10(Failure of reporting system) As quickly as possible and by not later than the close of the working day following the day upon which that transaction took place.</td>
</tr>
</tbody>
</table>
operator of a collective investment undertaking, pension scheme, occupational pension scheme, a personal pension scheme or a stakeholder pension scheme.

**SUP 17**

Transaction reporting
This applies to (a) a securities and futures firm; or (b) a personal investment firm; or (c) an investment firm (including a credit institution which is an investment firm) not within (a) or (b) excluding a firm to whom the ISD does not apply under Article 2(2) of the ISD.

This does not apply to: (a) an incoming EEA firm in relation to its passported activities; or (b) an oil market participant in relation to its oil market activities.

The fact of intending to use one of the systems specified

Before using one of the reporting systems listed in SUP 17.7.8: (1) CEDCOM system operated by Clearstream Banking AG, Frankfurt; (2) CGO - Central Gils Office; (3) CRESTCo Limited; (4) EUCLID operated by Euroclear SA (input directly into EUCLID or through SWIFT); (5) the FSA’s Direct Reporting System; (6) SEQUAL 2000 system of Thomson Financial Services; (7) Tradepoint Financial Networks Plc; (8) Trade Registration System of The London International Financial Futures and Options Exchange (LIFFE); (9) TRAX
<table>
<thead>
<tr>
<th>SUP 17</th>
<th>Transaction reporting</th>
<th>Whether the firm will adopt:</th>
<th>Failure of a reporting system</th>
<th>Before the end of the business day after the day when the failure occurs.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>(1) SUP 17.7.10 (1): make the transaction report through another reporting system, if the firm considers it reasonably practicable to do so; (2) SUP 17.7.10 (2): make the transaction report by the end of the business day after the day when the failure is remedied, if the firm does not consider it reasonably practicable to comply with (1)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>This applies to (a) a securities and futures firm; or (b) a personal investment firm; or (c) an investment firm (including a credit institution which is an investment firm) not within (a) or (b) excluding a firm to whom the ISD does not apply under Article 2(2) of the ISD. This does not apply to: (a) an incoming EEA firm in relation to its passported activities; or (b) an oil market participant in relation to its oil market activities.</td>
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</tbody>
</table>

**SUP 17**

Transaction reporting

This applies to (a) a securities and futures firm; or (b) a personal investment firm; or (c) an investment firm (including a credit institution which is an investment firm) not

The fact of the failure of the reporting system

Any failure of the firm’s system or that of a person reporting on its behalf which prevents a person making a transaction report within the specified period

Without-delay
within (a) or (b) excluding a firm to whom the ISD does not apply under Article 2(2) of the ISD.
This does not apply to:
(a) an incoming EEA firm in relation to its passported activities; or
(b) an oil market participant in relation to its oil market activities.

(SUP 17.6.1)
Annex G

Amendments to the Credit Unions sourcebook (CRED)

In this Annex, underlining indicates new text and striking through indicates deleted text.

CRED App 1.1.1

<table>
<thead>
<tr>
<th>Sourcebook or manual</th>
<th>Reference Code</th>
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<tbody>
<tr>
<td>…</td>
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<tr>
<td>Business standards</td>
<td></td>
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<tr>
<td>…</td>
<td></td>
</tr>
<tr>
<td>Market conduct, including: Code of Market, Conduct Price stabilising rules, Inter-professional conduct, Alternative Trading Systems Multilateral Trading Facilities</td>
<td>MAR</td>
</tr>
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</table>
Annex H

Amendments to the Electronic Money sourcebook (ELM)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Application of other parts of the Handbook to ELMIs

<table>
<thead>
<tr>
<th>Block</th>
<th>Module</th>
<th>Application</th>
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<tbody>
<tr>
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<td>…</td>
</tr>
<tr>
<td>Business Standards</td>
<td>…</td>
<td>…</td>
</tr>
<tr>
<td>…</td>
<td>Market Conduct (MAR)</td>
<td>MAR 1 (The Code of Market Conduct) applies if an ELMI is seeking guidance as to whether or not behaviour amounts to market abuse. MAR 2 (Price Stabilising Rules), MAR 3 (Inter-Professional Conduct) and MAR 4 (Endorsement of the Takeover Code) do not apply to an ELMI when issuing e-money. MAR 5 (Alternative Trading Systems Multilateral Trading Facilities) will not apply to an ELMI, as there are restrictions on the type of business activities that an ELMI may carry on.</td>
</tr>
</tbody>
</table>
Annex I

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

Arrangements for making information public

2.6.33  G  The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see REC 2.6.24EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

2.6.34  G  (1)  In respect of arrangements facilitating the consolidation of data as required in REC 2.6.24EU(b), the FSA considers information as being made public in accordance with REC 2.6.24EU(b), if it:

(a) is accessible by automated electronic means in a machine-readable way;

(b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and

(c) is accompanied by instructions outlining how users can access the information.

(2)  The FSA considers that an arrangement fulfils the ‘machine-readable’ criteria where the data:

(a) is in a physical form that is designed to be read by a computer;

(b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and

(c) is in a format that is known in advance by the party wishing to access the data.

(3)  The FSA considers that publication on a non-machine-readable website would not meet the MiFID requirements.

(4)  The FSA considers that information that is made public in accordance with REC 2.6.24EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use.