

Chapter 2

Commission Delegated Regulation (EU) 2016/908

Article 4 Safeguards of the operations of market forces operating in UK markets and interplay of the forces of supply and demand

(1) In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (b) of Article 13(2) of Regulation (EU) No 596/2014, the Financial Conduct Authority shall consider whether the market practice limits the opportunities for other market participants to respond to transactions. The Financial Conduct Authority shall also consider at a minimum the following criteria relating to the types of persons who will perform the market practice once established as an AMP:

- (a) whether they are supervised persons;
- (b) whether they are members of a UK trading venue where the AMP will be performed;
- (c) whether they maintain records of orders and transactions relating to the market practice performed in a way that allows it to be easily distinguished from other trading activities, including through the maintenance of separate accounts for the performance of the AMP, in particular to demonstrate that orders introduced are entered separately and individually without aggregating orders from several clients;
- (d) whether they have put in place specific internal procedures allowing:
 - (i) immediate identification of the activities relating to the market practice;
 - (ii) ready availability of the relevant orders and transaction records to the Financial Conduct Authority upon request;
- (e) whether they possess the compliance and audit resources necessary to be able to monitor and ensure compliance at all times with the conditions set for the AMP;
- (f) whether they keep the records mentioned in point (c) for a period of at least five years.

(2) The Financial Conduct Authority shall consider the extent to which the market practice establishes an *ex ante* list of trading conditions for its performance as an AMP, including limits with regard to prices and volumes and limits on positions.

(3) The Financial Conduct Authority shall assess the extent to which the market practice and the arrangement or contract for its performance:

(a) enables the person performing the AMP to act independently from the beneficiary without being subject to instructions, information or influence from the beneficiary as regards the manner in which trading is to be conducted;

(b) allows for the avoidance of conflicts of interest between the beneficiary and the clients of the person performing the AMP.