

TRADING VENUES INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct 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 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance); and
 - (4) section 293 (Power to make notification rules in respect of recognised bodies).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 September 2017.

Amendments to the Handbook

- D. The Market Conduct (MAR) sourcebook is amended in accordance with Annex A to this instrument.
- E. The Recognised Investment Exchanges sourcebook (REC) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Trading Venues Instrument 2017.

By order of the Board
20 July 2017

Annex A

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text, unless otherwise indicated.

5 **Multilateral trading facilities (MTFs)**

...

5.6 **Reporting requirements**

5.6.1 R ...

5.6.2 R A firm operating an MTF must give the FCA a summary of:

(1) any proposal to introduce, amend or renew a scheme for rebating or waiving fees or charges levied on its members or participants (or any group or class of them), at the same time as the proposal is communicated to those members or participants; and

(2) any such change, no later than the date when it is published or notified to the members or participants.

5.6.3 R The summary referred to in MAR 5.6.2R(1) must be given in the form specified in MAR 5 Annex 2R.

After MAR 5 Annex 1D insert the following form as a separate Annex. All the text is new and is not underlined.

5 Annex Form for reporting incentive scheme proposals (MAR 5.6.3R(1)) 2R

...

Annex 1 – Incentive Schemes (MAR 5.6.3R)

Notification of incentive schemes	
Name of the Trading Venue:	
Name and Reference Number of Operator:	
Date submitted (DD/MM/YYYY):	
Incentive scheme name:	
Period of the scheme (DD/MM/YYYY – DD/MM/YYYY):	
<p>Is the scheme new, or a renewal of an existing scheme?</p> <p>If this is a renewal of an existing scheme, please complete the incentive scheme renewals section only, at page 3 of this form.</p>	
List a broad categorisation of the financial instruments to which the incentive scheme relates.	
<p>Purpose:</p> <p>Explain the rationale behind the incentive scheme proposal and the benefits the scheme is intended to generate. Please provide details of how you propose to measure whether the scheme has been effective in delivering these benefits.</p>	
<p>Scheme summary:</p> <p>Please provide a summary of the key terms of the scheme. The following items are not an exhaustive list of relevant items, but should at a minimum be addressed in the summary:</p> <ul style="list-style-type: none"> • Describe which members may be eligible for the scheme. If the scheme is open to a restricted number of members, please explain how members will be selected in the event of over-subscription. • Explain the expected obligations of the participants. If participants will be invited to bid obligations, please describe how bids will be assessed and any benchmark that will be used for 	

<p>such assessment.</p> <ul style="list-style-type: none"> • Provide details of the incentive being offered. If the incentive varies according to performance, please provide worked examples of how incentives will be calculated. • Describe the way in which participants will receive the incentive (for example, as a discount applied to trading fee invoices). • Indicate the duration of the scheme. (The FCA generally expects the duration of an incentive scheme to be for a period of one year or less. Any incentive scheme for a period longer than one year will have to be reviewed and renewed on an annual basis at a minimum.) 	
<p>Scheme regulatory analysis: <i>The regulatory analysis should address the following aspects, in order to demonstrate the level of risk the scheme will pose to market integrity. In the event you have considered any additional aspects as part of your regulatory analysis, please include those as well. If additional information is required to support the analysis below, please append this..</i></p>	
<p>Transparency of the scheme:</p> <ul style="list-style-type: none"> (i) Please explain how the terms of the incentive scheme will be made available to potential applicants. (ii) Please provide a copy of any proposed communications with applicants. (iii) If the scheme requires potential participants to subscribe or bid, how much notice will potential applicants be given prior to the scheme's launch? 	
<p>Fair and orderly trading: Please explain the assessment the trading venue has made of:</p> <ul style="list-style-type: none"> (i) the risk of orders being placed or modified, or transactions being executed, for purposes other than those intended by the scheme; (ii) any risk that the scheme could distort the price formation process, including the relationship between the scheme's benefit and the costs which it is intended to alleviate; (iii) any risks that could arise if the scheme 	

<p>enables participants to use the benefits of the scheme, in trading any other instrument other than the instrument to which the scheme relates (e.g. fee credits that could be used in trading other instruments);</p> <p>(iv) any risks that could arise in the event that a scheme participant is eligible to simultaneously take part in any other incentive arrangement offered by the trading venue; and</p> <p>(v) whether the same benefits will be available to all venue users in an objective and non-discriminatory way.</p> <p>Please confirm whether or not, in certain circumstances, a scheme participant could receive rebates in relation to transactions covered by the scheme which exceed the fees due to the trading venue from the participant for such transactions (taking into account, where applicable, any other fee rebates or ‘holidays’ to which the participant is entitled).</p> <p>Please also confirm that the scheme does not amount to a ‘cliff edge’ where, upon reaching a given threshold, a discounted rate is applied not only to those trades which are incremental to the threshold, but to all trades which have gone before it in a particular fee period.</p>	
<p>Market monitoring and surveillance arrangements:</p> <p>Please confirm that there are sufficient market monitoring and surveillance arrangements in place to prevent abuse of the incentive scheme structure that could encourage disorderly and improper trading to occur.</p>	
<p>Incentive scheme renewals:</p> <p><i>In the case of a renewal of an existing scheme currently in force, please complete the following section below. If additional information to support the answers below is required (e.g. graphs, breakdown of statistics etc) which you have assessed internally as necessary to ensure the scheme continues to meet your regulatory requirements, please append these.</i></p>	
<p>Name the participants for most recent period of scheme.</p>	
<p>Have the terms of the scheme been changed? If so, please detail how and why.</p>	

How will the trading venue communicate the renewal of this scheme to all existing and new participants?	
Please provide the following information relating to the scheme for the most recent period: <ul style="list-style-type: none"> • Amounts paid out/rebated to each individual participant; • Total amount paid out/rebated in the scheme. 	
Have there been any instances of improper or disorderly trading in relation to the instruments covered within the scheme over the last period of operation of the scheme? Are there any other additional issues about this scheme that have been flagged through your market surveillance monitoring?	
Compliance sign off <i>Senior manager to sign off on this submission on behalf of the operator of the trading venue, to verify the factual accuracy of the information submitted, and that the proposed scheme is in compliance with relevant requirements.</i>	
Name:	Signature:
Date (DD/MM/YYYY):	

Amend the following as shown.

Sch 2 Notification requirements

...

Sch 2.2G Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<u>MAR 5.6.2R(1)</u>	<u>Proposal to change fee incentive scheme</u>	<u>Summary of proposal in the form set out in Annex 1</u>	<u>Proposal communicated to members</u>	<u>Without delay</u>

<u>MAR 5.6.2R(2)</u>	<u>Change to fee incentive scheme</u>	<u>Summary of change</u>	<u>Change published or notified to members</u>	<u>Without delay</u>
...

Annex B

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

2.3 Financial resources

...

2.3.10 Operational and other risks: individual guidance

- G The *FCA* would expect to provide a *UK recognised body* with individual guidance, issued with a frequency determined in accordance with the usual prudential cycle for such bodies, communicated from time to time, on the amount of eligible financial resources which it considers would be sufficient for the *UK recognised body* to hold in respect of operational and other risks ~~in order~~ to satisfy the *recognition requirements*. In formulating its individual *guidance*, the *FCA* will ordinarily apply the approach described in *REC 2.3.9G* for *UK RIEs*.

...

- 2.3.16 G The *FCA* would normally expect to use the most recent financial risk assessment prepared by the *UK RIE* in the course of preparing individual guidance, issued in accordance with the usual prudential cycle for such bodies, on the amount of financial resources that it considers is sufficient for a *UK RIE* to hold ~~in order~~ to satisfy the *recognition requirements*. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the *UK RIE* under the risk-based approach.

...

- 2.3.20 G The *FCA* would expect to consider the relevant annual financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating, in accordance with the usual prudential cycle for *UK RIEs*, its *guidance* on the amount of eligible financial resources it considers to be sufficient for the *UK RIE* to hold ~~in order to meet~~ for the *recognition requirements*. In formulating its *guidance*, the *FCA* would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:

...

...

3.9 Fees and incentive schemes

...

- 3.9.2 R A *UK recognised body* must give the *FCA* a summary of:
- (1) any proposal to change the fees or charges levied on its *members* (or any group or class of them), at the same time as the proposal is communicated to those *members*; and
 - (2) any such change, no later than the date when it is published or notified to those *members*.
- 3.9.3 R If the proposed change is to introduce, amend or renew a scheme for rebating or waiving fees or charges, the summary referred to in REC 3.9.2R(1) must be given in the form specified in REC 3 Annex 1R.

After REC 3.26 (Proposals to make regulatory provision) insert the following form as a separate Annex. All the text is new and is not underlined.

3 Annex Form for notifying incentive scheme proposals (REC 3.9.3R(1))
1R

Annex 1 – Incentive Schemes (REC 3.9.3R)

Notification of incentive schemes		
Name of the Trading Venue:		Date submitted (DD/MM/YYYY):
Name and Reference Number of Operator:		
Incentive scheme name:		
Period of the scheme (DD/MM/YYYY – DD/MM/YYYY):		
<p>Is the scheme new, or a renewal of an existing scheme?</p> <p>If this is a renewal of an existing scheme, please complete the incentive scheme renewals section only, at page 3 of this form.</p>		
List a broad categorisation of the financial instruments to which the incentive scheme relates.		
<p>Purpose:</p> <p>Explain the rationale behind the incentive scheme proposal and the benefits the scheme is intended to generate. Please provide details of how you propose to measure whether the scheme has been effective in delivering these benefits.</p>		
<p>Scheme summary:</p> <p>Please provide a summary of the key terms of the scheme. The following items are not an exhaustive list of relevant items, but should at a minimum be addressed in the summary:</p> <ul style="list-style-type: none"> • Describe which members may be eligible for the scheme. If the scheme is open to a restricted number of members, please explain how members will be selected in the event of over-subscription. • Explain the expected obligations of the participants. If participants will be invited to bid obligations, please describe how bids will be assessed and any benchmark that will be used for 		

<p>such assessment.</p> <ul style="list-style-type: none"> • Provide details of the incentive being offered. If the incentive varies according to performance, please provide worked examples of how incentives will be calculated. • Describe the way in which participants will receive the incentive (for example, as a discount applied to trading fee invoices). • Indicate the duration of the scheme. (The FCA generally expects the duration of an incentive scheme to be for a period of one year or less. Any incentive scheme for a period longer than one year will have to be reviewed and renewed on an annual basis at a minimum.) 	
<p>Scheme regulatory analysis: <i>The regulatory analysis should address the following aspects, in order to demonstrate the level of risk the scheme will pose to market integrity. In the event you have considered any additional aspects as part of your regulatory analysis, please include those as well. If additional information is required to support the analysis below, please append this.</i></p>	
<p>Transparency of the scheme:</p> <ul style="list-style-type: none"> (i) Please explain how the terms of the incentive scheme will be made available to potential applicants. (ii) Please provide a copy of any proposed communications with applicants. (iii) If the scheme requires potential participants to subscribe or bid, how much notice will potential applicants be given prior to the scheme's launch? 	
<p>Fair and orderly trading: Please explain the assessment the trading venue has made of:</p> <ul style="list-style-type: none"> (i) the risk of orders being placed or modified, or transactions being executed, for purposes other than those intended by the scheme; (ii) any risk that the scheme could distort the price formation process, including the relationship between the scheme's benefit and the costs which it is intended to alleviate; (iii) any risks that could arise if the scheme 	

<p>enables participants to use the benefits of the scheme, in trading any other instrument other than the instrument to which the scheme relates (e.g. fee credits that could be used in trading other instruments);</p> <p>(iv) any risks that could arise in the event that a scheme participant is eligible to simultaneously take part in any other incentive arrangement offered by the trading venue; and</p> <p>(v) whether the same benefits will be available to all venue users in an objective and non-discriminatory way.</p> <p>Please confirm whether or not, in certain circumstances, a scheme participant could receive rebates in relation to transactions covered by the scheme which exceed the fees due to the trading venue from the participant for such transactions (taking into account, where applicable, any other fee rebates or ‘holidays’ to which the participant is entitled).</p> <p>Please also confirm that the scheme does not amount to a ‘cliff edge’ where, upon reaching a given threshold, a discounted rate is applied not only to those trades which are incremental to the threshold, but to all trades which have gone before it in a particular fee period.</p>	
<p>Market monitoring and surveillance arrangements:</p> <p>Please confirm that there are sufficient market monitoring and surveillance arrangements in place to prevent abuse of the incentive scheme structure that could encourage disorderly and improper trading to occur.</p>	
<p>Incentive scheme renewals:</p> <p><i>In the case of a renewal of an existing scheme currently in force, please complete the following section below. If additional information to support the answers below is required (e.g. graphs, breakdown of statistics etc) which you have assessed internally as necessary to ensure the scheme continues to meet your regulatory requirements, please append these.</i></p>	
<p>Name the participants for most recent period of scheme.</p>	
<p>Have the terms of the scheme been changed? If so, please detail how and why.</p>	

How will the trading venue communicate the renewal of this scheme to all existing and new participants?	
<p>Please provide the following information relating to the scheme for the most recent period:</p> <ul style="list-style-type: none"> • Amounts paid out/rebated to each individual participant; • Total amount paid out/rebated in the scheme. 	
<p>Have there been any instances of improper or disorderly trading in relation to the instruments covered within the scheme over the last period of operation of the scheme? Are there any other additional issues about this scheme that have been flagged through your market surveillance monitoring?</p>	
<p>Compliance sign off <i>Key Individual to sign off on this submission on behalf of the operator of the trading venue, to verify the factual accuracy of the information submitted, and that the proposed scheme is in compliance with relevant requirements.</i></p>	
Name:	Signature:
Date (DD/MM/YYYY):	