

## PERIMETER GUIDANCE (TRADING VENUES) INSTRUMENT 2023

### **Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 137A (The FCA’s general rules); and
    - (b) section 139A (Power of the FCA to give guidance); and
  - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- 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 9 October 2023.

### **Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

### **Amendments to material outside the Handbook**

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

### **Citation**

- F. This instrument may be cited as the Perimeter Guidance (Trading Venues) Instrument 2023.

By order of the Board  
29 June 2023

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

*service company* a firm whose only permitted activities are making arrangements with a view to transactions in investments, and agreeing to carry on that regulated activity, and whose Part 4A permission:

- (a) incorporates a limitation substantially to the effect that the firm carry on regulated activities only with one or more of market counterparties, intermediate customers, eligible counterparties or professional clients; and

...

## Annex B

### Amendments to the Perimeter Guidance manual (PERG)

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

#### 13 Guidance on the scope of the UK provisions which implemented MiFID

...

#### 13.3 Investment Services and Activities

...

##### Multilateral system

**Q24B. Where can I find more information about what a multilateral system is (article 4.1(19))?**

~~There is some *guidance* on multilateral systems in *MAR 5AA.1.2G*. [deleted]~~

##### **Q24C. What is a multilateral system?**

*A multilateral system* is a system or facility in which multiple third-party buying and selling trading interests in *financial instruments* are able to interact in the system (see article 2(1)(11) UK MiFIR).

*A multilateral system*, for these purposes, comprises each of the following main elements:

- it has the characteristics of a trading system or facility;
- it comprises multiple third-party buying and selling trading interests;
- it allows trading interests to interact in the system; and
- those trading interests are in financial instruments.

We provide guidance on each of these elements below.

##### **Characteristics of a system or facility**

*A multilateral system* has the characteristics of a trading system or facility. Recital 7 UK MiFIR clarifies that a trading system or facility includes markets composed of a set of rules and a trading platform, as well as those only functioning on the basis of a set of rules. The rules relate to how multiple third-party trading interests in *financial instruments* are able to interact in the system (see below). The rules could be reflected in contracts and/or operating procedures. As such, a system is technology neutral for these purposes, as shown by the different types of trading systems referred to in

Annex I to MiFID RTS 1, and Annex I to MiFID RTS 2. For guidance on voice broking, please refer to Q24D below.

General purpose communications systems would not as such amount to trading systems or facilities. This means that the following services in and of themselves would not amount to operating a *multilateral system*:

- acting as an internet services provider;
- providing a telephone network;
- providing a website; or
- providing chatroom facilities.

Even if the provider of the general purpose communication system is not operating a *multilateral system*, a person using that system to operate a trading system or facility will operate a *multilateral system* if the other elements of the definition of a *multilateral system* are met.

If a system has features specifically designed to enable the interaction of trading interests in *financial instruments*, this would indicate that it is a trading system or facility. More generally, we will consider the role of the operator and its monitoring of the use of the system. Operating the platform requires more than simply providing technology or software. Our assessment of whether there is a trading system or facility will also take into consideration a wider range of factors, including for example:

- its target users and the actual use of a system by its users;
- any relevant restrictions on how the system may be used and their practical effect;
- whether the system is designed to enable trading of any kind amongst users; and
- the determinants of the remuneration of the operator and the extent to which these are linked to the interaction of trading interests in financial instruments in the system.

Accordingly, whilst general communications systems, for example, are used for the purposes of trading *financial instruments*, they will not amount to a *multilateral system* unless they were ever operated by a person for these purposes and then subject to these criteria.

It is possible for a firm to operate more than one piece of technology which, when taken together, have the characteristics of a trading system or facility.

### **There are multiple third-party buying and selling trading interests**

There needs to be multiple third-party buying and selling trading interests for a system to be a *multilateral system*. Recital 7 UK MiFIR clarifies that the expression

'buying and selling trading interests' is to be understood in a broad sense and includes orders, quotes and indications of interest.

The inclusion of the words 'third-party' in this expression makes it clear that the trading interests in question are not the trading interests of the system operator.

The fact that when any two persons negotiate within the system they do so between themselves does not make the system bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others (other than the operator). This is the service a person receives as a user of the system.

### **Trading interests are able to interact in the system**

Multiple third-party trading interests must also be able to interact in the system for it to be a *multilateral system*. A *multilateral system* involves the bringing together of third-party trading interests (see also recital 7 UK MiFIR).

Interaction takes the form of an exchange of information relevant to essential terms of a transaction in *financial instruments* (being price, quantity or subject matter).

Accordingly, in our view, a system which enables this information to be inputted and then responded to in the system would allow trading interests to interact in the system.

Interaction between trading interests can arise in a system because the system:

- matches trading interests within its system; or
- allows users to respond within the system to other users' trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction.

Interaction between trading interests in the system does not require a contract to be entered into for the sale/purchase of *financial instruments* (i.e. execution of a transaction to take place) within the system if it is with a view to the parties agreeing the terms of a trade.

As clarified by recital 8 UK MiFIR, any system that merely receives, pools, aggregates and broadcasts trading interests should not be considered a *multilateral system*. This means that a bulletin board should not be considered a trading venue because there is no interaction between trading interests within its system. Similarly, a system which simply notifies the parties of general expressions of interest in relation to *financial instruments* does not amount to an interaction of trading interests in the system. For further guidance on bulletin boards, please refer to Q24H to Q24L below. In addition, neither the service of portfolio compression, which reduces non-market risks in derivative portfolios without changing the market risk, nor post-trade confirmation services, constitute a *multilateral system* by themselves.

### **Financial instruments**

The interaction of multiple third-party buying and selling trading interests in the system must be in *financial instruments* for the system to be a *multilateral system*. A *financial instrument* is an instrument specified in Part 1 of Schedule 2 to the *Regulated Activities Order*. Please refer to *PERG* 13.4 for further guidance on *financial instruments*.

### **Trading venue perimeter – specific cases**

#### **Q24D. Does voice broking involve the operation of a multilateral system?**

Voice broking may but need not comprise the operation of a *multilateral system*.

Merely arranging or executing client orders over the telephone does not constitute a *multilateral system*, although it may amount to other investment services such as reception and transmission or execution of orders on behalf of clients.

A trading system or facility could, however, take the form of a voice trading system (as referred to in Annex I *MiFID RTS 2*) or a hybrid system (as referred to in Annex I *MiFID RTS 1* and Annex I *MiFID RTS 2*). For example, a firm that operates a platform where trading interests of clients are broadcast to other users and then engages in voice broking to enable negotiation between these parties would operate a trading system or facility, unless Q24F applies. Voice broking may also be part of a *multilateral system* when operating in conjunction with other modes of execution such as electronic order books operated by that broker.

#### **Q24E. Does a firm that undertakes portfolio management operate a multilateral system by operating an internal matching system to execute trading interests relating to the portfolio of one of its clients against trading interests relating to the portfolio of another of its clients?**

No. A firm engaged in *portfolio management*, in whatever capacity, must exercise discretion in relation to the *financial instruments* it manages. We do not consider that such a firm operates a *multilateral system* when, in the exercise of this discretion, it executes trading interests relating to the portfolio of one of its *clients* (which may be a fund) against the trading interests relating to the portfolio of another of its *clients* in an internal matching system. We also do not consider that it is the purpose of *COLL* 6.9.9R and *FUND* 1.4.3R to prevent a *UCITS management company* or an *external AIFM* that is a *full-scope UK AIFM* from doing this in these circumstances. This is because in these circumstances the portfolio manager is the only user of the system and hence, there is no interaction of multiple third-party trading interests in the system.

#### **Q24F. Does a firm using or operating a system to execute trades on behalf of clients operate a multilateral system?**

No, if a firm uses or operates a system for the purpose only of executing these trades on a trading venue consistent with the intentions of the parties to the underlying transactions to trade on a trading venue, in accordance with the venue's rules. For example, when arranging a large-in-scale or negotiated trade in accordance with the rules of the venue, in our view these arrangements do not amount to the operation of a

multilateral system – in accordance with Q24C – in the case of UK MiFIR or otherwise. For guidance on execution of orders on behalf of clients, see PERG 13 Q15.

**Q24G. Would a crowdfunding platform be regarded as a multilateral system?**

In our view, a crowdfunding platform does not amount to a multilateral system when the business funding interests of an issuer of shares, debentures or alternative debentures, as expressed in an offer made by that issuer, on the one hand, are matched with the interests of investors on the other.

A bulletin board provided to assist investors is not itself a multilateral system where the trading interests would not be able to interact within the system. By contrast, a crowdfunding platform in which multiple third-party buying and selling trading interests of investors in financial instruments are able to interact within a system (for example, in a secondary market) would be a multilateral system.

**Bulletin boards**

**Q24H. What is a bulletin board?**

There is no definition of a bulletin board. Recital 8 UK MiFIR, however, refers to ‘facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests’ or ‘other entities aggregating or pooling potential buying or selling interests’ and implies that such bulletin boards or entities should not be considered a multilateral system.

**Q24I. Is a bulletin board a multilateral system?**

No. The reason is that, whilst trading interests (including information relevant to essential terms of a transaction in financial instruments (being price, quantity or subject matter)) can be posted on a bulletin board, trading interests are not able to interact in such a system. In light of Q24C (see the section on ‘Trading interests are able to interact with each other’) above, we would not regard a firm as operating only a bulletin board if:

- it matches trading interests within the system;
- it enables users to respond within the system to other users’ trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction; or
- users can commit to or enter into contracts for the sale/purchase of the financial instruments (i.e. execute transactions) within the system.

By contrast, as a system simply notifying users of general expressions of interest in financial instruments does not give rise to an interaction of trading interests in the system, a bulletin board operator can notify and introduce potential counterparties to each other without operating a multilateral system.

Please see Q24J to Q24L below for further guidance on bulletin boards.

**Q24J. Can the operator of a bulletin board as described in Q24H assist users with exchanging contact details?**

The operator of a bulletin board could (subject to data protection legislation) enable publication of contact details of users advertising buying and selling interests on its bulletin board, so that users can use these to contact each other bilaterally outside the system.

However, some users may have reservations about the publication of their contact details. In these circumstances, one possibility might be for them to agree to share contact details on a case-by-case basis. Any such request should be limited to requesting to see another user's contact details and not extend to communicating in relation to, negotiating or accepting essential terms of a transaction (being price, quantity or subject matter).

**Q24K. Can an operator of a bulletin board as described in Q24H provide template documentation to assist its users with negotiating and executing transactions?**

Yes, an operator of a bulletin board can make available template documentation for download by users of the bulletin board. It can also require users to use this template documentation. This will not mean that the bulletin board is a *multilateral system*, provided that users use the template documentation to negotiate and execute transactions bilaterally outside the system. The operator should not, however, complete the template documentation in relation to the essential terms of these transactions (being price, quantity or subject matter).

**Q24L. Can an operator of a bulletin board as described in Q24H provide post-trade services?**

Yes, it is possible for the operator of a bulletin board to provide post-trade services, including in relation to settlement. This might include, for example, assisting with the transfer of funds or registering the transfer of *financial instruments*. The operator could be informed by users of the bulletin board that they have entered into a contract for the sale/purchase of a *financial instrument*, i.e. executed a transaction, bilaterally outside the system and then provide post-trade services in relation to that transaction to them. Providing simply these post-trade services does not require the operator to have permission for *operating a multilateral trading facility* or *operating an organised trading facility*. The operator should, however, consider whether the post-trade services provided may include any *payment services* (see *PERG 15.3*) or *electronic money issuance* (see *PERG 3A*).