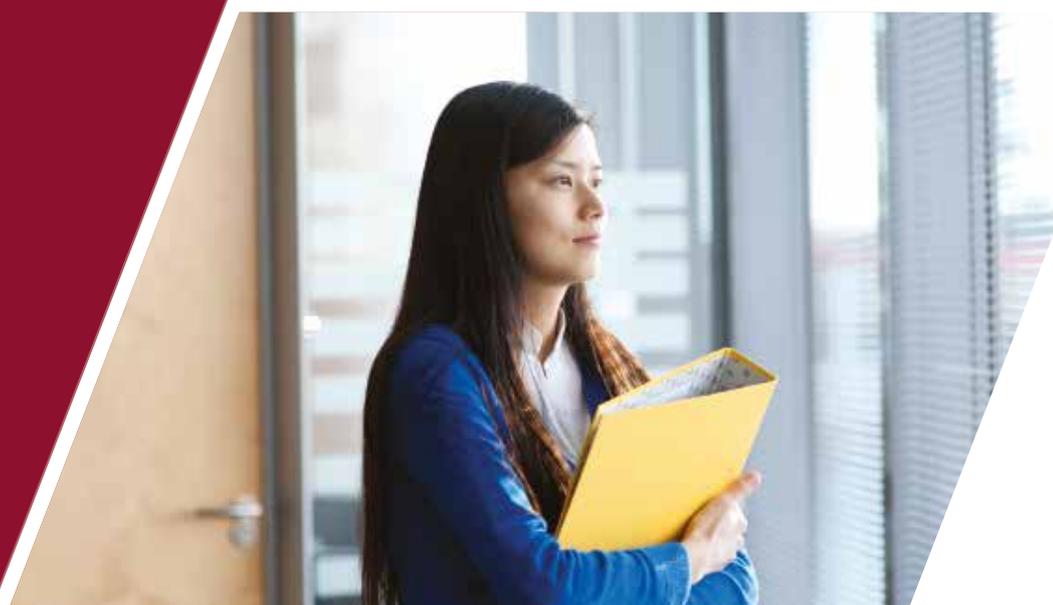


Policy Statement

PS17/5

Markets in Financial Instruments Directive II Implementation – Policy Statement I



31 March 2017

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In this Policy Statement (PS) we report on most of the main issues arising from Consultation Paper (CP) 15/43 (Markets in Financial Instruments Directive II Implementation – CP I) and CP 16/19 (Markets in Financial Instruments Directive II Implementation – CP II). We also cover some issues from CP 16/29 (Markets in Financial Instruments Directive II Implementation – CP III), and CP 16/43 (Markets in Financial Instruments Directive II Implementation – CP IV). We publish rules on certain aspects of the fees regime and near-final rules for other areas of the Handbook.

Please send any comments or queries to:

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We have developed the policy in this policy statement in the context of the existing UK and EU regulatory framework. The Government has made clear that it will continue to implement and apply EU law until the UK has left the EU. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 706 60790 or email publications_graphics@fca.org.uk or write to Editorial and Digital Department, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Abbreviations used in this document

APA	Approved Publication Arrangement
APF	Authorised professional firm
ARM	Approved Reporting Mechanism
BoE	Bank of England
BiPRU	Prudential sourcebook for Banks, Building Societies and Investment Firms
CA	Competent Authority
CASS	Client Assets Sourcebook
CBA	Cost benefit analysis
COBS	Conduct of Business Sourcebook
the Commission	European Commission
CTP	Consolidated Tape Provider
CRD	Capital Requirements Directive
CSDR	Central Securities Depositories Regulation
DEA	Direct Electronic Access
DEPP	Decision Procedure and Penalties Manual
DRS	Data Reporting Services
DRSP	Data Reporting Services Provider
EEA	European Economic Area
ECP	Eligible Counterparty
EG	Enforcement Guide
EMIR	European Markets and Infrastructure Regulation
ESA	European Supervisory Agencies

ESMA	European Securities and Markets Authority
EU	European Union
ETF	Exchange Traded Fund
FAMR	Financial Advice Markets Review
FCA	Financial Conduct Authority
FEMR	Fair and Effective Markets Review
FSMA	Financial Services and Markets Act 2000
GEN	General Provisions – FCA Handbook
HFT	High Frequency Trading
IFPRU	Prudential sourcebook for Investment Firms
ITS	Implementing Technical Standard
MAR	Market Conduct Sourcebook
MDP	Market Data Processor
MiFID	Markets in Financial Instruments Directive
MiFID II	Markets in Financial Instruments Directive II (includes MiFIR, where the context indicates)
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
NCA	National Competent Authority
NDA	Non-disclosure agreement
OTC	Over-the-Counter
OTF	Organised Trading Facility
OTR	Order to Trade Ratio
Parliament	European Parliament
PERG	Perimeter Guidance
PRA	Prudential Regulation Authority
PRIN	Principles for Businesses Sourcebook

RAO	Regulated Activities Order
REC	Recognised Investment Exchange Sourcebook
RFA	Retail Financial Adviser
RIE	Recognised Investment Exchange
RM	Regulated Market
RRRs	FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001
RTS	Regulatory Technical Standard
SMS	Standard Market Size
SSTI	Size Specific to the Instrument
SUP	Supervision Manual
SYSC	Senior Management Arrangements, Systems and Controls – FCA Handbook
TDM	Trade Data Monitor
the Treasury	HM Treasury

1. Overview

Introduction

- 1.1** The Markets in Financial Instruments Directive (MiFID) II is the major piece of EU financial services legislation governing the buying, selling and organised trading of shares, bonds, units in collective investment schemes, derivatives and certain other financial products. It will apply from 3 January 2018 and the UK has to make the necessary changes its legislation and rules to implement MiFID II by 3 July 2017.
- 1.2** We have published four consultation papers (CPs) on the implementation of MiFID II¹ since December 2015 and today publish a fifth, CP17/8² alongside this policy statement (PS). We will split our feedback to those CPs between this PS and a second PS at the end of June. Our aim is to provide clarity on certain issues as early as we can, and to make the process of publishing the feedback relating to several hundred pages of rules more manageable.
- 1.3** This PS predominantly covers issues we consulted on in CP15/43 (where we consulted mostly on markets issues) and CP16/19 (where the main issues consulted on were systems and controls, client assets and commodity position limits). Of the items in those CPs, we do not cover client assets or perimeter guidance in this PS. However, we do cover a small number of issues we consulted on in CP16/29 and CP16/43 where these are closely related to the material in the previous two CPs, and we also provide an update on our thinking on our proposals for recording of telephone conversations of retail financial advisors exempt from MiFID II, covered in CP16/29. This PS is structured around chapter headings from CP15/43 and CP16/19 but we indicate in the body of relevant chapters when we are covering material from the latter two CPs.
- 1.4** We make one rules instrument for the purpose of this PS, which is a fees instrument relating to application fees for new regulated activities arising out of MiFID II implementation. On all other topics in this PS we publish near-final, draft rules. This is because our rules must refer to EU and domestic legislation that has not yet been completed, which will be taken into account when we finalise the rules. To implement MiFID II we expect to finalise all our rules in June.

1 <https://www.fca.org.uk/publication/consultation/cp15-43.pdf>
<https://www.fca.org.uk/publication/consultation/cp16-19.pdf>
<https://www.fca.org.uk/publication/consultation/cp16-29.pdf>
<https://www.fca.org.uk/publication/consultation/cp16-43.pdf>

2 <https://www.fca.org.uk/publications/policy-statements/ps17-5-8-mifid-ii-implementation-proposals-v>

Who does this policy statement affect?

- 1.5** This PS affects a wide range of firms that we authorise and recognise, particularly
- investment banks
 - interdealer brokers
 - firms engaging in algorithmic and high-frequency trading
 - trading venues including Regulated Markets (RMs), Multilateral Trading Facilities (MTFs), and prospective Organised Trading Facilities (OTFs)
 - prospective Data Reporting Services Providers (DRSPs)
 - investment managers
 - stockbrokers
 - investment advisers, and
 - corporate finance firms and venture capital firms

Is this of interest to consumers?

- 1.6** Consumers have a clear interest in financial markets that operate fairly and transparently, which is the rationale for the proposals in this PS. Certain subjects covered, including remuneration of sales staff and the taping of retail financial advisers (RFAs), will be of particular concern to consumers. Our second PS will cover the MiFID II rules of most relevance to consumers, the conduct of business rules and client assets rules.

Context

- 1.7** The regulatory framework that MiFID II introduces will be important in helping us to achieve our operational objectives relating to consumer protection and market integrity. It introduces important new rules on product governance and remuneration, as well as strengthening the existing framework on best execution, conflicts of interest and inducements. The revised transaction reporting rules will enhance our ability to detect market abuse, and our regime for position management in commodity derivatives markets will be strengthened. A calibrated regime of enhanced pre and post-trade transparency across the full range of secondary trading of financial instruments should help to improve the price formation process.
- 1.8** We recognise that the implementation of MiFID II will be a significant challenge for firms, particularly given that important issues concerning the interpretation of legislation are still being resolved. We have undertaken a variety of activities to assist firms with their implementation and to ensure that we support London's position as a leading international financial centre. As well as publishing detailed CPs on Handbook changes, we meet monthly with a wide range of trade associations, undertake numerous bilateral meetings with firms and trade associations,

and contribute to the European Securities and Markets Authority's (ESMA) Level 3 work on guidelines and interpretative Questions and Answers (Q&A).

- 1.9** In January 2017 we published 'MiFID II – Application and notifications user guide'³ and opened our authorisation gateway. We have also held a number of authorisation workshops to help firms understand the processes if they need to apply for authorisation under MiFID II or to vary their permission. Firms impacted by the changes to the activities and instruments covered by MiFID II should apply as soon as possible for authorisation or variations of permission, or risk being unable to undertake the business they want from 3 January 2018, when MiFID II takes effect.

Summary of feedback and our response

- 1.10** Many of the measures under MiFID II take direct effect under UK law, meaning that we have limited or no discretion over many of the issues raised in our consultation papers. Therefore there are few significant differences between the proposals we consulted on and our final rules. However, we appreciated the many technical comments we received in responses to the CPs and have considered them carefully.
- 1.11** Below we highlight our responses on some of the issues covered in this PS which received the most feedback.
- **Multilateral systems** – In CP15/43 we consulted on perimeter guidance on a multilateral system, where we expressed the view that the activities that will be regulated as a trading venue under MiFID II are broader than under MiFID. All of our final perimeter guidance will be in our next PS. On the specific issue of a multilateral system, the issue is being considered by ESMA and we will decide in light of interpretative guidance from ESMA whether to provide our own perimeter guidance.
 - **Post-trade transparency deferrals** – In CP15/43 we consulted on allowing trading venues to use the post-trade deferrals which national competent authorities (NCAs) are allowed to provide under MiFID II. We will allow venues to use the maximum permitted deferrals. NCAs' approach to the use of deferrals will not be harmonised across the EU because of the national discretion provided in the Markets in Financial Instruments Regulation (MiFIR), but details of the regime in each Member State will be published by ESMA.
 - **Transaction reporting and collective portfolio managers and pension funds** – In CP15/43 we proposed that transaction reporting rules would only apply to firms required to transaction report under MiFID II. This would mean removing our current requirement for collective portfolio managers and pension funds to transaction report because we did not think the benefits of requiring them to report transactions on the MiFID II basis would outweigh the costs. This remains our view and we will not require them to report transactions under MiFID II.
 - **Transaction reporting and third parties** – Respondents to CP15/43 raised questions about the use by investment firms of third parties to provide transaction reports to Approved Reporting Mechanisms (ARMs) and the use of ARMs by trading venues. This led to us proposing some guidance on these issues in CP16/43 which was well received and which will be included in our final rules. We also provide guidance that investment firms

³ <https://www.fca.org.uk/publication/documents/mifid-ii-application-notification-guide.pdf>

providing transaction reports to us directly can use third parties to assist them but must submit the reports to us themselves.

1.12 There are three other issues that it is important to highlight in relation to this PS.

- **Handbook guides** – In CP15/43 and CP16/19 we published Handbook guides to the implementation of MiFID II covering the markets provisions and its systems and controls requirements. These were well received by respondents who thought they were useful in understanding how MiFID II had been implemented in the UK. We will therefore go ahead with these guides when we make the rules in the second PS.

The main suggestions we received for improving the guides were to clarify their status and include a correlation table showing how and where MiFID is implemented in UK legislation, including through FCA rules. We will clarify the status of the guides as guidance, and in due course provide a link to the eventual UK MiFID II transposition table.

- **Taping** – In CP16/29 we consulted on rules regarding the recording of telephone conversations and electronic communications ('taping'). As well as implementation of the specific MiFID II requirements we proposed requiring Article 3⁴ RFAs to tape. We will include our taping rules in our June PS, but in order to provide early clarity to Article 3 RFAs we set out how our thinking on this issue has developed in this PS.

In light of the feedback received we intend to amend our approach such that Article 3 RFAs are required either to tape all relevant conversations or to keep a contemporaneous note of all relevant conversations. We are also considering the feedback we received on other aspects of our taping proposals.

- **Asset management market study** – In November 2016 we published the interim report of our asset management market study. This identified several ways in which asset management services and products could work better for retail and institutional investors. It provisionally proposed a package of remedies to address the issues we had found. The remedies have links to issues covered in MiFID II and the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs). We will ensure the final package of remedies is consistent with, and builds upon, this legislation, bearing the interactions in mind as we finalise our rules for the implementation of MiFID II both here and in our second PS in June.

Equality and diversity considerations

1.13 We have considered the equality and diversity issues that may arise from the proposals in this PS.

1.14 Overall, we do not consider that the proposals in this PS adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

⁴ Article 3 allows Member States to exempt from authorisation under MiFID II certain firms providing investment advice and/or receiving and transmitting orders. These firms have to be authorised at the national level and subject to 'at least analogous' requirements to a list of the authorisation, organisational and conduct requirements in MiFID II.

Next steps

What do you need to do next?

- 1.15** Firms need to continue with their preparations for the application of MiFID II on 3 January 2018. As noted above, it is particularly important that if firms need to make applications for authorisation or variation of permission linked to the changes in MiFID II that they do so as soon as possible. Firms also need to respond to our fifth CP on MiFID II implementation which is being published at the same time as this PS.

What will we do?

- 1.16** We will publish a second PS on MiFID II implementation at the end of June at which point we will make all of our final rules. We will continue to talk to firms and trade associations about the implementation of MiFID II throughout this year to ensure that implementation goes as smoothly as possible.

Consultation paper I (15/43) response

2. Regulated Markets (RMs)

Introduction

- 2.1** This chapter is relevant for the operators of UK Regulated Markets (RMs), Recognised Investment Exchanges (RIEs). It may also be of interest to direct and indirect users of RMs such as investment banks, interdealer brokers, high frequency traders and investment managers.

Changes to REC

- 2.2** In CP 15/43 we set out our approach and consulted on the amendments necessary to reflect the changes to FSMA (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (RRRs). The amendments also took account of MiFIR, and various draft RTS. In the CP we proposed three new sections in REC on the management bodies of RMs, on position management and position reporting for commodity derivatives and on the operation of a DRSP. In addition, we proposed revisions to other parts of REC including to cover changes to the trading processes for MTFs and the introduction of OTFs to deal with the suspension and removal of financial instruments, the new provisions on trade transparency and the new requirements on algorithmic trading.
- 2.3** Our approach to REC was not to copy into the Handbook all the directly applicable EU provisions but to include a reference to them and update the Reader's Guide accordingly. The only exception to this was where we exercise a discretion provided for in the regulation itself.
- 2.4** In CP15/43 we asked in Q2 and Q3:
- Do you agree with our approach outlined above to amend REC to take account of the MiFID II changes? If not, please give reasons why
 - Do you foresee any implementation issues with the approach above?
- 2.5** The majority of respondents supported the approach of providing a reference to – rather than copying into the Handbook – the directly applicable provisions. However, some of those respondents favoured greater clarity on which provision within a directly applicable regulation is relevant for a REC provision. Others suggested additional signposts to directly applicable regulations should be added to REC. Only a few respondents were in favour of copying out the entirety of the EU directly applicable provisions in REC as we did with MiFID, arguing that the Handbook will be much harder to use with just references.
- 2.6** In relation to the new section on the management body of a market operator, some respondents expressed concern about the way Article 45(2) of MiFID II is transposed into REC 2.4A2(b). They argued that the FCA proposed to transpose this in a way that would restrict the number of

directorships held within the same group or undertakings where the market operator owns a qualifying holding more tightly than was intended by MiFID II.

- 2.7** Many respondents disagreed how we transposed the provision in Article 48(7) of MiFID II on direct electronic access (DEA) by members or participants of an RIE. Under the proposed REC 2.5.1(10)(a), only investment firms authorised in accordance with MiFID or credit institutions authorised in accordance with the Capital Requirements Directive (CRD) can provide DEA to clients. It was argued that the comparable provision for MTFs under the Market Conduct Sourcebook (MAR) 5.3A.9, allowed certain non-EEA firms to continue to provide DEA to their clients thereby constituting a competitive disadvantage for RIEs.
- 2.8** Several respondents expressed concerns about our transposition of Article 48(2) of MiFID II into REC 2.5.1(4), which requires an RIE to have written agreements in place with all investment firms pursuing a market making strategy on trading venues operated by it. They argued that the scope of the obligation is broader than that resulting from RTS 8 on market making agreements and market making schemes.
- 2.9** A small number of respondents disagreed with the deletion of REC 2.6.30 in relation to block trading and other types of specialist transactions such as the exchange of futures for physicals.
- 2.10** Finally a respondent pointed to the fact that much of REC was set out as guidance as opposed to directly applicable rules, which they said was at odds with MiFID II's aims.

Our response on changes to REC

We believe the approach that we took in CP15/43 to signpost directly applicable EU regulations rather than copying them into the Handbook remains the best way to implement the RM provisions of MiFID II. It avoids obscuring the directly applicable nature of the regulations.

When we published CP15/43 we copied the relevant sections of the RRRs as consulted by the Treasury at that time. The Treasury has now published revised draft implementing legislation, which includes changes to the RRRs in relation to the management body of RMs. We have amended REC 2.4A(2)2(b) accordingly.

In relation to DEA, REC 2.5.1(10)(a) also reflected the proposed changes to the RRRs by the Treasury at the time of consultation. Now that the Treasury has published revised draft implementing legislation, which changes the RRRs in relation to DEA we have made consequential changes to REC 2.5.1(10)(a), and this is aligned with the revised wording of MAR 5.3A.9 and MAR 5A.5.9 for MTFs and OTFs. This issue is also addressed in Chapter 8. On market making agreements, REC 2.5.1 continues to reflect the proposed changes to the RRRs consulted upon by the Treasury. The RRRs mirror Article 48(2) of MiFID II, the scope of which is specified in RTS 8 which we signpost in REC.

Blocks, in the form of large in scale orders and transactions, and exchange of future for physicals, are subject to the directly applicable transparency requirements set in MiFIR and the relevant RTSs. The transparency regime provides for exemptions from pre- and post-trade transparency for those types of transactions.

The apparent difference in the approach between REC and other parts of the Handbook is due to the distinction made under FSMA between the roles played by the RIEs and other market participants. Although this distinction has narrowed when the MTF category was created by MiFID, and there are now common market-facing regulatory obligations for MTFs in addition to RIEs. Whilst the separate regimes remain, FSMA imposes the RRRs on RIEs, and authorised firms are subject to our Handbook. The difference is that much of REC has been set out as excerpts from the draft new RRRs (rather than rules) and guidance. However, the recognition regime for RIEs will transpose binding requirements equivalent to those for trading venues operated by investment firms, when the Treasury legislation comes into force.

3. Multilateral Trading Facilities (MTFs)

Introduction

- 3.1** This chapter is relevant for the operators of UK Multilateral Trading Facilities (MTFs). It may also be of interest to direct and indirect users of MTFs such as investment banks, interdealer brokers, high frequency traders and investment managers.

Changes to MTF Requirements

- 3.2** In CP15/43 we proposed amendments to Chapter 5 of MAR to implement changes introduced by MiFID II for MTFs, in particular in relation to Articles 18, 19, 31 and 32 of MiFID II. We proposed new sections in MAR 5 on the functioning of an MTF, on suspension and removal of financial instruments and on systems and controls for algorithmic trading. In addition we proposed revisions to other parts of MAR 5 including to cover changes to the trading processes and the new provisions on trade transparency.
- 3.3** In CP15/43 we asked in Q4:
- Do you agree with our approach to implementing the MTF requirements in MAR 5? If not, please give reasons why
- 3.4** Respondents generally agreed with our approach, although a small number advocated copying out the text of the Directive into the Handbook and flagging it as EU material.
- 3.5** Most respondents supported the proposed guidance in MAR 5.3.1B(G) which clarifies that an investment firm, with the appropriate permission, can execute client orders against its proprietary capital or engage in matched principal trading outside the MTF it operates. However some of those respondents sought greater clarity on whether an investment firm, when acting as a member and not as the operator of its own MTF would be prohibited from dealing on own account or engaging in matched principal trading. One respondent supported the proposed approach only when executing orders on own account or engaging in matched principal trading does not conflict with the interests of the members of the MTF. Only one respondent did not support the proposed guidance and advocated a broader restriction.
- 3.6** Some respondents emphasised the importance of the non-discriminatory access requirement as a supervisory priority, especially on the inter-dealer market and suggested that in enforcing this requirement we should bear in mind our competition objective and said they would welcome further guidance in the Handbook on its interpretation.
- 3.7** Other respondents sought clarification on MAR 5.3A.3R and suggested that market making agreements are only required where a market making scheme is mandatory. A couple of

respondents were in favour of aligning the provision on who is permitted to provide DEA between RIEs and MTFs and suggested an amendment to MAR 5.3A.9.

Our response to changes to MTF requirements

Consistent with our response for REC (Chapter 2), we think that signposting directly applicable EU regulations rather than copying them out is the best approach to implementing the markets provisions of MiFID II.

For restrictions on the use of proprietary capital including matched principal, we will adopt the guidance we proposed. This allows an investment firm, with the appropriate permission, to execute orders against its proprietary capital or to engage in matched principal trading outside the MTF it operates. We believe this is aligned with MiFID II's intention and is bolstered by the requirement for investment firms to establish appropriate arrangements to identify and prevent the emergence of conflicts of interests between the operation of an MTF, and other investment services of activities.

In relation to the provision on market making agreements, consistent again with Chapter 2 of this PS, we note that the signpost to the directly applicable RTS 8 clarifies the scope of the obligation.

For the alignment of the provisions on DEA between MTFs and RIEs, the Treasury's recent implementing legislation changes the RRRs in relation to DEA, resulting in consequential changes to REC 2.5.1(10)(a), to align them more closely to MAR 5.3A.9. This issue is also addressed in Chapter 8.

4. Organised Trading Facilities (OTFs)

Introduction

- 4.1** Organised Trading Facilities (OTFs) are a new venue type for the trading of bonds, derivatives and other non-equity instruments. Their introduction into MiFID II is in part linked to G20 reforms to OTC derivatives markets which include requiring in certain circumstances the trading of such instruments to take place on trading venues subject to pre and post-trade transparency requirements. This chapter is relevant for those seeking authorisation as UK OTFs or for RIEs planning to operate an OTF. It may also be of interest to direct users of OTFs such as investment banks, interdealer brokers, high frequency traders and investment managers.

Requirements for OTFs

- 4.2** In CP15/43 we proposed an entirely new section of the Handbook for OTFs, MAR 5A, as the operation of an OTF is a new investment service or activity. In particular we highlighted some of the key aspects that distinguish an OTF from an MTF. An OTF is required to use discretion when deciding when to place or remove an order and whether or not to match a specific client order with other orders available in the system. The use of discretion by the OTF operator comes with conduct of business obligations, including best execution.
- 4.3** An investment firm operating an OTF is prohibited from operating an OTF and an SI within the same entity. An OTF is also not allowed to connect with a SI in a way which enables the orders in an OTF and in an SI to interact. In the CP we provided further guidance on the scope of the prohibition.
- 4.4** OTFs are subject to different limitations in relation to the use of their proprietary capital. An OTF can, with client consent, engage in matched principal trading in any financial instrument except derivatives subject to the clearing obligation and can also deal on own account in respect of sovereign bonds for which there is not a liquid market.
- 4.5** In CP15/43 we asked in Q5:
- Do you agree with our proposals on how to implement OTF rules in MAR 5A? If not, please give reasons why
- 4.6** Most respondents supported the proposed approach to implement the OTF rules in MAR 5A. Any concerns tended to be broader comments on our approach to transposition, for example around not copying all EU regulations into the Handbook. Other respondents noted the importance that any Handbook guidance does not deviate from MiFID II and future ESMA guidance. Some respondents suggested that MAR 5A for OTFs and MAR 5 for MTFs should be merged.

- 4.7** Some respondents requested clarification of what is meant by discretion in an OTF, and whether this should be applied at a system level or on a trade-by-trade basis. Others queried whether discretion could co-exist alongside various types of trading protocol, such as electronic trading. Others asked for clarification that discretion does not apply to the non-discriminatory access rules and whether OTFs could restrict access to their venue through their use of discretion.
- 4.8** Respondents also asked for clarification of whether when arranging trades in non-financial instruments, wholesale energy contracts that must be physically settled, if the arranging permission of an OTF venue applies. They also asked whether firms' terms of business could include a general assumption of consent for matched principal trading, rather than requiring client-by-client agreement as per Article 20(2) of MiFID II.
- 4.9** Others asked for clarity around the criteria for instruments to be traded on a venue. This links to the definition of multilateral system, which ESMA is considering.
- 4.10** Some respondents queried the scope of MAR 5A.3.10, which requires that OTFs explain why they cannot operate as an MTF, RM or SI.
- 4.11** There was a request that MAR 5A.5.17 (and MAR 5.3A.17) is amended to make clear that the clock synchronisation requirements only apply to venues, not all firms.
- 4.12** Finally one respondent asked for clarification on whether an RIE operating an OTF would be subject to the capital requirements set in CRD.

Our response on requirements for OTFs

As noted in the previous chapter in relation to REC (Chapter 2), we remain of the view that signposting directly applicable EU regulations rather than copying them out is the best approach to implementing the markets provisions of MiFID II.

We appreciate that OTFs are a new category of trading venue, and many firms require further clarity and guidance on how OTFs operate, especially in respect of the use of discretion. The FCA will not add further guidance in MAR 5A but will await publication of Level 3 Q&A by ESMA. In the meantime on discretion we refer respondents to Article 20(6) of MiFID II, which requires that OTF operators carry out the execution of orders on a discretionary basis and that an OTF operator may facilitate negotiations between clients so as to bring together two or more potentially compatible trading interest in a transaction.

The use of discretion must not undermine the principle of non-discriminatory access, which applies as equally to OTFs as it does to MTFs. The requirement that investment firms and market operators operating an OTF must explain why they cannot operate as an MTF, RM or SI is one which we would expect an OTF operator to make clear when applying to us for authorisation and on an ongoing basis. The key difference between an OTF and an MTF is that an OTF can use discretion. Discretion must be a key and essential component of the operating of the OTF.

Where non-MiFID financial instruments are traded on an OTF the operator is not required to comply with MiFID II in respect of those instruments. However, given the trading of non-MiFID financial instruments would take place within

the same systems as the core service of the OTF of offering to trade financial instruments, participants would expect to receive a similar level of service with equivalent outcomes.

Should an OTF wish to offer matched principal trading, consent can be obtained from clients if the OTF makes this clear in its rule book.

RIEs operating OTFs are not subject as such to CRD, however they should have regard to the risks they are exposed to as operator of OTFs, in particular those of dealing on own account. We expect RIEs to reflect these risks in their financial resources requirement in accordance with REC 2.3.

The clock synchronisation rules apply to trading venues and their members/participants. MAR 5A does not need amending in this respect as MAR 5A only applies to investment firms and market operators operating OTFs.

5. Systematic Internalisers (SIs)

Introduction

- 5.1** This chapter is relevant to Systematic Internalisers (SIs), and for those seeking authorisation as SIs. It may also be of interest to direct users of SIs such as interdealer brokers, high frequency traders and investment managers.

Changes to requirements for SIs

- 5.2** In CP15/43 we proposed amendments to our Handbook in MAR 6 to implement changes introduced by MiFID II. These involved deleting most of the substantive elements of the SI regime because these are now in a directly applicable EU regulation. We retained and updated the reporting requirement because MiFIR requires us to place an obligation on investment firms in this regard.
- 5.3** CP15/43 asked in Q6:
- Do you agree with our approach to implementing the SI regime in MAR 6? If not, please give reasons why
- 5.4** The majority of respondents agreed that as the SI regime is implemented through EU regulations, it does not need to be replicated in the Handbook.
- 5.5** Some respondents said that they disagreed with our proposed implementation as they did not agree with aspects of the policy that they believed to be in the Commission's draft delegated acts at the time of our consultation.
- 5.6** A number of respondents also questioned the proposed MAR6.4.1A R, which removes the requirement for a SI to notify us when it becomes or ceases to be a SI, when dealing above standard market size (SMS) or the size specific to the instrument (SSTI). They felt that without a broader notification requirement it would make other aspects of MiFID II, such as trade reporting, more difficult to implement.
- 5.7** Some also queried whether MAR 6 applies to UK branches of European Economic Area (EEA) or non-EEA investment firms.

Our response on requirements for SIs

Our consultation outlined our proposed approach to implementing the SI regime in to the Handbook. It did not consult on any matter relating to the

MiFID II implementing regulation that sets the thresholds for the SI regime. We do not therefore respond to the points raised about that.

MAR 6.4.1 is the rule which requires an SI to notify us when it becomes an SI or ceases to be an SI. The proposed MAR 6.4.1A turned-off this notification requirement where the firm deals above SSTI or SMS. We note that regardless of the size in which the firm trades, if a firm exceeds the relevant trading thresholds, it is an SI. Therefore, whilst when an SI trades above SSTI or SMS the particular obligations in Articles 14 and 18 of MiFIR do not apply, the notification requirement applies when the firm becomes or ceases to be an SI regardless of the size they are trading at or intend to trade at. We have therefore deleted the proposed MAR 6.4.1A, the effect of which is that all SIs must notify us when they become or cease to be an SI, regardless of the size at which they trade.

By virtue of Article 35(8) of MiFID II, MAR 6 applies to UK branches of non-EEA investment firms operating an SI. The amendment to GEN that we consulted on in CP15/43 (see Chapter 9 of this PS) will have the effect of applying the SI regime to UK branches of non-EEA firms. The application of MiFID II to EEA firms is dependent on a decision by the EEA joint committee.

6. Transparency

Introduction

- 6.1** This chapter will be of interest to operators of trading venues, and to direct and indirect users such as investment banks, interdealer brokers, high frequency traders, stock brokers and derivatives brokers, and investment managers.

Waivers from pre-trade transparency

- 6.2** In CP15/43 we said that it continued to believe that the waivers are important to ensure an appropriate balance between transparency and liquidity in equities markets and we proposed to grant waivers to RMs and MTFs trading equity and equity-like instruments where the use of the waivers meets the conditions set out in MiFID II.
- 6.3** In CP15/43 we asked in Q7:
- Do you agree that we should be prepared to use our power to grant waivers from pre-trade transparency in shares, ETFs, and depositary receipts in relation to:
 - systems matching orders on the basis of a reference price
 - systems that formalise negotiated transactions
 - orders that are large in scale, and
 - orders held in an order management facility pending disclosure?
- If not, please give reasons why
- 6.4** All the respondents agreed with the proposal to grant all the above waivers to operators of trading venues meeting the relevant requirements in the legislation.
- 6.5** In CP15/43 we said we supported the use of the waivers to ensure that transparency in non-equity markets, which are often characterised by lower and episodic liquidity, is carefully calibrated.
- 6.6** In CP15/43 we asked in Q8:
- Do you agree that we should use our power to grant waivers from pre-trade transparency in bonds, structured finance products, derivatives and emission allowances in relation to:

- orders that are large in scale
- orders held in an order management facility pending disclosure
- actionable indications of interest in request-for-quote and voice trading systems, and
- derivatives that are not subject to the trading obligation under Article 28 of MiFIR, and other financial instruments for which there is not a liquid market?

If not, please give reasons why

- 6.7** Respondents were strongly in support of us granting all the available waivers to UK trading venues on the grounds that the waivers provided by MiFIR to non-equity financial instruments would support liquidity on those markets. Some market participants supported greater clarity in the process of applying to us for a waiver from pre-trade transparency.
- 6.8** Some respondents raised concerns related to waivers that were not directly relevant to our question about whether we should grant all or some of the waivers from pre-trade transparency for non-equities. Those concerns relate to:
- the lack of a waiver for exchange of physicals and packages and the implications of that for the liquidity of markets
 - whether we should phase out some of the waivers post-implementation following an assessment of their impact on markets, especially in relation to cleared derivatives
 - the short timelines set in MiFIR in respect to the notification process, including the time necessary for us to assess waivers before notifying ESMA and the other NCAs
 - the quality of data for the first assessment of liquidity and for determining the value of the size specific to the financial instrument and the large in scale thresholds

Our response on waivers from pre-trade transparency

We will grant waivers to RMs and MTFs in respect of equity and equity-like instruments where the use of the waivers meets the conditions set out in MiFIR.

We will grant waivers to trading venues in respect of non-equity instruments where the use of the waivers meets the conditions set out in MiFIR. Since the publication of the CP15/43, MiFIR has been amended by the inclusion of a new waiver in relation to package orders including exchange for physicals. We will also grant waivers for packages where the use of the waiver meets the conditions set out in the legislation and the associated RTS, which has yet to be adopted by the Commission.

Together with other NCAs and ESMA, we will monitor the use of waivers by market participants and their impact on market efficiency and liquidity. We retain the power to revisit the decision to grant any of the waivers in due course and in accordance with the general process to amend rules. We note that ESMA has decided to carry out transparency calculations, i.e. calculations aimed at establishing the relevant transparency thresholds and determinations,

in the course of 2017 on the basis of data available to regulators, including data provided by trading venues.

Process of applying for pre-trade transparency waivers

6.9 In CP15/43 we asked in Q9:

- Do you agree that our sourcebooks should provide more clarity in relation to: the process of applying for a pre-trade transparency waiver, and information that we deem necessary in order to evaluate an application? If not, please give reasons why

6.10 All respondents supported greater clarity around the process and the timelines to apply for a waiver from pre-trade transparency. A number of respondents raised questions and offered proposals on how pre-existing waivers, such as waivers granted by us under MiFID, should be dealt with to ensure a smooth transition to MiFID II. Others highlighted the importance of ensuring that waivers are granted on a consistent basis and suggested that information on past waivers be made publicly available by or through us.

6.11 In CP15/43 we asked in Q10:

- Should the sourcebooks include templates setting the minimum information content that trading venues should provide to us when applying for a waiver? If not, please give reasons why

6.12 All respondents supported the introduction of a template in the Handbook setting out the minimum information content to be provided when applying for a pre-trade transparency waiver. Respondents believed that a template would bring greater certainty and efficiency to the application process. Respondents also suggested that all waivers granted should be made public and that the template should accommodate all the relevant information that trading venues may want to submit and be flexible enough to be used by different trading protocols.

Our response on the process of applying for pre-trade transparency waivers

In January 2017 we published our 'MiFID II – Application and notification user guide' which, among other things, clarifies the process of applying for a pre-trade transparency waiver and the relevant timelines. In the guide we said that applicants should send a complete application at least 5 months before the waiver is intended to take effect, which would include the mandatory 4 months period to notify ESMA and other NCAs before the waiver is intended to take effect. In addition ESMA published in December 2016, Q&A on the process and timelines for the assessment of equity and non-equity waivers for the period in advance of the application of MiFIR. ESMA has also published, Q&A on waivers granted under MiFID and how trading venues are expected to bring those waivers into compliance with MiFIR in advance of 3 January 2018. In accordance with the Level 3 ESMA Q&A UK trading venues are not required to re-apply in relation to existing waivers which require only non-substantial modifications to be brought in compliance with MiFIR.

We will add a template to the Handbook that trading venues are expected to complete to apply for a pre-trade transparency waiver. We published the template on our website (it is available from the 'publications' section of our website under 'forms') in December 2016.

Post-trade transparency deferrals

6.13 In CP15/43 we asked in Q11:

- Do you agree that we should be prepared to authorise operators of trading venues and investment firms to defer the publication of post-trade information in relation to large in scale transactions in shares, ETFs, and depositary receipts executed by investment firms acting in a principal capacity?
 - If yes, should we provide guidance in the Handbook on the process for applying for deferrals?
 - If not, please give reasons why

6.14 Respondents supported authorising operators of trading venues and investment firms to defer the publication of executed transactions in shares, ETFs, and depositary receipts. Respondents also supported greater clarity on the application process. Some respondents called for greater clarity on the process of how deferrals authorised under MiFID would transition to MiFID II.

6.15 In CP15/43 we asked in Q12:

- Do you agree that we should authorise operators of trading venues and investment firms to provide for deferred publication in relation to transactions that are:
 - large in scale
 - in financial instruments for which there is not a liquid market
 - above the size specific to the instrument, and
 - packages

If yes, do you agree that we should set up the process for the use of guidance in the Handbook for the application of deferrals? If not, please give reasons why

6.16 Respondents supported our proposal to authorise deferrals to transactions in bonds, structured finance products, derivatives and emission allowances in accordance with the conditions set in MiFIR. Many respondents also supported harmonisation in the use of deferrals across the EU to avoid complexity and fragmentation of regimes. Some respondents called for clarity on whether firms will need to re-apply on a regular basis following the calculations of the transparency thresholds.

6.17 In CP15/43 we asked in Q13:

- Should we:
 - use our powers under Article 11(3) of MiFIR further to calibrate post-trade deferrals in accordance with the above options
 - require additional information to be made public during the deferral period?

and/or, should we:

- permit the omission of the volume, or the aggregation of information, for an extended time period of four weeks?

If not, please give reasons why

6.18 All respondents agreed we should consider using our powers under Article 11(3) of MiFIR to calibrate further post-trade deferrals. No respondent was in favour of requiring additional information, either trade by trade or aggregated, during the deferral period. Respondents argued that the disclosure of some information during the standard deferral period would undermine liquidity provision and ultimately impose additional costs to investors.

6.19 Respondents were in favour of allowing the omission of the volume on a trade by trade basis at the end of the standard deferral period in accordance with Article 11(3)(b) in MiFIR and 11(1)(b) in RTS 2. The same respondents also supported the aggregation of the information for an indefinite period of time for sovereign debt instruments. No respondent supported the weekly aggregation of the transactions for non-sovereign debt instruments.

6.20 Finally, many respondents argued in favour of harmonisation of the deferral regime across the EU to limit the regulatory burden and limit the complexity of the regime.

Our response on post-trade transparency deferrals

We will authorise deferrals of transactions executed in shares, ETFs, and depositary receipts where the use of the deferrals meets the conditions set out in the legislation. We clarified the process for the authorisation of a deferral in our 'MiFID II – Application and notification user guide' – see Chapter 12.

We will authorise deferrals of transactions executed in bonds, structured finance products, derivatives and emission allowances where the use of the deferrals meets the conditions set out in the legislation. We clarified the process for the authorisation of a deferral in our 'MiFID II – Application and notification user guide' – see Chapter 12.

For shares the recalculations of the transparency thresholds, such as the large in scale, or the classes of financial instruments for which there is a liquid market, do not require firms to re-apply for authorisation of existing deferrals. Finally, we would point out that harmonisation of the deferral regime is outside the scope of this consultation, and also outside the scope of ESMA's powers.

We will use our powers to calibrate further post-trade deferrals. Where the conditions for a deferral are met in accordance with Article 11(1) of MiFIR we

will not require the publication of limited or aggregated information during the deferral period. We will also allow the omission of the publication of the volume during the extended time period of deferral set in RTS 2. For sovereign bonds we will allow the aggregation of the publication of several transactions in an aggregated form for an indefinite period of time. We will allow the aggregation of the information of several transactions executed during the course of a week for the extended time period of four weeks.

7. Market Data

Introduction

- 7.1** This chapter is relevant to persons who are interested in becoming authorised as a DRSP in the UK. DRSPs include Approved Reporting Mechanisms (ARMs), Approved Publication Arrangements (APAs) and Consolidated Tape Providers (CTPs). It may also be of interest to any operator of a UK trading venue seeking verification of its rights to provide data reporting services.
- 7.2** The part of the chapter on transaction reporting will be of interest to managers of collective undertakings and pension funds.

The Data Reporting Services Providers (DRSPs) regime proposed in CP15/43 and CP16/43

- 7.3** In CP15/43 we proposed the addition of a new chapter (MAR 9) to MAR. It will provide entities with directions and guidance about how they can apply to become authorised as a DRSP and how to extend, vary or cancel an authorisation. It will also cover matters such as our supervisory approach, and how a DRSP can notify us of important information such as changes to its management body.
- 7.4** In CP15/43 we asked in Q14:
- Do you agree with our approach to DRSPs in MAR 9? If not, please give reasons why
- 7.5** The responses were generally supportive of our proposals in relation to DRSPs in MAR 9. A few respondents said that elements of the CP text were incomplete and advised they were therefore not able to answer this question conclusively. This relates to the proposal of the requirement of an annual notification under MAR 9.3.7 for which no reference can be found in RTS 13. Furthermore for notifications under RTS 13, a couple of respondents argued that unless the materiality of such notifications is qualified, this requirement may become unnecessarily burdensome on both DRSPs and us.
- 7.6** Some respondents suggested making the following amendments to MAR 9.1.2G(4)
- “...Approved reporting mechanisms (ARMs) to provide the service of **submitting** transaction **reporting** reports on behalf of investment firms...”*
- 7.7** They thought it was inaccurate to state that ARMs transaction report on behalf of investment firms, as the obligation for completeness and accuracy of the report applies to the investment firm that executes a transaction in a reportable instrument.

- 7.8** Some respondents emphasised the importance of transparency around the formal timeline for DRSP authorisation. They argued that any inconsistencies in the approach to granting authorisation could result in a commercial disadvantage for some applicants, given the intense competition in the regulatory reporting industry.
- 7.9** Others commented on the obligations on operators of trading venues in Article 26 (5) of MiFIR to report transactions to NCAs on behalf of members/participants who are not investment firms or credit institutions. Respondents noted that under these circumstances the trading venue is not providing services to an investment firm in order for it the firm to meet its obligations under Article 26 of MiFIR' as per the definition of an ARM. They argued that while the trading venue in this instance can choose to connect directly to the NCA for the purpose of submitting this data it should also be allowed to outsource this process to a third party, including an ARM. They also noted that under REC 2.2.3-2.2.7 RIEs are expressly permitted to outsource functions subject to the fitness and propriety of the third party who performs them. Two respondents recommended amendments in the Handbook provisions to allow trading venues to outsource transaction reporting obligations under Article 26 of MiFIR through the use of ARMs.
- 7.10** One respondent said that it is critical for ARMs and their clients to understand technical specifications from a connectivity, configuration and accuracy & completeness of reporting point of view. The respondent therefore proposed expanding the provision of a non-disclosure agreement (NDA) to allow ARMs to share relevant information included in the technical specification with their clients.
- 7.11** A respondent recommended that where possible and appropriate CAs should align standards across MiFID II and EMIR reporting requirements. Another sought clarification around whether service providers that facilitate data reporting but do not act as an originator or end-point, would be required to become DRSPs.
- 7.12** A respondent sought clarification on whether an entity would need to become authorised as an ARM if (a) multiple firms within a group route transaction data to an ARM through common infrastructure, (b) the entity in question reports transactions on behalf of other firms within the same group and (c) the submission is made by the receiving firm where the conditions for transmission have been complied with under the Receipt and Transmission of Order (RTO) under RTS 22. In addition, the respondent asked whether the answers to the above questions would be different if the reporting firms chose to connect directly to the NCA.
- 7.13** A respondent stated that whereas they support sufficient funding for the NCA to carry out its mandates through setting up connectivity fees, such fees should not constitute an additional 'tax' for UK trading venues.
- 7.14** A potential legislative conflict was highlighted between:
- Article 73 of the Central Securities Depositories Regulation (CSDR) which exempts entities authorised as CSDs carrying out services explicitly listed in Annex A and B (including transaction reporting services such as ARMs) from requiring authorisation and being subject to provisions under the DRS Regulation, and
 - the proposed Handbook definitions which envisage that entities providing such services are doing so in accordance with regulation 5 of the DRS Regulations, while being subject to the Handbook.
- 7.15** In CP16/43 we provided further clarity on our supervisory approach to DRSPs. We proposed that the annual notification required under MAR 9.3.7 would be an annual review, for which

RTS 13 forms the framework. We proposed that a DRSP submit the notification within three months of the commencement of its authorisation.

7.16 In CP16/43 we asked in Q12:

- Do you agree with our approach that the annual notification required under MAR 9.3.7 will be an annual review, verified by a member of the management body of the DRSP, which assesses the DRSP's controls in place for RTS 13? If not, please give reasons why

7.17 In CP16/43 We asked in Q13:

- Do you agree with our proposal that RTS 13 should form the framework and scope of the annual review that should be undertaken by a DRSP prior to verifying its compliance with Title V of MiFID II? If not, please give reasons why

7.18 In CP16/43 we asked in Q14:

- Do you agree with our proposal to extend the timeframe in MAR 9.3.7 to submit the notification in MAR 9 Annex 8D? If not, please give us reasons why

7.19 The majority of the respondents were in favour of our proposals for the annual notification form.

7.20 One respondent had concerns that a full annual review, as proposed, could be burdensome and costly for DRSPs to undertake, and for potentially little benefit. They said that it was not clear whether our approach will be mirrored across the EU or adopted by ESMA as best practice, and believed a unilateral obligation on UK DRSPs appeared to be gold plating and could put UK DRSPs at a disadvantage in terms of costs and management time. They suggested that the annual review could identify any changes which may impact their on-going ability to comply with their authorisation conditions, rather than form a detailed annual review of compliance.

7.21 A respondent suggested the anniversary to submit the notification in MAR 9 Annex 8D notifications, should be amended to the 'commencement of service' and not the 'date of authorisation'. The respondent stated it was not clear to them whether the annual review will be provided as a 'confirmation of compliance', or 'declaration'. The respondent also stated the FCA should not require a DRSP to submit a copy of any internal review, to support the annual review. The DRSPs declaration that it is compliant having carried out its annual review should suffice.

7.22 In CP16/43, we proposed some changes to our approach and procedures for the authorisation and verification of DRSPs, to provide clarity on the information required for the extension or variation of authorisation, and notification requirements for an APA or a CTP.

7.23 In CP16/43 we asked in Q15:

- Do you agree with our proposed changes to process around authorisation and notification for DRSPs? If not, please give reasons why

7.24 We also proposed providing guidance in MAR to make it clear that trading venues can use ARMS to report transactions to us and for a group of investment firms to aggregate their reporting via an internal hub provided the hub uses an ARM or is an ARM.

7.25 CP16/43 asked in Q16:

- Do you agree with our proposed guidance on transaction reporting at MAR 9.5.9 and 9.5.10? If not, please give reasons why

7.26 All respondents agreed with our proposals to:

- process authorisations and notifications for DRSPs
- permit trading venues to use ARMs to report transactions to us, and
- allow groups of firms to aggregate transaction reporting via a hub

7.27 One respondent asked: if an investment firm reports directly to us, and uses a third party technology provider to facilitate the investment firm and meet its regulatory obligations, must that third party be an ARM, or must the report be submitted via an ARM?

Our response on the DRSP regime proposed in CP15/43 and CP16/43

Information on the DRSP authorisation process has been published on our webpage www.fca.org.uk/markets/mifid-ii/data-reporting-services-providers. We will endeavour to publish updates on DRSP authorisation timelines in a timely manner, to allow potential applicants sufficient time to make necessary arrangements towards completing their application, and being granted DRSP authorisation in time for MiFID II.

A list of authorised DRSPs will be provided on EMSA's website. In addition, we will provide a table of UK authorised DRSPs on our website.

In January 2017 we published our 'MiFID II – Application and notification user guide'. This clarified what we consider to be a complete DRSP application for authorisation, and that complete applications for authorisation of DRSPs must be submitted by 3 July 2017 to ensure we will assess them before 3 January 2018. We also hosted a number of pre-application meetings and forums to prepare the industry for completing and submitting their applications.

We believe that our proposal for an annual review of compliance by a DRSP under MAR 9.3.7 is consistent with Article 59(4) of MiFID II which allows each NCA to determine its own supervisory approach to keeping under regular review the compliance of DRSPs with the conditions for their initial authorisation and their on-going obligations. We do not think the annual review will impose incremental costs other than of minimal significance. DRSPs will need to monitor their policies and procedures put in place to achieve compliance with their obligations and we would expect that in light of the management body's obligation to ensure effective and prudent management of the DRSP that it receives regular reports on compliance. An overall review of compliance is needed to highlight where there are changes to information initially or previously reported, although obviously we would expect there to be a particular focus on areas where policies and procedures might have changed.

We would expect the MAR 9 Annex 5D ‘material change in information’ to capture any change from the information provided by the DRSP at the time of its authorisation.

For the anniversary to submit the annual notification in MAR 9 Annex 8D – both the ‘commencement’ of the service to provide a DRS, and ‘authorisation’ to become a DRSP become effective from 3 January 2018.

A DRSP may choose to attach a copy of any internal review in support of the annual notification, but is not required to do so. However, any documents which demonstrate compliance with the conditions of authorisation under RTS 13 must be made available to us on request.

With respect to amending the text in MAR 9.1.2G (4) to clarify that an ARM provides the service of ‘submitting transaction reports,’ we have not amended the definition in MAR. The definition in MAR 9.1.3G (4) is based on the Article 4 (52) MiFID II definition, that an ARM provides a service of ... ‘reporting details of transactions to competent authorities... on behalf of investment firms’. It is clear that the investment firm remains responsible for the completeness, accuracy and timely submission of the reports that are submitted to the CA, under Article 26(7) of MiFIR and Article 11 of RTS13.

Any fees charged for DRSP connectivity are charged on a cost-recovery basis. In CP 16/19 we confirmed the DRSP authorisation fees, and consulted on our Market Data Processor (MDP) on-boarding fees for conforming to the technical standards for the MDP. We acknowledge the potential conflict that exists between the CSDR and DRS Regulations. We also acknowledge that it is essential that a CSD should not be able to provide DRSP services without it being authorised and supervised in line with MiFID II. Details of the practicalities of this remain to be worked out.

With respect to potential inconsistency in terms of connectivity/outsourcing requirements for RIEs versus non-RIE entities alluded to in the response, we would highlight that MiFID II applies to entities that are recognised entities under the RRR. Whereas, under REC 2.2.3-2.2.7 RIEs are expressly permitted to outsource certain functions this does not extend to transaction reporting which will be covered by MiFID II.

In MAR 9.5.9 G we clarify that a trading venue may report transactions for the purposes of Article 26 of MiFIR to us using an ARM.

Article 26(7) of MiFIR states an investment firm may report transactions directly to us, or via an ARM acting on its behalf, or a trading venue through whose system the transaction was completed. We recognise that an investment firm may use the services of a third party technology provider to assist the firm with the preparation of the data for transaction reporting. An investment firm may use a third party technology provider to submit its transaction reports provided that the third party technology provider is an ARM, or the third party technology provider uses an ARM to report the transactions to us.

We won’t extend the non-disclosure agreement to enable ARMs to share the entire technical specification with their clients. However, we will allow ARMs to reflect the relevant parts within their own documentation, and share this with

their clients. Not all of the specification is relevant to ARM clients, and it remains our intellectual property.

Transaction reporting – collective investment undertakings and pension funds

- 7.28** For the purpose of MiFID II, in CP 15/43 we reviewed the likely costs and benefits of applying the new MiFID II transaction reporting requirements to managers of collective investment undertakings and pension funds, whom we currently require to report transactions but are exempt from the requirement to report transactions under MiFID II. We proposed not to extend the application of obligations under Article 26 of MiFIR transaction reporting obligations to those managers. This is contrary to the approach we took with MiFID where we extended the MiFID transaction reporting obligation to these firms.
- 7.29** We conveyed our expectations for MiFID investment firms, non-RIE trading venues and non-EEA firms who will be required to transaction report in accordance with Article 26 MiFIR or GEN to establish connectivity with our system. For instrument reference data, we stated that we expected SIs and non-RIE trading venues, which are required to provide reference data in accordance with Article 27 of MiFIR, to establish connectivity with our system.
- 7.30** In CP15/43 we asked in Q15:
- Do you agree with our proposals not to apply the transaction reporting obligation to managers of collective investment undertakings and pension funds? If not, please give reasons why
- 7.31** Responses generally favoured our proposals for the transaction reporting obligation for managers of collective investment undertakings and pension funds, and agreed on the basis that this approach helps to ensure effective compliance while minimising the compliance costs which arise from MiFID II reporting. Others disagreed with the proposal on grounds of cost and the liability imposed on trading venues.
- 7.32** Most understood the rationale behind MiFIR requirements for reducing the number of firms subject to transaction reporting obligations. Some respondents anticipated that it would increase the challenge for trading venues and investment firms to provide accurate and complete data for members and participants who are not subject to the transaction reporting obligation under MiFIR.
- 7.33** It was argued that some managers of collective investment undertakings and pension funds will not be sufficiently motivated to implement appropriate systems and controls to ensure trading venues are provided with accurate data. Given the responsibility falls on the trading venues, this exposes them to heightened risk of regulatory intervention/censure.
- 7.34** Some respondents that were trading venues thought the proposed approach was fundamentally different to the one in place under the current regime, and there may be potential risk of double reporting due to confusion among buy-side firms on whether they have an obligation to report. To mitigate the risk of double reporting, they requested that information should be shared on the MiFID status of UK asset management firms in a public register.
- 7.35** One respondent asked for a clear statement as to the scope of firms' activities that are impacted. It noted that PERG 13, Q43 indicates that we consider portfolio management activity

undertaken by UCITS management companies and AIFMs for third party clients do not fall within the Article 2 exemption in MiFID II, suggesting that the activity falls within the scope of MiFID II and is subject to the MiFIR transaction reporting regime. The respondent also said that firms conducting activity for their own funds and for third party clients would find it easier not to filter out the activity for their own funds but to report it all to us. They argued that the 'over reported' activity falls outside of MiFIR but would provide NCAs with more visibility of the activity. They requested that we confirm that activities undertaken by a firm in connection with its management of a collective investment undertaking, such as operation of an associated savings scheme ISA etc., are covered by the Article 2 exemption in MiFID II.

- 7.36** Some respondents expressed concerns around the confidential nature of the data that trading venues would need to collect, store and transmit. Data confidentiality regimes vary across the globe and for non-EEA firms there may be concerns about whether the provision of this data is consistent with local privacy laws.
- 7.37** Some respondents supported our proposals on the basis that reporting of duplicate information and associated costs will be eliminated. Any cost from transaction reporting would be passed on to clients of collective investment undertakings thus increasing the price of their products and subsequently making these less attractive.
- 7.38** A couple of respondents recommend streamlining reporting obligations under the UCITS Directive, AIFMD and MiFID II as this would enable a more homogenous framework and reduce the burden on firms.

Our response on transaction reporting – collective investment undertakings and pension funds

We will not extend the application of Article 26 of MiFIR transaction reporting obligations to managers of collective investment undertakings and pension funds. It remains our view that the potential benefits of extending the MiFID II transaction reporting obligations to these firms would be outweighed by the expected costs. This takes into account the complexities introduced by MiFIR along with the existence of provisions such as Article 26(5) of MiFIR – reporting by trading venues on behalf of members and participants that are not subject to the transaction reporting obligation in MiFIR. We acknowledge that as a result of not extending the obligation under Article 26, of MiFIR to managers of collective investment undertakings and pension schemes these managers will potentially be brought into the group of members and participants of trading venues that trading venues will have to report on behalf of under article 26(5). Many of these managers will not however, access the trading venues directly but will place their orders with a firm that will access the trading venue. In addition, whereas extending the obligation for the managers of collective investment undertakings or pension funds would mean imposing a requirement for these managers to report where none exists under Article 26 of MiFIR, trading venues already have to report under article 26(5) for other members or participants that are not subject to MiFIR transaction reporting obligations. Further, this aligns the requirements for trading venues and managers of collective investment undertakings across the EEA.

We confirm that PERG Q43 rightly acknowledges that 'in the case of UCITS management companies, some MiFID provisions will apply to those who provide portfolio management services (other than collective portfolio management),

investment advice or safekeeping and administrative services in relation to units by third parties, by virtue of Article 6.4 of the UCITS Directive). Portfolio management is a MiFID investment service, when performed by a UCITS manager but the point is that the only MiFID provisions which apply to it are those stipulated by Article 6 of the UCITS Directive. These provisions do not include the transaction reporting requirements in MiFIR and nor does Article 1 MiFIR apply to UCITS managers. The application provision in SUP17A.1.1R reflects the stated policy preference in CP 15/43 not to gold plate in regards to UCITS management companies in paragraph 7.19 and the scope of both MiFIR and the UCITS Directive.

With respect to streamlining reporting obligations across different reporting regimes such as the UCITS directive, AIMFD and MiFID II this falls outside the scope of the issues we consulted upon.

The concern around data confidentiality is something that arises from Article 26(5) of MiFIR more generally rather than arising from the decision not to extend the application of transaction reporting under Article 26 of MiFIR to collective investment undertakings and pension funds and as such falls outside of the scope of the issues we consulted upon.

Transaction reporting – connectivity for certain entities sending transaction reports and reference data

- 7.39** We made proposals in CP15/43 to amend SUP17 to make clear that entities other than ARMs and RIEs providing transaction reports to us and entities other than RIEs providing financial instrument reference data to us must connect to our systems to do so.
- 7.40** In CP15/43 we asked in Q16:
- Do you agree with our proposals to require connectivity with our systems for certain entities sending transaction reports and reference data to us? If not, please give reasons why
- 7.41** The responses to this question were split:
- Those agreeing doing so on the basis that connectivity to our MDP for the purpose of submitting transaction reports and instrument reference data is already established under the current regime and should continue to be essential under MiFID II.
 - Those disagreeing recommended expanding the text to allow entities which are required to submit transaction reports and instrument reference data to make use of certified third party providers who will connect to the MDP under an outsourcing agreement. They advised that this arrangement would minimise cost and the number of connections that the FCA will need to maintain.
- 7.42** Some respondents noted that sometimes investment firms might be inadvertently acting as SIs (for example in relation to new issues) which would give rise to non-linear reference data submissions. For this reason, the respondents recommend that investment firms operating SIs should retain the option to use DRSPs for the entirety of their operations.

- 7.43** Other respondents had considered the data delivery requirements under Article 3.1 of RTS 3 for APAs, and believe those requirements are not as complex as those for ARMs. They therefore believe that a lower connectivity cost should apply for entities submitting instrument reference data.
- 7.44** Some respondents raised concerns around the reference data requirements which entered into force in July 2016 (Article 4 of the Market Abuse Regulation) and they welcome guidelines on the connectivity requirements for the purpose of the submission of this data to us.
- 7.45** One respondent requested early guidance from us on the technical connectivity feeds required to be put in place for the purpose of transaction reporting and instrument reference data submissions. Another respondent sought additional information on connectivity to our MDP for the purpose of submitting transparency data.
- 7.46** Another respondent suggested clarifying that the requirement for connectivity is dependent on the type of activity performed by the firm rather than the type of entity that it is thus addressing potential ambiguity around the reporting requirements of non-MiFID firms based in the UK and non-UK MiFID firms.

Our response on connectivity for certain entities sending transaction reports and reference data

We have produced detailed market interface specifications for all types of data which require a technical connection for direct submission to us <https://www.fca.org.uk/markets/market-data-regimes/market-data-reporting-mdp>.

In relation to reference data submission requirements brought about by Article 4 of the Market Abuse Regulation, ESMA has provided technical specifications <https://www.esma.europa.eu/policy-rules/mifid-ii-and-mifir/mifir-reporting-instructions>

In terms of queries, comments and requests for clarification relating to trading venues outsourcing transaction reporting data and instrument reference data submission to third parties, these have been addressed in MAR 9.5.

Any queries or comments around transparency data fall outside the scope of SUP17 and we will therefore not be addressing them in this PS.

8. Algorithmic and High Frequency Trading (HFT) Requirements

Introduction

- 8.1** This chapter is of interest to trading venues and investment firms and banks who engage in algorithmic trading, including those who apply a high-frequency algorithmic trading technique.

Systems and controls for algorithmic trading on MTFs and OTFs

- 8.2** In CP15/43 we proposed amendments to MAR 5 and text in the new MAR 5A, transposing the provisions in Title III of MiFID II that apply high-level systems and controls requirements for algorithmic trading to MTFs and OTFs. More detailed requirements are contained in RTS 7 which we reference in the Handbook.
- 8.3** The Handbook currently references ESMA's 2012 automated trading guidelines which have been supplanted by RTSs 6 and 7. We will amend the Handbook to remove these references and replace them with a transposed text of, or references to, RTSs 6 and 7.
- 8.4** In CP15/43 we asked in Q17:
- Do you agree with our proposal to add in the rules outlined above to our Handbook? If not, please give reasons why
- 8.5** All respondents supported our general approach to Handbook implementation. Some provided suggestions to make technical improvements to the proposed rules, to ensure consistency with the MiFID II provisions. Others asked that we clarify further:
- provisions concerning trading venues' testing environments and drop copy facilities where more prescriptive requirements around deadline and minimum data relating to order and trade data would be beneficial, ensuring fair and non-discriminatory fee structures by requiring sufficient public transparency
 - whether the market making obligations under MAR 5.3A.5 should apply to liquid instruments only given the difficulty in applying such obligations to illiquid instruments
- 8.6** Some respondents noted the apparent difference in the way RMs and MTFs/OTFs are treated in relation to the provision of DEA to trading venues based in EEA. In their view, whilst REC Section 2.5.1(10) is aligned with Article 48(7) of MiFID II in permitting only those EEA regulated investment firms and credit institutions to be a DEA provider, the corresponding proposed

rules for MTFs (MAR 5.3A9) and OTFs (MAR 5A.5.9) also permit non-EEA investment firms and overseas firms registered in accordance with Article 46 of MiFIR.

Our response on systems and controls for algorithmic trading on MTFs and OTFs

Based on the feedback received, we have made some technical changes to our proposals. It is not our intention to provide further guidance on the interpretative issues raised by respondents. But we have taken account of the points raised in our work in ESMA on Level 3 Q&A.

We accept that there should be alignment provisions setting out who can provide DEA across different types of trading venue. Since our consultation, the Treasury has published near-final implementing legislation, including DEA provisions for RIEs. We have aligned the provisions in both REC and MAR with the provisions in the Treasury's implementing legislation.

Systems and controls for algorithmic trading by investment firms and for general clearing members

- 8.7** In CP15/43 we proposed a new section in MAR, MAR 7A, to set out the additional MiFID II requirements which an algorithmic trading firm, a firm providing DEA to a trading venue or a firm acting as a general clearing member must comply with, in addition to the general organisational requirements in Senior Management Arrangements, Systems and Controls (SYSC). As such, the content of the new chapter should be read in conjunction with the SYSC part of the Handbook.
- 8.8** In CP15/43 Q18-Q22 we asked:
- Do you agree with our proposal to add in the rules outlined above to our Handbook? If not, please give reasons why. Do you agree with our proposal to add a new section to MAR for Algorithmic and HFT firms, DEA providers and general clearing members? If not, please give reasons why
 - Do you foresee any implementation issues with the content of MAR 7A? If so, please provide examples
 - Are you in favour of the reports under MAR 7A.3.7 and MAR 7A.4.5 being submitted to us regularly, as opposed to an *ad hoc* basis?
 - If you are in favour, what will be the advantages of regular reporting as opposed to *ad hoc* reporting?
 - If we were to require regular reporting, what would be the cost to your firm?
- 8.9** All respondents agreed that our proposal to create a new, dedicated section of the Handbook capturing requirements for algorithmic and HFT firms, DEA providers and general clearing members was preferable to the alternative option of incorporating the relevant standards into SYSC. Respondents felt that this provided a clearer view of the requirements for the firms

concerned. Some noted that fine tuning of the regulations in the future would be better managed if the relevant provisions were contained in a standalone chapter of the Handbook, given the rapid developments in the area of algorithmic trading and HFT.

8.10 Respondents asked for clarity on whether the record keeping requirement for HFTs under MAR 7A.3.8 is applicable at user, system or firm level, and consistency across the Handbook for eligible firms offering DEA services to a trading venue.

8.11 Several respondents provided the following examples of issues which arise as a result of the proposed MAR 7A.

- **Market making** – respondents asked for clarity as to whether a market making agreement needs to be concluded with participants on the section of a trading venue operating under a reference price waiver. They thought that obligations under MAR 7A.3.4 and RTS 8 Article 1 may not be applicable to those participants using the section of a trading venue which operates under the reference price waiver, which can execute at the mid-price under MiFIR and hence no ‘firm, simultaneous two way quotes’ existed.
- **Disorderly trading** – respondents noted that the requirements under MAR 7A.3.2R and MAR 7A.4.2R on pre-trade controls referenced Market Abuse Regulation. They contended that it was impossible to ensure that a trading system could capture order submission in breach of the general prohibitions under the said Regulation, and that such a strict requirement may not reflect the intention of the co-legislators and did not reflect RTS 6 Article 13. They suggested amending the rule to state; ‘cannot ordinarily be used for any purpose that is contrary to:’
- **DEA provision for non-EEA firms** – a number of respondents were unsure whether we had accurately copied the provision under Article 18(5) of MiFID II ‘an investment firm that provides direct electronic access to a trading venue shall be responsible for ensuring that clients using that service comply with the requirements of this Directive and the rules of the trading venue’ into the proposed MAR 7A, as the current draft did not clarify how broadly MiFID II standards should be applied to DEA users, particularly those non-EEA firms that were not otherwise subject to MiFID II obligations.
- **Business continuity arrangements** – a respondent suggested that the proportionality conditions per RTS Article 14(1) would be better reflected by amending MAR 7A.3.3(1) thus ‘have in place effective appropriate business continuity arrangements to deal with any failure of its trading systems’.
- **Flagging of algorithms** – a respondent suggested a harmonised approach to implementing flagging of algorithms be adopted, as issues may arise if venues were to implement different logic.
- **Order to Trade Ratio (OTR) monitoring** – a respondent expressed preference for OTR monitoring requirement to be applied at a member level, so as to avoid excessively complex implementation.

8.12 On the question of whether the submission of the reports under MAR 7A.3.7 and MAR 7A.4.5 to us should be done on a regular or on an *ad hoc* basis, all but one of the 11 respondents clearly stated their preference for the latter.

8.13 In addition, some respondents expressed concerns that if *ad hoc* reporting were to be introduced, the requirements in MAR 7A.3.7 and MAR 7A.4.5 to provide the relevant information to us

“within 14 days from receipt of the request” would not give firms sufficient time in which to provide all the information specified. Consequently, they proposed that the timeframe for providing such information be extended to “within 30 days from receipt of the request”.

- 8.14** In estimating the cost of complying with regular reporting, only one firm was able to provide an estimate of the cost (£500,000 per year). Others noted that unless further clarity is provided with respect to the specific content and periodicity of such reporting, it would not be possible to estimate the additional cost. Our response on systems and controls for algorithmic trading for investment firms and for general clearing members.

Our response on systems and controls for algorithmic trading by investment firms and for general clearing members

We will retain the current proposed structure of including a new specific chapter on algorithmic and HFT firms, DEA providers and general clearing members. We will consider amending the text to clarify the text following some of the technical suggestions made by the respondents.

On the frequency of reporting, if regular reporting is required, there would be additional cost as compared to an *ad hoc* reporting regime, both in terms of staffing costs and time. Although such cost increase would be dependent on the content and periodicity of such reporting required, in absence of an overriding motive to implement a regular reporting regime, we will maintain the proposed *ad hoc* reporting regime. Furthermore, we will extend the timeframe for responding to *ad-hoc* requests to 30 days.

9.

Passporting and branches of non-European Economic Area (EEA) firms

Introduction

- 9.1** The section of this chapter dealing with passporting is of interest to anyone who wishes to provide investment services, or perform investment activities, in other EEA countries under MiFID II, either on a cross-border basis or through an establishment.
- 9.2** The section of this chapter dealing with the application of directly applicable EU regulations is relevant to UK branches of non-EEA firms undertaking investment services and activities.

Passporting changes proposed in CP15/43 and CP16/19

- 9.3** In CP15/43 we proposed changes to SUP 13 to signpost the draft RTS and draft implementing technical standards (ITS) that were developed by ESMA and that will be adopted by the Commission in relation to passporting under MiFID II. The RTS will set out the information to be included in a passport notification and the ITS will contain the procedures and forms to be used.
- 9.4** In CP16/19 we proposed reproducing the notification forms contained in the draft ITS in the annexes to SUP 13. We also proposed to amend SUP 13.5.3R and SUP 13.8.1R to require firms to submit these notifications electronically by using the FCA CONNECT system, as is the case with current MiFID notifications. We also proposed to issue two new notification forms to complement those proposed by ESMA: one for cancellation of investment services and activities passports, and another for the cancellation of passports in respect of OTFs and MTFs.
- 9.5** Some process changes resulting from the ITS were also reflected in the amendments to SUP 13 proposed in CP15/43 and CP16/19. In particular, under the ITS, firms will now be required to submit one notification per member state for service passports, as they currently do for establishment passports, and to submit one notification per MTF or OTF.
- 9.6** In CP15/43 we asked in Q23:
- Do you agree with our proposed Handbook changes on passporting? If not, please give reasons why
- 9.7** In CP16/19 we asked in Q5:
- Do you agree with our proposal relating to the passporting provisions in SUP? If not, how could we amend it?

- 9.8** Regarding the requirement that firms submit one notification per country, it was suggested by one respondent that we could develop the electronic form (via CONNECT) so that firms could select the member states that they wish to passport into and only enter the relevant information once (where it is common to each required form), with the system then generating multiple forms for the selected EU states.
- 9.9** Under MiFID II firms are required to provide details of the passporting arrangements for each MTF/OTF platform they operate. It was suggested by one respondent that a facility for a separate application per operator of MTFs and OTFs where the operator wishes the same passporting notification to be used across their permissions would be helpful.
- 9.10** Questions were asked in relation to the grandfathering process for existing passports and details on this were provided in the ‘MiFID II – Application and notification user guide’ – see Chapter 8.
- 9.11** Respondents also asked questions about the guidance in SUP that relates to the relationship between tied agents and branches, the ITS forms to be used when establishing a branch and a tied agent, and the way in which the ITS forms should be submitted, which has now been provided. We have also clarified that firms will now be required to submit one notification per member state, for both service and establishment passports, and to submit one notification per MTF or OTF.

Our response on passporting changes proposed in CP15/43 and CP16/19

The ITS will be directly applicable to investment firms. It will prescribe the notifications to be submitted to NCAs and it is quite clear from the final ESMA draft that investment firms will be required to submit separate notifications for each member state. It says: ‘The investment firm shall submit a separate investment services and activities passport notification [...] for each Member State into which the investment firm intends to operate.’

That said, we acknowledge the feedback received, and will consider whether the impact of these requirements can be minimised through our CONNECT system. Additional information will be made available in due course.

The ITS will require investment firms making notifications about the provision or arrangements to facilitate access to an MTF or OTF to use the form set out in Annex IV of the ITS, which we will reproduce in SUP 13 to enable submission through CONNECT. The final ESMA draft of the form at Annex IV of the ITS is clear that it can only be used for one MTF or OTF at a time.

We acknowledge the feedback received, and will evaluate whether the impact of these requirements can be minimised through our CONNECT system. Additional information will be made available in due course.

SUP Transitional Provision and other minor changes

- 9.12** Our ‘MiFID II – Applications and notification user guide’ referred to the transitional arrangements that we intend to put in place between 31 July 2017 and 3 January 2018 to help firms bring their passports into line with the changes of scope resulting from MiFID II as of 3 January 2018. This guide said that during the transitional period, we will ask firms to submit the new MiFID II passport notifications by email to MiFID.passport@fca.org.uk.
- 9.13** We will introduce a transitional provision in SUP to give effect to this. This will apply the amendments to SUP 13 described above from 31 July 2017 for the purpose of making notifications relating to business covered by the extended scope of MiFID II, but in a modified form to reflect our intention to receive the notifications subject to the transitional arrangements by email rather than through the FCA CONNECT system. Firms will be able to see the version of SUP 13 that applies to transitional notifications, including links to the new forms, by using the Handbook feature that allows you to go forward in time.
- 9.14** Passport notifications for existing MiFID business during this period will continue to be made in line with SUP 13 as it is currently in force, which means using the existing MiFID notification form and the FCA CONNECT system. That will change on 3 January 2018, when the amendments to SUP 13 described above will apply to notifications for existing MiFID and new scope MiFID II business.
- 9.15** Please note that during the transitional period, firms wishing to make a MiFID notification (effective before 3 January 2018) alongside a MiFID II notification (effective only from at least 3 January 2018) will have to submit two separate notifications, one through CONNECT in relation to the MiFID business, and one by email as per our transition arrangements for the new-scope MiFID II business.

Application of directly applicable EU regulations to branches of non-European Economic Area (EEA) firms

- 9.16** In CP15/43 we proposed a new rule in General Provisions (GEN) to subject branches of non-EEA firms whom we have authorised and who undertake investment services and activities to the obligations in the directly applicable regulations that are a part of MiFID II. The aim of this rule was to ensure that such firms are treated no more favourably than branches of EEA firms.
- 9.17** In CP15/43 we asked in Q24:
- Do you agree with the drafting of our proposed rule to apply obligations in directly applicable regulations to UK branches of non-EEA firms? If not, please give reasons why
- 9.18** The few responses we received to this question were generally positive, a couple raised substantive points. One said it was necessary to take care to avoid unintended consequences in applying directly applicable regulations wholesale to non-EEA firms. The other said account needed to be taken of the fact non-EEA branches may not fit within the MiFID II / MiFIR classification matrix, and that the application of directly applicable regulations to branches of non-EEA firms would need to take account of the fact the passporting system in MiFID II relies on the existence of a regulator in the home member state who can be relied upon to provide supervision of the passporting entity.

Our response on the application of directly applicable EU regulations to branches of non-European Economic Area (EEA) firms

We will implement the proposal we consulted on. It is a general rule that can be modified by specific provisions in individual Handbook modules, as we have done, for example, in SYSC. We believe that firms who are authorised here and conduct investment business do fit within MiFID II as a result of being subject to our rules including the provision in GEN. We do not think that the home/host split of regulatory responsibility relating to incoming firms is relevant to branches of non-EEA firms authorised in the UK, for the purposes of our GEN rule.

10.

Principles for businesses (PRIN)

Introduction

- 10.1** This chapter is of relevance to a wide range of firms including investment banks, potential operators of OTFs, and wholesale brokers. It will also be of interest to non-financial firms who are classified as eligible counterparties (ECPs) and local authorities.

Changes to the application of the principles for businesses

- 10.2** As a result of the way MiFID was implemented, parts of the Principles for Businesses sourcebook (PRIN) are currently switched-off for firms who conduct MiFID business with ECPs. In CP15/43 we proposed to apply Principles 1 (Integrity), 2 (Skill, care and diligence), 6 (Customers' interests), 7 (Communications with clients) and 8 (Conflicts of interest) in full to firms when conducting MiFID business with ECPs.
- 10.3** CP15/43 asked in Q25:
- Do you agree with our proposal to apply Principles 1, 2, 6, 7 and 8 in full to firms when conducting business with ECPs under MiFID II? If not, please give reasons why
- 10.4** Respondents generally supported the proposal to update PRIN to accommodate the changes made to MiFID II in respect of firms' conducting MiFID business with ECPs. The majority of respondents held the view that the proposed changes would pose little difficulty for firms in complying with MiFID II and the UK regulatory framework due to the similarity in the obligations, and that they would support consistency in the application of rules across all firms and business.
- 10.5** One respondent questioned our proposal to delete PRIN 4.1.4G(1)(a). Other respondents emphasised the need to apply these Principles proportionately. Respondents asked whether we would apply Principle 6 and Principle 7 to business with ECPs in the same way as we would do to business with professional and retail clients, or whether our intention was only to extend the Principles to the extent required by MiFID II. In particular, respondents pointed out that the Principle 6 concept of treating customers fairly is primarily designed to protect retail and professional clients rather than ECPs. One respondent expressed concerns that applying Principle 6 to ECPs would create uncertainty as to what is meant by 'fair treatment'.

Our response on the changes to the application of the principles for businesses

PRIN provides a set of fundamental standards that apply to all authorised firms. These high level rules are designed to ensure that consumers are protected, market integrity is ensured and effective competition is promoted. As we noted in CP15/43, a general principle of effective regulation is that the Principles should apply to every authorised firm, unless there is a reason for them not to apply, for example because they conflict with EU law obligations. For instance, a number of the Principles for Businesses were modified or switched-off when MiFID was implemented. However, MiFID II at Article 30 reduces the number of areas where conduct requirements are switched off for ECPs. As a consequence, we propose to apply to a greater extent our general approach that the Principles should apply to all authorised firms for all forms of regulated business. This means modifying the effect of provisions that switch off certain Principles when conducting business with ECPs under MiFID II. We believe this to be an important step in ensuring concepts of fairness, integrity and professionalism exist within ECP relationships.

In light of the positive feedback received, we will apply Principles 1, 2, 6, 7 and 8 to firms when conducting MiFID business with ECPs, as proposed. In response to the queries on how Principles 6 and 7 would be applied to ECPs, it is our view that although fairness may have one meaning for business with retail clients, it is a concept that must be considered in the context of the particular relationship and the type of services and activities that a firm engages in with its ECP clients, with reference to our rules and guidance. It does not imply the imposition of retail level protections to these relationships. Nonetheless, as a fundamental standard, firms must consider what 'fair' means within this provision and exercise judgement accordingly. More generally, PRIN 1.1.9 notes that some of the other rules and guidance in the Handbook have a bearing on the application of the Principles in particular circumstances, but this should not be viewed as exhausting the implications of the Principles themselves, given they are intended to apply also to new or unforeseen situations. We recognise that as a matter of drafting, we will need to ensure that references to 'customer' and 'client' within the Principles give proper effect to our policy intention. We have therefore modified the definition of 'customer' used within the Principles for MiFID business.

As noted in CP15/43, we will not further modify the application of the Principles to ECP business for non-MiFID designated investment business at this time, although note that this remains an option open to us.

Consequential to the limited application of the Principles to eligible counterparty business, a change was proposed to delete PRIN 4.1.4G(1)(a). However, we agree with respondents that while we propose removing exclusions from the application of the Principles to ECP business, some exclusions still remain relevant (for example, that Principle 9 continues to be switched off). We will therefore retain PRIN 4.1.4G(1)(a) in its current form to reflect this.

Changes to the client categorisation of local authorities for non-designated investment business

- 10.6** Firms are currently able to categorise local authorities as ECPs for non-designated investment business, such as general business or accepting deposits. We proposed in CP15/43 that this should no longer be the case, consistent with the fact that under MiFID II local authorities are retail clients, albeit with the ability to opt up to be elective professional clients.
- 10.7** CP15/43 asked in Q26:
- Do you agree with our proposal to update PRIN 1 Annex 1 to delete the possibility of local authorities being treated as ECPs for the purposes of PRIN in respect of non-designated investment business? If not, please give reasons why
- 10.8** The majority of respondents agreed with our proposal. However, some questioned the strength of our case for making this change. Many, including local authorities, commented regarding the broader policy implications of preventing firms classifying local authorities as ECPs for all forms of business, including how the policy would apply in relation to local authorities' pension schemes, the alternative criteria for opting up local authorities to 'elective' professional clients and the importance of transitional arrangements for local authorities.

Our response on changes to the client categorisation of local authorities for non-designated investment business

We set out our proposals for changes to the categorisation of local authorities for MiFID and non-MiFID business, including those required by MiFID II, through changes to COBS 3 of the Handbook in CP16/29. This included our proposals to apply equal treatment of local authority clients for MiFID and non-MiFID designated investment business. These proposals will be dealt with in our second MiFID II PS in June 2017.

We will also settle the policy questions emerging from our proposals in CP15/43 on the Principles and the treatment of local authorities as ECPs at the same time.

Consultation paper II (16/19) response

11. Commodity Derivatives

Introduction

- 11.1** This chapter is relevant for trading venues (regulated markets, MTFs and OTFs), MiFID investment firms trading commodity derivatives, and users of commodity derivatives markets, including non-financial firms who conduct significant amounts of trading.

A new regime for commodity derivative position limits, position management and position reporting

- 11.2** In CP16/19 we proposed a new section of MAR to set out guidance and directions on MiFID II's regime of position limits, position management and position reporting for commodity derivatives contracts. Position limits will be set in due course.
- 11.3** In CP16/19 we asked in Q2:
- Do you agree with our proposed new MAR chapter, MAR 10? If not, how would you suggest we modify our proposals?
- 11.4** A small number of respondents stated they did not agree with the proposals made in MAR 10 because the MiFID II Level 2 legislation on commodity derivatives, RTS 20 and 21, had not been finalised at the time FCA carried out its consultation.
- 11.5** All respondents were supportive of the idea of dedicating a specific section within the Handbook to the subject of commodity derivatives. A number of respondents said some provisions within MAR 10 needed to be clarified when further certainty is available on the definition of a commodity derivative and hence whether it is captured by this regime or not.
- 11.6** A small number of respondents commented on certain aspects of the Level 2 work, in the form of ITS and RTS, which is being carried out by ESMA.
- 11.7** One suggested changes to parts of MAR 10 with the purpose of setting an obligation for non-financial entities to submit applications for position limit exemptions.
- 11.8** Another proposed changes mandating consultation between trading venues and their members or participants prior to changes to the venue's position management controls.
- 11.9** A question was raised on whether the scope of position reporting obligations of trading venue members should be limited to investment firms only.

- 11.10** Comments were made about the various usage of the terms ‘client’ or ‘clients’ in the proposed text, and clarification sought on whether they applied as an FCA defined term.

Our response on a new regime for commodity derivative position limits, position management and position reporting

We recognise we consulted on proposed changes to our Handbook when certain aspects of the source legislation were not final. However, we felt it was beneficial to engage at an early stage and make amendments consequently where necessary.

Comments which relate to the Level 2 work implementing MiFID II are not relevant to the content of MAR 10 on which FCA has consulted. Whilst they are noted, it is not possible to incorporate this material within our rules.

We do not consider an amendment to set an obligation for non-financial entities to submit applications for position limit exemptions is appropriate; a market participant may respond to an approaching position limit breach in a number of ways. If it is eligible, it may apply for an exemption. However, it has alternatives available, primarily by the modification of its trading activity to ensure the limit is not breached.

Trading venues already conduct a dialogue with their members and participants on rule proposals. We do not see it necessary to introduce a new provision specifically to deal with this aspect of rulemaking.

We recognise the importance of clarity and certainty in the use of defined terms, particularly where they may give rise to regulatory obligations. We have therefore reviewed the usage of these terms and made adjustments to clarify their application.

12. Supervision

Introduction

- 12.1** The part of this chapter relating to notification of breaches of regulatory obligations is relevant for all MiFID investment firms. The part of this chapter dealing with transaction reporting is relevant to all firms who are currently required to transaction report.

Changes to notification requirements for breaches of regulatory obligations

- 12.2** In CP16/19 we proposed amending SUP 15.3 so that persons subject to obligations under MiFIR and non-FSMA UK implementing legislation are required to notify us of breaches of these obligations.
- 12.3** In CP16/19 we asked in Q3:
- Do you agree with our proposal relating to breaches of directly applicable regulations under MiFID II and non-FSMA regulations implementing MiFID II? If not, how could we amend it?
- 12.4** The small number of respondents who answered this question all agreed that it made sense to revise SUP 15.3 in the way we proposed. They offered no other comments.

Our response to changes of notification requirements for breaches of regulatory obligations

We will implement the changes to SUP 15.3 in the form we consulted on them.

Transitional arrangements for reporting breaches of current transaction reporting requirements

- 12.5** In CP16/19 we proposed amending SUP to include transitional provisions to (i) make clear that an obligation which a firm incurs under SUP 17 or the MiFID implementing regulation on or before 2 January 2018 continues until it has been satisfied, and (ii) that the requirements in SUP relating to notification and remedy of breaches apply to breaches of MiFID implementing regulation even if the breach comes to light after 2 January 2018.

- 12.6** In CP 16/19 we asked in Q4:
- Do you agree with our proposal for transitional provisions to deal with the revocation of the MiFID implementing regulation? If not, how could we amend it?
- 12.7** We received ten responses in relation to transaction reporting. Five respondents supported the proposals, although one of these noted that the activities were not relevant to the regulated firms they supported.
- 12.8** One respondent that was an Approved Reporting Mechanism (ARM) noted that there could be a risk that some firms would be less able to meet the new reporting requirements if they were required to expend resource correcting breaches from the previous transaction reporting regime. This respondent advised it would be maintaining its pre-MiFID II architecture to allow firms to meet their SUP 17 requirements and rectify any breaches that come to light after 3 Jan 2018.
- 12.9** The remaining four respondents requested clarification on the reporting of transactions executed on 2 January 2018 and the treatment for amendments, cancellations or late reports for trades executed prior to 3 January 2018, but submitted on or after that date, and one respondent noted that the fact there was no clarification as to the reasonable timeframe for notifying and remedying breaches of the MiFID implementing regulation was causing difficulties for firms and infrastructure providers.
- 12.10** One respondent suggested that the purpose of TP 9 was wider than the stated purpose of ensuring that firms continue to notify and remedy breaches of the MiFID implementing regulation and SUP17, and should be clarified as being to ensure that firms continue to comply after 2 January 2018 with the reporting obligations they had as of that date.

Our response on transitional arrangements for reporting breaches of current transaction reporting requirements

We confirm that this transitional provision provides us with the ability to take action against firms post 3 January 2018 for breaches in their transaction reporting obligations regarding transactions executed prior to 3 January 2018 and this would include a failure to notify us of any breaches. In respect of remediation, we could require remediation of any systems and controls that would have an impact on the firm's transaction reporting obligations under MiFIR. We are currently unable to provide a response to the questions raised in the consultation on remediation post 3 January 2018 of incorrect or missing reports for transactions executed prior to 3 Jan 2018 as work is ongoing on how the transition between reporting under MiFID to reporting under MiFIR will work and this may have an impact on what we ask from firms in this regard.

We will therefore implement the transitional provision with some minor drafting amendments.

13.

Prudential Rules

Introduction

- 13.1** This chapter is relevant to investment firms who wish to operate an OTF, and ‘local’ firms currently exempt from MiFID.

Changes to our prudential sourcebooks

- 13.2** In CP16/19 we proposed changes to our prudential sourcebooks to reflect MiFID II’s introduction of the new investment service of operating an Organised Trading Facility (OTF), the abolition of the exemption for a ‘local’ firm and updates to certain references. Our proposals were based on changes we consider follow automatically to prudential rules from various of the changes being made in MiFID II, as opposed to being discretionary policy choices.
- 13.3** In CP16/19 we asked in Q6:
- Do you agree with the changes we are making to our prudential rules? If not, please give reasons why
- 13.4** One respondent wanted confirmation that the only provisions in Chapter 1 of MiFID II that apply to a market operator operating an MTF or an OTF are 16, 18, 19 and 20. Another queried how an investment firm operating an MTF and OTF would be treated for prudential purposes as the relevant rule in the Prudential sourcebook for Investment Firms (IFPRU) talked about a firm operating ‘either an MTF or an OTF’. Finally, a respondent opposed the proposal in relation to OTFs. They said that many of the activities currently being carried out by firms likely to be required to become OTFs are permissions under the Prudential sourcebook for Banks, Building Societies and Investment Firms (BiPRU) and that the proposals would raise costs and limit choice.
- 13.5** In CP16/29 we proposed a consequential amendment to the Handbook to replace the current cross-reference to article 2(1)(i) of MiFID with the new reference to article 2(1)(j), and asked in Q65:
- Do you agree with our proposed consequential changes to IPRU(INV)3? If not, how could we amend them

Our response on changes to our prudential sourcebooks

It cannot be assumed that the only provisions in Chapter 1 of MiFID II applying to a market operator operating an MTF or OTF are those in Articles 16, 18, 19

and 20. There is no such limitation in MiFID II and we note that the Treasury's implementing legislation will extend the application of Article 14 to such firms.

An investment firm operating both an MTF and an OTF will be an IFPRU 730k firm. The wording in our proposal was intended to cover firms operating either an MTF or OTF or both types of venue.

Whilst we recognise that elements of what an OTF will do might currently be covered by BiPRU permissions, we believe that the CRR is clear that operating an OTF is an activity which falls outside of BiPRU permissions, in the same way that operating an MTF does currently.

For the consequential changes, we received no further comments. We will implement the proposals we consulted on.

14.

SYSC – Systems and Controls

Introduction

- 14.1** This chapter is relevant for common platform firms, which include BiPRU firms, banks, building societies, MiFID investment firms, designated investment firms, IFPRU firms, exempt CAD firms, local firms and dormant account fund operators, Article 3 MiFID exempt firms and UK branches of non-EEA firms.

Changes for Article 3 firms

- 14.2** In CP16/19 we proposed to apply ‘at least analogous requirements’ to MiFID optional exemption firms (hereafter, referred to as ‘Article 3 firms’) authorised and operating in the UK by transposing various MiFID II provisions by way of rules or guidance, depending on how MiFID II applies the provisions. We also proposed to introduce two new tables in SYSC1 (Tables B and C) to facilitate Handbook navigation, and introduced a draft version of these new tables in CP16/19 for firms to comment on.
- 14.3** In CP16/19 we asked in Q7:
- Do you agree with our proposals on the application of ‘at least analogous requirements’ to Article 3 firms authorised and operating in the UK? If not, please give reasons
- 14.4** We received a small number of supportive responses on this proposal. Some commented that similar requirements were already in force under MiFID. One respondent commented that applying the requirements equally in this way would help create a ‘level regulatory playing field’. Another also noted that ‘better run’ Article 3 firms tend to already be compliant with these proposals.
- 14.5** One respondent expressed concern that the new requirements might, when being applied in practice, become more onerous and burdensome, in particular, for small business.
- 14.6** Another asked whether Authorised Professional Firms (APFs) would be caught within the regime, given that APFs tend to resemble Article 3 firms in size, structure and business model (indeed, the respondent noted that many – but not all – APFs are also concurrently Article 3 firms).
- 14.7** Our proposal was to transpose the requirements of Article 16 (on organisation requirements) of MiFID II into SYSC 1 Annex 1, SYSC 4 – 9.

- 14.8** In CP 16/19 we asked in Q8:
- Do you agree with our proposals on the transposition of Article 16 (on organisational requirements) of MiFID II in SYSC 1 Annex 1, SYSC 4-9? If not, please give reasons
- 14.9** We received a small number of supportive responses to this question. One highlighted that many firms caught by MiFID II are currently reviewing their internal organisational governance in any regard, in anticipation of the extension of the Senior Managers & Certification Regime (SM&CR) to non-banks.⁵
- 14.10** To ensure consistency in transposition of the Directive, we proposed to apply the requirements of Articles 21 – 25, 30 – 32, and 72 of the MiFID Org. Regulation⁶ to the non-MiFID business of:
- common platform firms
 - Article 3 MiFID firms
 - UK branches of non-EEA firms
- 14.11** In CP16/19 we asked in Q9:
- Do you agree with our proposals on the application of the requirements in Articles 21 to 25, 30 to 32, and 72 of the MiFID Org. Regulation to the non-MiFID business of common platform firms, Article 3 MiFID firms and non-EEA firms? If not, please give reasons why
- 14.12** We received a small number of supportive responses. Several pointed to the benefits in ensuring consistency and a level playing field. One said that many firms prefer to run just one set of policies and procedures across MiFID and non-MiFID business lines.
- 14.13** Another respondent noted that draft SYSC 1 Annex 1 Part 2.6C R states that the ‘common platform requirements apply to an AIFM investment firm which is a full-scope UK AIFM in respect of its MiFID business in line with Column A in Table A of Part 3’. It argued that, for the sake of clarity, it would be helpful to amend the wording of Table A of Part 3 to reinforce that the requirements in Column A are only applicable in respect of a common platform firm’s MiFID business, and do not extend in this instance to its **non**-MiFID business.
- 14.14** We propose to apply both the common platform requirements and certain MiFID II Org. Regulations (Articles 21-25, 30-32 and 72) to Article 3 and non-EEA firms either in the form of Rules or Guidance, as appropriate.
- 14.15** In CP 16/19 we asked in Q10:
- Do you agree with our proposals on the application of the common platform requirements and those in Articles 21 to 25, 30 to 32, and 72 of the MiFID regulation, either as rules or as guidance to Article 3 MiFID firms and non-EEA firms? If not, please give reasons why

⁵ The Bank of England and Financial Services Act 2016 includes the extension of the SM&CR to all FSMA authorised firms. We are developing our approach to the extension of the SM&CR and our current plan is to consult during 2017. HM Treasury has stated their intention that the regime should start from 2018. <https://www.fca.org.uk/firms/senior-managers-certification-regime>

⁶ ‘The MiFID Org. Regulation’ is the way we refer in SYSC to the Level 2 regulation that contains the implementing measures under Article 16 of MiFID II concerning organisational requirements.

- 14.16** We received a small number of supportive responses to this question. A couple specifically welcomed our adaptation of the structure of SYSC to reflect these new provisions in a way which allows firms to more easily navigate the Handbook.

Our response on Article 3 Firms

We are pleased with the support for our proposals and therefore plan to implement them without change.

For Q7

Proportionality. We agree that MiFID II's governance provisions represent provisions broadly similar to those in MiFID. Therefore, our approach under the new provisions will continue. Thus, we believe that the application of 'at least analogous' requirements will have a limited impact in the UK where Article 3 firms are already subject to very similar regulations to firms regulated under MiFID. We expect these changes to lead to minimal incremental costs.

Application to APFs. An APF can be a firm:

- subject to MiFID – in which case it is a 'common platform firm' subject to the provisions in the SYSC 1 Annex 1 Part 3 Table A column A
- subject to Article 3 of MiFID – in which case it is a 'MiFID optional exemption firm' subject to the provisions in the SYSC 1 Annex 1 Part 3 Table B column A
- exempt under Article 2(1)(c) of MiFID – in which case it is subject to the common platform requirements as 'one of all other firms' in SYSC 1 Annex 1 Part 3 Table A Column B (noting also SYSC 1 Annex 1 2.5R on the common platform requirements on financial crime, conflicts of interest and Chinese walls)
- that can qualify for both (b) and (c) – in which case the APF can rely on the exemption in Article 2(1)(c) of MiFID and not be subject to the provisions that apply to a 'MiFID optional exemption firm'

For Q8

We are pleased that many firms are already working to anticipate the upcoming extension of the SM&CR and believe that MiFID II's organisational requirements will complement the extension of that regime.

For Q9

Proposed changes for Table A of SYSC 1 Annex 1 2.6C(R). There has been no policy change in relation to SYSC 1 Annex 1 2.6CR. The only change is the reference to Table A, which is a consequential amendment following the creation of Tables B and C, inserted simply for ease of Handbook cross-reference by firms).

The common platform requirements in fact apply as per the provision in the table in SYSC 1 Annex 1 3.1.G while the extension to the non-MiFID business is subject to SYSC 1 Annex 1 2.8AR.

For Q10

We acknowledge the support for our proposals and therefore plan to implement them without change.

Changes for conflicts of interest rules

- 14.17** In CP16/19 we consulted on the following proposals for Chapter 10 of our SYSC Handbook:
- Amend SYSC 10 and align it with the provisions of MiFID II, and extend these provisions to firms other than investment firms
 - Extend as a rule to all firms the new detailed disclosure obligations under MiFID II and the requirement to take all appropriate (rather than reasonable) steps to identify and to prevent or manage conflicts of interest, and
 - For non-scope firms, to extend as guidance the obligation to assess and periodically review, at least annually, the conflicts of interest policy and the requirement for senior management to receive on a frequent basis written reports on situations contained in the conflicts of interest record.
- 14.18** Most respondents agreed that we should amend SYSC 10 and align it with the provisions of MiFID II. This will mean that the new requirements will apply to firms as a combination of rules and guidance.
- 14.19** In CP16/19 we asked in Q11:
- Do you agree with our proposed approach to implementing the MiFID II requirements on conflicts of interest? If not, how could we amend it?
- 14.20** Respondents in general supported the proposal to amend SYSC 10 to align it with the provisions of MiFID II. Some respondents noted that beyond the recognition that the new standards are enhanced, it was not clear what is expected of firms by the emphasis on ‘appropriate’ rather than ‘reasonable’. It was suggested we should provide further guidance on what in practical terms this will mean for firms.
- 14.21** A respondent requested further guidance about when firms can use disclosure to manage their conflicts of interest.
- 14.22** Respondents also queried what steps should be taken in order to comply with the new conflicts of interest rules in certain situations. For example, a respondent requested clarification regarding situations where firms have self-created conflicts of interest. This followed an earlier Market Watch Newsletter on ‘Payment for Order Flow’ (PFOF), published in September 2016,⁷ which questioned whether it is possible for a direct, self-created conflict such as PFOF to be adequately managed. We stated that we had not seen a single effective method of managing a direct self-created conflict of this kind.

⁷ <https://www.fca.org.uk/sites/default/files/marketwatch-51.pdf>

- 14.23** A respondent stated that the word ‘prevent’ went further than the Level 1 text on conflicts of interest. This, however, is not the case, as it states in Article 23(1) of MiFID II that ‘firms must take all appropriate steps to identify and to prevent or manage conflicts of interest’.
- 14.24** In CP16/19 we asked in Q12:
- What impact would this approach have on your firm?
- 14.25** The majority of respondents noted that this would not have a significant impact on their firms. Three respondents stated that they did not expect the proposed changes to require any material changes to a compliant firm’s systems and controls given the overarching responsibilities under the current SYSC 10 requirements and PRIN 8 (for retail and professional clients).
- 14.26** A couple of respondents said that it was appropriate to apply the new conflicts of interest standard to all firms, given its importance. One respondent, however, felt that the enhanced disclosure requirements may have disproportionate impact on smaller firms, in particular small Article 3 MiFID firms. The respondent noted the increased detail that must be disclosed to clients as well as the time required to review and amend existing conflicts of interest policies was disproportionate in terms of cost. As such they did not think that it should apply equally to all firms.

Our response on changes to conflicts of interest rules

Amending SYSC 10. MiFID II requires a shift from taking ‘reasonable’ steps to identify and manage or prevent conflicts of interest to taking ‘appropriate’ steps. This requires firms to be more active in identifying circumstances under which changes to their operations may be necessary to prevent or manage conflicts of interest from arising. This change sets a higher bar for compliance. We expect more internal monitoring and senior management oversight to ensure that the processes and policies of the conflicts of interest framework are appropriate and take into account any new services or products offered by the firm. We expect firms to take suitable remedial actions as soon as any deficiencies in their conflicts of interest framework and operations were detected.

Our proposal for implementing the new disclosure requirements under MiFID II means that firms should only use disclosure as a measure of last resort. Disclosing a conflict of interest is not a form of managing that conflict of interest. A firm should take appropriate steps to prevent or manage conflicts of interest beforehand, and only disclose a conflict when the firm’s administrative and organisational arrangements have failed in this regard. However, it is clear that disclosure is not a mechanism that can be relied on by firms to manage their conflicts. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

Our proposals mean that when dealing with a direct, self-created conflict of interest (such as PFOF, as communicated in the Market Watch newsletter), the most straightforward method of complying with these new rules would be to prevent the conflict from arising in the first place. This is what we expect firms to do when they cannot manage these conflicts and are unable to rely on disclosure. In that PFOF Article we stated that ‘the cumulative impact of these changes [to the conflicts of interest rules under MiFID II] means that firms will

not be able to charge PFOF without breaching the new standards that we are proposing to introduce to implement MiFID II.’ As such, firms must prevent these self-created conflicts from arising.

Impact of the new rules. We expect the proposals will continue to ensure that the effective management of conflicts of interest is at the heart of maintaining fair, orderly and efficient financial markets.

In our view, the impact on an individual firm will be to increase senior management’s oversight and responsibilities, as they will receive on a frequent basis, written reports on situations contained in the conflicts of interest record, and have to periodically assess and review the conflicts of interest policy. This will lead to an increased focus on identifying and preventing or managing conflicts of interest and discouraging inappropriate use of disclosure. We expect this to apply proportionately to firms’ business models. For smaller Article 3 firms, we would not expect the same scale of systems and controls that would be in place for a larger investment firm and therefore do not think that the proposals will have a disproportionate impact.

The impact of the new standards on the wider industry will be to enhance conduct standards and ensure that there is effective management of conflicts of interest. Given this proposed impact and proportionality, we will continue to apply them to firms as consulted on in CP16/19.

Changes to requirements for management bodies

- 14.27** In CP16/19 we proposed to extend the scope of SYSC 4.3A (which only applied to CRR firms including significant IFPRU firms) to MiFID firms and Article 3 firms, transposing the approach under Article 9 of MiFID II. Broadly, the proposals require a firm’s management body to have clear allocation of responsibilities, alongside clear responsibility for the risk strategy, business strategy and internal governance of a firm. As we stated in CP16/19, these provisions aim to enhance the effective oversight and control over relevant firms, remedying weaknesses identified during the financial crisis regarding the functioning and composition of management.
- 14.28** In CP16/19 we asked in Q13:
- Do you agree with our proposals on the transposition of Article 9 (on the management body)? If not, please give reasons why
- 14.29** We received a small number of supportive responses to the proposal.
- 14.30** One specifically agreed with our ‘copy out’ method, noting that many requirements envisaged by Art (9) are ‘already seen as good practice’ by industry. Another argued that ‘enhance[d]’ oversight from management bodies was to be welcomed.
- 14.31** However, a couple of respondents argued for proportionality for smaller firms. In particular, one argued that the extension of the requirements from CRD firms (which traditionally, they would consider ‘more sophisticated’ firms) to MiFID II firms will see the provisions apply to smaller firms that may not have the same personnel resource.

14.32 We proposed to apply MiFID II's governance requirements to UK branches of non-EEA firms. In doing so, we sought to ensure that they should not be treated in such a way as to cause competitive disadvantage for EU firms, while also taking account of the different structures and home-state regulations applicable to non-EEA firms.

14.33 We proposed to maintain the status quo where possible for existing non-EEA firms, but proposed to elevate the status of some guidance to a rule where we felt there was particular conduct focus and doing so would improve consistency. For new MiFID II obligations, we proposed to introduce new guidance or rules, as appropriate.

14.34 In CP16/19 we asked in Q14:

- Do you agree with our proposed application of the Governance requirements to branches of non-EEA firms? If not, please give reasons why

14.35 We received a small number of supportive responses on this which made a number of comments on specific technical issues.

Proportionality – general

14.36 One respondent said that no competitive disadvantage should be suffered by EU firms, especially given that home country organisational requirements will apply; while another argued that this approach should not cause 'material' changes.

14.37 Another called for more guidance on proportionality for small and medium sized firms, given senior management will often constitute members of the management body in these firms.

Proportionality – IT security and data protection measures

14.38 Some respondents argued that there was a lack of clarity in how firms should implement SYSC 4.1.1R(3), which implements Article 16(5) of MiFID II's requirements regarding IT security and data protection.

14.39 One respondent noted that Article 21 of the MiFID Org. Regulation refers to 'adequate safeguarding', which they consider is not as categorical as 'guarantee' which is used in Article 16(5) of MiFID II and in SYSC.

14.40 Another asked whether SYSC 4.1.2R (SYSC's proportionality provisions) would be allowable to use to permit proportionality in the application of SYSC 4.1.1R(3).

Joint ESMA and EBA guidelines on the assessment of suitability of management

14.41 A respondent noted that they would welcome clarity as soon as possible from ESMA and the EBA on their joint guidelines as regards the assessment of the suitability of members of the management body and key function holders under CRD and MiFID II would be welcome.

Outsourcing

14.42 We also had a comment that Article 16(5) of MiFID II, which refers to outsourcing, would fit best into the SYSC 8 provisions on outsourcing.

Our response on changes to requirements for management bodies

We acknowledge the broad support for our proposals and plan to implement them without change.

Proportionality for smaller firms. In response to the comments regarding proportionality for smaller firms, we note that Article 9 of MiFID II mandates that we extend these requirements (stemming from CRD) onto all MiFID firms, including smaller firms.

It is for firms to design compliance regimes which comply with the new rules. We appreciate that smaller firms may tailor their programmes and personnel resources in a proportionate manner to appropriately mitigate risk, dependent on their business. We flag that SYSC4.1.2R allows for a ‘comprehensive and proportionate’ application of the governance arrangements, processes and mechanisms in SYSC 4.1.1R.

However, we emphasise that the management body requirements are important aspects of the MiFID II reforms and should be taken seriously to ensure that effective corporate governance is embedded in each firm.

Proportionality – general. With regards to proportionality for small and medium-sized firms, as above, it is for firms to design compliance regimes which comply with the new rules.

We appreciate that some firms may tailor their programmes and personnel resources in a proportionate manner to appropriately mitigate risk, dependent on their business.

We flag again that SYSC4.1.2R allows for a ‘comprehensive and proportionate’ application of the governance arrangements, processes and mechanisms in SYSC 4.1.1R.

Proportionality – security and data protection measures. The reference to the ‘guarantee[ing]’ of security and data protection mechanisms in SYSC 4.1.1R(3) directly transposes the third paragraph of Article 16(5) of MiFID II, which is the approach we have reflected throughout our adoption of MiFID II. We have not sought to copy directly the provision from the MiFID Org. Regulation which applies directly.

We agree with the respondent who commented that SYSC 4.1.2R could be referred to in ensuring compliance with SYSC 4.1.1R(3). As above, SYSC4.1.2R allows for a ‘comprehensive and proportionate’ application of the governance arrangements, processes and mechanisms in SYSC 4.1.1R. Firms must decide how to balance comprehensiveness and proportionality in line with a risk-based approach to compliance.

Outsourcing. We agree that SYSC 8 is the best place for Article 16(5) of MiFID II to be transposed, which is why we transposed it in SYSC 8.1.1R.

Changes to organisational requirements consequential to SYSC

14.43 In CP16/29 we proposed consequential changes to the Handbook derived from our changes to SYSC. These impacted the following Handbook Modules:

- Statements of Principle and Code of Practice for Approved Persons (APER)
- Consumer Credit sourcebook (CONC)
- Decision Procedure and Penalties Manual (DEPP)
- Fit and Proper test for Approved Persons (FIT)
- Insurance: Conduct of Business sourcebook (ICOBS)
- Supervision Manual (SUP)

14.44 We asked in Q64:

- Do you agree with our proposed changes to these modules? If not, how could we amend them?

14.45 Seven responses were received, with unanimous agreement to our proposed approach to consequential changes. No respondent offered any further comments.

Our response on changes to organisational requirements consequential to SYSC

We acknowledge the broad support for our proposals and plan to implement them without change.

Changes to remuneration

14.46 In CP16/43 we proposed In CP 16/43 we proposed to amend the application of SYSC 19F to include the UK branch of an incoming EEA firm (unless it is a UCITS investment firm or an AIFM investment firm).

14.47 We asked in Q19:

- Do you agree with our proposal to amend SYSC 19F? If not, please give reasons why

14.48 The responses were received were supportive of this approach.

Our response on changes to remuneration

We acknowledge the broad support for our proposals and plan to implement them without change.

15. Remuneration

Introduction

- 15.1** This chapter is relevant to MiFID investment firms and financial advisers and corporate finance firms exempt from MiFID under Article 3.

Rules on remuneration for sales staff

- 15.2** In CP16/19 we consulted on a proposed new chapter SYSC 19F ‘Remuneration and performance management of sales staff’, where we proposed to transpose Article 24(10) of MiFID II on remuneration incentives to sales staff.
- 15.3** In CP16/19 we asked in Q15:
- Do you agree with our proposal to only apply the remuneration provisions for sales staff to firms carrying on MiFID II business? If not, please give reasons why
- 15.4** Most of the responses to this question were supportive, although one respondent qualified their remarks by saying they found our proposals ‘acceptable’ under the current status quo.
- 15.5** **Application of multiple remuneration codes and/or provisions.** A respondent commented on the complexity of the different UK remuneration regimes which are driven by different EU directives, but considered acceptable the proposal in CP16/19 acceptable given this context. However, they did urge for an EU-level review of remuneration codes to improve consistency.
- 15.6** Relatedly, another respondent asked for clarification on whether the BIPRU remuneration code would also apply to common platform firms who fall under MiFID II’s remuneration provisions.
- 15.7** **Scope of actions covered by the rule.** A respondent asked for clarification as to whether SYSC 19F, which referred to ‘investment activities’, should be broader than the underlying Article 24 (10) of MiFID II, which refers to ‘investment firms providing services to clients’. They noted that SYSC 19F could extend to cover MTFs, whereas Article 24(10) of MiFID II would, in their opinion, not.
- 15.8** **Staff incentives and performance management – scope of provisions.** A respondent asked for clarification on whether investment managers in discretionary management funds, such as non-execution only funds, would constitute sales staff and/or advisors under SYSC 19F.
- 15.9** Another respondent argued that the definition excluded non-bank staff. They emphasised that, in their view, there was considerable difference between commission paid on a completed

transaction under an 'originate-to-distribute' model, compared to incentive-based remuneration awarded to 'code' staff.

- 15.10** One respondent commented that a firm's senior management would not be aware that the new section is broader than advisers and sales staff, as the chapter title only refers to 'sales staff and advisers', although SYSC 19F.1.5(b) also imposes requirements on directors and partners regarding remuneration policies and practices.

Our response on sales staff

Application of multiple remuneration codes and or provisions. We recognise that there are multiple regimes on remuneration and that this may present complexity.

However, given the complex remuneration landscape at the EU level, we believe the provision of separate codes targeted at specific firm types ensures both clarity and proportionality in our rules.

In regards to overlap on codes, the provisions in SYSC 19F largely affect a different population of staff to our other codes (which focus on material risk takers). That being said, firms should apply our rules to relevant staff by way of all relevant provisions, and one firm can fall under several remuneration codes and/or remuneration requirements.

For example, firms that fall under BIPRU and MiFID II should apply the remuneration rules of each regime to the relevant staff as per each regime.

Scope of applications covered by the rule. We have amended the instrument so that it now refers to 'investment services'.

Sales incentives and performance management. We remind firms subject to MiFID II of the overarching policy intention that firms shouldn't remunerate or assess the performance of their staff in a way that conflicts with its duty to act in the best interests of its clients.

Specifically, Article 27(2) of MiFID II Org. Regulation applies to:

- 'all relevant persons with an impact, directly or indirectly, on investment and ancillary services provided by the investment firm, or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm's clients.'

Firms should consider and assess which persons meet the criteria set out above, noting the reference to both the potential 'direct' and 'indirect' impact of relevant persons on investment services or corporate behaviour as a result of remuneration policies.

We confirm that SYSC 19F.1.5(b) applies obligations regarding policies and processes to partners and directors of firms. It is up to firms to ensure they comply with all of our regulatory provisions appropriately.

Changes for Article 3 and non-EEA firms

- 15.11** We also consulted on applying SYSC 19F to Article 3 firms and UK branches of non-EEA firms.
- 15.12** In CP16/19 we asked in Q16:
- Do you agree with our approach to applying the remuneration provisions to Article 3 firms and third-country firms? If not, please give reasons why
- 15.13** All the responses to this proposal were in support. One noted that, for non-EEA firms, SYSC 19.F will only apply in relation to activities carried on from an establishment based in the UK.

Our response on Article 3 and non-EEA firms

We are pleased with the unanimous positive response to our proposals and will therefore implement them without change.

We agree with the jurisdictional assessment regarding the application of SYSC 19.F insofar as it applies only in relation to activities conducted from an establishment based in the UK.

16.

Whistleblowing

Introduction

- 16.1** This chapter is relevant to investment firms and UK branches of non-EEA firms.

Implementing MiFID II's whistleblowing provisions

- 16.2** In CP16/19, we proposed to introduce a new section of SYSC (SYSC 18.6) to transpose the whistleblowing requirements in Article 73(2) of MiFID II for investment firms and branches of non-EEA firms.
- 16.3** We also proposed to use SYSC 18.6 to signpost other similar EU whistleblowing obligations, providing all firms with a starting point to meet obligations under the various EU whistleblowing provisions
- 16.4** In CP 16/19 we asked in Q20:
- Do you agree with our proposal? If not, how could we approach this issue?
- 16.5** We received a few supportive responses to this question, some of which offered substantive comments.
- 16.6** One noted that the lack of coordination in EU directives regarding whistleblowing was a source of consternation.
- 16.7** Another respondent, whilst agreeing with the proposed course of action, did not agree with the Cost Benefit Analysis (CBA). Specifically, they challenged the statement that, 'from 7 September 2016 firms will be under domestic requirements to establish whistleblowing procedures. The whistleblowing requirements under MiFID II should not add to the costs of the arrangements that firms are putting in place to comply with that obligation'.
- 16.8** In their view, the current definition of the word 'firm' for the purposes of the current SYSC 18 would only include the very few asset management firms that have permission to deal in investments as principal. As such, in their view, the whole of SYSC 18 as it currently stands does not apply to a significant group of the firms which would be caught by the whistleblowing requirements in MiFID II. Therefore, they argued that the implementation of the MiFID II requirements may well represent a new cost.

Our response on the implementation of MiFID II's whistleblowing provisions

We will implement the proposals with some minor changes. The most significant of these relates to the

- CSDR reference in SYSC 18.6.4G. In CP16/19, we included the whistleblowing obligation under the Central Securities Depositories Regulation (CSDR) in our guidance in SYSC 18.6 setting out other applicable EU whistleblowing requirements. However, as the CSDR whistleblowing obligation has not yet been transposed into national law, we have removed the reference to this provision in SYSC 18.6.4G. We may consult on a rule to transpose this provision in due course as part of our work on the implementation of the CSDR. We have also introduced some minor changes to SYSC 18.6 to clarify further the intended scope and application of the rules in this section.

We acknowledge there are multiple EU Directives from which some of our whistleblowing rules stem, and we provided analysis in CP16/19 on why we believe our Handbook approach is the simplest and most consistent way of treating these.

MiFID II introduces new whistleblowing obligations for some firms previously outside the scope of the rules in SYSC 18. The rules in SYSC 18 apply to such firms as guidance. However, the Market Abuse Regulation (MAR), came into effect from 3 July 2016, with whistleblowing obligations under Article 32(3). MAR requires appropriate internal procedures for whistleblowing purposes, and has a broad application to all 'employers who carry out activities that are regulated by financial services regulation'.

We would also note the whistleblowing obligation in MiFID II refer to implementing 'appropriate' internal procedures. Firms can tailor their programmes and personnel resources in a proportionate manner to appropriately mitigate risk, dependent on their business. Indeed, we flag that SYSC4.1.2R allows for a 'comprehensive and proportionate' application of the governance arrangements, processes and mechanisms in SYSC. As such, we believe that any incremental costs of compliance will be of minimal significance.

17. Fees

Introduction

17.1 In this chapter, we provide feedback on the responses received to proposals on fees in CP16/19:

- *Applications for authorisation and variations of permission (VoPs)*: Fees for operators of OTFs, and clarification of charges for VoPs by operators of OTFs and MTFs and firms undertaking new regulated activities in structured deposits
- *Onboarding fees*: establishing technical conformance with our MDP system in order to submit the data prescribed under MiFID II

17.2 We also include other rules on which we have already provided feedback:

- Our confirmation in CP16/19 that we would implement our fees proposals for DRSPs as consulted on.
- The fees to be charged for applications for MiFID II permissions will be finalised when the MiFID II transitional regime that enables us to receive and determine them before 3 January 2018 comes into force. In CP16/43 we consulted on a transitional rule relating to application fees for MiFID II permissions. When firms submit a single application to the FCA for more than one permission they are usually charged only one fee, for the most expensive permission. An application for new MiFID II permissions under the transitional regime made together with an application for permissions relating to existing regulated activities would be treated as two separate applications. The transitional rule ensures that such firms are treated for fees purposes as having made a single application and are charged no more than the difference between the two application fees. The rule also applies this benefit to firms who submit draft applications ahead of the SI coming into effect.

We received only one comment, in support of the proposal, and we provided feedback in our February Handbook Notice (HN 41) stating our intention to recommend that the FCA Board make the transitional rule as consulted on.

17.3 In April 2017, we will publish our annual Fee CP, consulting on the periodic fee rates for 2017/18. This will include feedback on responses to our assessment in CP16/33 of the fee-blocks from which we intend to recover the costs of implementing MiFID II and MiFIR and the proposed fee rates. We will consult on the annual fee rates for DRSPs later in the year.

Changes to Fees Manual

Applications for authorisation and VoPs

- 17.4** We proposed that operators of OTFs would be charged on the same basis as operators of MTFs, who pay a complex application fee of £25,000 and then a two-tier fixed rate periodic fee, depending on whether the MTF is supervised by a named 'fixed portfolio' supervisor or a team of 'flexible portfolio' supervisors. In 2016/17, the fee for a fixed portfolio MTF was £300,000 and £28,290 for a flexible portfolio MTF. The rates for 2017/18 will be consulted on in our April CP on fee rates.
- 17.5** When a firm applies for a VoP, it is charged half the application fee if the new permission moves it into a new fee-block or £250 if it remains in the same fee-block. We explained that we considered it would not be reasonable to charge only £250 when the operator of an MTF applied to operate an OTF or the operator of an OTF applied for an MTF, and so we proposed that the 50% VoP fee of £12,500 would be a fairer reflection of the work we undertake.
- 17.6** Finally, we proposed to expand the definition of fee-block A13 (Advisors, arrangers, dealers or brokers) to include the new MiFID II permissions relating to structured deposits, with the usual £250 VoP charge.
- 17.7** We received a few comments on applications for authorisation and VoPs. A couple supported our proposal to charge OTFs on the same basis as MTFs. One noted that the charging structure for VoPs appeared to be reasonable, provided our charges represented a fair reflection of the work we undertake. Another disagreed that the periodic fees for OTFs and MTFs should be set by reference to whether there is a named 'fixed portfolio' supervisor or a team of 'flexible portfolio' supervisors due to a concern that the fee would then be based on the regulatory status of the operating firm rather than the OTF or MTF it operates.

Onboarding fees

- 17.8** In November 2015,⁸ we proposed a two-tier structure of onboarding fees for entities connecting their systems to our MDP so that they could submit the data prescribed under MiFID II. The charges are intended to recover the costs of establishing connectivity for secure file transfer, compatibility of systems, testing of data conformance, etc. At that time, we had not appointed our MDP provider so had no definitive costings. In CP16/19, we had a more accurate basis for estimating our costs since we had appointed the provider and had more robust information about the entities which will be submitting data to our system. We were accordingly able to propose lower onboarding charges than we had originally estimated – £20,000 for applying to establish conformance to submit transaction reporting data and £10,000 for each subsequent application to establish conformance for all other data types. We provided examples to illustrate the total fees an entity might pay if it needed to make multiple connections.
- 17.9** We received a couple of responses. One agreed that our proposals seemed fair. The other gave qualified support. While welcoming the reduction from the indicative charges quoted in 2015, the firm stressed that 'The onus is on the FCA to ensure these figures are accurate and that this is true cost recovery which cannot be covered from other internal funding sources.'

⁸ FCA regulated fees and levied: Policy proposals for 2016/17 (CP 15/34, November 2015)

Our response on changes to the fees manual

We will proceed with all of our rules as consulted on.

- *MTF and OTF fees:* The comment about the regulatory status of MTFs and OTFs provides an opportunity to clarify that the current MTF fee is indeed proportionate to the specific MTF activity and does not take account of the firm's wider activities. As we explained when we consulted on introducing this structure for MTFs in our March 2016 CP on fee rates (paragraph 9.14): 'It should be noted that, while a firm as a whole may be supervised as a fixed portfolio firm, its MTF operations might be supervised on a flexible portfolio basis.' Operators of OTFs will be charged on the same basis. A fixed portfolio firm will therefore continue to pay the lower fee if it is operating a flexible portfolio MTF or OTF.
 - *Onboarding charges:* We note the comment that the onus is on us to ensure our onboarding charges reflect our costs. We will keep usage of the MDP and our costs under review. If we need to revise our charges in the future, we will consult on them. We do not have internal funding sources apart from fees paid by regulated firms, and we believe it is reasonable that, given the high costs of onboarding, firms connecting to our system should contribute towards these costs.
-

Consultation paper III (16/29) response

18. Taping

Introduction

- 18.1** In CP16/29, we consulted on implementing the MiFID II taping requirements. MiFID II requires us to extend our domestic taping regime to include certain additional activities and organisational requirements not currently covered by the existing regime. In particular, we are required to apply a taping obligation to RFA firms that are investment firms, and to MiFID firms undertaking corporate finance business where that business relates to the reception and transmission of client orders, the execution of orders on behalf of clients or dealing on own account. We are also required to extend ‘analogous requirements’ to MiFID optionally exempt (Article 3) firms.
- 18.2** We consulted on applying the same MiFID taping standard to all Article 3 firms. To ensure proportionality, and noting that the ‘analogous’ requirement can be met in various ways, we stated in that consultation that we were open to receiving alternative proposals for smaller Article 3 RFAs.
- 18.3** We also proposed to apply the MiFID II taping standard to a wider range of activities than those required by the Directive, namely:
- the service of portfolio management, including removing the current domestic qualified exemption for discretionary investment managers,
 - corporate finance business generally [*where the activities are not already captured by the Directive*]
 - Energy market activities and oil market activities
 - UK branches of non-EEA firms
 - the activities of collective portfolio management.
- 18.4** In CP16/43 and CP17/8 we further consulted on applying the MiFID II requirements on taping to other non-MiFID business, namely:
- commodity and exotic derivative instruments (in CP16/43), and
 - OPS firms acting as discretionary investment managers (in CP17/8).
- 18.5** Along with the other proposals consulted on in CP16/29 (as well as CP16/43 and CP17/8), we will be publishing our final rules on taping in the second PS in June. As we determine our final approach to taping we will continue to engage with industry in all the areas that we have consulted on.

Article 3 retail financial advisers (RFAs)

- 18.6** In CP16/29, we indicated that we would consider the proportionality of the proposals to tape firms who can be characterised as Article 3 RFAs, and were open to receiving and exploring suggestions on alternative proposals for firms, particularly for smaller financial advisers. The consultation closed in January and we are still in the process of reviewing some of the technical detail of the responses. However, given this approach in the CP, it is right to give early clarity to these firms in order to aid their preparations for being MiFID II compliant by 3 January 2018.
- 18.7** Based on the responses received and following extensive industry engagement, we have concluded that additional flexibility for all Article 3 RFAs is appropriate. This is because the business model of many of these firms is such that a full taping obligation may not always be proportionate. As such, we will propose that these firms, irrespective of size, can comply with the ‘at least analogous’ requirement by either taping all relevant conversations or taking a written note of all relevant conversations. The decision to tape or take a note should be taken at the level of the firm rather than in relation to individual relevant conversations or the relevant conversations of different advisers. This flexibility will not be available to MiFID investment firms who can be characterised as RFAs.
- 18.8** We are still in the process of determining what details firms must include in this note, ahead of the full rules being published in June. This is because in order for the note to meet the ‘analogous’ requirement under MiFID II, it must have an analogous outcome in terms of advancing our consumer protection objective. Firms will not be able to rely solely on their current record keeping requirements to meet this objective.
- 18.9** We are likely to undertake a formal review of how these proposals have been adhered to in a post-implementation review project.

Annex 1

List of non-confidential respondents

Consultation Paper I (CP 15/43)

Abide Financial Limited

Association of Foreign Banks

Association for Financial Markets in Europe

Australia and New Zealand Banking Group Limited

Alternative Investment Management Association

Bats Trading Limited

British Bankers Association

Bloomberg L.P.

The Chartered Institute of Public Finance & Accountancy

Citadel

CME Group Inc.

City of London Law Society

Deutsche Bank

Euroclear

Euronext

Eversheds LLP

Federation of European Securities Exchanges

Futures Industry Association

FIA European Principal Traders Association

Investment Association

ICAP Plc.

ICE Futures Europe/ ICE Trade Vault Europe Limited

Institute of Chartered Accountants in England and Wales

IG Markets Limited

Instinet Europe Limited

International Financial Data Services

International Swaps and Derivatives Association

Investment Association

London Metal Exchange and LME Clear

London Stock Exchange Plc.

Society of Pension Professionals

Tradeweb

UBS Group

Wholesale Markets Brokers' Association

Consultation Paper II (16/19)

Association for Financial Markets in Europe

Alternative Investment Management Association

Association of Professional Financial Advisers

Baillie Gifford & Co

British Bankers Association

Charles Stanley

CME Group Inc.

EA Change Group

European Federation Energy Traders

Euronext

Futures Industry Association

Fidelity

Institute of Chartered Accountants in England and Wales

Institutional Money Market Funds Association Ltd

Investment Association

London Stock Exchange Plc.

PricewaterhouseCoopers LLP

Standard Life Savings

City of London Law Society

Threesixty services LLP

Tax Incentivised Savings Association

Verint

Wealth Management Association

Wholesale Markets Brokers' Association

Consultation Paper III (16/29) – Taping proposals

Association for Financial Markets in Europe

Alpha FMA and Jardine Lloyd Thompson Group

Alternative Investment Management Association & Managed Funds Association

Altitude Partners

AMR Financial Management

Association of Professional Financial Advisers

Association for British Insurers

AV Trinity

Bovill – KSL Capital Partners

Bowmark Capital LLC

British Bankers Association

British Private Equity and Venture Capital Association

Cambridge Fund Managers Limited

City of London Law Society

Company Sense Network

Compliance New Limited

Confidel
Consort Financial Planning
DPI Financial Services
EA Change Group
Enterprise Investment Scheme Association
First Capital IFA Ltd
GI Integrity Financial Planning
Guinness Funds
Hastings O’Loughlin
Investment Association
Legal and Medical Investments
McLeod Ross Limited
Miller Knight
Moore Stephens
Oakworth Consultancy Services
Partridge Financial
Prudential
Quadrant Group
Schroders
Siguler Huff LLP
SimplyBiz Group
St James Place
Tenet Group
The Association of Investment Companies
Threesixty Services LLP
Tiley Bestinvest
Time Financial Planning Ltd

Tax Incentivised Savings Association

True Potential

TT International

Verint

Wealth Management Association

Wholesale Markets Brokers' Association

FCA Consumer Panel

FCA Practitioner Panel and Small Business Practitioner Panel

Appendix

Made rules (legal instrument), and near-final rules

This Appendix comprises three instruments:

1. Fees (MiFID 2 Application Fees) instrument 2017
2. Fees (Data Reporting Applications) instrument 2017
3. Markets and organisational requirements (MiFiD 2) instrument 2017

Instrument 1) has been made and comes into force on 2 April 2017. Instruments 2) and 3) are published in near final form.

FEES (MiFID 2 APPLICATION FEES) 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”):
- (a) section 137A (The FCA’s general rules);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (d) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
- B. the rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 2 April 2017.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument for the purposes of FEES 3.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (MiFID 2 Application Fees) Instrument 2017.

By order of the Board
30 March 2017

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

operating an organised trading facility (in relation to *FEES 3*), the *regulated activity* in article 25DA of the *Regulated Activities Order*, which is in summary, the operation of an *organised trading facility* on which non-equity MiFID instruments are traded.

In this definition “non-equity MiFID instrument” means any investment:

- (a) of the kind specified by articles 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or
- (b) of the kind specified by article 89 of the *Regulated Activities Order*, so far as relevant to an investment falling within (a);

that is a bond, a structured finance product (within the meaning of article 2(1)(28) of *MiFIR*), an *emissions allowance*, or a derivative (within the meaning of article 2(1)(29) of *MiFIR*).

organised trading facility (in relation to *FEES 3*), (in accordance with article 3(1) of the *Regulated Activities Order*):

- (a) an organised trading facility (within the meaning of article 4(1)(23) of *MiFID II*) operated by an *investment firm*, a *credit institution* or a *market operator*; or
- (b) a facility which:
 - (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
 - (ii) if its operator had a *Home State*, would be an *organised trading facility* within the meaning of article 4(1)(23) of *MiFID II*.

[Note: article 4(1)(23) of *MiFID II*]

OTF (in relation to *FEES 3*), *organised trading facility*.

Annex B

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(p) A <i>firm</i> applying for a variation of its <i>Part 4A permission</i> whose fee is not payable pursuant to sub-paragraph (ga) of this table	<p>(1) Unless (2), (2A), (3), (3A), (3B), (3C) or (3D) <u>or 3(E)</u> applies, if the proposed new business of the <i>firm</i> would fall within one or more activity groups specified in Part 1 of <i>FEES 4 Annex 1AR</i> not applicable before the application, the fee is 50% of the highest of the tariffs set out in <i>FEES 3 Annex 1R</i> which apply to that application.</p> <p>...</p> <p><u>(3E) The fee is 12,500 if the <i>firm</i> applying:</u></p> <p><u>(i) is an <i>MTF</i> operator and the proposed new business of the <i>firm</i> is to be an <i>OTF</i> operator;</u></p> <p><u>or</u></p> <p><u>(ii) is an <i>OTF</i> operator</u></p>	On or before the date the application is made

3 Annex 1R

	and the proposed new business of the <i>firm</i> is to be an <i>MTF</i> operator.	
...		
Authorisation fees payable		
...		
Part 2 – Complexity Groupings groupings not relating to <i>credit-regulated activities</i> Straightforward Cases		
...		
Complex cases		
Activity grouping	Description	
...	...	
B	<i>MTF</i> operators and <u><i>OTF</i></u> operators	

...

Insert the new FEES TP 15 after FEES TP 14 (Transitional provisions relating to FEES 4 for benchmark administrators and recognised investment exchanges). The text is not underlined.

TP 15 Transitional Provisions for the MiFID II Order

15.1	Introduction	
15.1.1	G	<i>FEES</i> TP 15 deals with transitional arrangements for applicants applying for <i>permissions</i> as introduced by the MiFID II Order.
15.2	Interpretation	
15.2.1	R	The “MiFID II Order” is the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order 2017 (SI 2017/xxxx).
15.2.2	G	The MiFID II Order makes amendments to the Financial Services and Markets Act 2000 (Regulated Activities) Order (SI 2001/544) to transpose parts of <i>MiFID II</i> . The MiFID II Order was brought into force on 1st April 2017, and enables

			the <i>FCA</i> to determine applications made under it.	
15.3	Application			
15.3.1	R	(1)	<i>FEES</i> TP 15.4.1R applies:	
			(a)	to a <i>person</i> who:
			(i)	makes an application to the <i>FCA</i> for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> other than under article [15] of the MiFID II Order; and also
			(ii)	makes an application to the <i>FCA</i> for a <i>Part 4A permission</i> or an application for a variation of a <i>Part 4A permission</i> under article 15 of the MiFID II Order;
			(b)	where:
			(i)	applications under <i>FEES</i> TP 15.3.1R(1)(a)(i) and <i>FEES</i> TP 15.3.1R(1)(a)(ii) are made on the same date; or
			(ii)	an application under <i>FEES</i> TP 15.3.1R(1)(a)(i) is made before an application under <i>FEES</i> TP 15.3.1R(1)(a)(ii); and
			(c)	either:
			(i)	the applications under <i>FEES</i> TP 15.3.1R(1)(a)(i) and <i>FEES</i> TP 15.3.1R(1)(a)(ii) are made on the same date; or
			(ii)	an application under <i>FEES</i> TP 15.3.1R(1)(a)(i) is made before an application under <i>FEES</i> TP 15.3.1R(1)(a)(ii), where the following two conditions apply:
			(A)	a draft of the application described in <i>FEES</i> TP 15.3.1R(1)(a)(ii) is received by the <i>FCA</i> before the date the MiFID II Order came into force; and
			(B)	the applicant confirmed that the draft application can be treated as a formal application on or after the date that the MiFID II Order came into force.

15.3.2	G	<i>FEES</i> TP 15.4.1R does not apply to <i>dual regulated firms</i> which are <i>authorised</i> or have applied to become <i>authorised</i> by the <i>PRA</i> .	
15.4			
Calculation of fees payable under FEES 3.2.1R			
15.4.1	R	Where this <i>rule</i> applies, the fee payable under <i>FEES</i> 3.2.1R in respect of the application described under <i>FEES</i> TP 15.3.1R(1)(b) is any positive amount that results from the following calculation:	
		(1)	the fee payable under the application described under <i>FEES</i> TP 15.3.1R(1)(a)(ii); LESS
		(2)	the fee paid for the application described under <i>FEES</i> TP 15.3.1R(1)(a)(i).
15.5			
Transitional provisions: dates in force			
15.5.1	R	<i>FEES</i> TP 15 will remain in force until 3 January 2018.	

FEES (DATA REPORTING APPLICATIONS) INSTRUMENT 2017

Powers exercised

- A. The Financial Conduct Authority 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);
 - (b) section 137T (General supplementary powers);
 - (c) section 139A (Power of the FCA to give guidance); and
 - (d) paragraph 23 (Fees) in Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
 - (2) the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017 (SI 2017/xxxx):
 - (a) regulation 21 (Fees); and
 - (b) regulation 22 (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument for the purpose of FEES 1, FEES 2 and FEES 3.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (Data Reporting Applications) Instrument 2017.

By order of the Board
[date] 2017

Annex A**Amendments to the Glossary of definitions**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>data reporting service</i>	(in relation to <i>FEES 1</i> , <i>FEES 2</i> and <i>FEES 3</i>) (in accordance with regulation 2(1) of the <i>DRS Regulations</i>) the operation of an <i>APA</i> , an <i>ARM</i> or a <i>CTP</i> when carried out as a regular occupation or business activity.
<i>data reporting services provider</i>	(in relation to <i>FEES 1</i> , <i>FEES 2</i> and <i>FEES 3</i>) a <i>person</i> operating one or more <i>data reporting service</i> .
<i>DRS Regulations</i>	(in relation to <i>FEES 1</i> , <i>FEES 2</i> and <i>FEES 3</i>) the Data Reporting Services Regulations 2017 (SI 2017/[xxxx]).
<i>incoming data reporting services provider</i>	(in relation to <i>FEES 1</i> , <i>FEES 2</i> and <i>FEES 3</i>) a <i>data reporting services provider</i> authorised or applying for authorisation under Title V of <i>MiFID II</i> in an <i>EEA State</i> , other than the <i>UK</i> , to provide a <i>data reporting service</i> in the <i>UK</i> .

Annex B

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

1.1.1 G (1) ...

...

(3) *FEES 3* (Application, Notification and Vetting Fees) covers one-off fees payable on a particular event for example:

- (a) various application fees (including those in relation to authorisation, variation of *Part 4A permission*, registration as a *CBTL firm*, authorisation of a data reporting services provider, listing and the Basel Capital Accord); and

...

...

...

2 General Provisions

2.1 Introduction

...

Purpose

...

2.1.5 G (1) The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:

...

- (d) article 25(a) of the *MCD Order*; ~~and~~
- (e) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations* ~~;~~
- (f) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations* ; and

(g) regulation 21 of the DRS Regulations.

...

...

- 2.1.5C G (1) The *FCA* also has a fee-raising power as a result of:
- (a) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*; ~~and~~
 - (b) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations*; and
 - (c) regulation 21 of the DRS Regulations.

...

...

2.2 Late Payments and Recovery of Unpaid Fees

...

Recovery of Fees

- 2.2.3 G (1) Paragraph 23(8) of Schedule 1ZA of to the *Act* permits the *FCA* to recover fees (including *fees* relating to *payment services*, the issuance of *electronic money*, ~~fees relating to CBTL firms~~, *data reporting services providers*, *designated credit reference agencies*, *designated finance platforms* and, where relevant, *FOS* levies and *CFEB* levies).

...

...

3 Application, Notification and Vetting Fees

3.1 Introduction

...

- 3.1.1A R A reference to *firm* in this chapter includes a reference to a *fee-paying payment service provider*, a *CBTL firm*, a *fee-paying electronic money issuer*, a *designated finance platform* ~~and~~, a *designated credit reference agency* and a *data reporting services provider*.

...

- 3.1.6D G ...

- 3.1.6E G (1) Application fees for authorisation under regulation 7 of the DRS Regulations, and under regulation 8 of the DRS Regulations for operators of trading venues seeking verification of their compliance with Title V of MiFID II are set out in the table at FEES 3.2.7R.
- (2) The fee depends on the number of data reporting services for which the firm is making an application.

...

3.2 Obligation to pay fees

...

Method of payment

...

- 3.2.5 G (1) (a) The appropriate authorisation or registration fee is an integral part of an application for, or an application for a variation of, a *Part 4A permission*, authorisation, registration or variation under the *Payment Services Regulations* or the *Electronic Money Regulations*, registration under article 8(1) of the *MCD Order*, authorisation under regulation 7 of the DRS Regulations or verification under regulation 8 of the DRS Regulations or notification or registration under the *AIFMD UK regulation*.
- (b) Any application or notification received by the FCA without the accompanying appropriate fee, in full and without deduction (see *FEES 3.2.1R*), will not be treated as an application or notification made, incomplete or otherwise, in accordance with section 55U(4), or section 55H of the *Act* or regulation 5(3) or 12(3) of the *Payment Services Regulations* or regulation 5 or 12 of the *Electronic Money Regulations* or regulation 11(1) and 60(a) of the *AIFMD UK regulation*, regulation 7(2) of the DRS Regulations or article 9 of the *MCD Order*.

...

...

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
<u>(zw) An applicant for</u>	<u>Either (1) or (2) applies</u>	<u>On or before the</u>

<p><u>authorisation under regulation 7 of the <i>DRS Regulations</i>, or the operator of a <i>trading venue</i> seeking verification of their compliance with Title V of <i>MiFID II</i>.</u></p>	<p>as set out below:</p> <p><u>(1) If the applicant is applying for permission to operate one <i>data reporting service</i>, 5,000.</u></p> <p><u>(2) If the applicant is applying for permission to operate more than one <i>data reporting services</i>, 50% of the fee at (1) for each additional service plus the fee at (1).</u></p>	<p><u>application is made.</u></p>
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...

**MARKETS AND ORGANISATIONAL REQUIREMENTS
(MiFID 2) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority 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 64A (Rules of conduct);
 - (b) section 137A (The FCA’s general rules);
 - (c) section 137H (General rules about remuneration);
 - (d) section 137T (General supplementary powers);
 - (e) section 139A (Power of the FCA to give guidance);
 - (f) section 293 (Power to make notification rules in respect of recognised bodies);
 - (g) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority);
 - (h) paragraph 19 (Establishment) of Schedule 3 (EEA Passport Rights); and
 - (i) paragraph 20 (Services) of Schedule 3 (EEA Passport Rights).
 - (2) the power in regulation 11 of the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, as inserted by the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2017;
 - (3) the powers of direction, guidance and related provisions in or under the following provisions of [the Data Reporting Services Regulations 2017]:
 - (a) regulation 7 (Application for authorisation);
 - (b) regulation 8 (Application for verification of compliance);
 - (c) regulation 11 (Cancellation of authorisation);
 - (d) regulation 12 (Variation of authorisation);
 - (e) regulation 21 (Fees);
 - (f) regulation 22 (Guidance); and
 - (g) regulation 24 (Reporting requirements);
 - (4) the powers of direction, guidance and related provisions in or under the following provisions of the [Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017]:
 - (a) regulation 14 (Position limits)
 - (b) regulation 17 (Power to require information);
 - (c) regulation 18 (Applications from non-financial entities);
 - (d) regulation 35 (Guidance);
 - (e) regulation 36 (Reporting requirements); and
 - (f) regulation 52 (Application of Schedule 1ZA to the Act); and

- (5) in relation to the Glossary of definitions, 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 3 January 2018 except as indicated in (1) to (6) below:

- (1) FEES 3.1.2G, FEES 3.2.7R(zx) and FEES 3.2.7R(zy) and the related Glossary definitions in Part 1 of Annex A come into force on 3 July 2017;
- (2) chapter 9.1 of the Market Conduct sourcebook (MAR) in Annex L; MAR 9.2 (except for MAR 9.2.3D, MAR 9.2.4G and MAR 9.2.5D); MAR 9.3 (except for MAR 9.3.1D, MAR 9.3.2D, MAR 9.3.3G, MAR 9.3.7D, MAR 9.3.8D and MAR 9.3.9G); MAR 9.5; MAR 9 Annexes (except for MAR 9 Annex 3D, MAR 9 Annex 4D, MAR 9 Annex 5D, MAR 9 Annex 6D, MAR 9 Annex 8D and MAR 9 Annex 9D) come into force on [the date of commencement of the Data Reporting Services Regulations 2017];
- (3) for the purposes of (2) every direct and indirect reference to the term CTP is not to be read as including reference to the operation of a CTP in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue until 3 March 2019;
- (4) for the purposes of MAR 9.2.3D, MAR 9.2.4G, MAR 9.2.5D; MAR 9.3.1D, MAR 9.3.2D, MAR 9.3.3G; MAR 9.3.7D, MAR 9.3.8D, MAR 9.3.9G; MAR 9.4; MAR 9 Annex 3D; MAR 9 Annex 4D; MAR 9 Annex 5D; MAR 9 Annex 6D; MAR 9 Annex 8D and MAR 9 Annex 9D every direct and indirect reference to the term CTP is not to be read as including reference to the operation of a CTP in relation to bonds, structured finance products, emission allowances and derivatives traded on a trading venue until 3 September 2019;
- (5) MAR 10.2.4D and MAR 10 Annex 1D relating to the application process for non-financial entities for the exemption from position limit obligations come into force on [date]; and
- (6) SUP 1.2 TP in Annex M (Supervision manual (SUP)), which contains transitional provisions in relation to the exercise of passport rights by UK firms, comes into force on [31 July 2017].

Amendments to the Handbook

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

(1)	(2)
Glossary of definitions	Annex A
Principles for Businesses (PRIN)	Annex B
Senior Management Arrangements, Systems and Controls sourcebook (SYSC)	Annex C
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex D
Fit and Proper test for Approved Persons (FIT)	Annex E
General Provisions (GEN)	Annex F
Fees manual (FEES)	Annex G
Prudential sourcebook for Investment Firms (IFPRU)	Annex H
Interim Prudential sourcebook for Investment Businesses (IPRU (INV))	Annex I
Conduct of Business sourcebook (COBS)	Annex J
Insurance: Conduct of Business sourcebook (ICOBS)	Annex K
Market Conduct sourcebook (MAR)	Annex L
Supervision manual (SUP)	Annex M
Decision Procedure and Penalties manual (DEPP)	Annex N
Consumer Credit sourcebook (CONC)	Annex O
Recognised Investment Exchanges sourcebook (REC)	Annex P

Amendments to material outside the Handbook

- E. The Service Companies Handbook Guide (SERV) is amended in accordance with Annex Q to this instrument.
- F. The Enforcement Guide (EG) is amended in accordance with Annex R to this instrument.

Notes

- G. In the Annex to this instrument, the notes (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- H. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- I. This instrument may be cited as the Markets and Organisational Requirements (MiFID 2) Instrument 2017.

By order of the Board
[*date*] 2017

Annex A

Amendments to the Glossary of definitions

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

Part 1: Comes into force on 3 July 2017

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

markets data (other than transaction reports) (in relation to *FEES 3*) data that must be reported to the *FCA* under:

- (a) articles 22 and 27 of *MiFIR*; and
- (b) article 58 of *MiFID*.

market data processor system (in relation to *FEES 3*) the IT system set up and maintained by the *FCA* to receive data under *MiFID* and *MiFIR*.

MiFI Regulations the *Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/xx)*.

Amend the following as shown.

transaction report (1) a report of a transaction which meets the requirements of *SUP 17.4.1EU.1R* and *SUP 17.4.2R* (Information to appear in transaction reports).

- (2) (in relation to *FEES 3*) a report which meets the requirements imposed by and under article 26 of *MiFIR*.

Part 2: Comes into force on 3 January 2018

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

algorithmic trading trading in *financial instruments* which meets the following conditions:

- (a) where a computer algorithm automatically determines individual parameters of orders such as whether to initiate the order, the

	timing, price or quantity of the order for how to manage the order after its submission; and
	(b) there is limited or no human intervention; but
	does not include any system that is only used for the purpose of routing orders to one or more <i>trading venues</i> or the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions.
	[Note: article 4(1)(39) of <i>MiFID</i>]
<i>APA</i>	<i>approved publication arrangement.</i>
<i>approved publication arrangement</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide services to an <i>investment firm</i> for the <i>investment firm</i> to meet its obligations under articles 20 and 21 of <i>MiFIR</i> .
<i>ARM</i>	<i>approved reporting mechanism.</i>
<i>branch passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4A</i> Annex VI.
<i>certificates</i>	(as defined in article 2(1)(27) of <i>MiFIR</i>), those securities which are negotiable on the capital market and which in case of a repayment of investment by the issuer are ranked above shares but below unsecured bond instruments and other similar instruments.
<i>central competent authority</i>	(in <i>MAR 10</i>) in respect of a particular <i>commodity derivative</i> traded in significant volumes on <i>trading venues</i> in more than one <i>EEA</i> jurisdiction, the <i>competent authority</i> of the <i>trading venue</i> where the largest volume of trading in the <i>commodity derivative</i> takes place in the <i>EEA</i> .
<i>commodity derivative</i>	those <i>financial instruments</i> defined in: <ul style="list-style-type: none"> (a) point (44)(c) of article 4(1) of <i>MiFID</i> which relate to a <i>commodity</i>; or an underlying referred to in Section C(10) of Annex I of <i>MiFID</i>; or (b) in points (5), (6), (7) and (10) of Section C of Annex I to <i>MiFID</i>.
	[Note: article 2(1)(30) of <i>MiFIR</i>]
<i>consolidated tape provider</i>	a <i>person</i> permitted under regulation 5 of the <i>DRS Regulations</i> to provide the service of: <ul style="list-style-type: none"> (a) collecting trade reports for <i>financial instruments</i> made in accordance with articles 6, 7, 10, 12, 13, 20 and 21 of <i>MiFIR</i>

from *regulated markets, MTFs, OTFs* and *APAs*; and

- (b) consolidating them into a continuous electronic live data stream providing price and volume data per *financial instrument*.

CSDR Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the *EU* and on central securities depositories and amending the *Settlement Finality Directive* and *MiFID* and the *short selling regulation*.

CTP *consolidated tape provider*.

DEA *direct electronic access*.

direct electronic access an arrangement where a member or participant or client of a *trading venue* permits a *person* to use its trading code so the *person* can electronically transmit orders relating to a *financial instrument* directly to the *trading venue* and includes arrangements which involve the use by a *person* of the infrastructure of the member or participant or client, or any connecting system provided by the member or participant or client, to transmit the orders (direct market access) and arrangements where such an infrastructure is not used by a *person* (sponsored access).

[Note: article 4(1)(41) of *MiFID*]

- economically equivalent OTC contract*
- (1) in respect of a *commodity derivative* traded on a *trading venue*, an *OTC derivative* which has identical contractual specifications and terms and conditions, excluding the following, to those of that *commodity derivative*:
- (a) different lot size specifications;
 - (b) delivery dates diverging by less than one calendar day; and
 - (c) different post-trade risk management arrangements; and
- (2) in respect of an *emission allowance* traded on a *trading venue*, a contract which has identical contractual specifications and terms and conditions, excluding the following, to those of that *emission allowance*:
- (a) different lot size specifications;
 - (b) delivery dates diverging by less than one calendar day; and
 - (c) different post-trade risk management arrangements.

[Note: article 6 of *MiFID RTS 21*]

<i>Emission Allowance Trading Directive</i>	Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community, and amending Council Directive 96/61/EC.
<i>ETF</i>	<i>exchange-traded fund</i> .
<i>EU regulation</i>	a regulation made pursuant to article 288 of the <i>Treaty</i> .
<i>exchange-traded fund</i>	a fund of which at least one unit or share class is traded throughout the day on at least one <i>trading venue</i> and with at least one market maker which takes action to ensure that the price of its <i>units</i> or <i>shares</i> on the <i>trading venue</i> does not vary significantly from its net asset value and, where applicable, from its indicative net asset value. [Note: article 4(1)(46) of <i>MiFID</i>]
<i>FCA MDP on-boarding application form</i>	a form for approval to connect to the <i>FCA's market data processor system</i> .
<i>investment advice</i>	the provision of <i>personal recommendations</i> to a <i>client</i> , either upon the <i>client's</i> request or at the initiative of the <i>firm</i> , in respect of one or more transactions relating to <i>designated investments</i> .
<i>investment services and activities passport notification</i>	a notification made in accordance with article 34(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex I</i> .
<i>market interface specification</i>	a document setting out the technical details required to format and submit <i>market data</i> to the <i>FCA</i> using the <i>market data processor system</i> .
<i>market making strategy</i>	a strategy undertaken by a <i>person</i> where: <ul style="list-style-type: none"> (a) the <i>person</i> is a member or participant of one or more <i>trading venues</i>; (b) the <i>person's</i> strategy, when <i>dealing on own account</i>, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more <i>financial instruments</i> on a <i>trading venue</i>, or across different <i>trading venues</i>; and (c) the result provides liquidity on a regular and frequent basis to the overall market.
<i>matched principal trading</i>	a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never itself exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is

concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction.

[Note: article 4 (1)(38) of *MiFID*]

member of the management body

(in relation to a *UK recognised body*) any one of the following:

- (a) its chairman or president; or
- (b) its *chief executive*; or
- (c) a member of its *governing body*; or
- (d) a *person* who, alone or jointly with one or more others, is responsible under the immediate authority of a *person* in (a), (b) or (c) or a committee of the *governing body* for the conduct of any *relevant function*.

MiFI Regulations

the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/xx).

MiFID/MiFIR requirements

any of the requirements applicable to an *RIE* or an applicant to become an *RIE* imposed by *MiFIR* and any directly applicable regulation made under *MiFID* or *MiFIR*.

MiFID/MiFIR Systems Regulations

MiFID RTS 7 to *MiFID RTS 12* inclusive, *MiFID RTS 25* and *MiFID RTS 26*.

MiFID ITS 2

Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to the format and timing of the communication and publication of the suspension and removal of financial instruments from trading on a regulated market, an MTF or an OTF according to MiFID.

MiFID ITS 3

Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications according to MiFID.

MiFID ITS 4

Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to the format of position reports by investment firms and market operators.

MiFID ITS 4A

Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID.

MiFID ITS 5

Commission Implementing Regulation (EU) No [.../...] laying down implementing technical standards with regard to the format and the

timing of position reports by investment firms and market operators of trading venues according to MiFID of the European Parliament and of the Council on markets in financial instruments.

<i>MiFID ITS 19</i>	Commission Implementing Regulation (EU) [.../...] of 24 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of MTFs and OTFs and the notification to ESMA according to MiFID.
<i>MiFID optional exemption firm</i>	a firm that complies with regulation 5(9) of the <i>MiFI Regulations</i> .
<i>MiFID Org Regulation</i>	Commission Delegated Regulation (EU) [xxx/xxx] of 25 April 2016 supplementing <i>MiFID</i> of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF).
<i>MiFID RTS 1</i>	Commission Delegated Regulation (EU) [.../...] of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser.
<i>MiFID RTS 2</i>	Commission Delegated Regulation (EU) No [.../...] of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives.
<i>MiFID RTS 3</i>	Commission Delegated Regulation (EU) No [.../...] of 13 June 2016 supplementing MiFIR with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations.
<i>MiFID RTS 3A</i>	Commission Delegated Regulation (EU) No [.../...] of [date] supplementing MiFID with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions.
<i>MiFID RTS 6</i>	Commission Delegated Regulation (EU) No [.../...] of 19 July 2016 supplementing MiFID with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members.
<i>MiFID RTS 7</i>	Commission Delegated Regulation (EU) [.../...] of 14 July 2016 supplementing MiFID with regard to regulatory technical standards

specifying organisational requirements of regulated markets, multilateral trading facilities and organised trading facilities enabling or allowing algorithmic trading through their systems.

- MiFID RTS 8* Commission Delegated Regulation (EU) [.../...] of 13 June 2016 supplementing MiFID with regard to regulatory technical standards specifying the requirements on market making agreements and schemes.
- MiFID RTS 9* Commission Delegated Regulation (EU) No [.../...] of 18 May 2016 supplementing MiFID with regard to regulatory technical standards on the ratio of unexecuted orders to transactions.
- MiFID RTS 10* Commission Delegated Regulation (EU) [.../...] of 6 June 2016 supplementing MiFID with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location and fee structures.
- MiFID RTS 11* Commission Delegated Regulation (EU) [.../...] of 14 July 2016 supplementing MiFID with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange traded funds.
- MiFID RTS 12* Commission Delegated Regulation (EU) No [.../...] of 26 May 2016 supplementing MiFID with regard to regulatory technical standards on the determination of a material market in terms of liquidity relating to trading halt notifications.
- MiFID RTS 13* Commission Delegated Regulation (EU) No [.../...] of 2 June 2016 supplementing MiFID with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers.
- MiFID RTS 14* Commission Delegated Regulation (EU) No [.../...] of 2 June 2016 supplementing MiFIR with regard to regulatory technical standards on the specification of the offering of pre-trade and post-trade data and the level of disaggregation.
- MiFID RTS 17* Commission Delegated Regulation (EU) No [.../...] of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets.
- MiFID RTS 18* Commission Delegated Regulation (EU) No [.../...] of 24 May 2016 supplementing MiFID with regard to regulatory technical standards for the suspension and removal of financial instruments from trading.
- MiFID RTS 21* Commission Delegated Regulation (EU) No [.../...] of 1 December 2016 supplementing MiFID with regard to regulatory technical standards for the application of position limits to commodity derivatives.

<i>MiFID RTS 22</i>	Commission Delegated Regulation (EU) [.../...] of 28 July 2016 supplementing MiFIR with regard to regulatory technical standards for the reporting of transactions to competent authorities.
<i>MiFID RTS 23</i>	Commission Delegated Regulation (EU) No [.../...] of 14 July 2016 supplementing MiFIR with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities.
<i>MiFID RTS 25</i>	Commission Delegated Regulation (EU) [.../...] of 7 June 2016 supplementing MiFID with regard to regulatory technical standards for the level of accuracy of business clocks.
<i>MiFID RTS 26</i>	Commission Delegated Regulation (EU) [.../...] of 29 June 2016 supplementing MiFIR with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing.
<i>MiFID RTS 27</i>	Commission Delegated Regulation (EU) [.../...] of 8 June 2016 supplementing MiFID with regard to regulatory technical standards for the data to be provided by execution venues on the quality of execution of transactions.
<i>MiFID RTS 28</i>	Commission Delegated Regulation (EU) [.../...] of 8 July 2016 supplementing MiFID with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution.
<i>MiFIR</i>	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.
<i>MiFIR Delegated Regulation</i>	Commission Delegated Regulation (EU) [xxx/xxx] of 18 May 2016 supplementing Regulation (EU) No 600/2014 of European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2860-EN-F1-1.PDF).
<i>MIS</i>	<i>market interface specification.</i>
<i>MIS confidentiality agreement</i>	an agreement between the <i>FCA</i> and a party receiving information regarding the <i>market data processor system market interface specification.</i>
<i>multilateral system</i>	any system or facility in which multiple third-party buying and selling trading interests in <i>financial instruments</i> are able to interact in the system.

[Note: article 4(1)(19) of *MiFID*]

*non-financial
entity*

a natural or legal person other than:

- (a) an *investment firm* authorised in accordance with *MIFID*;
- (b) a *CRD credit institution*;
- (c) an *insurance undertaking* authorised in accordance with Directive 73/239/EEC;
- (d) an assurance undertaking authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council;
- (e) a *reinsurance undertaking* authorised in accordance with Directive 2005/68/EC of the European Parliament and of the Council;
- (f) a *UCITS* and, where relevant, its *management company*, authorised in accordance with the *UCITS Directive*;
- (g) an institution for occupational retirement provision within the meaning of article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council;
- (h) an *alternative investment fund* managed by *AIFMs* authorised or registered in accordance with the *AIFMD*;
- (i) a *CCP* authorised in accordance with *EMIR*; and
- (j) a central securities depository authorised in accordance with *CDSR*.

[Note: article 2 of *MiFID RTS 21*]

*reportable
financial
instrument*

in *SUP 17A*, those *financial instruments* in article 26(2) of *MiFIR*, namely:

- (a) *financial instruments* which are admitted to trading or are traded on a *trading venue* for which a request for admission to trading has been made;
- (b) *financial instruments* where the underlying is a *financial instrument* traded on a *trading venue*; and
- (c) *financial instruments* where the underlying is an index or a basket composed of *financial instruments* traded on a *trading venue*.

*Securities
Financing*

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing

<i>Transactions Regulation</i>	transactions and of reuse and amending Regulation (EU) No 648/2012 (http://data.europa.eu/eli/reg/2015/2365/oj).
<i>SME growth market</i>	a <i>multilateral trading facility</i> that is registered as an SME growth market in accordance with article 33 of <i>MiFID</i> . [Note: article 4(1)(12) of <i>MiFID</i>]
<i>sovereign debt</i>	a debt instrument issued by a <i>sovereign issuer</i> . [Note: article 4 (1)(61) of <i>MiFID</i>]
<i>structured deposit regulated activities</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business in relation to <i>structured deposits</i> : (a) <i>dealing in investments as agent</i> ; (b) <i>arranging (bringing about) deals in investments</i> ; (c) <i>making arrangements with a view to transactions in investments</i> ; (d) <i>managing investments</i> ; and (e) <i>advising on investments (except P2P agreements)</i> .
<i>structured finance products</i>	(as defined in article 2(1)(28) of <i>MiFIR</i>) those securities created to securitise and transfer credit risk associated with a pool of financial assets entitling the security holder to receive regular payments that depend on the cash flow from the underlying assets. [Note: article 4(1)(48) of <i>MiFID</i>]
<i>third country firm</i>	(in <i>SYSC</i>) either: (a) a <i>third country investment firm</i> ; or (b) the <i>UK</i> branch of a <i>non-EEA bank</i> .
<i>tied agent passport notification</i>	a notification made in accordance with article 35(2) of <i>MiFID</i> and <i>MiFID ITS 4 Annex VII</i> .

Amend the following as shown.

<i>advising on investments (except P2P agreements)</i>	the <i>regulated activity</i> , specified in article 53(1) of the <i>Regulated Activities Order</i> (Advising on investments), which is in summary; advising a <i>person</i> if the advice is:
--	--

...

- (2) advice on the merits of their doing any of the following (whether as principal or agent):
- (a) *buying, selling*, subscribing for or underwriting a particular *investment* which is a *security* or *relevant investment* (that is, any *designated investment* (other than a *P2P agreement*), *funeral plan contract*, *pure protection contract*, *general insurance contract* ~~or~~, right to or interests in a *funeral plan contract* or structured deposit); or
- ...
- ancillary service* (1) (except in *CONC*) any of the services listed in Section B of Annex I to *MiFID*, that is:
- (a) safekeeping and administration of *financial instruments* for the account of *clients*, including custodianship and related services such as cash/collateral management but excluding maintaining securities accounts at the top tier level, ('central maintenance service') referred to in point 2 of Section A of the Annex to *CSDR*;
- ...
- approved reporting mechanism* ~~a trade matching or reporting system approved by the FCA in accordance with Section 412A of the Act~~ a person permitted under regulation 5 of the DRS Regulations to provide services to an investment firm in order for it to meet its obligations under article 26 of MiFIR.
- arranging (bringing about) deals in investments* the *regulated activity*, specified in article 25(1) of the *Regulated Activities Order*, which is in summary: making arrangements for another *person* (whether as *principal* or agent) to *buy, sell*, subscribe for or underwrite a particular *investment* which is:
- ...
- (e) *rights to or interests in investments* in (b), (c) or (d) ; or
- (f) a structured deposit.
- branch* ...
- (b) (in relation to an *investment firm*):
- (i) a place of business other than the head office which is a part of an *investment firm*, which has no legal personality and which provides *investment services and/or activities* and which may also perform *ancillary services* for which the *firm* has been ~~authorized~~ authorised;
- (ii) all the places of business set up in the same *EEA State* by

an *investment firm* with headquarters in another *EEA State* are regarded as a single branch;

[Note: article ~~4(1)(26)~~ 4(1)(30) of *MiFID*]

CAD investment firm a *firm* that is subject to the requirements imposed by *MiFID* (or which would be subject to that Directive if its head office were in an *EEA State*) but excluding a *bank*, a *building society*, a *credit institution*, a *local firm* and an *exempt CAD firm* that meets the following conditions:

...

- commodity*
- (1) (except for (2) ~~and (3)~~) a physical asset (other than a financial instrument or cash) which is capable of delivery.
 - (2) (for the purpose of calculating *position risk requirements*) any of the following (but excluding gold):
 - (a) a commodity within the meaning of paragraph (1); and
 - (b) any:
 - (i) physical or energy product; or
 - (ii) of the items referred to in paragraph 10 of Section C of Annex 1 of ~~the *MiFID*~~ as an underlying with respect to the derivatives mentioned in that paragraph;

which is, or can be, traded on a secondary market.

- (3) ~~(in relation to the *MiFID Regulation*, including the definitions of a *financial instrument* and an *ancillary service*) (in relation to *MiFID* or *MiFIR*)~~ any goods of a fungible nature that are capable of being delivered, including metals and their ores and alloys, agricultural products, and energy such as electricity, ~~not including services or other items that are not goods, such as currencies or rights in real estate, or that are entirely intangible.~~

[Note: ~~article 2(1) of the *MiFID Org Regulation*~~ article 2(6) of the *MiFID Org Regulation*]

common platform firm

...

- (c) a *UK MiFID investment firm* which falls within the definition of 'local firm' in ~~Article 3.1P of the *Capital Adequacy Directive*~~ article 4(1)(4) of the *EU CRR*; or

...

common platform (1) *SYSC 4 to SYSC 9*; and

<i>organisational requirements</i>	(2) <u>those articles of the <i>MiFID Org Regulation</i> as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u>
<i>common platform record-keeping requirements</i>	<p>the record-keeping requirements applicable to <i>common platform firms</i> set out in (in relation to <i>common platform firms</i>) the following:</p> <p>(1) SYSC 9; and</p> <p>(2) <u>those articles of the <i>MiFID Org Regulation</i> as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u></p>
<i>common platform requirements</i>	<p>(1) SYSC 4 to SYSC 10; and</p> <p>(2) <u>those articles of the <i>MiFID Org Regulation</i> as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.</u></p>
<i>competent authority</i>	<p>...</p> <p>(4) the authority, designated by each <i>EEA State</i> in accordance with Article 48 <u>article 67</u> of <i>MiFID</i>, unless otherwise specified in <i>MiFID</i>.</p> <p>[Note: article 4(1)(22) <u>article 4(1)(26)</u> of <i>MiFID</i>]</p> <p>...</p> <p>[Note: This definition is based on the definition contained in the CRD (Consequential Amendments) Instrument 2006 which was consulted on in the consultation paper Strengthening Capital Standards 2 (CP 06/3)]</p>
<i>competent employees rule</i>	<p>(a) for an <i>insurer</i>, a <i>managing agent</i> and the <i>Society</i>, SYSC 3.1.6R;</p> <p>(b) for a <i>common platform firm</i>, SYSC 5.1.1R <u>article 21(1)(d) of the <i>MiFID Org Regulation</i> that applies in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR;</u></p> <p>(ba) <u>for a <i>MiFID optional exemption firm</i> and a <i>third country firm</i>, article 21(1)(d) of the <i>MiFID Org Regulation</i> that applies in accordance with SYSC 1 Annex 1 2.8R, SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR; and</u></p> <p>(c) for every other <i>firm</i>, SYSC 5.1.1R (where it applies).</p>
<i>conflicts of interest policy</i>	(1) <u>(except in MAR 8)</u> the policy established and maintained in accordance with SYSC 10.1.10R; and

- (2) (in *MAR 8*) the policy established and maintained in accordance with *MAR 8.2.8G* which:
- (a) identifies circumstances that constitute, or may give rise to, a conflict of interest arising from *benchmark submissions* and the process of gathering information in order to make *benchmark submissions*; and
 - (b) sets out the process to manage such conflicts.
- control*
- (1) (except in (2) and (2A)) (in relation to the acquisition, increase or reduction of control of a *firm*) the relationship between a *person* and the *firm* or other *undertaking* of which the *person* is a controller.
- (2) (in *SYSC 8* and *SYSC 10*) ~~control as defined in Article 1 of the Seventh Council Directive 83/349/EEC (The Seventh Company Law Directive)~~ :
- (a) the relationship between a parent undertaking and a subsidiary, in all cases referred to in articles 22(1) and (2) of the *Accounting Directive*; or
 - (b) a similar relationship between any natural or legal person and an *undertaking*.
- [Note: article 4 ~~(1)(30)~~ 4(1)(35)(b) of *MiFID*]
- ...
- customer*
- (A) ...
- (B) in the *FCA Handbook*:
- (1) (except in relation to *ICOBS*, a *credit-related regulated activity*, *MCOB 3A*, an *MCD credit agreement* ~~and~~ , *CASS 5* and *PRIN* in relation to *MiFID* or equivalent third country business) a *client* who is not an *eligible counterparty* for the relevant purposes.
- ...
- (6) (for the purposes of *PRIN* in relation to *MiFID* or equivalent third county business) has the meaning given in *COBS 3.2*.
- data reporting service*
- ~~(in relation to *FEES 1*, *FEES 2* and *FEES 3*)~~ (in accordance with regulation 2(1) of the *DRS Regulations*) the operation of an *APA*, an *ARM* or a *CTP* when carried out as a regular occupation or business activity.

<i>data reporting services provider</i>	(in relation to FEES 1, FEES 2 and FEES 3) a person operating one or more <i>data reporting service</i> .
<i>dealing in investments as agent</i>	the <i>regulated activity</i> , specified in article 21 of the <i>Regulated Activities Order</i> (Dealing in investments as agent), which is in summary: <i>buying, selling, subscribing for or underwriting designated investments</i> (other than <i>P2P agreements</i>), <i>pure protection contracts</i> or , <i>general insurance contracts</i> or <u><i>structured deposits</i></u> as agent.
<i>derivative</i>	(1) <u>(other than in REC, MAR 5 and MAR 5A)</u> a contract for <i>differences</i> , a <i>future</i> or an <i>option</i> (see also <i>securitised derivative</i>). (2) <u>(in REC, MAR 5 and MAR 5A)</u> has the meaning in article 2(1)(29) of <u>MiFIR</u> .
<i>designated investment</i>	(1) a <i>security</i> or a contractually-based investment (other than a <i>funeral plan contract</i> and a right to or interest in a <i>funeral plan contract</i>), that is, any of the following <i>investments</i> , specified in Part III of the <i>Regulated Activities Order</i> (Specified Investments): ... (h) <i>stakeholder pension scheme</i> (article 82(1)); (ha) ... (hb) <u><i>emissions auction product</i></u> (article 82A) where it is a <u><i>financial instrument</i></u> ; (hc) <u><i>emissions allowance</i></u> (article 82B);
<i>designated investment business</i>	any of the following activities, specified in Part II of the <i>Regulated Activities Order</i> (Specified Activities), which is carried on by way of business: ... (da) ... (daa) <u>operating an <i>organised trading facility</i></u> (article 25DA); ...
<i>DRS Regulations</i>	(in relation to FEES 1, FEES 2 and FEES 3) the Data Reporting Services Regulations 2017 (SI 2017/[xxxx]).
<i>emissions allowance</i>	(1) an 'allowance', within the meaning of article 3(a) of Directive 2003/87/EC of the European Parliament and of the Council of 13

~~October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC the *Emission Allowance Trading Directive*;~~

- (2) (in relation to MiFID business other than in MAR 10 (Commodity derivative position limits and controls and position reporting)) the investment, specified in article 82B of the *Regulated Activities Order* ('Emission Allowances'), which is in summary emission allowances:
- (a) consisting of any units recognised for compliance with the *Emission Allowance Trading Directive*; and
- (b) to which article 82B of the *Regulated Activities Order* applies; and
- (3) (in MAR 10 (Commodity derivative position limits and controls and position reporting)):
- (a) an allowance consisting of any units recognised for compliance with Directive 2003/87/EC (Emission Trading Scheme), as specified in paragraph (11) of Section C of Annex I of *MiFID*; or
- (b) any derivative of such an allowance, whether falling under paragraph (4) or (10) of Section C of Annex I of *MiFID*.

execution of orders on behalf of clients acting to conclude agreements to buy or sell one or more *financial instruments* on behalf of *clients* including the conclusion of agreements to sell *financial instruments* issued by an *investment firm* or a *credit institution* at the moment of their issuance.

[Note: article 4(1)(5) of *MiFID*]

exempt CAD firm (1) (except in *SYSC* and *IPRU(INV)*) a firm as defined in article 4(1)(2)(c) of the *EU CRR* that is authorised to provide only one or more of the following *investment services*:

(a) investment advice;

(b) receive and transmit orders from investors as referred to in Section A of Annex I of *MiFID*).

(2) (in *SYSC* and *IPRU(INV)*) a *firm* in (1) whose head office (or, if it has a registered office, that office) is in the ~~United Kingdom~~ *United Kingdom*.

financial instrument (1) (other than in (2) and (3) and (4)) instruments specified in Section C of Annex I of *MiFID*, that is:

...

- (d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash;
- (da) (in relation to derivative contracts relating to a currency) has the meaning in article 10 [link] of the *MiFID Org Regulation* (in summary):
- (i) an instrument which is not a contract within the meaning of paragraph 2 of that article; or
- (ii) a means of payment as described in paragraph 1(b) of that article;
- (e) options, futures, swaps, ~~forward rate agreements~~ forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (~~otherwise other~~ than by reason of a default or other termination event);
- (f) options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a *regulated market* ~~and/or~~ , an *MTF*, or an *OTF*, except for wholesale energy products (having regard to article 6 of the *MiFID Org Regulation*) traded on an *OTF* that must be physically settled where the conditions of article 5 of the *MiFID Org Regulation* are met;
- (g) options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in (f) and :
- (i) not being for commercial purposes ; having regard to article 7(4) of the *MiFID Org Regulation*;
- (ii) which have the characteristics of other derivative financial instruments ; ~~having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls (see articles 38(1), (2) and (4) of the *MiFID Regulation*)~~ having regard to article 7(1) of the *MiFID Org Regulation*; and
- (iii) not being spot contracts having regard to articles 7 (1) and (2) of the *MiFID Org Regulation*;

...

- (j) options, futures, swaps, forward rate agreements and any other derivative contracts relating to:

...

- (xii) a derivative contract to which article 8 of the MiFID Org Regulation applies;

where the conditions in ~~Articles 38~~ articles 7(3) and (4) of the MiFID Regulation MiFID Org Regulation are met ;

[Note: article ~~4(1)(17)~~ 4(1)(15) and section C of Annex I to MiFID and ~~articles 38 and 39 of the MiFID Regulation~~ articles 7 and 8 of the MiFID Org Regulation]

- (k) emission allowances consisting of any units recognised for compliance with the Emission Allowance Trading Directive;

...

firm

...

- (8) (in SYSC 18, with the exception of the ~~guidance~~ guidance in SYSC 18.3.9G):

...

- (9) (in FEES 4) includes a recognised investment exchange and a data reporting services provider in accordance with FEES 4.1.1AR.

Home State

...

- (2) (in relation to an *investment firm*):

...

[Note: article ~~4(1)(20)~~ 4(1)(55)(a) of *MiFID*]

...

- (16) (a data reporting services provider):

(a) the EEA State in which its head office is situated, for a natural person;

(b) the EEA State in which its registered office is situated, for a legal person;

(c) if the data reporting services provider has, under its national law, no registered office, the EEA State in which its head

office is situated.

[Note: article 4(1)(55)(c) of *MiFID*]

*Home State
regulator*

...

(4) (in *REC*) the competent authority (within the meaning of ~~Article (4)(1)(22)~~ article 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* in relation to the *EEA market operator* concerned.

...

(6) (for a *data reporting services provider*) the competent authority (within the meaning of article 4(1)(26) of *MiFID*) of the *EEA State* which is the *Home State* for that *data reporting services provider*.

Host State

...

(3) (in relation to *MiFID investment firms*) the *EEA State*, other than the *Home State*, in which an *investment firm* has a *branch* or ~~performs~~ provides *investment services and/or activities*, or the *EEA State* in which a *regulated market* provides appropriate arrangements so as to facilitate access to trading on its system by remote members or participants established in that same *EEA State*.

[Note: article 4(1)(56) of *MiFID*]

...

IFPRU 125K firm

has the meaning in *IFPRU* 1.1.9R (Types of investment firm: IFPRU 125K firm), which in summary is an *IFPRU investment firm* that satisfies the following conditions:

...

(e) it does not operate a *multilateral trading facility* or an *organised trading facility*.

IFPRU 50K firm

has the meaning in *IFPRU* 1.1.10R (Types of investment firm: IFPRU 50K firm) which in summary is an *IFPRU investment firm* that satisfies the following conditions:

...

(d) it does not operate a *multilateral trading facility* or an *organised trading facility*.

*incoming data
reporting services
provider*

~~(in relation to *FEES 1*, *FEES 2* and *FEES 3*)~~ a *data reporting services provider* authorised or applying for authorisation under Title V of *MiFID II* in an *EEA State*, other than the *UK*, to provide a *data reporting service* in the *UK*.

<i>investment service</i>	<p>any of the following involving the provision of a service in relation to a <i>financial instrument</i>:</p> <p>...</p> <p>(h) operation of <i>multilateral trading facilities</i> <u>an <i>MTF</i></u>; and</p> <p>(i) <u>operation of an <i>OTF</i></u>.</p> <p>...</p>
<i>investment services and/or activities</i>	<p>any of the services and activities listed in Section A of Annex I to <i>MiFID</i> relating to any <i>financial instrument</i>, that is:</p> <p>...</p> <p>(h) operation of <i>multilateral trading facilities</i>; <u>and</u></p> <p>(i) <u>operation of an <i>OTF</i></u>.</p> <p>...</p>
<i>investment services or activities</i>	<p>any of the services and activities listed in Section A of Annex I to <i>MiFID</i> relating to any <i>financial instrument</i>, that is:</p> <p>...</p> <p>(h) operation of <i>multilateral trading facilities</i> <u>an <i>MTF</i></u>; and</p> <p>(i) <u>operation of an <i>OTF</i></u>.</p> <p>...</p>
<i>issuer</i>	<p>...</p> <p>[Note: article 2(2) of the <i>MiFID Regulation</i>]</p> <p>...</p>
<i>local firm</i>	<p>a <i>firm</i> which falls within the definition of "local firm" in Article 3.1P of <i>CAD</i>, that is a firm dealing for its own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets, or dealing for the accounts of other members of those markets and being guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such a firm is assumed by clearing members of the same markets</p> <p><u>has the meaning in article 4(1)(4) of the <i>EU CRR</i>.</u></p>
<i>making arrangements with a view to</i>	<p>the <i>regulated activity</i>, specified in article 25(2) of the <i>Regulated Activities Order</i> (Arranging deals in investments), which is in summary: making arrangements with a view to a <i>person</i> who participates in the</p>

<i>transactions in investments</i>	<p>arrangements <i>buying, selling</i>, subscribing for or underwriting any of the following <i>investments</i> (whether as <i>principal</i> or agent):</p> <p>...</p> <p>(g) <i>general insurance contract; or</i></p> <p>(h) <i>a structured deposit.</i></p>
<i>management body</i>	<p>(1) (other than in (2)) (in accordance with article 3(7) of <i>CRD</i> <u>and article 4.1(36) of <i>MiFID</i></u>) the <i>governing body</i> and <i>senior personnel</i> of a <i>CRR firm</i> who are empowered to set the <i>firm's person's</i> strategy, objectives and overall direction, and which oversee and monitor management decision-making <u>in the following</u>:</p> <p>(a) <u>a common platform firm (in relation to the requirements imposed by or under <i>MiFID</i> or <i>MiFIR</i>); or</u></p> <p>(b) <u>a recognised investment exchange; or</u></p> <p>(c) <u>a data reporting services provider.</u></p> <p>...</p>
<i>managing investments</i>	<p>the <i>regulated activity</i> specified in article 37 of the <i>Regulated Activities Order</i> (Managing investments), which is in summary: managing assets belonging to another <i>person</i> in circumstances which involve the exercise of discretion, if:</p> <p>(a) the assets consist of or include any <i>security</i> or <i>contractually based investment</i> (that is, any <i>designated investment</i> (other than a <i>P2P agreement</i>), <i>funeral plan contract</i>, <u><i>structured deposit</i></u> or right to or interest in a <i>funeral plan contract</i>); or</p> <p>...</p>
<i>market data processor system</i>	<p>(in relation to <i>FEES 3</i>) the IT system set up and maintained by the <i>FCA</i> to receive data under <i>MiFID</i> and <i>MiFIR</i>.</p>
<i>markets data (other than transaction reports)</i>	<p>(in relation to <i>FEES 3</i>) data that must be reported to the <i>FCA</i> under:</p> <p>(a) articles 22 and 27 of <i>MiFIR</i>; and</p> <p>(b) article 58 of <i>MiFID</i>.</p>
<i>market maker</i>	<p>...</p> <p>[Note: article 4(1)(8) <u>4(1)(7)</u> of <i>MiFID</i> <u>and article 11 of the <i>MiFID Org Regulation</i></u>]</p> <p>...</p>

market operator a person who manages and/or operates the business of a *regulated market*.
The *market operator* and who may be the *regulated market* itself.

[Note: article ~~4(1)(13)~~ (4)(1)(18) of *MiFID*]

MiFID ~~The European Parliament and Council Directive on markets in financial instruments (No. 2004/39/EC).~~

See also *MiFID Regulation* and *MiFID implementing Directive Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending the insurance mediation directive and AIFMD.*

MiFID investment firm (1) (in summary) ~~(except in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity)~~ a firm to which *MiFID* applies including, for some purposes only, a *credit institution* and *collective portfolio management investment firm*.

(2) (in full) a firm ~~(except in SUP 13, SUP 13A and SUP 14 in relation to notification of passported activity)~~ which is:

~~(1)~~ (a) an *investment firm* with its head office in the *EEA* (or, if it has a registered office, that office);

~~(2)~~ (b) a *CRD credit institution* (only when providing an *investment service or activity* or when selling, or advising *clients in relation to, structured deposits* ~~in relation to~~ for the purposes of:

(i) the *rules* implementing the ~~Articles~~ articles referred to in ~~article 1(2)~~ article 1(3) and article 1(4) of *MiFID* ;

(ii) the requirements imposed upon it by and under *MiFIR*; and

(iii) the requirements imposed upon it by *EU regulations* made under *MiFID*);

~~(3)~~ (c) a *collective portfolio management investment firm* (only when providing the services referred to in article 6(4) *AIFMD* or ~~Article~~ article 6(3) of the *UCITS Directive* in relation to the *rules* implementing the articles of *MiFID* referred to in article 6(6) of *AIFMD* or article 6(4) of the *UCITS Directive* and for a *full-scope UK AIFM* or the rules implementing article 12(2)(b) of *AIFMD*);

unless, and to the extent that, *MiFID* does not apply to it as a result of ~~Article~~ article 2 (Exemptions) or ~~Article~~ article 3 (Optional exemptions) of *MiFID*.

(3) (in SUP 13, SUP 13A and SUP 14 in relation to notification of

passported activity) an investment firm with its head office in the EEA (or, if it has a registered office, that office) unless, and to the extent that, MiFID does not apply to it as a result of article 2 (Exemptions) or article 3 (Optional exemptions) of MiFID.

<i>multilateral trading facility</i>	<p>a multilateral system, operated by an <i>investment firm</i> or a <i>market operator</i>, which brings together multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with non-discretionary rules – in a way that results in a contract in accordance with the provisions of Title II of <i>MiFID</i>.</p> <p>[Note: article 4(1)(15) 4(1)(22) of <i>MiFID</i>]</p>
<i>operating a multilateral trading facility</i>	<p>...</p> <p>In this definition “MiFID instrument” means any investment:</p> <ul style="list-style-type: none"> (a) of the kind specified by articles 76, 77, 78, 79, 80, 81, 82B, 83, 84 or 85 of the <i>Regulated Activities Order</i>; or (b) of the kind specified by article 89 of the <i>Regulated Activities Order</i>, so far as relevant to an investment falling within (a); <p>that is a <i>financial instrument</i>.</p>
<i>operating an organised trading facility</i>	<p>(in relation to FEES 3), the <i>regulated activity</i> in article [25DA] of the <i>Regulated Activities Order</i>, which is in summary, the operation of an <i>organised trading facility</i> on which non-equity MiFID instruments are traded. In this definition “non-equity MiFID instrument” means any investment:</p> <ul style="list-style-type: none"> (a) of the kind specified by articles 77, 77A, 78, 79, 80, 81, 82B, 83, 84 or 85; or (b) of the kind specified by article 89 of the <i>Regulated Activities Order</i>, so far as relevant to an investment falling within (a); <p>that is a bond, a structured finance product (within the meaning of article 2(1)(28) of <i>MiFIR</i>), an <i>emissions allowance</i>, or a derivative (within the meaning of article 2(1)(29) of <i>MiFIR</i>).</p>
<i>option</i>	<p>the <i>investment</i>, specified in article 83 of the <i>Regulated Activities Order</i> (Options), which is <u>in summary</u> an option to acquire or dispose of:</p> <p>...</p>
<i>organised trading facility</i>	<p>(in relation to FEES 3), (in accordance with article 3(1) of the <i>Regulated Activities Order</i>):</p> <ul style="list-style-type: none"> (a) an organised trading facility (within the meaning of article 4(1)(23) of <i>MiFID H</i>) operated by an <i>investment firm</i>, a <i>credit institution</i> or a <i>market operator</i>; or

- (b) a facility which:
- (i) is operated by an *investment firm*, a *credit institution* or a *market operator* which does not have a *Home State*; and
 - (ii) if its operator had a *Home State*, would be an *organised trading facility* within the meaning of article 4(1)(23) of *MiFID II*.

[Note: article 4(1)(23) of *MiFID II*]

OTF ~~(in relation to *FEES 3*)~~, *organised trading facility*.

outsourcing ...

- (2) (in *SYSC 8*, *COBS 11.7*, *SYSC 3* and *SYSC 13* to the extent applicable to the *Solvency II firm*, and the definition of *relevant person*) an arrangement of any form between a *firm* and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the *firm* itself.

[Note: ~~article 2(6) of the *MiFID implementing Directive*~~ article 2(3) of the *MiFID Org Regulation* and article 13(28) of the *Solvency II Directive*]

- overseas firm*
- (1) (in relation to *MAR 5* and *MAR 5A*) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom* excluding an *incoming EEA firm*.
 - (2) (in any other case) a *firm* which has its registered office (or, if it has no registered office, its head office) outside the *United Kingdom*.

personal transaction ...

[Note: ~~article 2(7) and article 11 of the *MiFID implementing Directive*~~ article 16(2) of *MiFID* and article 28 of the *MiFID Org Regulation*]

portfolio management managing portfolios in accordance with mandates given by *clients* on a discretionary *client-by-client* basis where such portfolios include one or more *financial instruments*.

[Note: article ~~4(1)(9)~~ 4(1)(8) of *MiFID*]

qualifying holding ...

- (2) (otherwise) ~~any~~ a direct or indirect holding in an *investment firm* which represents 10% or more of the capital or of the voting rights, as set out in ~~Article 92~~ articles 9 and 10 of the European Parliament and Council Directive on the admission of securities to official stock exchange listing and on information to be published

~~on those securities (No. 2001/34/EC) Transparency Directive, taking into account the conditions regarding aggregation in article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the *investment firm* in which that holding subsists.~~

[Note: article ~~4(1)(27)~~ 4(1)(31) of *MiFID*]

- RAP recognition requirements*
- (1) (in relation to an *RAP*) any of the requirements applicable to an *RAP* under the *RAP regulations*, the *auction regulation* or ~~the *MiFID Regulation*~~ *MiFIR* and any *EU regulation* adopted under *MiFID* or *MiFIR*.
 - (2) (in relation to a *UK RIE* applying for recognition as an *RAP*) any of the requirements under the *RAP regulations*, the *auction regulation* or ~~the *MiFID Regulation*~~ *MiFIR* and any *EU regulation* adopted under *MiFID* or *MiFIR* which, if its application were successful, would apply to it.
- recognised body requirements*
- ...
 - (2) (in relation to a *UK RIE*) the ~~*MiFID implementing requirements*~~ *MiFID/MiFIR requirements*;
 - ...
- regulated market*
- (1) a multilateral system operated and/or managed by a *market operator*, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in *financial instruments* – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the *financial instruments* admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with ~~the provisions of~~ Title III of *MiFID*.

[Note: article ~~4(1)(14)~~ 4(1)(21) of *MiFID*]

- ...
- regulatory system*
- the arrangements for regulating a *firm* or other *person* in or under the *Act*, including the *threshold conditions*, the *Principles* and other *rules*, the *Statements of Principle*, codes and *guidance*, or in or under the *CCA*, and including any relevant directly applicable provisions of a Directive or Regulation such as those contained in the ~~*MiFID implementing Directive*, the *MiFID Regulation*~~, *MiFID Org Regulation* and the *EU CRR*.
- relevant person*
- any of the following:
- (1) (in *COMP*) a *person* for *claims* against whom the *compensation scheme* provides cover, as defined in *COMP* 6.2.1R.;

(2) (otherwise) any of the following:

...

[Note: ~~article 2(3) of the MiFID implementing Directive~~ article 2(1) of the MiFID Org Regulation and article 3(3) of the *UCITS implementing Directive*]

remuneration

(1) (except where (2) applies) any form of remuneration, including salaries, *discretionary pension benefits* and benefits of any kind.

[Note: article 92(2) of ~~the~~ *CRD*]

(2) (in relation to those articles of the MiFID Org Regulation as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR, SYSC 1 Annex 1 3.3R; SYSC 19F.1.3R; SYSC 19F.1.4R and SYSC 19F.1.5R) all forms of payments or financial or non-financial benefits provided directly or indirectly by a firm to relevant persons in the provision of one or more of *designated investment business, ancillary activities and ancillary services to clients*.

[Note: article 2(5) of the *MiFID Org Regulation*]

securities and futures firm

...

(h) a firm that is exempt from *MiFID* under article 2(1) ~~(i)~~ (j) whose permitted activities include *bidding in emissions auctions*.

security

(1) (except in *LR* and *CONC*) (in accordance with article 3(1) of the *Regulated Activities Order (Interpretation)*) any of the following investments specified in that Order:

...

(gb) emissions allowance (article 82B); and

...

...

senior personnel

(1) those persons who effectively direct the business of the firm, ~~or CBTL firm, recognised investment exchange or data reporting services provider~~ which could include a ~~firm's or CBTL firm's or the membership of the governing body~~ and other persons individuals who effectively direct the business of the ~~person firm or CBTL firm~~.

(2) (in relation to a *management company*) and in accordance with article 3(4) of the *UCITS implementing Directive*) the person or persons who effectively conduct the business of the *management*

- company.*
- senior management*
- (1) ...
 - (2) (in SYSC (except SYSC 4.3A) and IFPRU and in accordance with article 3(9) of CRD) those *persons* who are a natural person and who exercise executive functions in an *institution* and who are responsible and accountable to the *management body* for the day-to-day management of the *institution*.
 - (3) (in SYSC 4.3A and COBS 2.3B and in accordance with article 4.1(37) of MiFID) those persons who are a natural person, who exercise executive functions in common platform firms and who are responsible and accountable to the management body for the day-to-day management of the firm, including for the implementation of the policies concerning the distribution of services and products to clients by it and its personnel.
- small and medium-sized enterprise*
- (1) (in MAR 5) companies that had an average market capitalisation of less than €200,000,000 based on end-year quotes for the previous three calendar years.

[Note: article 4(1)(13) of MiFID]
 - (2) (in PR) (as defined in ~~Article~~ article 2.1(f) of the *prospectus directive*) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43,000,000 and an annual net turnover not exceeding €50,000,000.
- structured deposit*
- ~~a deposit paid on terms under which any interest or premium will be paid, or is at risk, according to a formula which involves the performance of:~~
- ~~(a) an index (or combination of indices) (other than money market indices);~~
 - ~~(b) a stock (or combination of stocks); or~~
 - ~~(c) a commodity (or combination of commodities).~~
- (in accordance with article 3 of the Regulated Activities Order) a deposit which is fully repayable at maturity on terms under which interest or a premium will be paid or is at risk, according to a formula involving factors such as:
- (a) an index or combination of indices, excluding variable rate deposits whose return is directly linked to an interest rate index such as EURIBOR or LIBOR; or

- (b) a financial instrument or combination of financial instruments; or
- (c) a commodity or combination of commodities or other physical or non-physical non-fungible assets; or
- (d) a foreign exchange rate or combination of foreign exchange rates.

[Note: article 4(1)(43) of *MiFID*]

systematic internaliser

(has the meaning in article 4(1)(20) of *MiFID*) (in summary) an investment firm which, on an organised, frequent and systematic and substantial basis, deals on own account by executing ~~client~~ client orders outside a regulated market or, an MTF or an OTF without operating a multilateral system.

[Note: article ~~4(1)(7)~~ 4(1)(20) of *MiFID*]

tied agent

a person who, under the full and unconditional responsibility of only one *MiFID* investment firm or third country investment firm on whose behalf it acts, promotes investment services and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments and/or provides advice to clients or prospective clients in respect of those financial instruments or investment services.

[Note: article ~~4(1)(25)~~ 4(1)(29) of *MiFID*]

third country investment firm

a firm which would be a *MiFID* investment firm if it had its head office or registered office in the EEA.

trading venue

- (1) (except in *FINMAR* and *MAR*) a regulated market, an MTF or systematic internaliser acting in its capacity as such, and, where appropriate, a system outside the EU with similar functions to a regulated market or MTF an OTF.

[Note: article ~~2(8) of the *MiFID* Regulation~~ article 4(1)(24) of *MiFID*]

- (2) (in *FINMAR*) (as defined in article 2(1)(1) of the *short selling regulation*) a regulated market or an MTF.
- ~~(3) (in *MAR*) a regulated market or an MTF.~~

transaction

- (1) (except in *CONC* App 1.1 and *SUP 17A*) only the purchase and sale of a financial instrument. ~~For the purposes of the *MiFID* Regulation, excluding Chapter II, this does not include:~~
 - (a) securities financing transactions; or
 - (b) the exercise of options or covered warrants; or

(e) ~~primary market transactions (such as issuance allotment or subscription) in *financial instruments* falling within Article 4(1)(18(a) and (b) of *MiFID*).~~

(2) (in *CONC* App 1.3, except in *CONC* App 1.1.6R(1)(c)) a *credit agreement*, any transaction which is a *linked transaction*, any contract for the provision of *security* relating to the *credit agreement*, any *credit broking* contract relating to the *credit agreement* and any other contract to which the *borrower* or a *relative* of ~~his~~ the borrower is a party and which the *lender* requires to be made or maintained as a condition of the making of the *credit agreement*.

(3) (in *SUP* 17A), a concluded acquisition or disposal of a *reportable financial instrument*, including those in articles 2(2) to 2(4) of *MiFID RTS* 22, but excluding those in article 2(5) of that *EU regulation*.

[Note: article 5 of the ~~*MiFID Regulation*~~]

transaction report (1) ~~a report of a transaction which meets the requirements of *SUP* 17.4.1EU.1R and *SUP* 17.4.2R (Information to appear in transaction reports).~~

(2) ~~in relation to *FEES* 3, a report which meets the requirements imposed by and under article 26 of *MiFIR*. a report of a transaction:~~

(a) for the purposes of *SUP* TP 9; or

(b) which meets the requirements imposed by and under article 26 of *MiFIR*.

transferable security

...

(3) those classes of securities which are negotiable on the capital market, with the exception of instruments of payment, such as:

...

[Note: article ~~4(1)(18)~~ 4(1)(44) of *MiFID*]

UCITS management company

...

(2) (in relation to *MiFID* business) a *management company* as defined in the *UCITS Directive*.

[Note: ~~article 4(1)(24)~~ article 4(1)(28) of *MiFID*]

UK designated investment firm

(in *BIPRU* 12 and in *SYSC* 19D) a *designated investment firm* which is a *body corporate or partnership* formed under the law of any part of the

UK.

Delete the following definitions. The text is not struck through.

- common platform outsourcing rules* SYSC 8.1.1R to SYSC 8.1.12G.
- key individual* (in relation to a *UK recognised body*):
- (a) its chairman or president;
 - (b) its *chief executive*;
 - (c) a member of its *governing body*;
 - (d) a *person* who, alone or jointly with one or more others, is responsible under the immediate authority of a *person* in (a), (b) or (c) or a committee of the *governing body* for the conduct of any *relevant function*.
- local*
- (1) (except in *IFPRU* 1.1 (Application and purpose)) a *firm* which is a member of a *futures* and *options* exchange and whose *permission* includes a *requirement* that:
 - (a) the *firm* will not conduct *designated investment business* other than:
 - (i) *dealing* for its own account on that *futures* or *options* exchange; or
 - (ii) *dealing* for the accounts of other members of the same *futures* and *options* exchange; or
 - (iii) making a price to other members of the same *futures* and *options* exchange; and
 - (iv) *dealing* for its own account in financial *futures* and *options* or other *derivatives* in the capacity of a customer; and
 - (b) the performance of the *firm*'s contracts must be guaranteed by and must be the responsibility of one or more of the clearing members of the same *futures* and *options* exchange.
 - (2) [deleted]
 - (3) (in *IFPRU* 1.1 (Application and purpose) has the meaning given in the definition of "local firm" in article 4(1)(4) of the *EU CRR*.
- MiFID II* Directive 2014/65/EU of the European Parliament and of the Council of

15 May 2014 on markets in financial instruments and amending the *insurance mediation directive* and *AIFMD* (http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?url=OJ:JOL_2014_173_R_0009&from=EN).

*MiFID
implementing
Directive*

Commission Directive No. 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*MiFID
implementing
requirement*

- (1) (in relation to a *UK RIE*) any of the requirements applicable to that body under the *MiFID Regulation*.
- (2) (in relation to a body applying for recognition as a *UK RIE*) any of the requirements under the *MiFID Regulation* which, if its application were successful, would apply to it.

*MiFID
outsourcing rules*

SYSC 8.1.1R to SYSC 8.1.11R.

Annex B

Amendments to the Principles for Businesses (PRIN)

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

1 Introduction

1.1 Application and purpose

...

Purpose

- 1.1.2 G The *Principles* are a general statement of the fundamental obligations of *firms* under the *regulatory system*. This includes provisions which implement the *Single Market Directives*. They derive their authority from the ~~appropriate regulator's~~ FCA's rule-making powers as set out in the *Act* and reflect the *statutory objectives*.

...

Taking group activities into account

- 1.1.5 G *Principles* 3 (Management and control), 4 (Financial prudence) and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) 11 (Relations with regulators) take into account the activities of members of a *firm's group*. ...

Standards in markets outside the United Kingdom

- 1.1.6 G As set out in *PRIN* 3.3 (Where?), *Principles* 1 (Integrity), 2 (Skill, care and diligence) and 3 (Management and control) apply to world-wide activities in a *prudential context*. *Principle* 5 (Market conduct) applies to world-wide activities which might have a negative effect on confidence in the *UK financial system*. In considering whether to take regulatory action under these *Principles* in relation to activities carried on outside the *United Kingdom*, the ~~appropriate regulator~~ FCA will take into account the standards expected in the market in which the *firm* is operating. *Principle* 11 (Relations with regulators) applies to world-wide activities; in considering whether to take regulatory action under *Principle* 11 in relation to cooperation with an overseas regulator, the ~~appropriate regulator~~ FCA will have regard to the extent of, and limits to, the duties owed by the *firm* to that regulator. (*Principle* 4 (Financial prudence) also applies to world-wide activities.)

...

Consequences of breaching the Principles

1.1.7 G ... Under each of the *Principles* the onus will be on the ~~appropriate regulator~~ FCA to show that a *firm* has been at fault in some way. What constitutes "fault" varies between different *Principles*. Under *Principle 1* (Integrity), for example, the ~~appropriate regulator~~ FCA would need to demonstrate a lack of integrity in the conduct of a *firm's* business ...

...

1.1.9 G Some of the other *rules* and *guidance* in the *Handbook* deal with the bearing of the *Principles* upon particular circumstances. However, since the *Principles* are also designed as a general statement of regulatory requirements applicable in new or unforeseen situations, and in situations in which there is no need for *guidance*, the ~~appropriate regulator's~~ FCA's other *rules* and *guidance* or EU regulations should not be viewed as exhausting the implications of the *Principles* themselves.

...

1.2 Clients and the Principles

...

Approach to client categorisation

1.2.2 G *Principles 6, 8 and 9* and parts of *Principle 7*, as qualified by *PRIN 3.4.1R*, apply only in relation to *customers* (~~that is, clients which are not eligible counterparties~~). The approach that a *firm* (other than for *credit-related regulated activities* in relation to which *client* categorisation does not apply) needs to take regarding categorisation of *clients* into *customers* and *eligible counterparties* will depend on whether the *firm* is carrying on *designated investment business* or other activities, as described in *PRIN 1.2.3G*.

...

1 Annex 1R Non-designated investment business - clients that a firm may treat as an eligible counterparty for the purposes of PRIN

1.1	A <i>firm</i> may categorise the following types of <i>client</i> as an <i>eligible counterparty</i> for the purposes of <i>PRIN</i> :	
	...	
	(4)	a State investment body, or a body charged with, or intervening in, the management of the public debt <u>at national level</u> ;
	...	
...		

2 The Principles

2.1 The Principles

2.1.1 R The Principles

...	
11 Relations with regulators	A <i>firm</i> must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator <u>FCA</u> appropriately anything relating to the <i>firm</i> of which that regulator would reasonably expect notice.

...

3 Rules about application

3.1 Who?

...

3.1.2 G ~~COBS 1 Annex 1 and the territorial guidance in PERG 13.6 all contain~~ contains *guidance* that is relevant to the reservation of responsibility to a *Home State regulator* referred to in *PRIN 3.1.1R(1)*.

...

3.2 What?

...

3.2.3 R *Principles 3, 4* and (in so far as it relates to disclosing to the ~~appropriate regulator~~ FCA) **11** (and this chapter) also:

- (1) apply with respect to the carrying on of *unregulated activities* (for *Principle 3* this is only in a *prudential context*); and
- (2) take into account any activity of other members of a *group* of which the *firm* is a member.

3.3 Where?

3.3.1 R Territorial application of the Principles

Principle	Territorial application
-----------	-------------------------

<i>Principles 1, 2 and 3</i>	in a <i>prudential context</i> , apply with respect to activities wherever they are carried on; otherwise, apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU regulation</i> .
...	
<i>Principles 6, 7, 8, 9 and 10</i>	<i>Principle 8</i> , in a prudential context, applies with respect to activities wherever they are carried on; otherwise apply with respect to activities carried on from an establishment maintained by the <i>firm</i> (or its <i>appointed representative</i>) in the <i>United Kingdom</i> unless another applicable <i>rule</i> or <i>EU regulation</i> which is relevant to the activity has a wider territorial scope, in which case the <i>Principle</i> applies with that wider scope in relation to the activity described in that <i>rule</i> or <i>EU regulation</i> .
...	

3.4 General

Clients and the Principles

3.4.1 R ~~Although *Principle 7* refers to *clients*, For business other than *MiFID* or *equivalent third country business*, the only requirement of *Principle 7* relating to *eligible counterparties* is that a *firm* must communicate information to *eligible counterparties* in a way that is not misleading.~~

3.4.1A G *Principle 7* applies in full to *MiFID* or *equivalent third country business*.

...

Reference to “regulators” in Principle 11

3.4.5 R Where *Principle 11* refers to regulators, this means, in addition to the ~~*appropriate regulator*~~ *FCA*, other regulators with recognised jurisdiction in relation to *regulated activities*, whether in the *United Kingdom* or abroad.

4.1 Principles: MiFID business

4.1.1 G *PRIN 3.1.6R* ensures that the *Principles* do not impose obligations upon *firms* which are inconsistent with an *EU* instrument. If a ~~*Principles*~~ *Principle* does purport to impose such an obligation *PRIN 3.1.6R* disapplies that *Principle*

but only to the extent necessary to ensure compliance with European law. This disapplication has practical effect only for certain matters covered by *MiFID*, which are explained in this section.

Where?

- 4.1.2 G Under *PRIN 3.3.1R*, the territorial application of a number of *Principles* to a *UK MiFID investment firm* is extended to the extent that another applicable rule or EU regulation which is relevant to an activity has a wider territorial scope. ...

...

What?

...

- 4.1.5 G ~~Although *Principle 8* does not apply to *eligible counterparty business*, a firm will owe obligations in respect of conflicts of interest set out in *SYSC 10* which are wider than those contained in *Principle 8* in that they apply to *eligible counterparty business*. [deleted]~~

Annex C

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

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

1 Application and purpose

1.1A Application

...

- 1.1A.1A G The application of this sourcebook to *firms* that are not *PRA-authorised persons* is summarised at a high level in the following table. The detailed application is cut back in SYSC 1 Annex 1 and in the text of each chapter.

Type of firm	Applicable chapters
<i>Full-scope UK AIFM</i>	Chapters <u>4</u> to 10, 12, 18, 19B, 21, 22
...	...

...

1 Annex 1 Detailed application of SYSC

...

Part 2	Application of the common platform requirements (SYSC 4 to 10)	
...		
2.6C	R	The <i>common platform requirements</i> apply to an <i>AIFM investment firm</i> which is a <i>full-scope UK AIFM</i> in respect of its <i>MiFID business</i> in line with Column A <u>in Table A</u> of Part 3.
2.6D	R	The <i>common platform requirements</i> apply to a <i>full-scope UK AIFM</i> of an <i>authorised AIF</i> in line with column <u>Column A++</u> in <u>Table A</u> of Part 3.
2.6E	G	The <i>common platform requirements</i> apply to a <i>small authorised UK AIFM</i> in line with Column B <u>in Table A</u> of Part 3 (unless such a <i>firm</i> is also a <i>common platform firm</i> , in which case they must comply with Column A).
...		

2.7A	G	<i>EEA UCITS management companies</i> are also reminded that they must comply with:		
		(1)	the <i>common platform requirements</i> indicated in Column A+ (Application to a management company) in <u>Table A</u> in Part 3 of this Annex;	
			...	
	What?			
2.8	R	...		
<u>2.8A</u>	R	(1)	<u>Subject to (2) and (3), in SYSC 1 Annex 1 2.8R, articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> (including any relevant definitions in <i>MiFID</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>) apply to a firm's business other than <i>MiFID business</i> or <i>structured deposits regulated activities</i> as if they were <i>rules</i> or <i>guidance</i> in accordance with Part 3 (Tables summarising the application of the common platform requirements to different types of firm).</u>	
		(2)	<u>References in Column (1) to a word or phrase used in the <i>MiFID Org Regulation</i> for the purpose of (1) have the meaning indicated in Column (2) of the table below:</u>	
			<u>(1)</u>	<u>(2)</u>
			<u>“ancillary services”</u>	<u><i>ancillary services</i> or <i>ancillary activities</i> associated with the <i>firm's regulated activities</i></u>
			<u>“client” and “potential client”</u>	<u><i>client</i></u>
			<u>“competent authority”</u>	<u><i>FCA</i></u>
			<u>“investment firm” and “firm”</u>	<u><i>firm</i></u>
			<u>“investment service” and “investment services and activities”</u>	<u><i>designated investment business</i></u>
			<u>“portfolio management” and “portfolio management service”</u>	<u><i>managing investments</i></u>

		<p><u>“Directive 2014/65/EU”;</u> <u>“Regulation (EU) No 600/2014”;</u> <u>“Directive 2014/57/EU” and</u> <u>“Regulation (EU) No 596/2014” and their</u> <u>implementing measures</u></p>	<p><u>regulatory system, except</u> <u>where the reference is to a</u> <u>specific provision of a</u> <u>Directive or Regulation in</u> <u>Column (1) in which case the</u> <u>reference must be read as</u> <u>referring to such specific</u> <u>provision</u></p>
		<p><u>“shall”</u></p>	<p><u>must</u></p>
	(3)	<p><u>Any references within the <i>MiFID Org Regulation</i> for the</u> <u>purpose of (1) to other provisions of <i>EU law</i> must be</u> <u>interpreted in light of this rule.</u></p>	
	(4)	<p><u>This rule does not apply to a <i>collective portfolio</i></u> <u>management investment firm in relation to the firm’s</u> <u>business other than its <i>MiFID business</i>.</u></p>	
		<p>[Note: The <i>MiFID Org Regulation</i> can be found at: [to follow].]</p>	
2.8B	G	<p>The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR is that the <u>common platform organisational requirements also apply when carrying on any of the activities listed in SYSC 1 Annex 1 2.8R even where they do not involve investment services and/or activities and, where relevant, ancillary services (unless provided otherwise within a specific rule).</u></p>	
2.8C	G	<p>SYSC 1 Annex 1 2.8AR(3) has the effect that, where the <u>requirement in the <i>MiFID Org Regulation</i> that is a common platform organisational requirement includes a reference or cross reference to another part of the <i>MiFID Org Regulation</i>, that reference or cross reference is given the same meaning as for the purposes of SYSC 1 Annex 1 2.8AR.</u></p>	
2.8D	G	<p>For the purpose of SYSC 1 Annex 1 2.8AR, a <u>firm should apply any guidance published by the FCA that assists with interpreting the definitions in <i>MiFID</i>, <i>MiFIR</i> and the <i>MiFID Org Regulation</i>.</u></p>	
2.9	G	<p>The application of the provisions on the conflicts of interest in SYSC 10 is set out in SYSC 10.1.1R <u>SYSC 10.1.-2G to SYSC 10.1.1AR</u> and SYSC 10.2.1R.</p>	
2.10	R	<p>The provisions on record-keeping in SYSC 9 <u>and articles 21 and 72 of the <i>MiFID Org Regulation</i> apply as set out in SYSC 1 Annex 1.2.8R and SYSC 1 Annex 1.2.8AR, except that they only apply to the carrying on of ancillary activities that are performed in relation to:</u></p>	
		...	

...			
2.14	G		...
<u>2.14A</u>	<u>G</u>	<u>The systems and control requirements in article 17 of MiFID for the following are in chapter 7A of the Market Conduct sourcebook (MAR):</u>	
		(1)	<u>algorithmic trading;</u>
		(2)	<u>direct electronic access to a trading venue; and</u>
		(3)	<u>acting as a general clearing member of a trading venue.</u>
<u>2.14B</u>	<u>G</u>	<u>Firms should refer to articles 38 to 42 of the MiFID Org Regulation for additional organisational requirements for underwriting and placing.</u>	
		Where?	
...			
2.16A	R	(1)	The <i>common platform requirements</i> referred to in Column A+ in Table A of Part 3 (below) apply to a <i>UK UCITS management company</i> in relation to <i>passport activities</i> carried on by it from a <i>branch</i> in another <i>EEA State</i> .
		...	
...			
2.17	R	The <i>common platform record-keeping requirements</i> apply to activities carried on by a <i>firm</i> from an establishment maintained in the <i>United Kingdom</i> , unless another applicable <i>rule</i> which is relevant to the activity has a wider territorial scope, in which case the <i>common platform record-keeping requirements</i> apply with that wider scope in relation to the activity described in that <i>rule</i> .	
		[Note: article 43(9) 16(11) first paragraph of MiFID]	
...			
<u>2.18A</u>	<u>G</u>	<u>SYSC 6.1.1R on systems and controls for countering the risk that a firm might be used to further financial crime is:</u>	
		(1)	<u>a common platform organisational requirement, not a common platform requirement on financial crime; and</u>
		(2)	<u>subject to the application, amongst other provisions, of SYSC 1 Annex 1 2.13R, SYSC 1 Annex 1 2.16R and SYSC 1 Annex 1 2.18R.</u>

...																
Part 3	Tables summarising the application of the common platform requirements to different types of firm															
3.1	G	<p>The <i>common platform requirements</i> apply in the following four ways as described in the following table (subject to the provisions in Part 2 of this Annex (<u>Application of the common platform requirements</u>)).</p> <table border="1"> <thead> <tr> <th><u>Type of firm</u></th> <th><u>Common platform requirements</u></th> </tr> </thead> <tbody> <tr> <td><u>Common platform firm</u></td> <td><u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u></td> </tr> <tr> <td><u>Management company</u></td> <td><u>SYSC 1 Annex 1 3.2AG</u></td> </tr> <tr> <td><u>Full-scope UK AIFM of an authorised AIF</u></td> <td><u>SYSC 1 Annex 1 3.2BR</u></td> </tr> <tr> <td><u>MiFID optional exemption firm</u></td> <td><u>SYSC 1 Annex 1 3.2CR</u></td> </tr> <tr> <td><u>Third country firm</u></td> <td><u>SYSC 1 Annex 1 3.2CR</u></td> </tr> <tr> <td><u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u></td> <td><u>SYSC 1 Annex 1.3.3R</u></td> </tr> </tbody> </table>	<u>Type of firm</u>	<u>Common platform requirements</u>	<u>Common platform firm</u>	<u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u>	<u>Management company</u>	<u>SYSC 1 Annex 1 3.2AG</u>	<u>Full-scope UK AIFM of an authorised AIF</u>	<u>SYSC 1 Annex 1 3.2BR</u>	<u>MiFID optional exemption firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>	<u>Third country firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>	<u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u>	<u>SYSC 1 Annex 1.3.3R</u>
<u>Type of firm</u>	<u>Common platform requirements</u>															
<u>Common platform firm</u>	<u>SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR</u>															
<u>Management company</u>	<u>SYSC 1 Annex 1 3.2AG</u>															
<u>Full-scope UK AIFM of an authorised AIF</u>	<u>SYSC 1 Annex 1 3.2BR</u>															
<u>MiFID optional exemption firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>															
<u>Third country firm</u>	<u>SYSC 1 Annex 1 3.2CR</u>															
<u>All other firms (apart from insurers, managing agents, the Society, full-scope UK AIFMs of unauthorised AIFs, MiFID optional exemption firms and third country firms)</u>	<u>SYSC 1 Annex 1.3.3R</u>															
<u>Common platform firm</u>																
3.2	G	<p>For a <i>common platform firm</i> τ (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i>):</p> <table border="1"> <tbody> <tr> <td>(1)</td> <td><u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and</td> </tr> <tr> <td>(2)</td> <td><u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i>.</td> </tr> </tbody> </table>	(1)	<u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and	(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i> .										
(1)	<u>SYSC 4 to SYSC 10</u> they apply in accordance with Column A in the table <u>Table A</u> below ; and															
(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> are directly applicable to the <i>firm</i> .															
<u>3.2-A</u>	<u>R</u>	<p>For a <i>common platform firm</i> (other than a <i>dormant account fund operator</i> not subject to <i>MiFID</i>), <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation</u> apply to the <i>firm's</i> business other than <i>MiFID business</i> or <i>structured deposits regulated activities</i> as if the <i>MiFID Org Regulation</i> applied to the <i>firm</i> as <u>rules</u> in accordance with <u>SYSC 1 Annex 1 2.8R</u> and <u>SYSC 1 Annex</u></p>														

		<u>1 2.8AR.</u>
<u>3.2-B</u>	<u>R</u>	<u>For a common platform firm that is a dormant account fund operator and is not subject to MiFID:</u>
		(1) <u>SYSC 4 to SYSC 10 apply in accordance with Column A in Table A below; and</u>
		(2) <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR.</u>
<u>Management company</u>		
<u>3.2A</u>	<u>G</u>	<u>For a management company, they the common platform requirements in SYSC 4 to SYSC 10 apply in accordance with Column A+ in the table Table A below.</u>
<u>Full-scope UK AIFM of an authorised AIF</u>		
<u>3.2B</u>	<u>R</u>	<u>For a full-scope UK AIFM of an authorised AIF, they the common platform requirements in SYSC 4 to SYSC 10 apply in line accordance with Column A++ in the table Table A below.</u>
<u>MiFID optional exemption firm and a third country firm</u>		
<u>3.2C</u>	<u>R</u>	<u>For a MiFID optional exemption firm and a third country firm:</u>
		(1) <u>SYSC 4 to SYSC 10 apply as rules or as guidance in accordance with Table B below in the following way:</u>
		(a) <u>where a rule is shown modified as 'Guidance', it should be read as guidance (as if "should" appeared in that rule instead of "must"); and</u>
		(b) <u>the provision should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's business; and</u>
(2) <u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation apply as if the MiFID Org Regulation applied to the firm as rules (in accordance with SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR) or as guidance in accordance with Part 1 of Table C below. Part 2 of Table C sets out those articles of the MiFID Org Regulation.</u>		
<u>3.2D</u>	<u>R</u>	(1) <u>Subject to (2), SYSC 4.3A.6R, SYSC 4.3A.8R and SYSC 7.1.18R apply to a MiFID optional exemption firm that is 'significant' as a rule or as guidance in accordance with SYSC 1 Annex 1 3.2CR.</u>

		(2)	In (1), 'significant' means a <i>MiFID optional exemption firm</i> that meets one of more of the conditions in paragraphs (1) to (5) of <i>IFPRU 1.2.3R</i> and related <i>rules</i> and <i>guidance</i> .
<u>Other firms</u>			
3.3E	R	<i>SYSC 1 Annex 1 3.3R</i> does not apply to the following:	
		(1)	<i>insurers</i> ;
		(2)	<i>managing agents</i> ;
		(3)	<i>the Society</i> ;
		(4)	<i>full-scope UK AIFMs of unauthorised AIFs</i> ;
		(5)	<i>MiFID optional exemption firms</i> ; and
		(6)	<i>third country firms</i> .
3.3	G R	For all other <i>firms</i> apart from <i>insurers, managing agents, the Society and full scope UK AIFMs of unauthorised AIFs</i> , they :	
		(1)	<i>SYSC 4 to SYSC 10</i> apply as <i>rules</i> or as <i>guidance</i> in accordance with Column B in the table <u>Table A</u> below in the following way:
		(a)	For these <i>firms</i> , where a <i>rule</i> is shown modified in Column B as 'Guidance', it should be read as <i>guidance</i> (as if "should" appeared in that rule <i>rule</i> instead of "must") ; and
		(b)	<u>the provision</u> should be applied in a proportionate manner, taking into account the nature, scale and complexity of the firm's <i>firm's</i> business; and
(2)	articles 1(2), 21 to 25, 30 to 32 and 72 of the <i>MiFID Org Regulation</i> do not apply.		
3.3A	R	<i>SYSC 1 Annex 1 3.3R(1)(b)</i> does not apply to a <i>firm</i> in relation to <u>the requirements in SYSC 4.5 (Management responsibilities maps for UK relevant authorised persons), SYSC 4.6 (Management responsibilities maps for non-UK relevant authorised persons), SYSC 4.7 (Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities), SYSC 4.8 (Senior management responsibilities for third country relevant authorised persons: allocation of responsibilities), SYSC 4.9 (Handover procedures and material) and SYSC 5.2 (Certification regime)</u> .	

[Editor's note: The rows in Table A below relating to SYSC 10.1.4R, SYSC 10.1.6R, SYSC 10.1.10R and SYSC 10.1.11R are provisional, as they depend on possible changes to COBS 12 consulted on in CP16/29. The final content of these rows will be confirmed at the time of making the final rules.]

Table A: Application of the common platform requirements in SYSC 4 to SYSC 10

Provision SYSC 4	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents the Society, and full-scope UK AIFMs of unauthorised AIFs, MiFID <u>optional exemption firms and third country firms</u>
<u>SYSC 4.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 4.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 4.1.1CR	Rule for a <i>BIPRU firm</i>	Rule for a <i>BIPRU firm</i> that is a <i>UCITS investment firm</i>	Not applicable	<u>Third country BIPRU firms: Rule</u> <u>Other firms: Not applicable</u>
...				
SYSC 4.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	(1) and (3) ; Guidance ; (2) ; Rule

...				
SYSC 4.1.5R	Rule applies only to a <i>MiFID investment firm</i> <u>Not applicable</u>	Rule	Not applicable	Not applicable
...				
SYSC 4.1.7R	Rule for a <u><i>CRR firm</i></u> only	Rule	Not applicable	Guidance
...				
SYSC 4.1.9R	Rule <u>Not applicable</u>	Rule	Not applicable	Not applicable
SYSC 4.1.10R	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance - except reference to SYSC 4.1.9R which does not apply to these <i>firms</i>
...				
SYSC 4.2.1R	Rule	Rule	Rule	UK branch of non-EEA bank rule applies. Other firms Guidance
...				
SYSC 4.2.2R	Rule	Rule	Rule	UK branch of a non-EEA bank Rule applies Other firms this provision does not apply <u>Not applicable</u>
SYSC 4.2.3G - 4.2.5G	Guidance	Guidance	Guidance	UK branch of a non-EEA bank

				Guidance Other firms these provisions do not apply <u>Not applicable</u>
SYSC 4.2.6R	Rule	Rule for a <i>UCITS investment firm</i> ; otherwise not applicable	Not applicable	UK branch of a non-EEA bank Rule applies Other firms this provision does not apply <u>Not applicable</u>
...				
SYSC 4.3.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
SYSC 4.3.2R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
...				
SYSC 4.3A.-1R	Rule applicable to CRR firms	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
SYSC 4.3A.1R	Rule applicable to CRR firms	Rule for a <i>CRR firm</i> that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
<u>SYSC</u>	<u>Rule</u>	<u>Rule for a CRR</u>	<u>Not</u>	<u>Not applicable</u>

<u>4.3A.1AR</u>		<i>firm that is a UCITS investment firm</i>	<u>applicable</u>	
SYSC 4.3A.2R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
<u>SYSC 4.3A.2AG</u>	<u>Guidance</u>	<u>Guidance for a CRR firm that is a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 4.3A.3R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.4R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.5R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.6R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.7R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.8R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.9R	Rule applicable to CRR firms	Rule for a CRR firm that is a UCITS investment firm	Not applicable	Not applicable
SYSC 4.3A.10R	Rule applicable to CRR firms	Rule for a CRR firm that is a	Not applicable	Not applicable

		<i>UCITS investment firm</i>		
...				
SYSC 4.5	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.6	Applies to <i>EEA relevant authorised persons</i> and <i>third country relevant authorised persons</i> in accordance with the <i>rules</i> in SYSC 4.6	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.7	Whole section applies to <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>
SYSC 4.8	Applies to <i>third country relevant authorised persons</i> only	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only. All rules apply as rules and not as guidance.</u>

SYSC 4.9	Whole section applies to <i>third country relevant authorised persons</i> and <i>UK relevant authorised persons</i> only	Not applicable	Not applicable	<u>Not applicable</u> Whole section applies to <u>relevant authorised persons</u> only. <u>All rules apply as rules</u> and <u>not as guidance</u> .
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Provision SYSC 5	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms</u> and <u>third country firms</u>
<u>SYSC 5.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 5.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 5.1.1R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule
...				
SYSC 5.1.6R	<u>Rule Not applicable</u>	Rule	Guidance	Guidance

...				
SYSC 5.1.12R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 5.1.13R	<u>Rule Not applicable</u>	Rule	Not applicable	Rule
SYSC 5.1.14R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				

Provision SYSC 6	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 6.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a UCITS investment firm and its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 6.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

SYSC 6.1.2R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance
...				
SYSC 6.1.3R	<u>Rule Not applicable</u>	Rule	Not applicable	- Guidance This provision shall be read with the following additional sentence at the start. "Depending on the nature, scale and complexity of its business, it may be appropriate for a <i>firm</i> to have a separate compliance function. Where a <i>firm</i> has a separate compliance function, the <i>firm</i> should also take into account <u>SYSC</u> 6.1.3R and <u>SYSC</u> 6.1.4R as guidance."
...				
SYSC 6.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	(1) , (3) and (4) ; Guidance ; (2) ; - Rule for <i>firms</i> which carry on <i>designated investment business</i> with or for <i>retail clients</i> or <i>professional clients</i> .

				- Guidance for all other <i>firms</i> .
SYSC 6.1.4-AG	Not applicable <u>Guidance</u>	Not applicable	Rule	Guidance
...				
<u>SYSC 6.1.4-CG</u>	<u>Guidance applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 6.1.5R	<u>Not applicable</u>	Rule	Not applicable	- Guidance - " <i>investment services and/or activities</i> " shall be read as " <i>financial services and activities</i> "
...				
SYSC 6.2.1R	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance
...				
<u>SYSC 6.2.1BG</u>	<u>Guidance applies to relevant authorised persons only</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				

Provision SYSC 7	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised	COLUMN B Application to all other firms apart from insurers, managing agents, the
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			AIF	Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 7.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 7.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 7.1.2R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its <u>non-MiFID business</u></i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.3R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its <u>non-MiFID business</u></i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.4AG	<u>Not applicable Guidance</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance

...				
SYSC 7.1.5R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.6R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 7.1.7R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.8G	Guidance	Guidance	Guidance	Guidance
...				
SYSC 7.1.16AG	Guidance applies to a BIPRU firm	Guidance for a UCITS investment firm otherwise not applicable	Not applicable	Not applicable
SYSC 7.1.16BG	Guidance applies to a BIPRU firm	Guidance for a UCITS investment firm otherwise not applicable	Not applicable	Not applicable

...				
<i>SYSC</i> <u>7.1.18AG</u> <u>7.1.18AA</u> <u>G</u>	<u>Guide</u> <u>Guidance</u> applies to a <i>CRR</i> <i>firm</i>	Guidance for a <i>UCITS</i> <i>investment firm</i> that is a <i>CRR</i> <i>firm</i> , otherwise not applicable	Not applicable	Not applicable
...				
<i>SYSC</i> <u>7.1.23G</u>	<u>Guidance</u> applies to <i>UK</i> <i>relevant</i> <i>authorised</i> <i>persons</i> and <i>third country</i> <i>relevant</i> <i>authorised</i> <i>persons</i> only	<u>Not applicable</u>	<u>Not</u> <u>applicable</u>	<u>Not applicable</u>

Provision SYSC 8	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID</u> <u>optional</u> <u>exemption firms</u> and <u>third</u> <u>country firms</u>
<i>SYSC</i> <u>8.1.-2G</u>	<u>Guidance</u>	<u>Not</u> <u>applicable</u> save in relation to a <i>UCITS</i> <i>investment</i> <i>firm</i> and its <i>MiFID</i> <i>business</i>	<u>Not applicable</u>	<u>Not applicable</u>

<u>SYSC</u> <u>8.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 8.1.4R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.1.6R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Rule
<u>SYSC</u> <u>8.1.6AG</u>	<u>Guidance for a UCITS investment firm in relation to its MiFID business</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 8.1.7R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm in relation to its non-MiFID business</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.8R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment</i>	Not applicable	Guidance

		<i>firm in relation to its non-MiFID business; otherwise guidance</i>		
SYSC 8.1.9R	Rule Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	Rule Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11R	Rule Not applicable	Rule for a UCITS investment firm in relation to its non-MiFID business; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.2	MiFID investment firms only [deleted]	UCITS investment firms only [deleted]	Not applicable [deleted]	Not applicable [deleted]
SYSC 8.3	MiFID investment firms only [deleted]	UCITS investment firms only [deleted]	Not applicable [deleted]	Not applicable [deleted]

Provision SYSC 9	COLUMN A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 9.1.-2G</u>	<u>Guidance</u>	<u>Not applicable save in relation to a <i>UCITS investment firm</i> and its <i>MiFID business</i></u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC 9.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
SYSC 9.1.1R	<u>Rule Not applicable</u>	Rule	Rule but only for the requirement to arrange for orderly records to be kept of its business and internal organisation which do not relate to portfolio transactions and subscription and redemptions orders	Rule
<u>SYSC 9.1.1AR</u>	<u>Rule</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>

SYSC 9.1.2R	Rule applies only in relation to <i>MiFID business</i>	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i>	Rule but only for records specified by the modified application of SYSC 9.1.1R	Not applicable
SYSC 9.1.3R	Rule applies only in relation to <i>MiFID business</i> [deleted]	Rule applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]
...				
SYSC 9.1.7G	Guidance applies only in relation to <i>MiFID business</i> [deleted]	Guidance applies only in relation to <i>MiFID business</i> of a <i>UCITS investment firm</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]

Provision SYSC 10	Column A Application to a common platform firm other than to a UCITS investment firm	COLUMN A+ Application to a UCITS management company	COLUMN A++ Application to a full-scope UK AIFM of an authorised AIF	COLUMN B Application to all other firms apart from insurers, managing agents, the Society, and full-scope UK AIFMs of unauthorised AIFs, <u>MiFID optional exemption firms and third country firms</u>
<u>SYSC 10.1.-2G</u>	<u>Guidance</u>	<u>Guidance in relation to relation to a</u>	<u>Not applicable</u>	<u>Not applicable</u>

		<u>UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>		
<u>SYSC 10.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 10.1.4R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3
...				
SYSC 10.1.6R	<u>Rule Not applicable</u>	Rule	Not applicable	Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3

SYSC 10.1.6AG	Not applicable	Not applicable	Not applicable <u>Guidance</u>	Guidance
<u>SYSC</u> <u>10.1.6BG</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
SYSC 10.1.8R	Rule <u>Not applicable</u>	Rule	Not applicable	Rule
SYSC 10.1.8AR	Rule <u>Not applicable</u>	Rule	Not applicable	Rule
SYSC 10.1.9G	Guidance <u>Not applicable</u>	Guidance	Not applicable	Guidance
<u>SYSC</u> <u>10.1.9AR</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Rule</u>
SYSC 10.1.10R	Rule <u>Not applicable</u>	Rule	Not applicable	[Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or dissemination of non-independent research in accordance with <i>COBS</i> 12.3]
SYSC 10.1.11R	Rule <u>Not applicable</u>	Rule	Not applicable	[Guidance – but applies as a rule in relation to the production or arrangement of investment research in accordance with <i>COBS</i> 12.2, or the production or

				dissemination of non-independent research in accordance with COBS 12.3]
SYSC 10.1.11A G	Not applicable	Not applicable	Not applicable <u>Guidance</u>	Guidance
<u>SYSC 10.1.11B G</u>	<u>Not applicable</u>	<u>Guidance</u>	<u>Guidance</u>	<u>Guidance</u>
...				
SYSC 10.1.12G - 10.1.15G	Guidance <u>Not applicable</u>	Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G – SYSC 10.1.15G	Guidance for SYSC 10.1.12G; not applicable for SYSC 10.1.13G to SYSC 10.1.15G	Guidance
<u>SYSC 10.1.13-10.1.15G</u>	[deleted]	[deleted]	[deleted]	[deleted]
...				

Insert the following new Tables B and C after Table A. All the text is new and is not underlined.

Table B: Application of the common platform requirements in SYSC 4 to 10 to MiFID optional exemption firms and third country firms

Provision	COLUMN A MiFID optional exemption firms	COLUMN B Third country firms
SYSC 4		
SYSC 4.1.-2G	Not applicable	Not applicable

<i>SYSC 4.1.-1G</i>	Guidance	Guidance
<i>SYSC 4.1.1R</i>	Rule	Rule
<i>SYSC 4.1.1AR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1BR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1CR</i>	Not applicable	Rule
<i>SYSC 4.1.1DR</i>	Not applicable	Not applicable
<i>SYSC 4.1.1ER</i>	Not applicable	Not applicable
<i>SYSC 4.1.1FG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2R</i>	Rule	Guidance
<i>SYSC 4.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.2AAR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2BR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2CR</i>	Not applicable	Not applicable
<i>SYSC 4.1.2DR</i>	Not applicable	Not applicable
<i>SYSC 4.1.4R</i>	Not applicable	Not applicable
<i>SYSC 4.1.4AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.5R</i>	Not applicable	Not applicable
<i>SYSC 4.1.6R</i>	Rule	Guidance
<i>SYSC 4.1.7R</i>	Rule	Guidance
<i>SYSC 4.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.8G</i>	Guidance	Guidance
<i>SYSC 4.1.9R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10R</i>	Not applicable	Not applicable
<i>SYSC 4.1.10AG</i>	Not applicable	Not applicable
<i>SYSC 4.1.11G</i>	Guidance	Guidance
<i>SYSC 4.1.13G</i>	Guidance	Guidance

<i>SYSC 4.1.14G</i>	Guidance	Guidance
<i>SYSC 4.2.1R</i>	Rule	Rule
<i>SYSC 4.2.1AG</i>	Not applicable	Not applicable
<i>SYSC 4.2.2R</i>	Rule	Rule
<i>SYSC 4.2.3G - 4.2.5G</i>	Guidance	Guidance
<i>SYSC 4.2.6R</i>	Rule	Rule
<i>SYSC 4.2.7R</i>	Not applicable	Not applicable
<i>SYSC 4.2.8G</i>	Not applicable	Not applicable
<i>SYSC 4.3.1R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2R</i>	Not applicable	Not applicable
<i>SYSC 4.3.2AG</i>	Not applicable	Not applicable
<i>SYSC 4.3.3G</i>	Guidance	Guidance
<i>SYSC 4.3A.-1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1R</i>	Rule	Not applicable
<i>SYSC 4.3A.1AR</i>	Rule	Not applicable
<i>SYSC 4.3A.2R</i>	Rule	Not applicable
<i>SYSC 4.3A.2AG</i>	Guidance	Not applicable
<i>SYSC 4.3A.3R</i>	Rule	Not applicable
<i>SYSC 4.3A.4R</i>	Rule	Not applicable
<i>SYSC 4.3A.5R</i>	Rule	Not applicable
<i>SYSC 4.3A.6R</i>	Rule	Not applicable
<i>SYSC 4.3A.7R</i>	Rule	Not applicable
<i>SYSC 4.3A.8R</i>	Rule	Not applicable
<i>SYSC 4.3A.9R</i>	Rule	Not applicable
<i>SYSC 4.3A.10R</i>	Rule	Not applicable
<i>SYSC 4.3A.11R</i>	Not applicable	Not applicable

SYSC 4.4.1AR	Not applicable	Not applicable
SYSC 4.4.2G	Not applicable	Not applicable
SYSC 4.4.3R	Not applicable	Not applicable
SYSC 4.4.5R	Not applicable	Not applicable
SYSC 4.4.6G	Not applicable	Not applicable
SYSC 4.5	Not applicable	Not applicable
SYSC 4.6	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.6</i>
SYSC 4.7	Not applicable	Not applicable
SYSC 4.8	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.8</i>
SYSC 4.9	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 4.9</i>
SYSC 5		
SYSC 5.1.-2G	Not applicable	Not applicable
SYSC 5.1.-1G	Guidance	Guidance
SYSC 5.1.1R	Not applicable	Not applicable
SYSC 5.1.2G	Guidance	Guidance
SYSC 5.1.3G	Guidance	Guidance
SYSC 5.1.4G	Guidance	Guidance
SYSC 5.1.4AG	Guidance	Guidance
SYSC 5.1.5G	Guidance	Guidance
SYSC 5.1.5AG	Guidance	Guidance
SYSC 5.1.6R	Not applicable	Not applicable

SYSC 5.1.7R	Rule	Rule
SYSC 5.1.7AG	Not applicable	Not applicable
SYSC 5.1.8G	Guidance	Guidance
SYSC 5.1.9G	Guidance	Guidance
SYSC 5.1.10G	Guidance	Guidance
SYSC 5.1.11G	Guidance	Guidance
SYSC 5.1.12R	Not applicable	Not applicable
SYSC 5.1.12AG	Not applicable	Not applicable
SYSC 5.1.13R	Not applicable	Not applicable
SYSC 5.1.14R	Not applicable	Not applicable
SYSC 5.1.15G	Not applicable	Not applicable
SYSC 5.2	Not applicable	<i>Third country relevant authorised person: each provision applies as rule or guidance as shown in SYSC 5.2</i>
SYSC 6		
SYSC 6.1.-2G	Not applicable	Not applicable
SYSC 6.1.-1G	Guidance	Guidance
SYSC 6.1.1R	Rule	Rule
SYSC 6.1.1AG	Guidance	Guidance
SYSC 6.1.2R	Not applicable	Not applicable
SYSC 6.1.2AG	Not applicable	Not applicable
SYSC 6.1.3R	Not applicable	Not applicable
SYSC 6.1.3AG	Not applicable	Not applicable
SYSC 6.1.4R	Not applicable	Not applicable
SYSC 6.1.4-AG	Guidance	Guidance
SYSC 6.1.4AR	Not applicable	Not applicable

SYSC 6.1.4-BG	Not applicable	Not applicable
SYSC 6.1.4CR	Not applicable	Not applicable
SYSC 6.1.4-CG	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 6.1.5R	Not applicable	Not applicable
SYSC 6.1.6G	Not applicable	Not applicable
SYSC 6.1.7R	Not applicable	Not applicable
SYSC 6.2.1R	Not applicable	Not applicable
SYSC 6.2.1AG	Not applicable	Not applicable
SYSC 6.2.1BG	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 6.2.2G	Guidance	Guidance
SYSC 6.3.1R	Rule	Rule
SYSC 6.3.2G	Guidance	Guidance
SYSC 6.3.3R	Rule	Rule
SYSC 6.3.4G	Guidance	Guidance
SYSC 6.3.5G	Guidance	Guidance
SYSC 6.3.6G	Guidance	Guidance
SYSC 6.3.7G	Guidance	Guidance
SYSC 6.3.8R	Rule	Rule
SYSC 6.3.9R	Rule	Rule
SYSC 6.3.10G	Guidance	Guidance
SYSC 6.3.11G	Guidance	Guidance
SYSC 7		
SYSC 7.1.-2G	Not applicable	Not applicable
SYSC 7.1.-1G	Guidance	Guidance
SYSC 7.1.1G	Guidance	Guidance

<i>SYSC 7.1.2R</i>	Not applicable	Not applicable
<i>SYSC 7.1.2AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.2BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.3R</i>	Not applicable	Not applicable
<i>SYSC 7.1.4R</i>	Rule	Guidance
<i>SYSC 7.1.4AG</i>	Guidance	Guidance
<i>SYSC 7.1.4BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.5R</i>	Not applicable	Not applicable
<i>SYSC 7.1.6R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7R</i>	Not applicable	Not applicable
<i>SYSC 7.1.7AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BAG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7BBG</i>	Not applicable	Not applicable
<i>SYSC 7.1.7CG</i>	Guidance	Guidance
<i>SYSC 7.1.8G</i>	Guidance	Guidance
<i>SYSC 7.1.9R</i>	Not applicable	Not applicable
<i>SYSC 7.1.10R</i>	Not applicable	Not applicable
<i>SYSC 7.1.11R</i>	Not applicable	Not applicable
<i>SYSC 7.1.12G</i>	Not applicable	Not applicable
<i>SYSC 7.1.13R - 7.1.16R</i>	Not applicable	Not applicable
<i>SYSC 7.1.16AG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16BG</i>	Not applicable	Not applicable
<i>SYSC 7.1.16CR</i>	Not applicable	Not applicable
<i>SYSC 7.1.17R</i>	Guidance	Not applicable

SYSC 7.1.18R	Guidance	Not applicable
SYSC 7.1.18AAG	Guidance	Not applicable
SYSC 7.1.18BR	Guidance	Not applicable
SYSC 7.1.19R	Guidance	Not applicable
SYSC 7.1.20R	Guidance	Not applicable
SYSC 7.1.21R	Guidance	Not applicable
SYSC 7.1.22R	Guidance	Not applicable
SYSC 7.1.23G	Not applicable	Guidance for a <i>third country relevant authorised person</i>
SYSC 8		
SYSC 8.1.-2G	Not applicable	Not applicable
SYSC 8.1.-1G	Guidance	Guidance
SYSC 8.1.1R	Rule	Guidance
SYSC 8.1.1AG	Not applicable	Not applicable
SYSC 8.1.2G	Guidance	Guidance
SYSC 8.1.3G	Guidance	Guidance
SYSC 8.1.4R	Not applicable	Not applicable
SYSC 8.1.5R	Not applicable	Not applicable
SYSC 8.1.5AG	Not applicable	Not applicable
SYSC 8.1.6R	Not applicable	Not applicable
SYSC 8.1.6AG	Not applicable	Not applicable
SYSC 8.1.7R	Not applicable	Not applicable
SYSC 8.1.8R	Not applicable	Not applicable
SYSC 8.1.9R	Not applicable	Not applicable
SYSC 8.1.10R	Not applicable	Not applicable
SYSC 8.1.11R	Not applicable	Not applicable

<i>SYSC 8.1.11AG</i>	Not applicable	Not applicable
<i>SYSC 8.1.12G</i>	Not applicable	Not applicable
<i>SYSC 8.1.13R</i>	Not applicable	Not applicable
<i>SYSC 8.1.14G</i>	Not applicable	Not applicable
SYSC 9		
<i>SYSC 9.1.-2G</i>	Not applicable	Not applicable
<i>SYSC 9.1.-1G</i>	Guidance	Guidance
<i>SYSC 9.1.1R</i>	Not applicable	Not applicable
<i>SYSC 9.1.1AR</i>	Rule	Rule
<i>SYSC 9.1.2R</i>	Rule	Not applicable
<i>SYSC 9.1.4G</i>	Guidance	Guidance
<i>SYSC 9.1.5G</i>	Guidance	Guidance
<i>SYSC 9.1.6G</i>	Guidance	Guidance
SYSC 10		
<i>SYSC 10.1.-2G</i>	Not applicable	Not applicable
<i>SYSC 10.1.-1G</i>	Guidance	Guidance
<i>SYSC 10.1.1R</i>	Rule	Rule
<i>SYSC 10.1.1AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.2G</i>	Guidance	Guidance
<i>SYSC 10.1.3R</i>	Rule	Rule
<i>SYSC 10.1.4R</i>	Rule	Guidance
<i>SYSC 10.1.4AG</i>	Not applicable	Guidance
<i>SYSC 10.1.5G</i>	Guidance	Guidance
<i>SYSC 10.1.6R</i>	Rule	Guidance
<i>SYSC 10.1.6AG</i>	Not applicable	Guidance
<i>SYSC 10.1.6BG</i>	Not applicable	Guidance

<i>SYSC 10.1.7R</i>	Rule	Rule
<i>SYSC 10.1.8R</i>	Rule	Rule
<i>SYSC 10.1.8AR</i>	Rule	Rule
<i>SYSC 10.1.9G</i>	Guidance	Guidance
<i>SYSC 10.1.9AR</i>	Not applicable	Not applicable
<i>SYSC 10.1.10R</i>	Rule	Guidance
<i>SYSC 10.1.11R</i>	Rule	Guidance
<i>SYSC 10.1.11AG</i>	Not applicable	Guidance
<i>SYSC 10.1.11BG</i>	Not applicable	Guidance
<i>SYSC 10.1.12G</i>	Guidance	Guidance
<i>SYSC 10.1.16R</i>	Not applicable	Not applicable
<i>SYSC 10.1.17R</i>	Not applicable	Not applicable
<i>SYSC 10.1.18G</i>	Not applicable	Not applicable
<i>SYSC 10.1.19R</i>	Not applicable	Not applicable
<i>SYSC 10.1.20R</i>	Not applicable	Not applicable
<i>SYSC 10.1.21R</i>	Not applicable	Not applicable
<i>SYSC 10.1.22R</i>	Not applicable	Not applicable
<i>SYSC 10.1.23R</i>	Not applicable	Not applicable
<i>SYSC 10.1.24R</i>	Not applicable	Not applicable
<i>SYSC 10.1.25R</i>	Not applicable	Not applicable
<i>SYSC 10.1.26R</i>	Not applicable	Not applicable
<i>SYSC 10.1.27G</i>	Not applicable	Not applicable
<i>SYSC 10.2.1R</i>	Rule	Rule
<i>SYSC 10.2.2R</i>	Rule	Rule
<i>SYSC 10.2.3G</i>	Guidance	Guidance
<i>SYSC 10.2.4R</i>	Rule	Rule

SYSC 10.2.5G	Guidance	Guidance
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Table C:

Part 1: Application of the requirements in articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation to MiFID optional exemption firms and third country firms

Provision MiFID Org Regulation		Text of the MiFID Org Regulation as of:	MiFID optional exemption firm	Third country firm
Article 1 – Subject-matter and scope	(2)	[xx/xx/2016]	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)		Rule	(a), (b) and (g): Guidance; (c), (d), (e), (f) and final paragraph: Rule
	(2)		Rule	Rule
	(3)		Rule	Guidance
	(4)		Rule	Guidance
	(5)		Rule	Guidance
Article 22 – Compliance	(1)		Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management			Guidance	Guidance
Article 24 – Internal audit			Guidance	Guidance
Article 25 – Responsibility of senior management			Guidance	(1): Rule; (2), (3) and (4): Guidance
Article 30 – Scope of critical			Guidance	Guidance

and important operational functions			
Article 31 – Outsourcing critical or important operational functions		(1): Rule; (2), (3), (4) and (5): Guidance	(1): Rule; (2), (3), (4) and (5): Guidance
Article 32(1) and (2) – Service providers located in third countries		Rule	Guidance
Article 72 – Retention of records		Rule	Guidance

Part 2: Articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation

EU	Article 1 - Subject-matter and scope		
	2	References to investment firms shall encompass credit institutions and references to financial instruments shall encompass structured deposits in relation to all the requirements referred to in Article 1(3) and 1(4) of Directive 2014/65/EU and their implementing provisions as set out under this Regulation.	
EU	Article 21 - General organisational requirements		
	1	Investment firms shall comply with the following organisational requirements:	
	(a)	establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;	
	(b)	ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;	
	(c)	establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;	
	(d)	employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;	
	(e)	establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;	
	(f)	maintain adequate and orderly records of their business and internal organisation;	
	(g)	ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from	

		discharging any particular function soundly, honestly, and professionally.
		When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
	2	Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.
	3	Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.
	4	Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
	5	Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.
EU	Article 22 - Compliance	
	1	Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under Directive 2014/65/EU, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive. Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.
	2	Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
	(a)	to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1,

			and the actions taken to address any deficiencies in the firm's compliance with its obligations;
		(b)	to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's obligations under Directive 2014/65/EU;
		(c)	to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;
		(d)	to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.
			In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.
	3		In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, investment firms shall ensure that the following conditions are satisfied:
		(a)	the compliance function has the necessary authority, resources, expertise and access to all relevant information;
		(b)	a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required by Directive 2014/65/EU and Article 25(2) of this Regulation;
		(c)	the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its obligations under Directive 2014/65/EU;
		(d)	the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;
		(e)	the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.
	4		An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature,

		scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.	
EU	Article 23 - Risk management		
	1	Investment firms shall take the following actions relating to risk management:	
		(a)	establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;
		(b)	adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;
		(c)	monitor the following:
		(i)	the adequacy and effectiveness of the investment firm's risk management policies and procedures;
		(ii)	the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);
		(iii)	the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.
	2	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:	
		(a)	implementation of the policy and procedures referred to in paragraph 1;
		(b)	provision of reports and advice to senior management in accordance with Article 25(2).
		Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it is has adopted in accordance with paragraph 1 satisfy the requirements therein.	

EU	Article 24 - Internal audit	
	Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:	
	(a)	establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;
	(b)	issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;
	(c)	report in relation to internal audit matters in accordance with Article 25(2).
EU	Article 25 - Responsibility of senior management	
	1	Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under Directive 2014/65/EU. In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2014/65/EU and to take appropriate measures to address any deficiencies. The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.
	2	Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.
	3	Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.
	4	For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.
EU	Article 30 - Scope of critical and important operational functions	

	1	For the purposes of the first subparagraph of Article 16(5) of Directive 2014/65/EU, an operational function shall be regarded as critical or important where a defect or failure in its performance would materially impair the continuing compliance of an investment firm with the conditions and obligations of its authorisation or its other obligations under Directive 2014/65/EU, or its financial performance, or the soundness or the continuity of its investment services and activities.
	2	Without prejudice to the status of any other function, the following functions shall not be considered as critical or important for the purposes of paragraph 1:
	(a)	the provision to the firm of advisory services, and other services which do not form part of the investment business of the firm, including the provision of legal advice to the firm, the training of personnel of the firm, billing services and the security of the firm's premises and personnel;
	(b)	the purchase of standardised services, including market information services and the provision of price feeds.
EU	Article 31 - Outsourcing critical or important operational functions	
	1	Investment firms outsourcing critical or important operational functions shall remain fully responsible for discharging all of their obligations under Directive 2014/65/EU and shall comply with the following conditions:
	(a)	the outsourcing does not result in the delegation by senior management of its responsibility;
	(b)	the relationship and obligations of the investment firm towards its clients under the terms of Directive 2014/65/EU is not altered;
	(c)	the conditions with which the investment firm must comply in order to be authorised in accordance with Article 5 of Directive 2014/65/EU, and to remain so, are not undermined;
	(d)	none of the other conditions subject to which the firm's authorisation was granted is removed or modified.
	2	Investment firms shall exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions and shall take the necessary steps to ensure that the following conditions are satisfied:
	(a)	the service provider has the ability, capacity, sufficient resources, appropriate organisational structure supporting the performance of the outsourced functions, and any authorisation required by law to perform the outsourced functions, reliably and professionally;

		(b)	the service provider carries out the outsourced services effectively and in compliance with applicable law and regulatory requirements, and to this end the firm has established methods and procedures for assessing the standard of performance of the service provider and for reviewing on an ongoing basis the services provided by the service provider;
		(c)	the service provider properly supervises the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;
		(d)	appropriate action is taken where it appears that the service provider may not be carrying out the functions effectively or in compliance with applicable laws and regulatory requirements;
		(e)	the investment firm effectively supervises the outsourced functions or services and manage the risks associated with the outsourcing and to this end the firm retains the necessary expertise and resources to supervise the outsourced functions effectively and manage those risks;
		(f)	the service provider has disclosed to the investment firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;
		(g)	the investment firm is able to terminate the arrangement for outsourcing where necessary, with immediate effect when this is in the interests of its clients, without detriment to the continuity and quality of its provision of services to clients;
		(h)	the service provider cooperates with the competent authorities of the investment firm in connection with the outsourced functions;
		(i)	the investment firm, its auditors and the relevant competent authorities have effective access to data related to the outsourced functions, as well as to the relevant business premises of the service provider, where necessary for the purpose of effective oversight in accordance with this article, and the competent authorities are able to exercise those rights of access;
		(j)	the service provider protects any confidential information relating to the investment firm and its clients;
		(k)	the investment firm and the service provider have established, implemented and maintained a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced;
		(l)	the investment firm has ensured that the continuity and quality of the outsourced functions or services are maintained also in the event of termination of the outsourcing either by transferring the outsourced

		functions or services to another third party or by performing them itself.
	3	The respective rights and obligations of the investment firms and of the service provider shall be clearly allocated and set out in a written agreement. In particular, the investment firm shall keep its instruction and termination rights, its rights of information, and its right to inspections and access to books and premises. The agreement shall ensure that outsourcing by the service provider only takes place with the consent, in writing, of the investment firm.
	4	Where the investment firm and the service provider are members of the same group, the investment firm may, for the purposes of complying with this Article and Article 32, take into account the extent to which the firm controls the service provider or has the ability to influence its actions.
	5	Investment firms shall make available on request to the competent authority all information necessary to enable the authority to supervise the compliance of the performance of the outsourced functions with the requirements of Directive 2014/65/EU and its implementing measures.
EU	Article 32 - Service providers located in third countries	
	1	In addition to the requirements set out in Article 31, where an investment firm outsources functions related to the investment service of portfolio management provided to clients to a service provider located in a third country, that investment firm ensures that the following conditions are satisfied:
	(a)	the service provider is authorised or registered in its home country to provide that service and is effectively supervised by a competent authority in that third country;
	(b)	there is an appropriate cooperation agreement between the competent authority of the investment firm and the supervisory authority of the service provider.
	2	The cooperation agreement referred to in point (b) of paragraph 1 shall ensure that the competent authorities of the investment firm are able, at least, to:
	(a)	obtain on request the information necessary to carry out their supervisory tasks pursuant to Directive 2014/65/EU and Regulation (EU) No 600/2014;
	(b)	obtain access to the documents relevant for the performance of their supervisory duties maintained in the third country;
	(c)	receive information from the supervisory authority in the third country as soon as possible for the purpose of investigating apparent breaches of the requirements of Directive 2014/65/EU and its implementing measures and Regulation (EU) No 600/2014;

		(d)	cooperate with regard to enforcement, in accordance with the national and international law applicable to the supervisory authority of the third country and the competent authorities in the Union in cases of breach of the requirements of Directive 2014/65/EU and its implementing measures and relevant national law.
	3		<p>Competent authorities shall publish on their website a list of the supervisory authorities in third countries with which they have a cooperation agreement referred to in point (b) of paragraph 1.</p> <p>Competent authorities shall update cooperation agreements concluded before the date of entry into application of this Regulation within six months from that date.</p>
EU	Article 72 - Retention of records		
	1		The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:
		(a)	the competent authority is able to access them readily and to reconstitute each key stage of the processing of each transaction;
		(b)	it is possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
		(c)	it is not possible for the records otherwise to be manipulated or altered;
		(d)	it allows IT or any other efficient exploitation when the analysis of the data cannot be easily carried out due to the volume and the nature of the data; and
		(e)	the firm's arrangements comply with the record keeping requirements irrespective of the technology used.
	2		<p>Investment firms shall keep at least the records identified in Annex I to this Regulation depending upon the nature of their activities.</p> <p>The list of records identified in Annex I to this Regulation is without prejudice to any other record-keeping obligations arising from other legislation.</p>
	3		<p>Investment firms shall also keep records of any policies and procedures they are required to maintain pursuant to Directive 2014/65/EU, Regulation (EU) No 600/2014, Directive 2014/57/EU and Regulation (EU) No 596/2014 and their respective implementing measures in writing.</p> <p>Competent authorities may require investment firms to keep additional records to the list identified in Annex I to this Regulation.</p>

4 General organisational requirements

4.1 General requirements

...

Application to a common platform firm

4.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 4.1.1R, SYSC 4.1.1CR, SYSC 4.1.2R, SYSC 4.1.2AAR</u>
<u>Business continuity</u>	<u>SYSC 4.1.6R, SYSC 4.1.7R, SYSC 4.1.8G</u>
<u>Audit committee</u>	<u>SYSC 4.1.11G, SYSC 4.1.13G, SYSC 4.1.14G</u>
<u>Persons who effectively direct the business</u>	<u>SYSC 4.2.1R, SYSC 4.2.2R, SYSC 4.2.3G, SYSC 4.2.4G, SYSC 4.2.5G, SYSC 4.2.6R</u>
<u>Responsibility of senior personnel</u>	<u>SYSC 4.3.3G</u>
<u>Management body</u>	<u>SYSC 4.3A-1R to SYSC 4.3A.7R</u>
<u>Nominations committee</u>	<u>SYSC 4.3A.8R to SYSC 4.3A.11R</u>
<u>Management responsibilities maps for UK relevant authorised persons</u>	<u>SYSC 4.5</u>
<u>Management responsibilities maps for non-UK relevant authorised persons</u>	<u>SYSC 4.6</u>
<u>Senior management responsibilities for UK relevant authorised persons</u>	<u>SYSC 4.7</u>
<u>Handover procedures and material</u>	<u>SYSC 4.9</u>

Application to a MiFID optional exemption firm and to a third country firm

4.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

4.1.1 R (1) A *firm* must have robust governance arrangements, which include a clear organisational structure with well defined, transparent and consistent lines of responsibility, effective processes to identify, manage, monitor and report the risks it is or might be exposed to, and internal control mechanisms, including sound administrative and accounting procedures and effective control and safeguard arrangements for information processing systems.

...

[**Note:** article 74 (1) of *CRD*, article ~~13~~ 16(5) second paragraph of *MiFID*, article 12(1)(a) of the *UCITS Directive*, and article 18(1) of *AIFMD*]

- (3) Without prejudice to the ability of the *FCA* or any other relevant competent authority to require access to communications in accordance with *MiFID* and *MiFIR*, a common platform firm must have sound security mechanisms in place for the following, while maintaining the confidentiality of the data at all times:
 - (a) to guarantee the security and authentication of the means of transfer of information;
 - (b) to minimise the risk of data corruption and unauthorised access; and
 - (c) to prevent information leakage.

[**Note:** article 16(5) third paragraph of *MiFID*]

...

4.1.2 R For a *common platform firm*, the arrangements, processes and mechanisms referred to in SYSC 4.1.1R must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and of the *common platform firm's* activities and must take into account the specific technical criteria described in ~~SYSC 4.1.7R~~ article 21(3) of the *MiFID Org Regulation*, SYSC 5.1.7R, SYSC 7 and whichever of the following as

applicable:

- (1) (for a *firm* to which SYSC 19A applies) SYSC 19A (IFPRU Remuneration Code);
- (2) (for a *full-scope UK AIFM*) SYSC 19B (AIFM Remuneration Code);
- (3) (for a *firm* to which SYSC 19C applies) SYSC 19C (BIPRU Remuneration Code);
- (4) (for a *firm* to which SYSC 19D applies) SYSC 19D (Dual-regulated firms Remuneration Code);
- (5) (for a *firm* to which the remuneration part of the *PRA Rulebook* applies) the remuneration part of the *PRA Rulebook*.

[**Note:** article 74(2) of *CRD*]

- 4.1.2A G Other *firms* should take account of the comprehensiveness and proportionality *rule* (SYSC 4.1.2R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in SYSC 1 Annex 1 3.3 ~~G~~ R(1).

...

Mechanisms and procedures for a firm

- 4.1.4 R A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) must, taking into account the nature, scale and complexity of the business of the *firm*, and the nature and range of the financial services and activities undertaken in the course of that business:

- (1) (if it is a ~~*common platform firm*~~ or a *management company*) establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

...

- (3) ~~(if it is a *common platform firm*)~~ establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the *firm*; and

...

[**Note:** ~~articles 5(1) final paragraph, 5(1)(a), 5(1)(e) and 5(1)(e) of the *MiFID implementing Directive* and articles 4(1) final paragraph, 4(1)(a), 4(1)(c) and 4(1)(d) of the *UCITS implementing Directive*~~]

- 4.1.4A G A *firm* that is not a *common platform firm* or a *management company* should take into account the decision-making procedures and effective internal

reporting *rules* (SYSC 4.1.4R (1), (3) and (4)) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ rules instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

- 4.1.5 R A ~~MiFID investment firm~~ and a *management company* must establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

[~~Note: article 5(2) of the MiFID implementing Directive~~ and article 4(2) of the *UCITS implementing Directive*]

Business continuity

- 4.1.6 R A *common platform firm* must take reasonable steps to ensure continuity and regularity in the performance of its *regulated activities*. To this end the *common platform firm* must employ appropriate and proportionate systems, resources and procedures.

[~~Note: article 13~~ 16(4) of *MiFID*]

- 4.1.7 R A ~~common platform firm~~ *CRR firm* and a *management company* must establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, that any losses are limited, the preservation of essential data and functions, and the maintenance of its *regulated activities*, or, in the case of a *management company*, its *collective portfolio management* activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of those activities.

[~~Note: article 5(3) of the MiFID implementing Directive, annex V paragraph 13 of the Banking Consolidation Directive, article 4(3) of the UCITS implementing Directive~~ and article 85(2) of ~~the~~ *CRD*]

- 4.1.7A G Other *firms* should take account of the business continuity *rules* (SYSC 4.1.6R and 4.1.7R) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ rules instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

- 4.1.8 G The matters dealt with in a business continuity policy should include:

...

- (3) communication arrangements for internal and external concerned parties (including the ~~appropriate regulator~~ FCA, *clients* and the press);

...

- (6) regular testing of the business continuity policy in an appropriate and proportionate manner in accordance with SYSC 4.1.10R and for a common platform firm with article 21(5) of the MiFID Org

Regulation.

...

Accounting policies: management company

- 4.1.9 R A ~~common platform firm and a~~ management company must establish, implement and maintain accounting policies and procedures that enable it, at the request of the *FCA*, to deliver in a timely manner to the *FCA* financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

[~~Note: article 5(4) of the MiFID implementing Directive and~~ article 4(4) of the *UCITS implementing Directive*]

Regular monitoring: management company

- 4.1.10 R A ~~common platform firm and a~~ management company must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with SYSC 4.1.4R to SYSC 4.1.9R and take appropriate measures to address any deficiencies.

[~~Note: article 5(5) of the MiFID implementing Directive and~~ article 4(5) of the *UCITS implementing Directive*]

Regular monitoring: other firms

- 4.1.10A G Other firms should take account of the regular monitoring rule (SYSC 4.1.10R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1), but ignoring the cross-reference to SYSC 4.1.5R and SYSC 4.1.9R.

...

4.2 Persons who effectively direct the businessGeneral requirement

- 4.2.1 R The *senior personnel* of a *common platform firm*, a *management company*, a *full-scope UK AIFM*, or of the *UK branch* of a *non-EEA bank* must be of sufficiently good repute and sufficiently experienced as to ensure the sound and prudent management of the *firm*.

[~~Note: article 9(1)(4) of MiFID, article 7(1)(b) of the UCITS Directive , article 8(1)(c) of AIFMD, article 11(1) second paragraph of the Banking Consolidation Directive and article 13(1) 91(1) of the CRD~~]

- 4.2.1A G Other firms should take account of the senior personnel rule (SYSC 4.2.1R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

...

Composition of management

4.2.2 R A *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch of a non-EEA bank* must ensure that its management is undertaken by at least two persons meeting the requirements laid down in SYSC 4.2.1R and, :

(a) for a *full-scope UK AIFM*, SYSC 4.2.7R; or

(b) for a *common platform firm*, SYSC 4.3A.3R.

[**Note:** article 9 (4) (6) first paragraph of *MiFID*, article 7(1)(b) of the *UCITS Directive*, article 8(1)(c) of *AIFMD* and article 13(1) of *CRD*]

...

4.2.4 G At least two independent minds should be applied to the formulation and implementation of the policies of a *common platform firm*, a *management company*, a *full-scope UK AIFM* and the *UK branch of a non-EEA bank third country firm*. Where a *firm* nominates just two individuals to direct its business, the ~~appropriate regulator~~ *FCA* will not regard them as both effectively directing the business where one of them makes some, albeit significant, decisions relating to only a few aspects of the business. Each should play a part in the decision-making process on all significant decisions. Both should demonstrate the qualities and application to influence strategy, day-to-day policy and its implementation. This does not require their day-to-day involvement in the execution and implementation of policy. It does, however, require involvement in strategy and general direction, as well as knowledge of, and influence on, the way in which strategy is being implemented through day-to-day policy.

4.2.5 G Where there are more than two individuals directing the business of a *common platform firm*, a *management company*, a *full-scope UK AIFM* or the *UK branch of a non-EEA bank third country firm*, the ~~appropriate regulator~~ *FCA* does not regard it as necessary for all of these individuals to be involved in all decisions relating to the determination of strategy and general direction. However, at least two individuals should be involved in all such decisions. Both individuals' judgement should be engaged so that major errors leading to difficulties for the *firm* are less likely to occur. Similarly, each individual should have sufficient experience and knowledge of the business and the necessary personal qualities and skills to detect and resist any imprudence, dishonesty or other irregularities by the other individual. Where a single individual, whether a chief executive, managing *director* or otherwise, is particularly dominant in such a *firm* this will raise doubts about whether SYSC 4.2.2R is met.

Alternative arrangements

4.2.6 R If a *common platform firm*, (other than a *credit institution* or *AIFM*

investment firm) or the *UK* branch of a ~~*non-EEA bank*~~ *third country firm*, is:

- (1) a natural person; or
- (2) a legal person managed by a single natural person;

then:

- (3) it must have alternative arrangements in place which ensure:
 - (a) sound and prudent management of the *firm* ; and
 - (b) adequate consideration of the interests of *clients* and the integrity of the market; and
- (4) the natural persons concerned must be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

[**Note:** article 9 (4)(6) second paragraph of *MiFID*]

...

4.3 Responsibility of senior personnel

- 4.3.1 R A *firm* (with the exception of a *common platform firm* and a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)), when allocating functions internally, must ensure that *senior personnel* and, where appropriate, the *supervisory function*, are responsible for ensuring that the *firm* complies with its obligations under the *regulatory system*. In particular, *senior personnel* and, where appropriate, the *supervisory function* must assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the *firm's* obligations under the *regulatory system* and take appropriate measures to address any deficiencies.

[**Note:** ~~article 9(1) of the *MiFID implementing Directive*~~ and articles 9(1) and 9(3) of the *UCITS implementing Directive*]

- 4.3.2 R ~~A *common platform firm* (with the exception of a *sole trader* who does not employ any *person* who is required to be approved under section 59 of the *Act* (Approval for particular arrangements)) and a *management company* ;~~ must ensure that:

- (1) its *senior personnel* receive on a frequent basis, and at least annually, written reports on the matters covered by SYSC 6.1.2R to SYSC 6.1.5R, SYSC 6.2.1R and ~~,~~ SYSC 7.1.2R, SYSC 7.1.3R and SYSC 7.1.5R to SYSC 7.1.7R, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies; and
- (2) the *supervisory function*, if any, receives on a regular basis written

reports on the same matters.

[~~Note: article 9(2) and article 9(3) of the MiFID implementing Directive and articles 9(4) and 9(6) of the UCITS implementing Directive~~]

- 4.3.2A G Other *firms* should take account of the written reports *rule* (SYSC 4.3.2R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ *rule* instead of "must") as explained in SYSC 1 Annex 1 3.3G ~~R(1)~~.

...

4.3A ~~CRR firms~~ **Management body and nomination committee**

Management body

- 4.3A.-1 R In SYSC 4.3A.6R and SYSC 4.3A.8R a '~~CRR firm~~ common platform firm that is ~~significant~~ significant means a *significant IFPRU firm*.
- 4.3A.1 R A ~~CRR firm~~ common platform firm must ensure that the *management body* defines, oversees and is accountable for the implementation of governance arrangements that ensure effective and prudent management of the *firm*, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interests of clients. The *firm* must ensure that the *management body*:
- (1) has overall responsibility for the *firm*;
 - (2) approves and oversees implementation of the *firm's* strategic objectives, risk strategy and internal governance;
 - (3) ensures the integrity of the *firm's* accounting and financial reporting systems, including financial and operational controls and compliance with the *regulatory system*.
 - (4) oversees the process of disclosure and communications;
 - (5) has responsibility for providing effective oversight of *senior management* - 2;
 - (6) monitors and periodically assesses:
 - (a) the adequacy and the implementation of the firm's strategic objectives in the provision of investment services and/or activities and ancillary services;
 - (b) the effectiveness of the *firm's* governance arrangements; and
 - (c) the adequacy of the policies relating to the provision of services to clients, and

takes appropriate steps to address any deficiencies; and

- (7) has adequate access to information and documents which are needed to oversee and monitor management decision-making.

[**Note:** article 88(1) of *CRD* and articles 9(1) and 9(3) of *MiFID*]

4.3A.1A R Without prejudice to SYSC 4.3A.1R, a common platform firm must ensure that the management body defines, approves and oversees:

- (1) the organisation of the firm for the provision of investment services and/or activities and ancillary services, including the skills, knowledge and expertise required by personnel, the resources, the procedures and the arrangements for the provision of services and activities, taking into account the nature, scale and complexity of its business and all the requirements the firm has to comply with;
- (2) a policy as to services, activities, products and operations offered or provided, in accordance with the risk tolerance of the firm and the characteristics and needs of the firm's clients to whom they will be offered or provided, including carrying out appropriate stress testing, where appropriate; and
- (3) a remuneration policy of persons involved in the provision of services to clients aiming to encourage responsible business conduct, fair treatment of clients as well as avoiding conflict of interest in the relationships with clients.

[**Note:** article 9(3) of *MiFID*]

4.3A.2 R A ~~CRR firm~~ common platform firm must ensure that the chairman of the firm's management body does not exercise simultaneously the PRA's Chief Executive function (controlled function (SMF1) or chief executive function within the same firm, ~~unless justified by the firm and authorised by the FCA.~~

[**Note:** article 88(1)(e) of *CRD* and article 9(1) of *MiFID*]

4.3A.2A G A firm may apply to the FCA under section 138A of the Act to waive SYSC 4.3A.2R.

4.3A.3 R A ~~CRR firm~~ common platform firm must ensure that the members of the management body of the firm:

- (1) are of sufficiently good repute;
- (2) possess sufficient knowledge, skills and experience to perform their duties;
- (3) possess adequate collective knowledge, skills and experience to understand the firm's activities, including the main risks;

- (4) reflect an adequately broad range of experiences;
- (5) commit sufficient time to perform their functions in the *firm*; and
- (6) act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of *senior management* where necessary and to effectively oversee and monitor management decision-making.

[**Note:** article 91(1)-(2) and (7)-(8) of *CRD* and article 9(1) and 9(4) of *MiFID*]

4.3A.4 R A ~~*CRR firm*~~ *common platform firm* must devote adequate human and financial resources to the induction and training of members of the *management body*.

[**Note:** article 91(3) (9) of *CRD* and article 9(1) of *MiFID*]

4.3A.5 R A ~~*CRR firm*~~ *common platform firm* must ensure that the members of the *management body* of the *firm* do not hold more directorships than is appropriate taking into account individual circumstances and the nature, scale and complexity of the *firm's* activities.

[**Note:** article 91(3) of *CRD* and article 9(1) of *MiFID*]

4.3A.6 R (1) A ~~*CRR firm*~~ *common platform firm* that is significant must ensure that the members of the *management body* of the *firm* do not hold more than one of the following combinations of directorship in any organisation at the same time:

- (a) one executive directorship with two non-executive directorships; and
- (b) four non-executive directorships.

(2) Paragraph (1) does not apply to members of the *management body* that represent the *United Kingdom*.

[**Note:** article 91(3) of *CRD* and article 9(1) of *MiFID*]

4.3A.7 R For the purposes of SYSC 4.3A.5R and SYSC 4.3A.6R:

- (1) directorships in organisations which do not pursue predominantly commercial objectives shall not count; and
- (2) the following shall count as a single directorship:
 - (a) executive or non-executive directorships held within the same *group*; or
 - (b) executive or non-executive directorships held within:

- (i) *firms* that are members of the same institutional protection scheme provided that the conditions set out in article 113(7) of the *CRR* are fulfilled; or
- (ii) *undertakings* (including non-financial entities) in which the *firm* holds a *qualifying holding*.

[**Note:** article 91(4) and (5) of *CRD* and article 9(1) of *MiFID*]

Nomination Committee

- 4.3A.8 R A ~~*CRR-firm*~~ *common platform firm* that is significant must:
- (1) establish a nomination committee composed of members of the *management body* who do not perform any executive function in the *firm*;
 - (2) ensure that the nomination committee is able to use any forms of resources the nomination committee deems appropriate, including external advice; and
 - (3) ensure that the nomination committee receives appropriate funding.

[**Note:** article 88(2) of *CRD* and article 9(1) of *MiFID*]

- 4.3A.9 R A ~~*CRR-firm*~~ *common platform firm* that has a nomination committee must ensure that the nomination committee:
- (1) ~~engage~~ engages a broad set of qualities and competences when recruiting members to the *management body* and for that purpose puts in place a policy promoting diversity on the *management body*;
 - (2) identifies and recommends for approval, by the *management body* or by general meeting, candidates to fill *management body* vacancies, having evaluated the balance of knowledge, skills, diversity and experience of the *management body*;
 - (3) prepares a description of the roles and capabilities for a particular appointment, and assesses the time commitment required;
 - (4) decides on a target for the representation of the underrepresented gender in the *management body* and prepares a policy on how to increase the number of the underrepresented gender in the *management body* in order to meet that target;
 - (5) periodically, and at least annually, assesses the structure, size, composition and performance of the *management body* and makes recommendations to the *management body* with regard to any changes;
 - (6) periodically, and at least annually, assesses the knowledge, skills and experience of individual members of the *management body* and of

the *management body* collectively, and reports this to the *management body*;

- (7) periodically reviews the policy of the *management body* for selection and appointment of *senior management* and makes recommendations to the *management body*; and
- (8) in performing its duties, and to the extent possible, on an ongoing basis, takes account of the need to ensure that the *management body's* decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interest of the *firm* as a whole ;

[**Note:** article 88(2) and article 91(10) of ~~the~~ *CRD* and article 9(1) of *MiFID*]

4.3A.10 R A ~~CRR firm~~ common platform firm that does not have a nomination committee must engage a broad set of qualities and competences when recruiting members to the *management body*. For that purpose a ~~CRR firm~~ common platform firm that does not have a nomination committee must put in place a policy promoting diversity on the *management body*.

[**Note:** article 91(10) of *CRD* and article 9(1) of *MiFID*]

...

4.7 Senior management responsibilities for UK relevant authorised persons: allocation of responsibilities

...

4.7.7 R Table: FCA-prescribed senior management responsibilities

FCA-prescribed senior management responsibility	Explanation	Equivalent PRA-prescribed senior management responsibility
...		
Part Two (applies to all firms except for small CRR firms and credit unions)		
...		
(7) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the internal audit function, in accordance with SYSC	This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of;	<i>PRA-prescribed senior management responsibility 4.1(15)</i>

6.2 (Internal Audit) <u>or article 24 of the MiFID Org Regulation.</u>	a person approved to perform the PRA's Head of Internal Audit <i>designated senior management function</i> for the <i>firm</i> .	
(8) Responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the compliance function in accordance with SYSC 6.1(Compliance) <u>or article 22 of the MiFID Org Regulation.</u>	This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; the person performing the <i>compliance oversight function</i> for the <i>firm</i> .	<i>PRA-prescribed senior management responsibility 4.1(16)</i>
...		

...

5 Employees, agents and other relevant persons

5.1 Skills, knowledge and expertise

...

Application to a common platform firm

5.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Segregation of functions</u>	<u>SYSC 5.1.2G to SYSC 5.1.5AG, SYSC 5.1.7R, SYSC 5.1.8G to SYSC 5.1.11G</u>
<u>Certification regime</u>	<u>SYSC 5.2</u>

Application to an MiFID optional exemption firm and to a third country firm

5.1.-1 G For a MiFID optional exemption firm and a third country firm:

- (a) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (b) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and SYSC 1 Annex 1 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Segregation of functions

- 5.1.1 R A *firm* (other than a *common platform firm*) must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

[~~Note: article 5(1)(d) of the *MiFID implementing Directive*, articles 12(1)(a) and 14(1)(c) of the *UCITS Directive* and article 5(1) of the *UCITS implementing Directive*]~~

...

- 5.1.5A G If a *firm* requires *employees* who are not subject to a qualification requirement in *TC* to pass a relevant examination from the list of recommended examinations maintained by the Financial Skills Partnership, the ~~appropriate regulator~~ FCA will take that into account when assessing whether the *firm* has ensured that the *employee* satisfies the knowledge component of the *competent employees rule*.

Segregation of functions

- 5.1.6 R A ~~*common platform firm* and a *management company*~~ must ensure that the performance of multiple functions by its *relevant persons* does not and is not likely to prevent those persons from discharging any particular functions soundly, honestly and professionally.

[~~Note: article 5(1)(g) of the *MiFID implementing Directive* and article 5(3) of the *UCITS implementing Directive*]~~

- 5.1.7 R The *senior personnel* of a *common platform firm* must define arrangements concerning the segregation of duties within the *firm* and the prevention of conflicts of interest.

[~~Note: article 88 of the *CRD* and annex V paragraph 1 of the *Banking Consolidation Directive* article 9(1) of *MiFID*]~~

- 5.1.7A G Other *firms* should take account of the segregation of functions *rules* (SYSC 5.1.6R and SYSC 5.1.7R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G ~~R~~ R(1).

Segregation of functions: additional guidance

...

- 5.1.11 G Where a *common platform firm* outsources its internal audit function, it should take reasonable steps to ensure that every individual involved in the performance of this service is independent from the individuals who perform its external audit. This should not prevent services from being undertaken by a *firm's* external auditors provided that:

...

Awareness of procedures: management company

- 5.1.12 R A *common platform firm* and a *management company* must ensure that its *relevant persons* are aware of the procedures which must be followed for the proper discharge of their responsibilities.

[~~Note: article 5(1)(b) of the MiFID implementing Directive~~ and article 4(1)(b) of the UCITS implementing Directive]

Awareness of procedures: other firms

- 5.1.12A G Other *firms* should take account of the *rule* concerning awareness of procedures (SYSC 5.1.12R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

General

- 5.1.13 R The systems, internal control mechanisms and arrangements established by a *firm* (~~other than a common platform firm~~) in accordance with this chapter must take into account the nature, scale and complexity of its business and the nature and range of financial services and activities undertaken in the course of that business.

[~~Note: article 5(1) final paragraph of the MiFID implementing Directive~~ and articles 4(1) final paragraph and 5(4) of the UCITS implementing Directive]

- 5.1.14 R A *common platform firm* and a *management company* must monitor and, on a regular basis, evaluate the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with this chapter, and take appropriate measures to address any deficiencies.

[~~Note: article 5(5) of the MiFID implementing Directive~~ and articles article 4(5) of the UCITS implementing Directive]

- 5.1.15 G Other *firms* should take account of the *rule* requiring monitoring and evaluation of the adequacy and effectiveness of systems (SYSC 5.1.14R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

6 Compliance, internal audit and financial crime

6.1 Compliance

...

Application to a common platform firm

6.1.-2 G For a *common platform firm*:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Adequate policy and procedures</u>	<u>SYSC 6.1.1R, SYSC 6.1.1AG</u>
<u>Compliance function</u>	<u>SYSC 6.1.4-AG, SYSC 6.1.7R</u>
<u>Internal audit</u>	<u>SYSC 6.2.2G</u>
<u>Financial crime</u>	<u>SYSC 6.3.1R to SYSC 6.3.11G</u>

Application to an MiFID optional exemption firm and to a third country firm

6.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
- (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Adequate policy and procedures

6.1.1 R A *firm* must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the *firm* including its managers, employees and *appointed representatives* (or where applicable, *tied agents*) with its obligations under the *regulatory system* and for countering the risk that the *firm* might be used to further *financial crime*.

[**Note:** article 13 16(2) of *MiFID* and article 12(1)(a) of the *UCITS Directive*]

...

6.1.2 R A ~~*common platform firm*~~ and a *management company* must, taking into account the nature, scale and complexity of its business, and the nature and range of financial services and activities undertaken in the course of that

business, establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the *firm* to comply with its obligations under the *regulatory system*, as well as associated risks, and put in place adequate measures and procedures designed to minimise such risks and to enable the ~~appropriate regulator~~ FCA to exercise its powers effectively under the *regulatory system* and to enable any other *competent authority* to exercise its powers effectively under ~~MiFID~~ or the *UCITS Directive*.

[~~Note: article 6(1) of the MiFID implementing Directive~~ and article 10(1) of the *UCITS implementing Directive*]

- 6.1.2A G Other *firms* should take account of the adequate policies and procedures *rule* (SYSC 6.1.2R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

Compliance function

- 6.1.3 R A ~~common platform firm~~ and a *management company* must maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:
- (1) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with SYSC 6.1.2R, and the actions taken to address any deficiencies in the *firm's* compliance with its obligations; and
 - (2) to advise and assist the *relevant persons* responsible for carrying out *regulated activities* to comply with the *firm's* obligations under the *regulatory system*.

[~~Note: article 6(2) of the MiFID implementing Directive~~ and article 10(2) of the *UCITS implementing Directive*]

- 6.1.3A G (1) Other *firms* should take account of the compliance function *rule* (SYSC 6.1.3R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

- 6.1.4 R In order to enable the compliance function to discharge its responsibilities properly and independently, a ~~common platform firm~~ and a *management company* must ensure that the following conditions are satisfied:
- (1) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;
 - (2) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by SYSC 4.3.2R;
 - (3) the *relevant persons* involved in the compliance functions must not be

involved in the performance of the services or activities they monitor;

- (4) the method of determining the remuneration of the *relevant persons* involved in the compliance function must not compromise their objectivity and must not be likely to do so.

[~~Note: article 6(3) first paragraph of the MiFID implementing Directive and article 10(3) of the UCITS implementing Directive~~]

- 6.1.4-A G In setting the method of determining the *remuneration of relevant persons* involved in the compliance function:
- (1) *firms* that SYSC 19A applies to will also need to comply with the *Remuneration Code*;
 - (2) ~~BIPRU~~ *firms* that SYSC 19C applies to will also need to comply with the *BIPRU Remuneration Code*;
 - (3) *firms* that SYSC 19D applies to will also need to comply with the *dual-regulated firms Remuneration Code*; and
 - (4) *firms* that the remuneration part of the ~~PRA Rulebook~~ *Rulebook* applies to will also need to comply with it.

...

- 6.1.4-C G (1) This *guidance* is relevant to a *relevant authorised person* required to appoint a compliance officer under SYSC 6.1.4R or article 22(3) of the MiFID Org Regulation as applicable.

...

- 6.1.5 R A ~~common platform firm and a management company~~ need not comply with SYSC 6.1.4R(3) or SYSC 6.1.4R(4) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of financial services and activities, the requirements under those *rules* are not proportionate and that its compliance function continues to be effective.

[~~Note: article 6(3) second paragraph of the MiFID implementing Directive and article 10(3) second paragraph of the UCITS implementing Directive~~]

- 6.1.6 G Other *firms* should take account of the proportionality *rule* (SYSC 6.1.5R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3GR(1).

- 6.1.7 R ...

- (2) References to the *regulatory system* in SYSC 6.1.1R, SYSC 6.1.2R and SYSC 6.1.3R apply in respect of a *firm's branch* as if *regulatory system* includes a *Host State's* requirements under *MiFID* and the ~~MiFID implementing Directive~~ *MiFID Org Regulation* which are applicable to the *investment services and/or activities* conducted from the *firm's*

branch.

[**Note:** article ~~13(2)~~ 16 of *MiFID*]

6.2 Internal audit

- 6.2.1 R A ~~common platform firm~~ and a management company must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of its financial services and activities, undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the *firm* and which has the following responsibilities:

...

[**Note:** ~~article 8 of the *MiFID implementing Directive*~~ and article 11 of the *UCITS implementing Directive*]

- 6.2.1A G Other *firms* should take account of the internal audit *rule* (SYSC 6.2.1R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ rule instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).
- 6.2.1B G (1) This *guidance* is relevant to a *relevant authorised person* required to establish and maintain an internal audit function under ~~SYSC 6.2.1R~~ article 24 of the *MiFID Org Regulation*.
- 6.2.2 G (1) The term 'internal audit function' in SYSC 6.2.1R (and SYSC 4.1.11G), and for a *common platform firm* in article 24 of the *MiFID Org Regulation*, refers to the generally understood concept of internal audit within a *firm*, that is, the function of assessing adherence to and the effectiveness of internal systems and controls, procedures and policies.

...

...

7 Risk control

7.1 Risk control

...

Application to a common platform firm

- 7.1.-2 G For a *common platform firm*:
- (1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
 - (2) the *rules* and *guidance* apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Risk assessment</u>	<u>SYSC 7.1.1G</u>
<u>Risk management</u>	<u>SYSC 7.1.4R, SYSC 7.1.4AG</u>
<u>Risk control: remuneration</u>	<u>SYSC 7.1.7BG, SYSC 7.1.7BBG</u>
<u>Risk control: additional provisions</u>	<u>SYSC 7.1.7CG, SYSC 7.1.8G, SYSC 7.1.9R to SYSC 7.1.16R</u>
<u>Additional rules for CCR firms</u>	<u>SYSC 7.1.16CR to SYSC 7.1.22R</u>

Application to an MiFID optional exemption firm and to a third country firm

- 7.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:
- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
 - (2) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

Risk assessment

- 7.1.1 G SYSC 4.1.1R requires a *firm* to have effective processes to identify, manage, monitor and report the risks it is or might be exposed to.
- 7.1.2 R A *common platform firm UCITS investment firm* must establish, implement and maintain adequate risk management policies and procedures, including effective procedures for risk assessment, which identify the risks relating to the *firm's* activities, processes and systems, and where appropriate, set the level of risk tolerated by the *firm*.
- ~~[Note: article 7(1)(a) of the *MiFID implementing Directive*, article 13(5) second paragraph of *MiFID*]~~
- 7.1.2A G Other *firms* should take account of the risk management policies and procedures ~~rule~~ (SYSC 7.1.2R) as if it were *guidance* (and as if “should” appeared in that ~~rule~~ *rule* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

Risk management

- 7.1.3 R A *common platform firm UCITS investment firm* must adopt effective arrangements, processes and mechanisms to manage the risk relating to the *firm's* activities, processes and systems, in light of that level of risk tolerance.

~~[Note: article 7(1)(b) of the MiFID implementing Directive]~~

...

7.1.4B G Other *firms* should take account of the risk management *rules* (SYSC 7.1.3R and SYSC 7.1.4R) as if they were *guidance* (and as if "should" appeared in those ~~rules~~ *rules* instead of "must") as explained in SYSC 1 Annex 1 3.3G R(1).

7.1.5 R A ~~common platform firm~~ *UCITS investment firm* must monitor the following:

- (1) the adequacy and effectiveness of the *firm's* risk management policies and procedures;
- (2) the level of compliance by the *firm* and its *relevant persons* with the arrangements, processes and mechanisms adopted in accordance with SYSC 7.1.3R;
- (3) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the *relevant persons* to comply with such arrangements or processes and mechanisms or follow such policies and procedures.

~~[Note: article 7(1)(c) of the MiFID implementing Directive]~~

7.1.6 R A ~~common platform firm~~ *UCITS investment firm* must, where appropriate and proportionate in view of the nature, scale and complexity of its business and the nature and range of the *investment services and/or activities* undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:

- (1) implementation of the policies and procedures referred to in SYSC 7.1.2R to SYSC 7.1.5R; and
- (2) provision of reports and advice to *senior personnel* in accordance with SYSC 4.3.2R.

~~[Note: MiFID implementing Directive Article 7(2) first paragraph]~~

7.1.7 R Where a ~~common platform firm~~ *UCITS investment firm* is not required under SYSC 7.1.6R to maintain a risk management function that functions independently, it must nevertheless be able to demonstrate that the policies and procedures which it has adopted in accordance with SYSC 7.1.2R to SYSC 7.1.5R satisfy the requirements of those *rules* and are consistently effective.

~~[Note: article 7(2) second paragraph of the MiFID implementing Directive]~~

7.1.7A G Other *firms* should take account of the risk management *rules* (SYSC 7.1.5R to SYSC 7.1.7R) as if they were *guidance* (and as if "should" appeared in

those ~~rules~~ rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

...

Risk control: additional provisions

7.1.7C G ...

7.1.8 G ...

- (2) The term 'risk management function' in SYSC 7.1.6R and SYSC 7.1.7R₂ and for a *common platform firm* in article 23(2) of the *MiFID Org Regulation*, refers to the generally understood concept of risk assessment within a *firm*, that is, the function of setting and controlling risk exposure.

...

...

7.1.21 R (1) A *CRR firm's* risk management function (~~SYSC 7.1.6R~~ article 23 of the *MiFID Org Regulation*) must be independent from the operational functions and have sufficient authority, stature, resources and access to the *management body*.

...

...

8 Outsourcing

8.1 General outsourcing requirements

...

Application to a common platform firm

8.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 8.1.1R, SYSC 8.1.2G, SYSC 8.1.3G, SYSC 8.1.12G</u>

Application to an MiFID optional exemption firm and to a third country firm

- 8.1.-1 G For a MiFID optional exemption firm and a third country firm:
- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and
 - (2) those articles of the MiFID Org Regulation in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

- 8.1.1 R A common platform firm must:
- (1) when relying on a third party for the performance of operational functions which are critical for the performance of *regulated activities*, *listed activities* or *ancillary services* (in this chapter "relevant services and activities") on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and
 - (2) not undertake the *outsourcing* of important operational functions in such a way as to impair materially:
 - (a) the quality of its internal control; and
 - (b) the ability of the ~~appropriate regulator~~ FCA to monitor the *firm's* compliance with all obligations under the *regulatory system* and, if different, of a *competent authority* to monitor the *firm's* compliance with all obligations under *MiFID*.

[**Note:** article ~~13~~ 16(5) first paragraph of *MiFID*]

- 8.1.1A G Other *firms* should take account of the outsourcing *rule* (SYSC 8.1.1R) as if it were *guidance* (and as if "should" appeared in that ~~rule~~ rule instead of "must") as explained in SYSC 1 Annex 1 3.3~~G~~ R(1).

...

- 8.1.3 G SYSC 4.1.1R requires a *firm* to have effective processes to identify, manage, monitor and report risks and internal control mechanisms. Except in relation to those functions described in SYSC 8.1.5R and (for a common platform firm in article 30(2) of the MiFID Org Regulation), where a *firm* relies on a third party for the performance of operational functions which are not critical or important for the performance of relevant services and activities (see SYSC 8.1.1R(1)) on a continuous and satisfactory basis, it should take into account, in a manner that is proportionate given the nature, scale and complexity of the *outsourcing*, the *rules* in this section in complying with that requirement.

- 8.1.4 R For the purposes of this chapter an operational function is regarded as critical or important if a defect or failure in its performance would materially impair the continuing compliance of a *firm* (other than a common platform firm)

with the conditions and obligations of its *authorisation* or its other obligations under the *regulatory system*, or its financial performance, or the soundness or the continuity of its relevant services and activities.

~~[Note: article 13(1) of the MiFID implementing Directive]~~

8.1.5 R ~~Without~~ For a UCITS investment firm and without prejudice to the status of any other function, the following functions will not be considered as critical or important for the purposes of this chapter:

- (1) the provision to the *firm* of advisory services, and other services which do not form part of the relevant services and activities of the *firm*, including the provision of legal advice to the *firm*, the training of personnel of the *firm*, billing services and the security of the *firm's* premises and personnel;
- (2) the purchase of standardised services, including market information services and the provision of price feeds;

~~[Note: article 13(2) of the MiFID implementing Directive]~~

- (3) the recording and retention of relevant telephone conversations or electronic communications subject to ~~COBS 4.8~~ [SYSC 10A].

8.1.5A G Other *firms* should take account of the critical functions *rules* (SYSC 8.1.4R and SYSC 8.1.5R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ rules instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

8.1.6 R If a *firm* (other than a *common platform firm*) *outsources* critical or important operational functions or any relevant services and activities, it remains fully responsible for discharging all of its obligations under the *regulatory system* and must comply, in particular, with the following conditions:

- (1) the *outsourcing* must not result in the delegation by *senior personnel* of their responsibility;
- (2) the relationship and obligations of the *firm* towards its *clients* under the *regulatory system* must not be altered;
- (3) the conditions with which the *firm* must comply in order to be *authorised*, and to remain so, must not be undermined;
- (4) none of the other conditions subject to which the *firm's authorisation* was granted must be removed or modified.

~~[Note: article 14(1) of the MiFID implementing Directive]~~

8.1.6A G A UCITS investment firm should take account of the provisions that apply to a common platform firm in relation to its MiFID business in accordance with SYSC 8.1-2G.

8.1.7 R A ~~common platform firm~~ UCITS investment firm must exercise due skill and care and diligence when entering into, managing or terminating any arrangement for the *outsourcing* to a service provider of critical or important operational functions or of any relevant services and activities.

~~[Note: article 14(2) first paragraph of the MiFID implementing Directive]~~

8.1.8 R A ~~common platform firm~~ UCITS investment firm must in particular take the necessary steps to ensure that the following conditions are satisfied:

...

(8) the service provider must co-operate with the ~~appropriate regulator~~ FCA and any other relevant *competent authority* in connection with the *outsourced* activities;

(9) the *firm*, its auditors, the ~~appropriate regulator~~ FCA and any other relevant *competent authority* must have effective access to data related to the *outsourced* activities, as well as to the business premises of the service provider; and the ~~appropriate regulator~~ FCA and any other relevant *competent authority* must be able to exercise those rights of access;

...

~~[Note: article 14(2) second paragraph of the MiFID implementing Directive]~~

8.1.9 R A ~~common platform firm~~ UCITS investment firm must ensure that the respective rights and obligations of the *firm* and of the service provider are clearly allocated and set out in a written agreement.

~~[Note: article 14(3) of the MiFID implementing Directive]~~

8.1.10 R If a ~~common platform firm~~ UCITS investment firm and the service provider are members of the same *group*, the *firm* may, for the purpose of complying with SYSC 8.1.7R to SYSC 8.1.11R and SYSC 8.2 and SYSC 8.3, take into account the extent to which the ~~common platform firm~~ UCITS investment firm *controls* the service provider or has the ability to influence its actions.

~~[Note: article 14(4) of the MiFID implementing Directive]~~

8.1.11 R A firm (other than a common platform firm) must make available on request to the ~~appropriate regulator~~ FCA and any other relevant *competent authority* all information necessary to enable the ~~appropriate regulator~~ FCA and any other relevant *competent authority* to supervise the compliance of the performance of the *outsourced* activities with the requirements of the *regulatory system*.

~~[Note: article 14(5) of the MiFID implementing Directive]~~

8.1.11A G Other *firms* should take account of the outsourcing of important operational

functions *rules* (SYSC 8.1.7R to SYSC 8.1.11R) as if they were *guidance* (and as if “should” appeared in those ~~rules~~ *rules* instead of “must”) as explained in SYSC 1 Annex 1 3.3G R(1).

- 8.1.12 G As SUP 15.3.8G explains, a *firm* should notify the ~~appropriate regulator~~ FCA when it intends to rely on a third party for the performance of operational functions which are critical or important for the performance of relevant services and activities on a continuous and satisfactory basis.

[**Note:** recital ~~20~~ of 44 to the ~~MiFID implementing Directive~~ *MiFID Org Regulation*]

...

SYSC 8.2 and SYSC 8.3 are deleted in their entirety. The deleted text is not shown.

Amend the following as shown.

9 Record-keeping

9.1 General rules on record-keeping

Application to a common platform firm

- 9.1.-2 G For a common platform firm:

- (1) the MiFID Org Regulation applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and
- (2) the rules and guidance apply as set out in the table below:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>General requirements</u>	<u>SYSC 9.1.1AR</u>
<u>Guidance on record-keeping</u>	<u>SYSC 9.1.4G, SYSC 9.1.5G, SYSC 9.1.6G</u>

Application to an MiFID optional exemption firm and to a third country firm

- 9.1.-1 G For a MiFID optional exemption firm and a third country firm:

- (1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1); and

- (2) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2).

General requirements

- 9.1.1 R A firm (other than a *common platform firm*) must arrange for orderly records to be kept of its business and internal organisation, including all services and transactions undertaken by it, which must be sufficient to enable the ~~appropriate regulator~~ *FCA* or any other relevant *competent authority* under ~~*MiFID*~~ or the *UCITS Directive* to monitor the *firm's* compliance with the requirements under the *regulatory system*, and in particular to ascertain that the *firm* has complied with all obligations with respect to *clients*.

[**Note:** ~~article 13(6) of *MiFID*, article 5(1)(f) of the *MiFID implementing Directive*, article 12(1)(a) of the *UCITS Directive* and article 4(1)(e) of the *UCITS implementing Directive*]~~

- 9.1.1A R (1) A *common platform firm* must arrange for records to be kept of all services, activities and transactions undertaken by it.
- (2) The records in (1) must be sufficient to enable the *FCA* to fulfil its supervisory tasks and to perform the enforcement actions under the *regulatory system* including *MiFID*, *MiFIR* and the *Market Abuse Regulation*, and in particular to ascertain that the *common platform firm* has complied with all obligations including those with respect to *clients* or potential *clients* and to the integrity of the market.

[**Note:** article 16(6) of *MiFID*]

- 9.1.2 R A *common platform firm* must retain all records kept by it under this chapter in relation to its *MiFID business* for a period of at least five years.

[**Note:** ~~article 51(1) of the *MiFID implementing Directive*~~]

- 9.1.3 R ~~In relation to its *MiFID business*, a *common platform firm* must retain records in a medium that allows the storage of information in a way accessible for future reference by the *appropriate regulator* or any other relevant *competent authority* under *MiFID*, and so that the following conditions are met:~~
- (1) ~~the *appropriate regulator* or any other relevant *competent authority* under *MiFID* must be able to access them readily and to reconstitute each key stage of the processing of each transaction;~~
- (2) ~~it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections and amendments, to be easily ascertained;~~
- (3) ~~it must not be possible for the records otherwise to be manipulated~~

~~or altered. [deleted]~~

~~[Note: article 51(2) of the *MiFID implementing Directive*]~~

Guidance on record-keeping

...

9.1.6 G Schedule 1 to each module of the *Handbook* sets out a list summarising the record-keeping requirements of that module. A common platform firm should also refer to the record-keeping requirements in the *MiFID Org Regulation*.

~~[Note: article 51(3) of *MiFID implementing Directive*]~~

9.1.7 G ~~The Committee of European Securities Regulators (*CESR*) has issued recommendations on the list of minimum records under Article 51(3) of the *MiFID implementing Directive*. [deleted]~~

10 Conflicts of interest

10.1 Application

Application to a common platform firm

10.1.-2 G For a common platform firm:

(1) the *MiFID Org Regulation* applies, as summarised in SYSC 1 Annex 1 3.2G, SYSC 1 Annex 1 3.2-AR and SYSC 1 Annex 1 3.2-BR; and

(2) the rules and guidance in the table below apply:

<u>Subject</u>	<u>Applicable rule or guidance</u>
<u>Provision of services</u>	<u>SYSC 10.1.2G</u>
<u>Identifying conflicts</u>	<u>SYSC 10.1.3R</u>
<u>Types of conflicts</u>	<u>SYSC 10.1.5G</u>
<u>Managing conflicts</u>	<u>SYSC 10.1.7R</u>
<u>Conflicts policy</u>	<u>SYSC 10.1.12G</u>

Application to a MiFID optional exemption firm and to a third-country firm

10.1.-1 G For a *MiFID optional exemption firm* and a *third country firm*:

(1) the rules and guidance in this chapter apply to them as if they were rules or as guidance in accordance with SYSC 1 Annex 1 3.2CR(1);

and

- (2) those articles of the *MiFID Org Regulation* in SYSC 1 Annex 1 2.8AR and 3.2CR apply to them as if they were *rules* or as *guidance* in accordance with SYSC 1 Annex 1 3.2CR(2).

General application

- 10.1.1 R (1) This section applies to a *firm* which provides services to its *clients* in the course of carrying on *regulated activities* or *ancillary activities* or providing *ancillary services* (but only where the *ancillary services* constitute *MiFID business*).

- (2) This section also applies to a *management company*.

[Note: The provisions in SYSC 10.1 also implement articles 74(1) and 88 of CRD and as applied under the discretion in the third paragraph of article 95(2) of the EU CRR, BCD article 22 and BCD Annex V paragraph 1]

- 10.1.1A R This section also applies to:

- (1) a *full-scope UK AIFM* of:

- (a) a *UK AIF*;
- (b) an *EEA AIF* managed or *marketed* from an establishment in the *UK*; and
- (c) a *non-EEA AIF*; and

- (2) an *incoming EEA AIFM branch* which manages or *markets* a *UK AIF*.

Requirements only apply if a service is provided

- 10.1.2 G The requirements in this section only apply where a service is provided by a *firm*. The status of the *client* to whom the service is provided (as a *retail client*, *professional client* or *eligible counterparty*) is irrelevant for this purpose.

[Note: ~~recital 25 of MiFID implementing Directive~~ recital 46 to the *MiFID Org Regulation*]

Identifying conflicts

- 10.1.3 R A *firm* must take all ~~reasonable~~ appropriate steps to identify and to prevent or manage conflicts of interest between:

- (1) the *firm*, including its managers, employees and *appointed representatives* (or where applicable, *tiered agents*), or any *person* directly or indirectly linked to them by *control*, and a *client* of the *firm*; or

- (2) one *client* of the *firm* and another *client*;

that arise or may arise in the course of the *firm* providing any service referred to in SYSC 10.1.1R including those caused by the receipt of inducements from third parties or by the *firm*'s own remuneration and other incentive structures.

[~~Note: article 18~~ 23(1) of *MiFID*]

Types of conflicts

- 10.1.4 R For the purposes of identifying the types of conflict of interest that arise, or may arise, in the course of providing a service and whose existence may ~~entail a material risk of damage to the interests of a *client*, a ~~common platform firm~~ and a *management company* must take into account, as a minimum, whether the *firm* or a *relevant person*, or a *person* directly or indirectly linked by *control* to the *firm*:~~
- (1) is likely to make a financial gain, or avoid a financial loss, at the expense of the *client*;
 - (2) has an interest in the outcome of a service provided to the *client* or of a transaction carried out on behalf of the *client*, which is distinct from the *client's* interest in that outcome;
 - (2A) in the case of a *management company* providing *collective portfolio management* services for a *UCITS scheme*, (2) also applies where the service is provided to, or the transaction is carried out on behalf of, a *client* other than the *UCITS scheme*;
 - (3) has a financial or other incentive to favour the interest of another *client* or group of *clients* over the interests of the *client*;
 - (4) carries on the same business as the *client*; or in the case of a *management company*, carries on the same activities for the *UCITS scheme* and for another *client* or *clients* which are not *UCITS schemes*; or
 - (5) receives or will receive from a *person* other than the *client* an inducement in relation to a service provided to the *client*, in the form of monies, goods or services, other than the standard commission or fee for that service.

The conflict of interest may result from the *firm* or *person* providing a service referred to in SYSC 10.1.1R or engaging in any other activity or, in the case of a *management company*, whether as a result of providing *collective portfolio management* services or otherwise.

[~~Note: article 21 of *MiFID implementing Directive*~~ and article 17(1) of the *UCITS implementing Directive*]

10.1.4A G Other *firms* (~~except common platform firms and UCITS management companies~~) should take account of the *rule* on the types of conflicts (see SYSC 10.1.4R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must") as explained in SYSC 1 Annex 1 3.3G, ~~except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~

10.1.5 G The circumstances which should be treated as giving rise to a conflict of interest cover cases where there is a conflict between the interests of the *firm* or certain *persons* connected to the *firm* or the *firm's group* and the duty the *firm* owes to a *client*; or between the differing interests of two or more of its *clients*, to whom the *firm* owes in each case a duty. It is not enough that the *firm* may gain a benefit if there is not also a possible disadvantage to a *client*, or that one *client* to whom the *firm* owes a duty may make a gain or avoid a loss without there being a concomitant possible loss to another such *client*.

[**Note:** recital 24 of *MiFID implementing Directive 45* to the *MiFID Org Regulation*]

Record of conflicts

10.1.6 R A ~~common platform firm and a management company~~ must keep and regularly update a record of the kinds of service or activity carried out by or on behalf of that *firm* in which a conflict of interest entailing a material risk of damage to the interests of one or more *clients* has arisen or, in the case of an ongoing service or activity, may arise.

[**Note:** article 23 of *MiFID implementing Directive* and article 20(1) of the *UCITS implementing Directive*]

10.1.6A G Other *firms* (other than common platform firms) should also take account of the *rule* on records of conflicts (see SYSC 10.1.6R) as if it were *guidance* (and as if "should" appeared in that rule instead of "must", (as explained in SYSC 1 Annex 1 3.3G), ~~except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1 3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).~~

10.1.6B G A firm (other than a common platform firm) should ensure that its management body receives on a frequent basis, and at least annually, written reports on all situations referred to in SYSC 10.1.6R.

Managing conflicts

10.1.7 R A *firm* must maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to

prevent conflicts of interest as defined in SYSC 10.1.3R from ~~constituting or giving rise to a material risk of damage to~~ adversely affecting the interests of its *clients*.

[~~Note:~~ article ~~13~~ 16(3) of *MiFID*]

Disclosure of conflicts

- 10.1.8 R (1) If arrangements made by a *firm* under SYSC 10.1.7R ~~to manage conflicts of interest~~ are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of a *client* will be prevented, the *firm* must clearly disclose the ~~general nature and/or sources of conflicts of interest~~ following to the *client* before undertaking business for the *client*:
- (a) the general nature or sources of conflicts of interest, or both; and
 - (b) the steps taken to mitigate those risks.
- (2) The disclosure must:
- (a) be made in a *durable medium*; ~~and~~
 - (b) clearly state that the organisational and administrative arrangements established by the *firm* to prevent or manage that conflict are not sufficient to ensure, with reasonable confidence, that the risks of damage to the interests of the *client* will be prevented;
 - (c) include specific description of the conflicts of interest that arise in the provision of *investment services* or *ancillary services*;
 - (d) explain the risks to the *client* that arise as a result of the conflicts of interest; and
 - (e) include sufficient detail, taking into account the nature of the *client*, to enable that *client* to take an informed decision with respect to the service in the context of which the conflict of interest arises.
- (3) This *rule* does not apply to the extent that SYSC 10.1.21R applies.

[~~Note:~~ article ~~18~~(2) 23(2) and (3) of *MiFID* ~~and Article 22(4) of *MiFID* implementing Directive~~]

- 10.1.8A R The obligation in SYSC 10.1.8R(2)(a) does not apply to a *firm* when carrying on *insurance mediation activity*.
- 10.1.9 G *Firms* should aim to identify and manage the conflicts of interest arising in relation to their various business lines and their *group's* activities under a

comprehensive *conflicts of interest policy*. In particular, the disclosure of conflicts of interest by a *firm* should not exempt it from the obligation to maintain and operate the effective organisational and administrative arrangements under SYSC 10.1.7R. While disclosure of specific conflicts of interest is required by SYSC 10.1.8R, an over-reliance on disclosure without adequate consideration as to how conflicts may appropriately be managed is not permitted.

~~[Note: recital 27 of MiFID implementing Directive]~~

- 10.1.9A R A firm must treat disclosure of conflicts pursuant to SYSC 10.1.8R as a measure of last resort to be used only where the effective organisational and administrative arrangements established by the firm to prevent or manage its conflicts of interest in accordance with SYSC 10.1.7R are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the client will be prevented.

Conflicts policy

- 10.1.10 R (1) ~~A common platform firm and a management company~~ must establish, implement and maintain an effective ~~conflicts of interest policy~~ *conflicts of interest policy* that is set out in writing and is appropriate to the size and organisation of the *firm* and the nature, scale and complexity of its business.
- (2) Where the ~~common platform firm or the management company~~ is a member of a *group*, the policy must also take into account any circumstances, of which the *firm* is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the *group*.

~~[Note: article 22(1) of MiFID implementing Directive and article 18(1) of the UCITS implementing Directive]~~

Contents of policy

- 10.1.11 R (1) The *conflicts of interest policy* must include the following content:
- (a) it must identify in accordance with SYSC 10.1.3R and SYSC 10.1.4R, by reference to the specific services and activities carried out by or on behalf of the ~~common platform firm or management company~~, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more *clients*; and
- (b) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.
- (2) The procedures and measures provided for in paragraph (1)(b) must:
- (a) be designed to ensure that *relevant persons* engaged in different business activities involving a conflict of interest of

the kind specified in paragraph (1)(a) carry on those activities at a level of independence appropriate to the size and activities of the ~~common platform firm~~ or the *management company* and of the *group* to which either of them respectively belongs, and to the materiality of the risk of damage to the interests of *clients*; and

- (b) include such of the following as are necessary and appropriate for the ~~common platform firm~~ or the *management company* to ensure the requisite degree of independence:
 - (i) effective procedures to prevent or control the exchange of information between *relevant persons* engaged in activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more *clients*;
 - (ii) the separate supervision of *relevant persons* whose principal functions involve carrying out activities on behalf of, or providing services to, *clients* whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the *firm*;
 - (iii) the removal of any direct link between the remuneration of *relevant persons* principally engaged in one activity and the remuneration of, or revenues generated by, different *relevant persons* principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - (iv) measures to prevent or limit any *person* from exercising inappropriate influence over the way in which a *relevant person* carries out services or activities; and
 - (v) measures to prevent or *control* the simultaneous or sequential involvement of a *relevant person* in separate services or activities where such involvement may impair the proper management of conflicts of interest.
- (3) If the adoption or the practice of one or more of those measures and procedures does not ensure the requisite level of independence, a ~~common platform firm~~ and a *management company* must adopt such alternative or additional measures and procedures as are necessary and appropriate for the purposes of paragraph (1)(b).

[~~Note: article 22(2) and (3) of MiFID implementing Directive~~ and articles 18(2), 19(1) and 19(2) of the *UCITS implementing Directive*]

- 10.1.11A G Other firms (except common platform firms and UCITS management companies) should take account of the *rules* relating to *conflicts of interest*

policies (see SYSC 10.1.10R and SYSC 10.1.11R) ~~as if they were guidance~~ (and as if "should" appeared in those rules instead of "must", as explained in SYSC 1 Annex 13.3.3G), ~~except when they produce or arrange the production of investment research in accordance with COBS 12.2, or produce or disseminate non-independent research in accordance with COBS 12.3 (see SYSC 10.1.16R) in accordance with SYSC 1 Annex 1.3.2BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R.~~

10.1.11B G A firm (other than a common platform firm) should assess and periodically review, on an at least an annual basis, the conflicts of interest policy established in accordance with SYSC 10.1.10R and SYSC 10.1.11R and should take all appropriate measures to address any deficiencies (such as over reliance on disclosure of conflicts of interest).

10.1.12 G In drawing up a *conflicts of interest policy* which identifies circumstances which constitute or may give rise to a conflict of interest, a *firm* should pay special attention to the activities of investment research and advice, proprietary trading, portfolio management and corporate finance business, including underwriting or selling in an offering of securities and advising on mergers and acquisitions. In particular, such special attention is appropriate where the *firm* or a *person* directly or indirectly linked by *control* to the *firm* performs a combination of two or more of those activities.

[**Note:** recital 26 of *MiFID implementing Directive 47* to the *MiFID Org Regulation*]

Corporate finance

10.1.13 G ~~This section is relevant to the management of a securities offering by any firm. [deleted]~~

10.1.14 G ~~A firm will wish to note that when carrying on a mandate to manage an offering of securities, the firm's duty for that business is to its corporate finance client (in many cases, the corporate issuer or seller of the relevant securities), but that its responsibilities to provide services to its investment clients are unchanged. [deleted]~~

10.1.15 G ~~Measures that a firm might wish to consider in drawing up its conflicts of interest policy in relation to the management of an offering of securities include: [deleted]~~

(1) ~~at an early stage agreeing with its corporate finance client relevant aspects of the offering process such as the process the firm proposes to follow in order to determine what recommendations it will make about allocations for the offering; how the target investor group will be identified; how recommendations on allocation and pricing will be prepared; and whether the firm might place securities with its investment clients or with its own proprietary book, or with an associate, and how conflicts arising might be managed; and~~

- (2) ~~agreeing allocation and pricing objectives with the corporate finance *client*; inviting the corporate finance *client* to participate actively in the allocation process; making the initial recommendation for allocation to *retail clients* of the *firm* as a single block and not on a named basis; having internal arrangements under which senior personnel responsible for providing services to *retail clients* make the initial allocation recommendations for allocation to *retail clients* of the *firm*; and disclosing to the *issuer* details of the allocations actually made.~~

~~[Note: The provisions in SYSC 10.1 also implement articles 74(1) and 88 of the *CRD* and as applied under the discretion in the third paragraph of article 95(2) of the *EU CRR*, *BCD* Article 22 and *BCD* Annex V paragraph 1]~~

...

18 Whistleblowing

18.1 Application and Purpose

...

18.1.1A R This chapter applies to:

- (1) a *firm*;
- (2) in relation to the *guidance* in SYSC 18.3.9G to every *firm*;
- (3) in relation to SYSC 18.6.1R to SYSC 18.6.3G (Whistleblowing obligations under MiFID):
 - (a) a UK MiFID investment firm, except a collective portfolio management firm; and
 - (b) a third country investment firm; and
- (4) in relation to SYSC 18.6.4G to SYSC 18.6.5G (Whistleblowing obligations under other EU legislation), a person within the scope of the identified EU sectoral and cross-sectoral legislation.

18.1.1AA G *Firms* are reminded that for the purpose of SYSC 18 (except for SYSC 18.3.9G) “*firm*” has the specific meaning set out in paragraph (8) of that definition in the *Glossary*, namely:

- “(8) (in SYSC 18, with the exception of the *guidance* in SYSC 18.3.9G):
- “(a) a *relevant authorised person* except a *small deposit taker*; and
- (b) a firm as referred to Chapter 1.1 of the PRA Rulebook: Solvency II Firms: Whistleblowing.”

...

Purpose

- 18.1.2 G (1) The purposes of the chapter are to:
- ...
- (c) ...
- (ca) implement the whistleblowing obligation under article 73(2) of MiFID, which requires MiFID investment firms (except collective portfolio management firms) to have in place appropriate procedures for their employees to report potential or actual infringements of MiFID and MiFIR (SYSC 18.6);
- (cb) outline other EU-derived whistleblowing obligations similar to those in article 73(2) of MiFID, some of which may also be applicable to MiFID investment firms (SYSC 18.6);
- ...

Insert the following new section after SYSC 18.5 (Settlement agreements with workers). All the text is new and not underlined.

18.6 Whistleblowing obligations under MiFID and other EU legislation

Whistleblowing obligations under MiFID

- 18.6.1 R (1) A UK MiFID investment firm (except a collective portfolio management investment firm) must have appropriate procedures in place for its employees to report a potential or actual breach of:
- (a) any rule implementing MiFID; or
- (b) a requirement imposed by MiFIR or any EU regulation adopted under MiFID or MiFIR.
- (2) The procedures in (1) must enable employees to report internally through a specific, independent and autonomous channel.
- (3) The channel referred to in (2) may be provided through arrangements made by social partners, subject to the Public Interest Disclosure Act 1998 and the Employment Rights Act 1996 to the extent that they apply.
- [Note: article 73(2) of MiFID]
- 18.6.2 R SYSC 18.6.1R applies to a third country investment firm as if it were a UK MiFID investment firm (unless it is a collective portfolio management

investment firm) when the following conditions are met:

- (1) it carries on *MiFID* or *equivalent third country business*; and
- (2) it carries on the business in (1) from an establishment in the *United Kingdom*.

- 18.6.3 G When considering what procedures may be appropriate for the purposes of SYSC 18.6.1R(1), a *UK MIFID investment firm* or a *third country investment firm* may wish to consider the arrangements in SYSC 18.3.1R(2).

Whistleblowing obligations under other EU legislation

- 18.6.4 G In addition to obligations under *MiFID*, similar whistleblowing obligations apply to miscellaneous *persons* subject to regulation by the *FCA* under the following non-exhaustive list of *EU* legislation:

- (1) article 32(3) of the *Market Abuse Regulation*, as implemented in section 131AA of the *Act*;
- (2) article 71(3) of the *CRD* (see *IFPRU* 2.4.1R in respect of *IFPRU investment firms*);
- (3) article 99d(5) of the *UCITS Directive* (see *SYSC* 4.1.1ER in respect of *UK UCITS management companies*, and *COLL* 6.6B.30R in respect of *depositories*); and
- (4) article 24(3) of the *securities financing transactions regulation*.

- 18.6.5 G Depending on the nature of its business, in addition to SYSC 18.6.1R, a *MiFID investment firm* may, for example, be subject to one or more of the requirements in SYSC 18.6.4G.

Amend the following as shown.

19A IFPRU Remuneration Code

19A.3 Remuneration principles for IFPRU investment firms

...

Remuneration Principle 5: Control functions

...

19A.3.17 G ...

- (3) The ~~appropriate regulator~~ FCA would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4R(4)~~ article 22(3) of the *MiFID Org Regulation*).

...

19C BIPRU Remuneration Code

19C.3 Remuneration principles

...

Remuneration Principle 5: Control functions

...

19C.3.17 G ...

- (3) The *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4R(4)~~ article 22(3) of the *MiFID Org Regulation*).

...

19D Dual-regulated firms Remuneration Code

19D.3 Remuneration principles

...

Remuneration Principle 5: Control functions

...

19D.3.18 G ...

- (3) The *FCA* would generally expect the ratio of the potential variable component of *remuneration* to the fixed component of *remuneration* to be significantly lower for *employees* in risk management and compliance functions than for *employees* in other business areas whose potential bonus is a significant proportion of their *remuneration*. *Firms* should nevertheless ensure that the total *remuneration* package offered to those *employees* is sufficient to attract and retain staff with the skills, knowledge and expertise to discharge those functions. The requirement that the method of determining the *remuneration* of *relevant persons* involved in the compliance function must not compromise their objectivity or be likely to do so also applies (see ~~SYSC 6.1.4R(4)~~ article 22(3) of the *MiFID Org Regulation*).

...

Insert the following new chapter after SYSC 19E (UCITS Remuneration Code). All the text is new and not underlined.

19F Remuneration and performance management of sales staff

19F.1 MiFID remuneration incentives

Application

- 19F.1.1 R (1) SYSC 19F.1 applies to:
- (a) a *common platform firm*, unless it is a *collective portfolio management investment firm*;
 - (b) a *MiFID optional exemption firm*;
 - (c) a *third country firm*; and
 - (d) a *UK branch* of an *EEA MiFID investment firm*, unless it is a *UCITS investment firm* or an *AIFM investment firm*.
- (2) In relation to a *firm* that falls under (1)(c), SYSC 19F.1 applies only in relation to activities carried on from an establishment in the *United Kingdom*.

Purpose

- 19F.1.3 G This chapter contains *rules* implementing article 24(10) of *MiFID* and on remuneration policies and practices.

MiFID requirement on remuneration incentives

- 19F.1.4 R A *firm* which provides *investment services* to *clients* must ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interests of its *clients*. In particular, a *firm* must not make any arrangement by way of *remuneration*, sales targets or otherwise that could provide an incentive to its staff to recommend a particular *financial instrument* to a *retail client* when the *firm* could offer a different *financial instrument* which would better meet that *client's* needs.

[**Note:** article 24(10) of *MiFID*]

Remuneration policies and practices

- 19F.1.5 R (1) A *dormant account fund operator* in respect of its *investment services* and *ancillary services*, a *MiFID optional exemption firm* in respect of its *investment services* and *ancillary services* and a *third country firm* in respect of its *MiFID or equivalent third country business* must:
- (a) define and implement *remuneration* policies and practices under appropriate internal procedures taking into account the interests of all the *clients* of the *firm*, with a view to ensuring that *clients* are treated fairly and their interests are not impaired by the *remuneration* practices adopted by the *firm* in the short, medium or long term. *Remuneration* policies and practices must be designed in such a way so as not to create a conflict of interest or incentive that may lead *relevant persons* to favour their own interests or the *firm's* interests to the potential detriment of any *client*;
 - (b) ensure that their *remuneration* policies and practices apply to all *relevant persons* with an impact, directly or indirectly, on *investment services* and *ancillary services* provided by the *firm* or on its corporate behaviour, regardless of the type of *clients*, to the extent that the *remuneration* of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the *firm's clients*; and
 - (c) ensure that its *management body* approves, after taking advice from the compliance function, the *firm's remuneration* policy. The *senior management* of the *firm* must be responsible for the day-to-day implementation of the *remuneration* policy and the monitoring of compliance risks related to the policy.
- (2) (a) *Remuneration* and similar incentives must not be solely or predominantly based on quantitative commercial criteria, and must take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of *clients* and the quality of services provided to *clients*.
- (b) A balance between fixed and variable components of *remuneration* must be maintained at all times, so that the

remuneration structure does not favour the interests of the *firm* or its *relevant persons* against the interests of any *client*.

19F.1.6 G A *firm* should also be aware of:

- (1) in the case of a *common platform firm* (but excluding a *collective portfolio management investment firm*), the requirements on *remuneration* in article 27 of the *MiFID Org Regulation* applying to it;
- (2) the requirements in relation to remuneration policies (SYSC 4.3A.1AR) and conflicts of interest (SYSC 10.1.7R);
- (3) the Finalised Guidance 13/01 entitled ‘Risks to customers from financial incentives’ published in January 2013; and
- (4) the Finalised Guidance 15/10 entitled ‘Risks to customers from performance management at firms’ published in July 2015.

Amend the following as shown.

Sch 1 Record keeping requirements

1.1G The aim of the guidance in the following table is to give the reader a quick over-all view of the relevant record keeping requirements.

It is not a complete statement of those requirements and should not be relied on as if it were.

1.2G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
SYSC 9.1.1R	...	...	...	...
<u>SYSC 9.1.1AR</u>	<u>Business and internal organisation</u>	<u>Details of the firm's orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

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

4 Code of Practice for Approved Persons: specific

...

4.7 Statement of Principle 7

...

4.7.10 G In the case of an *approved person* performing an *accountable higher management function* responsible for compliance ~~under SYSC 3.2.8R, SYSC 6.1.4R or SYSC 6.1.4AR~~ in respect of the following provisions, failing to take reasonable steps to ensure that appropriate compliance systems and procedures are in place falls within *APER 4.7.2G*:

- (1) SYSC 3.2.8R; or
- (2) SYSC 6.1.4R; or
- (3) article 22(3) of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R); or
- (4) SYSC 6.1.4AR.

...

Annex E

Amendments to the Fit and Proper test for Approved Persons and specified significant-harm functions (FIT)

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

1 General

...

1.2 Introduction

...

1.2.1C G The key general *rules* relating to the criteria listed in *FIT* 1.2.1BG include:

...

- (2) for *employees of firms* generally, ~~SYSC 5.1.1R~~ (the *competent employees rule*) ; and

...

...

Annex F

Amendments to the General Provisions (GEN)

In this Annex underlining indicates new text.

2 Interpreting the Handbook

...

2.2 Interpreting the Handbook

...

EU Regulations and third country firms

- 2.2.22A **R** (1) Unless exempted in (2) and subject to (3), *MiFIR*, and any *EU regulation* adopted as at 3 January 2018 under *MiFIR* or *MiFID*, apply to a *third country investment firm* as if it were a *UK MiFID investment firm* when the following conditions are met:
- (a) when it carries on *MiFID* or equivalent third country business; and
 - (b) it carries on the business in (a) from an establishment in the *United Kingdom*.
- (2) Paragraph (1) does not apply:
- (a) to the extent *MiFIR* or an *EU regulation* adopted under *MiFIR* or *MiFID* imposes a specific requirement in relation to a *third country investment firm*; and
 - (b) to *EU regulations* adopted under articles 7, 34 and 35 of *MiFID*.
- (3) Paragraph (1) is modified by the application provisions in individual *Handbook* chapters for particular purposes.
- 2.2.22B **G** (1) The purpose of *GEN 2.2.22AR* is to ensure consistency with the principle referred to in recital 109 to *MiFID* that a *third country investment firm* should not be treated in a more favourable way than an *EEA firm*. A *third country investment firm* does not, however, benefit from passporting rights in the manner envisaged for *EEA firms* and its *authorisation* requires consideration of other issues, including the nature and extent of regulation provided by its *Home State regulator*.
- (2) *GEN 2.2.22AR* may be overridden where the application provisions at the beginning of individual *Handbook* chapters qualify its effect.

...

Annex G

Amendments to the Fees manual (FEES)

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

1 Fees Manual

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

- (1) ...
- (2) *FEES* 1, 2 and 4 apply to:
 - ...
 - (n) every *AIFM* notifying the *FCA* under regulation 57, 58 and 59 of the *AIFMD UK regulation* and every *AIFM* which has made such a notification; ~~and~~
 - (o) each of the following that makes *transactions reports* directly to the *FCA* under ~~*SUP 17*~~ *17A* (Transaction reporting):
 - (i) a *firm*;
 - (ii) a third party acting on a *firm's* behalf;
 - (iii) an *approved reporting mechanism*;
 - (iv) an operator of a *regulated market*; and
 - (v) an operator of an *MTF* or *OTF*; and
 - (p) a *data reporting services provider*.

...

2 General Provisions

2.1 Introduction

...

Purpose

...

2.1.5 G (1) The following enable the *FCA* to charge fees to cover its costs and expenses in carrying out its functions:

...

- (d) article 25(a) of the *MCD Order*; ~~and~~
- (e) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*;
- (f) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations*;
- (g) regulation 21 of the *DRS Regulations*; and
- (h) regulation 52 of the *MiFI Regulations*.

...

...

2.1.5C G (1) The *FCA* also has a fee-raising power as a result of:

- (a) regulation 21 of the *Small and Medium Sized Businesses (Credit Information) Regulations*; ~~and~~
- (b) regulation 18 of the *Small and Medium Sized Business (Finance Platforms) Regulations* ;
- (c) regulation 21 of the *DRS Regulations*; and
- (d) regulation 52 of the *MiFI Regulations*.

(2) The *FCA*'s functions under these regulations are treated as functions conferred on the *FCA* under the *Act* for the purposes of its fee-raising power in paragraph 23 of Schedule 1ZA to the *Act*.

...

3.1 Introduction

...

3.1.2 G This chapter does not apply to:

- (1) an *EEA firm* that wishes to exercise an *EEA right*; ~~or unless it is:~~
 - (a) an incoming data reporting services provider connecting to the market data processing system; or

(b) an EEA firm connecting to the market data processing system; or

...

...

3.2 Obligation to pay fees

...

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£)	Due date
...		
(r) Providers of reporting or trade matching systems applying for recognition under MiFID as an Approved Reporting Mechanism. [deleted]	100,000	Having received its application, within 30 days after the FCA has notified the applicant that it is to commence testing of the applicant's systems.
...		
(t) A firm, a third party acting on a firm's behalf, an operator of a regulated market or, an operator of an MTF applying to the FCA to report transaction reports directly to the FCA. [deleted]	100,000	Having received its application, within 30 days after the FCA has notified the applicant that it is to commence testing of the applicant's systems.
...		
(zx) (1) <u>Unless (2) applies any person applying to connect to the market data processing system to make transaction reports directly to the FCA under MiFIR.</u> (2) <u>If a person has</u>	(1) <u>Unless (2) applies, 20,000.</u> (2) <u>Any incoming data reporting services provider will pay 80% of the fee at (1).</u>	<u>On or before the date the application is made.</u>

<p><u>previously applied as stated in (zx)(1) above and has been connected then no further fee is payable for any further such applications.</u></p>		
<p><u>(zy) (1) Subject to (2) and (3) below, any person applying to connect to the market data processing system to provide markets data (other than transaction reports) under MiFID II and MiFIR.</u></p> <p><u>(2) If a person has previously applied as stated in (zy)(1) above and has been connected then no further fee is payable for any further such applications in relation to reporting the same data.</u></p> <p><u>(3) If a person has previously applied as stated in (zy)(1) above and makes a further application in relation to the provision of different data then a separate fee is payable for such application.</u></p>	<p><u>(1) Unless (2) applies, 10,000.</u></p> <p><u>(2) Any incoming data reporting services provider authorised by another EEA State will pay 80% of the fee at (1).</u></p>	<p><u>On or before the date the application is made.</u></p>
<p>...</p>		

...

4 Periodic fees

4.1 Introduction

...

4.1.1A R A reference to *firm* in this chapter includes a reference to:

- (1) a *fee-paying payment service provider*;
- (2) a *CBTL firm*;
- (3) a ~~fee-paying~~ fee-paying *electronic money issuer*, ~~and~~ ;
- (4) a *recognised investment exchange*; and
- (5) a data reporting services provider.

...

Background

...

4.1.4 G ...

- (3) The periodic fees for *fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting service providers* and *issuers of regulated covered bonds* are set out in *FEES 4 Annex 11R*. This annex sets out the activity groups, tariff base, valuation dates and, where applicable, the flat fees due for these *firms*.

...

4.2 Obligation to pay periodic fees

...

4.2.7K R ...

Table A: calculating tariff data for second and subsequent years of authorisation when full trading figures are not available

Fee-block	Tariff base	Calculation where trading data are not available
...		
B. Market operators and , MTF operators <u>and</u> OTF <u>operators</u>	Flat fee	Not applicable.
...		

...

4.2.11 R Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period

			leading to modified periodic fee
Any <i>firm</i> (except an <i>AIFM</i> <i>qualifier</i> , <i>ICVC</i> or a <i>UCITS</i> <i>qualifier</i>)	(1) Unless (2) applies, as specified in <i>FEES</i> 4.3.1R in relation to <i>FEES</i> 4 Annex 2AR and <i>FEES</i> 4 Annex 11R. (2) Where a <i>firm</i> is paying a <i>ring-fencing implementation fee</i> , as specified in <i>FEES</i> 4 Annex 2BR.	(1) Unless (2) or (3) apply, on or before the relevant dates specified in <i>FEES</i> 4.3.6R. ... (3) Where the <i>permission</i> is for <i>operating a multilateral trading facility</i> or <u><i>operating an organised trading facility</i></u> , the date specified in <i>FEES</i> 4 Annex 10 <u>10R</u> (Periodic fees for MTF <u>and</u> OTF operators).	<i>Firm</i> receives <i>permission</i> , or becomes authorised or registered under the <i>Payment Services Regulations</i> , article 8 of the <i>MCD Order</i> , <u>the <i>DRS Regulations</i></u> or the <i>Electronic Money Regulations</i> ; or <i>firm</i> extends <i>permission</i> or its <i>payment service</i> activities
...
Each of the following that makes <i>transaction reports</i> directly to the <i>FCA</i> under <i>SUP 17</i> <u><i>17A</i></u> (Transaction reporting): ... (4) an operator of a <i>regulated market</i> ; and (5) an operator of an <i>MTF</i> ; and <u>(6) an operator of an <i>OTF</i>.</u>	...	...	...

...

4.3 Periodic fee payable by firms (other than AIFM qualifiers, ICVCs and UCITS qualifiers)

...

Calculation of periodic fee (~~excluding~~ except in relation to the Society of Lloyd's, fee-paying payment service providers and , fee-paying electronic money issuers and data reporting services providers)

- 4.3.3 R The periodic fee referred to in *FEES* 4.3.1R is (except in relation to the *Society, fee-paying payment service providers and , fee-paying electronic money issuers and data reporting services providers*) calculated as follows:

...

Calculation of periodic fee for fee-paying payment service providers and fee-paying electronic money issuers

- 4.3.3A R The periodic fee referred to in *FEES* 4.3.1R in relation to *fee-paying payment service providers, CBTL firms, data reporting service providers and fee-paying electronic money issuers* is calculated in accordance with *FEES* 4 Annex 11R.

...

Time of payment

- 4.3.6 R ...

[**Note:** If the *firm* is a *PRA-authorized person* that meets the condition at *FEES* 4.3.6R(1)(D)(b), the *firm* will also pay its *PRA* periodic fees in two tranches as specified in the Fees Part of the *PRA Rulebook Rulebook*. The *FCA*, acting as the *PRA*'s collection agent, will collect these fees.]

...

- (3) If a *firm* has applied to cancel its *Part 4A permission* in the way set out in *SUP* 6.4.5D (Cancellation of permission), or its status as a *payment institution* under regulation 10 of the *Payment Services Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 14 of the *Payment Services Regulations* (Supplementary provisions), or its status as an *electronic money issuer* under regulation 10 of the *Electronic Money Regulations* (Cancellation of authorisation) or as regulation 10 is applied by regulation 15 of the *Electronic Money Regulations* (Supplementary provisions), or its registration as a *CBTL firm* under article 13(c) of the *MCD Order* or its authorisation as a *data reporting service provider* under regulation 11 of the *DRS Regulations*, then (1) and (2) do not apply but it must pay the total amount due when the application is made.

...

- (4A) If the *FCA* has cancelled a *firm's* authorisation or registration under regulation 10 of the *Payment Services Regulations* or regulation 10 of the *Electronic Money Regulations* or its registration under regulation 10 as applied by regulation 14 of the *Payment Services Regulations* or its registration under regulation 10 as applied by regulation 15 of the *Electronic Money Regulations*, or its registration under article 13 (except under article 13(c)) of the *MCD Order*, or its authorisation as a *data reporting service provider* under regulation 11 or 12 of the *DRS Regulations*, then (1) and (2) do not apply but the *firm* must pay the total amount due immediately before the cancellation becomes effective.

...

- (6) Paragraphs (1) and (2) do not apply to any periodic fee in relation to a *firm's permission for operating a multilateral trading facility* or operating an organised trading facility and such a fee is not taken into account for the purposes of the split in (1). Instead any fee for this *permission* is payable on the date specified in *FEES* 4 Annex 10R (Periodic fees for MTF and OTF operators).

...

- 4.3.12 R For an *incoming EEA firm* (excluding *MTF* and *OTF* operators), or an *incoming Treaty firm*, the calculation required by *FEES* 4.3.3R is modified as follows:

...

...

Firms Applying to Cancel or Vary Permission Before Start of Period

- 4.3.13 R (1) If:
- (a) a *firm*:
 - (i) makes an application to vary its *permission* (by reducing its scope), or cancel it, in the way set out in *SUP* 6.3.15D(3) (Variation of permission) and *SUP* 6.4.5D (Cancellation of permission); or
 - (ii) applies to vary (by reducing its scope) or cancel its authorisation or registration (regulation 8 and 10(1) of the *Payment Services Regulations* including as applied by regulation 14 of the *Payment Services Regulations*) ; or
 - (iii) applies to cancel its authorisation or registration

(regulation 10 and 12 of the *Electronic Money Regulations* including as applied by regulation 15 of the *Electronic Money Regulations*) ; or

(iv) applies for revocation of its registration under article 13(c) of the *MCD Order* ; or

(v) applies to vary (by reducing its scope) or cancel its authorisation as a data reporting services provider under regulation 11 and 12 of the DRS Regulations;
or

(aa) an *issuer* makes an application for de-listing; or

(ab) a *sponsor* notifies the *FCA* of its intention to be removed from the list of approved *sponsors*; and

(b) the *firm, issuer* or *sponsor* makes the application or notification referred to in (a), (aa) or (ab) respectively, before the start of the *fee year* to which the fee relates;

FEES 4.2.1R applies to the *firm* as if the relevant variation or cancellation of the *firm's permission* or authorisation or registration under the *Payment Services Regulations, MCD Order, DRS Regulations* or the *Electronic Money Regulations*, de-listing or removal from the list of approved *sponsors*, took effect immediately before the start of the *fee year* to which the fee relates.

(2) But (1) does not apply if, due to the continuing nature of the business, the variation, cancellation, de-listing or removal is not to take effect on or before 30 June of the *fee year* to which the fee relates.

4.3.14 G ~~Where~~ The due dates for payment of periodic fees are modified by *FEES* 4.3.6R(3), *FEES* 4.3.6R(4) and *FEES* 4.3.6R(4A) respectively where:

(1) a *firm* has applied to cancel its:

(a) *Part 4A permission*; ; or

(b) its authorisation or registration under the *Payment Services Regulations* or the *Electronic Money Regulations*; ; or

(c) its registration as a *CBTL firm* under article 13(c) of the *MCD Order*; ; or

(d) authorisation under regulation 11 of the *DRS Regulations*; or

(2) the *FCA* has exercised its:

(a) *own-initiative powers* to cancel a *firm's Part 4A permission* ;
or

- (b) ~~the FCA has exercised its~~ powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 14 (Supplementary provisions) of the *Payment Services Regulations* to cancel a *firm's* authorisation or registration under the *Payment Services Regulations* ; or
- (c) ~~the FCA has exercised its~~ powers under regulation 10 (Cancellation of authorisation), including as applied by regulation 15 (Supplementary provisions) of the *Electronic Money Regulations*; or regulation 11 of the *DRS Regulations*; or
- (d) ~~the FCA has exercised its~~ powers under article 13 (Revocation of registration), excluding article 13(c), of the *MCD Order* ; ~~the due dates for payment of periodic fees are modified by FEES 4.3.6R(3), FEES 4.3.6R(4) and FEES 4.3.6R(4A) respectively.~~

...

4.4 Information on which fees are calculated

- 4.4.1 R A *firm* (other than the *Society* ~~and~~ or an *MTF* or *OTF* operator in relation to its *MTF* or *OTF* business) must notify the *FCA* (in its own capacity and, if applicable, in its capacity as collection agent for the *PRA*) the value (as at the valuation date specified in Part 5 of *FEES* 4 Annex 1AR) of each element of business on which the periodic fee payable by the *firm* is to be calculated.

...

4 Annex FCA Activity groups, tariff bases and valuation dates 1AR

Part 1	
This table shows how the <i>FCA</i> links the <i>regulated activities</i> for which a <i>firm</i> has <i>permission</i> to activity groups (fee-blocks). A <i>firm</i> can use the table to identify which fee-blocks it falls into based on its <i>permission</i> .	
Activity group	Fee payer falls in the activity group if :
...	...
A.13 Advisors, arrangers, dealers or brokers	(1) it is an <i>authorised professional firm</i> and ALL the <i>regulated activities</i> in its <i>permission</i> are limited to non-mainstream regulated activities (a <i>firm</i> falling within this category is a <i>class</i> (1) <i>firm</i>); OR (2) its <i>permission</i> :

	<p>(a) includes one or more of the following:</p> <p>...</p> <p>(ii) ...</p> <p><u>(iii) in relation to a structured deposit:</u></p> <p><u>dealing in investments as agent; or</u></p> <p><u>arranging (bringing about deals) in investments; or</u></p> <p><u>making arrangements with a view to transactions in investments; or</u></p> <p><u>advising on investments (except P2P agreements); or</u></p> <p><u>advising on investments (except pension transfers and pension opt-outs);</u></p> <p>...</p>
...	
B. Market operators	<p>(1) <i>firms</i> that were prescribed as an operator of a <i>prescribed market</i> under the Financial Services and Markets Act (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996); and</p> <p>(2) <i>firms</i> that are prescribed as a market operator, as defined in article 4(1)(13) <u>4(1)(18)</u> of <i>MiFID</i>.</p>
...	
B. MTF and OTF operators	its <i>permission</i> includes <u>operating a multilateral trading facility</u> or <u>operating an organised trading facility</u> .
...	
<p>Part 3</p> <p>This table indicates the tariff base for each fee-block set out in Part 1.</p> <p>The tariff base in this Part is the means by which the <i>FCA</i> measures the amount of business conducted by a <i>firm</i> for the purposes of calculating the annual periodic fees payable to the <i>FCA</i> by that <i>firm</i>.</p>	
Activity group	Tariff base
...	...
A.10	<p>NUMBER OF TRADERS</p> <p>Any <i>employee</i> or agent, who:</p> <p>ordinarily acts within the <i>United Kingdom</i> on behalf of an <i>authorised person</i> liable to pay fees to the <i>FCA</i> in its fee-block A.10 (firms dealing as principal); and who,</p>

	<p>as part of their duties in relation to those activities of the <i>authorised person</i>, commits the <i>firm</i> in market dealings or in transactions in <i>securities</i> or in other <i>specified investments</i> in the course of <i>regulated activities</i>.</p> <p>But not any <i>employees</i> or agents who work solely in the <i>firm's MTF or OTF</i> operation.</p> <p>...</p>
...	
B. MTF and OTF operators	<p>SUPERVISORY CATEGORY</p> <p>The general supervisory category to which the <i>firm</i> <i>MTF or OTF operator</i> was assigned as at the start of the relevant <i>fee year</i>.</p>
...	

Part 5

This table indicates the valuation date for each fee-block. A *firm* can calculate its tariff data in respect of fees payable to the *FCA* by applying the tariff bases set out in Part 3 with reference to the valuation dates shown in this table.

Activity group	Valuation date
<p>IN THIS TABLE, REFERENCES TO SPECIFIC DATES OR MONTHS ARE REFERENCES TO THE LATEST ONE OCCURRING BEFORE THE START OF THE PERIOD TO WHICH THE FEE APPLIES, UNLESS OTHERWISE SPECIFIED - E.G. FOR 2013/14 FEES (1 APRIL 2013 TO 31 MARCH 2014), A REFERENCE TO DECEMBER MEANS DECEMBER 2012.</p>	
<p>Where a <i>firm's</i> tariff data is in a currency other than sterling, it should be converted into sterling at the exchange rate prevailing on the relevant valuation date.</p>	
...	
B. MTF and OTF operators	The start of the relevant <i>fee year</i> .
...	

4 Annex 2AR FCA Fee rates and EEA/Treaty firm modifications for the period from 1 April 2016 to March 2017 1 April 2017 to 31 March 2018

Part 1

This table shows the tariff rates applicable to each of the fee blocks set out in Part 1 of *FEES 4 Annex 1AR*.

...		
Activity group	Fee payable	
...		
B. <u>MTF and OTF</u> operators	As set out in <i>FEES</i> 4 Annex 40 <u>10R</u> (Periodic fees for <u>MTF and OTF</u> operators).	
...
<p>Part 3</p> <p>This table shows the modifications to fee tariffs that apply in respect of the <i>FCA</i> to <i>incoming EEA firms</i> and <i>incoming Treaty firms</i> which have established branches in the UK.</p>		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>	
...		
B. MTF <u>MTF and OTF</u> operators	Not applicable	
...		

4 Annex 3AR Fees relating to the direct reporting of transactions to the FCA under SUP ~~17~~ 17A for the period ~~1 April 2016 to 31 March 2017~~ 1 April 2017 to 31 March 2018

This table shows the fees payable by a *firm*, a third party acting on behalf of a *firm*, an *approved reporting mechanism*, an operator of a *regulated market* ~~or~~, an operator of an *MTF* or an operator of an *OTF* that makes *transaction reports* directly to the *FCA* under *SUP* 17 (Transaction reporting).

...

4 Annex 10R Periodic fees for MTF and OTF operators payable in relation to the period ~~1 April 2016 to 31 March 2017~~ 1 April 2017 to 31 March 2018

General supervisory category of <i>MTF</i> or <i>OTF</i> operator (see Note below)	Fee payable (£)	Due date (i) 1 August 2016 <u>2017</u> ; or (ii) 30 days from the date of the invoice in the case of a <i>firm</i> which receives <i>permission</i> to be operating
--	-----------------	--

		<i>a multilateral trading facility or to be operating an organised trading facility</i> or whose <i>permission</i> is extended to include this either activity in the course of the relevant financial year.
<i>MTF or OTF</i> operator has a named individual fixed portfolio supervisor	...	
All other <i>MTF or OTF</i> operators (i.e. those supervised by a team of flexible portfolio supervisors)	...	
...		
Note: subject to <i>FEES</i> 4.3.13R, this table applies to all <i>MTF or OTF</i> operators with <i>permission</i> to operate an <i>MTF or OTF</i> as at 1 April of the applicable <i>fee year</i> , irrespective of whether, and if so when, their <i>permission</i> to operate an <i>MTF or OTF</i> was subsequently cancelled during that <i>fee year</i> .		

4 Annex 11R Periodic fees in respect of payment services, electronic money and issuance, regulated covered bonds, CBTL business and data reporting services in relation to the period 1 April 2017 to 31 March 2018

This Annex sets out the periodic fees in respect of *payment services* carried on by *fee-paying payment service providers* under the *Payment Services Regulations* and electronic money issuance by *fee-paying electronic money issuers* under the *Electronic Money Regulations* and issuance of *regulated covered bonds* by issuers and *CBTL business* carried on by *CBTL firms* under the *MCD Order* and, ~~firms registered under the *Money Laundering Regulations* in relation to the period 1 April 2017 to 31 March 2018~~ and *data reporting services providers* under the *DRS Regulations*.

...	
Part 2C – Activity group relevant to <i>data reporting services providers</i>	
<u>Activity Group</u>	<u>Fee payer falls into this group if:</u>
<u>G.25 DRSP</u>	<u>it is a <i>data reporting services provider</i></u>

Part 3

This table indicates the tariff base for each fee-block. The tariff base is the means by which the *FCA* measures the amount of business conducted by *fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, MLR firms, data reporting services providers* and *issuers of regulated covered bonds*.

Activity Group	Tariff base
...	
<u>G.25</u>	<u>Not applicable</u>

...

Part 5 – Tariff rates		
Activity group	Fees payable in relation to 2017/18	
...		
<u>G.25</u>	<u>Flat fee (£) for first data reporting service plus 50% flat fee for each additional data reporting service for which the data reporting services provider has authorisation.</u>	<u>[TBC]</u>

...

Annex H

Amendments to the Prudential sourcebook for Investment Firms (IFPRU)

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

1 Application

1.1 Application and Purpose

...

Types of IFPRU investment firm: IFPRU 125K firm

- 1.1.9 R An *IFPRU 125K firm* means an *IFPRU investment firm* that satisfies the following conditions:

...

- (5) it does not operate either a multilateral trading facility or an organised trading facility, or both.

[Note: article 29(1) of *CRD*]

Types of IFPRU investment firm: IFPRU 50K firm

- 1.1.10 R An *IFPRU 50K firm* is a *IFPRU investment firm* that satisfies the following conditions:

...

- (4) it does not operate either a multilateral trading facility or an organised trading facility, or both.

[Note: article 29(3) of *CRD*]

Types of IFPRU investment firm: IFPRU 730K firm

- 1.1.11 R ...

- (2) An *IFPRU investment firm* that operates either a multilateral trading facility or an organised trading facility or both is an *IFPRU 730K firm*.

[Note: article 28(2) of *CRD*]

...

Interpretation of the definition of types of firm and undertaking

- 1.1.13 G A *firm* whose head office is not in an *EEA State* is an *investment firm* if it would have been subject to the requirements imposed by MiFID (but it is

not a *bank, building society, credit institution, local firm, exempt CAD firm and BIPRU firm*) if:

...

...

2 Supervisory processes and governance

...

2.3 Supervisory review and evaluation process: internal capital adequacy standards

...

A securities firm

...

2.3.65 G Counterparty risk requirements 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:

...

- (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 *multilateral trading facilities* and organised trading facilities; and

...

...

Annex I

**Amendments to the Interim Prudential sourcebook for Investment Businesses
(IPRU(INV))**

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

3 Financial resources for Securities and Futures Firms which are not MiFID Investment Firms or which are Exempt BIPRU Commodities Firms or Exempt IFPRU Commodities Firms

...

3-60 FIRMS TO WHICH RULES 3-61 TO 3-182 APPLY

Broad scope firms

- 3-60(1) R Rules 3-61 to 3-182 apply to a *broad scope firm* except that rules 3-80 to 3-178 do not apply to a *venture capital firm* or in respect of *bidding in emissions auctions* carried on by a *firm* that is exempt from *MiFID* under article 2(1)(~~i~~) (j).

...

Advisers ~~and locals/traded options market makers~~

- 3-60(4) R Rules 3-61 to 3-182 do not apply to an *adviser* ~~or local/traded options market maker~~ which must instead comply with the following capital requirements at all times:
- (a) *tangible net worth* must be positive; and
 - (b) ~~in the case of an adviser,~~ net current assets must be positive; and .
 - (c) ~~in the case of a local traded options market maker, the firm must be able to meet its liabilities as they fall due.~~

...

Absolute minimum requirement = General rule

- 3-72 R A *firm's* absolute minimum requirement is:

...

- (eb) for a *firm* that is exempt from *MiFID* under article 2(1)(~~i~~) (j) and whose *permitted activities* include *bidding in emissions auctions*: £50,000;

...

3-173A DERIVATIVE TRANSACTIONS

...

Exposures to ~~loca~~ local firms

- 3-173A(5) R A *firm* must calculate a 100% *CRR* for amounts of initial and variation margin not met with *acceptable collateral* or a positive *equity balance* owed to a *firm* by a *local firm* in respect of transactions in *derivatives* listed on an *exchange* or *approved exchange* from the date of any shortfall. However, a *firm* may use an alternative treatment if it:
- (a) participates in the profits or losses of the *local firm* for 25% or more when the *firm* may include the *local firm* position in its own position which will then be subject to *PRR*; or
 - (b) calculates *PRR* for ~~loca~~ local firms in which case its requirement will be the sum of the following:
 - (i) 10% of the *PRR* result for each *local firm*; and
 - (ii) the excess over the “net liquidating balance” of the *PRR* applied to the positions of each *local firm*; and
 - (c) for the purposes of (b) above, “net liquidating balance” means the cash amount which would remain in a *local firm* account if all positions were liquidated and there were added (1) cash balances (2) the value of *marketable investments*, and (3) letters of credit and guarantees issued by a *regulated banking institution* which is not the *counterparty* or an *associate* of the *counterparty* in the control of the *firm*; and there were deducted all loans and overdrafts from, and other liabilities to the *firm*; and to the extent that a *firm* includes an exposure in the net liquidating balance calculation, it does not also need to apply the liquidity adjustment in rule 3-75 or the *CRR* to those exposures.

...

APPENDIX 1 - GLOSSARY OF TERMS FOR IPRU(INV) 3

...

broad scope firm means any *firm* which is not an *adviser*; or an arranger ~~or a local~~;

...

9 Financial resources requirements for an exempt CAD firm**9.2 GENERAL REQUIREMENTS**

...

Initial capital and professional indemnity insurance requirements – exempt CAD

firms that are not IMD insurance intermediaries

- 9.2.4 R (1) An *exempt CAD firm* which is not an *IMD insurance intermediary* must have:

...

[Note: ~~Article 67(3) of MiFID~~ and article 31(1) of the *CRD*]

...

Initial capital and professional indemnity insurance requirements – exempt CAD firms that are also IMD insurance intermediaries

- 9.2.5 R (1) An *exempt CAD firm* that is also an *IMD insurance intermediary* must comply with the professional indemnity insurance requirements at least equal to those set out in *IPRU(INV)* 9.2.4R(1)(b) (except that the minimum *limits of indemnity* are at least EUR 1,120,200 for a single claim and EUR 1,680,300 in aggregate) and in addition has to have:

...

[Note: ~~Article 67(3) of MiFID~~ and article 31(2) of the *CRD*]

...

...

Initial capital and ongoing capital requirements for local firms

- 9.2.8 R A *local firm* must:
- (a) have *initial capital* of EUR 50,000; and

[Note: ~~Article 67(2) of MiFID~~ and article 30 of *CRD*]

...

...

13 Financial Resource Requirements for Personal Investment Firms

13.1 APPLICATION, GENERAL REQUIREMENTS AND PROFESSIONAL INDEMNITY INSURANCE REQUIREMENTS

...

Limits of indemnity

...

- 13.1.11 R ...

[Note: ~~Article 67(3) of MiFID~~ and article 31(1) of CRD (see also IPRU(INV) 13.1A.3R)]

13.1.12 R ...

[Note: ~~Article 67(3) of MiFID~~ and article 31(2) of CRD (see also IPRU(INV) 13.1A.4R)]

...

Annex J

Amendments to the Conduct of Business sourcebook (COBS)

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

3 Client categorisation

...

3.6 Eligible counterparties

...

Per se eligible counterparties

3.6.2 R Each of the following is a *per se eligible counterparty* (including an entity that is not from an *EEA State* that is equivalent to any of the following) unless and to the extent it is given a different categorisation under this chapter:

...

(7) ~~an undertaking exempted from the application of *MiFID* under either Article 2(1)(k) (certain own account dealers in commodities or commodity derivatives) or Article 2(1)(l) (locals) of that directive; [deleted]~~

...

(9) a central bank; and

...

...

Annex K

Amendments to the Insurance: Conduct of Business sourcebook (ICOBS)

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

2 General matters

...

2.4 Record-keeping

- 2.4.1 G (1) The Senior Management Arrangements, Systems and Controls sourcebook (SYSC) contains high-level record-keeping requirements (see ~~SYSC 3.2.20R~~ and ~~SYSC 9.1.1R~~ and SYSC 9.1.1AR).

...

Annex L

Amendments to the Market Conduct sourcebook (MAR)

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

5 Multilateral trading facilities (MTFs)

5.1 Application

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access.~~

~~See www.esma.europa.eu/system/files/esma_2012_122_en.pdf~~

Who and what?

5.1.1 R This chapter applies to:

(1)	a <i>UK domestic firm</i> which operates an <i>MTF</i> from an establishment in the <i>United Kingdom</i> or elsewhere; or
(2)	an <i>overseas firm</i> which operates an <i>MTF</i> from an establishment in the <i>United Kingdom</i> .

Status of EU provisions as rules in certain instances

5.1.2 R ~~In this chapter, provisions marked “EU” apply to an *overseas firm* as if they were *rules*. [deleted]~~

5.1.3 G *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

5.2.1 G The purpose of this chapter is to implement the provisions of *MiFID* relating to *firms* operating *MTFs*, specifically articles ~~14, 26, 29 and 30~~ 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. ~~It sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.~~

5.3 Trading process requirements

Rules, procedures and arrangements

5.3.1 R A ~~firm operating an MTF~~ must have:

- (1) transparent ~~and non-discretionary~~ rules and procedures for fair and orderly trading;

[~~Note: Article 14~~ article 18(1) of MiFID]

- (2) objective criteria for the efficient execution of orders which are established and implemented in non-discretionary rules;

[~~Note: Article 14(1)~~ 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 14~~ article 18(2) of MiFID]

- (4) published, transparent and non-discriminatory rules, based on objective criteria, governing access to its facility, and which ~~rules~~ must provide that its members or participants are *investment firms, CRD credit institutions* or other ~~persons~~ persons who:
- (a) are ~~fit and proper~~ of sufficient good repute;
 - (b) have a sufficient level of trading ability ~~and~~, 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*; ~~and~~

[~~Note: Article 14(4) and 42(3)~~ articles 18(3), 19(2) and 53(3) of MiFID]

- (5) ~~where applicable must~~ arrangements to provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment ~~judgment~~ judgement, taking into account both the nature of the users and the types of instrument traded; and

[~~Note: Subparagraph 2 of Article 14~~ article 18(2) of MiFID]

(6) (as between the interests of the *MTF*, 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 MTF

5.3.1A R 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.

[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]

- 5.3.1B G 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.

~~Publication of pre and post-trade information for shares not admitted to trading on a regulated market~~

- 5.3.2 G ~~In the case of shares not admitted to trading on a regulated market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public on reasonable commercial terms:~~
- ~~(1) on a continuous basis during normal trading hours, information about the quotes and orders relating to these shares which the MTF displays or advertises to its users; and~~
 - ~~(2) as close to real time as possible, information about the price, volume and time of transactions in these shares executed under its systems. [deleted]~~

- 5.3.3 G ~~The firm may make information about a large quote, order or transaction available under MAR 5.3.2G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction. [deleted]~~

~~Publication of post-trade information for financial instruments other than shares~~

- 5.3.4 G ~~Where financial instruments other than shares are traded on an MTF, and the same or substantially similar instruments are also traded on a UK RIE, a regulated market or an EEA commodities market, the FCA expects that in order to fulfil the requirements in MAR 5.3.1R as regards fair and orderly trading, the firm operating the MTF will make public, on reasonable commercial terms and as close to real time as possible, the price, volume and time of the transactions executed under its systems. [deleted]~~
- 5.3.5 G ~~For large transactions in debt securities, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of~~

~~the actual volume is sufficient transparency of the volume of a trade.~~
~~[deleted]~~

- 5.3.6 G ~~The *firm* may make information about a large quote, order or transaction available under MAR 5.3.4G on a delayed basis, but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, provided the quote or executed the transaction.~~ ~~[deleted]~~

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

- 5.3.7 G The *FCA* will be minded to impose a variation on the *Part 4A Permission permission* of an *MTF* operator (other than an *SME growth market*) that operates a primary market in ~~shares~~ financial instruments not admitted to trading on a *regulated market* in order to ensure its fulfilment of the requirements in MAR 5.3.1R as regards fair and orderly trading.

Transferable securities traded without issuer consent

- 5.3.8 R 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 14(6)~~ article 18(8) of *MiFID*]

After MAR 5.3 (Trading process requirements) insert the following new section. All the text is new and is not underlined.

5.3A Systems and controls for algorithmic trading

Systems and controls

- 5.3A.1 R 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 R 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*]

- 5.3A.4 R A market making agreement in *MAR* 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 *MAR* 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 *MAR* 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*]

- 5.3A.7 R 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*]

- 5.3A.8 R 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

- 5.3A.9 R 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:
 - (a) *investment firms* authorised under *MiFID*; or
 - (b) *CRD credit institutions*; or
 - (c) *third country investment firms*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
 - (e) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (f) third country firms providing the *direct electronic access* in accordance with the relevant *UK* national regime for the purposes of article 54.1 (transitional provisions) of *MiFIR*; or
 - (g) 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
 - (h) *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

- 5.3A.10 R 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

- 5.3A.11 R 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*]

- 5.3A.12 G Nothing in *MAR 5.2A.11R* 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 R 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 R A *firm* must adopt tick size regimes in:

- (1) shares, *depository 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 R 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 G 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 R 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 G For the purpose of *MAR 5.3A.17R*, the regulatory technical standards made under article 50 of *MiFID* provide further requirements.

Amend the following as shown.

5.4 Finalisation of transactions

- 5.4.1 R A ~~firm operating an MTF~~ must:
- (1) clearly inform its users of their respective responsibilities for the settlement of transactions executed in ~~that~~ its MTF; and
 - (2) have in place the arrangements necessary to facilitate the efficient settlement of the transactions concluded under its systems.

[~~Note: Article 14(5)~~ 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 R A ~~firm operating an MTF~~ must:
- (1) have effective arrangements and procedures relevant to ~~the~~ 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~~ market abuse.

[~~Note: Article 26~~ article 31(1) of MiFID]

5.6 Reporting requirements

- 5.6.1 R A ~~firm operating an MTF~~ must:
- (1) report to the FCA any:
 - (a) significant breaches of the *firm's* rules;
 - (b) disorderly trading conditions; ~~and~~
 - (c) conduct that may involve ~~market abuse~~ 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~~ market abuse; and

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

[~~Note: Article 26~~ article 31(2) of MiFID and articles 81 and 82 of the MiFID Org Regulation]

After MAR 5.6 insert the following new section. All the text is new and is not underlined.

5.6A Suspension and removal of financial instruments

5.6A.1 R 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~~]

Amend the following as shown.

5.7 Pre- and post-trade transparency requirements for shares equity and non-equity instruments: form of waiver and deferral

...

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.

Pre-trade information

5.7.2	EU	1.	An investment firm or market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [of the MiFID Regulation], make public the information set out in paragraphs 2 to 6.
		2.	Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
		3.	Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its normal trading hours the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices. The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell. In exceptional market conditions, however, one-way prices may be

	allowed for a limited time.
4.	Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
5.	Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraph 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share. In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
6.	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II [of the <i>MiFID Regulation</i>].
[Note: Article 17 of the <i>MiFID Regulation</i>] [deleted]	

Table 1: Information to be made public in accordance with Article 17

5.7.3

EU	Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	Continuous auction order book trading system	A system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels
	Quote-driven trading system	A system where transactions are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and	The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

	participants to deal in a commercial size and the risk to which the market maker exposes itself	
Periodic auction trading system	A system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	The price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
Trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit
[Note: Table 1, Annex II of the <i>MiFID Regulation</i>] [deleted]		

Publication of pre-trade information

5.7.4

EU

1.	A regulated market, MTF or systematic internaliser shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market, MTF or systematic internaliser concerned, and remains available until it is updated.
2.	Pre-trade information ... shall be made available as close to real time as possible ...
[Note: Article 29(1) and (2) of the <i>MiFID Regulation</i>] [deleted]	

5.7.5

EU

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
[Note: Recital (18) to the <i>MiFID Regulation</i>] [deleted]

Disapplication of the pre-trade transparency requirements

- 5.7.6 G The obligation in *MAR 5.7.1R(1)* to make public certain pre-trade information is disappplied 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*, *MAR 5.7.9EU*, *MAR 5.7.10EU* and *MAR 5.7.11EU*. In particular, the obligation is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

[**Note:** Article 29(2) of *MiFID* and Recital 12 and Articles 18, 19, 20, 33 and 34 of the *MiFID Regulation*] [deleted]

- 5.7.7 EU If granting waivers in relation to pre-trade transparency requirements, or authorising the deferral of post-trade transparency obligations, *competent authorities* should treat all *regulated markets* and *MTFs* equally and in a non-discriminatory manner, so that a waiver or deferral is granted either to all *regulated markets* and *MTFs* that they authorise under [the *MiFID*] Directive 2004/39/EC, or to none. *Competent authorities* which grant the waivers or deferrals should not impose additional requirements.

[**Note:** Recital 12 to the *MiFID Regulation*] [deleted]

- 5.7.8 EU 1. Waivers in accordance with Article 29(2) and 44(2) of [the *MiFID*] Directive 2004/39/EC may be granted by the *competent authorities* for systems operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:
- | | |
|------|---|
| (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 one of the following criteria: |
| (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 <i>regulated market</i> or <i>MTF</i> 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. |

	<p>For the purposes of point (b), the other conditions specified in the rules of the regulated market or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.</p>
2.	<p>Waivers in accordance with Articles 29(2) and 44(2) of [the <i>MiFID</i>] Directive 2004/39/EC based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the <i>regulated market</i> or the <i>MTF</i> pending their being disclosed to the market.</p>
<p>[Note: Article 18 of the <i>MiFID Regulation</i>] [deleted]</p>	

5.7.9	EU	<p>For the purpose of Article 18(1)(b) [of the <i>MiFID Regulation</i>] a negotiated transaction shall mean a transaction involving members or participants of a <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:</p>
	(a)	<p>dealing on own account with another member or participant who acts for the account of a <i>client</i>;</p>
	(b)	<p>dealing with another member or participant, where both are executing orders on own account;</p>
	(c)	<p>acting for the account of both the buyer and seller;</p>
	(d)	<p>acting for the account of the buyer, where another member or participant acts for the account of the seller;</p>
	(e)	<p>trading for own account against a <i>client</i> order.</p>
<p>[Note: Article 19 of the <i>MiFID Regulation</i>] [deleted]</p>		

5.7.10	EU	<p>An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [of the <i>MiFID Regulation</i>]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a regulated market shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33 [of the <i>MiFID Regulation</i>].</p>
<p>[Note: Article 20 of the <i>MiFID Regulation</i>] [deleted]</p>		

Table 2: Orders large in scale compared with normal market size

5.7.11	EU	Class in terms of average daily turnover (ADT)	ADT < €500 000	€500 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €25 000 000	€25 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
		Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000
[Note: Table 2, Annex II of the <i>MiFID Regulation</i>] [deleted]							

- 5.7.12 G The FCA will publish on its website the calculations and estimates for shares admitted to trading on a regulated market, made by the FCA under the provisions in Articles 33 and 34 of the *MiFID Regulation*. [deleted]

MAR 5.8 and MAR 5.9 are deleted in their entirety. The deleted text is not shown.

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

5.9 Post-trade transparency requirements for shares [deleted]

After the deleted MAR 5.9 insert the following link to a new form as a separate Annex. All the text is new and is not underlined.

5 Annex 1D Form in relation to pre-trade transparency

<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.doc>

...

After the new MAR 5 Annex 1R insert the following new chapter. All the text is new and is not underlined.

5A Organised trading facilities (OTFs)

5A.1 Application

Who and what?

5A.1.1 R 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*.

5A.1.2 G 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 G 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 G *MAR 5A.3.9R* also sets out how the obligations of an *investment firm* under articles 16, 24, 25, 27 and 28 apply to a *firm* operating an *OTF* in respect of that operation.

5A.2.3 G 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 R 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 R 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 G 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 G *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 R 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 R 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 R 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 G *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 R A *firm* must comply with the obligations under the following provisions of *MiFID*, in the course of operating an *OTF*:
- (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*]

Reporting to the FCA

- 5A.3.10 R 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*]

- 5A.3.11 G 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 R 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 which are established and implemented in non-discretionary rules;

[**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

- 5A.5.1 R 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.
- 5A.5.2 R *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 R 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 R 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 R 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 investment firms*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or

- (e) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (f) third country firms providing the *direct electronic access* in accordance with the relevant *UK* national regime for the purposes of article 54.1 (transitional provisions) of *MiFIR*; or
 - (g) 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
 - (h) *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

- 5A.5.10 R 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

- 5A.5.11 R 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*]

5A.5.12 G 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 synchronisation

5A.5.13 R 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 R 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 R 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 G 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 R 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 G 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

- 5A.6.1 R 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 R 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

5A.8.1 R 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 R 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* and *MiFID RTS 18*]

5A.10 Pre-trade transparency requirements for non-equity instruments: form of waiver

- 5A.10.1 D 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 D 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 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 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.

After *MAR 5A* insert the following link to a new form as a separate Annex. All the text is new and is not underlined.

5A Annex 1D Form in relation to pre-trade transparency

<https://www.fca.org.uk/publication/forms/mifid-transparency-waiver-form.doc>

Amend the following as shown.

6 Systematic ~~Internalisers~~ internalisers

6.1 Application

Who and what?

6.1.1 R ~~Except as regards the reporting requirement in MAR 6.4.1R, this chapter applies 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 in shares when dealing in sizes up to standard market size; or~~
- (2) ~~a third country investment firm which is a systematic internaliser in shares when dealing in the United Kingdom in sizes up to standard market size.~~

[Note: article 35(8) of MiFID]

6.1.2 R The *systematic internaliser* reporting requirement in MAR 6.4.1R 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 R ~~In this chapter, provisions marked "EU" apply to a *third country investment firm* which is a *systematic internaliser* as if they were *rules*. [deleted]~~

6.1.4 G 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 G The purpose of this chapter is to implement ~~Article~~ article 27(3) of MiFID, which deals with the requirements on *systematic internalisers* ~~for pre-trade transparency in shares, the execution of orders on behalf of clients and standards and conditions for trading~~ to make available to the public data relating to the quality of execution of transactions. It also provides a ~~rule~~ 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 Article 21(4) articles 15(1) and 18(4) of the MiFID Regulation. The chapter sets out for reference other provisions of the MiFID Regulation relevant to the articles being implemented 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.

MAR 6.3 is deleted in its entirety. The deleted text, other than the section title, is not shown.

6.3 Criteria for determining whether an investment firm is a systematic

internaliser [deleted]

After the deleted MAR 6.3 insert the following new section. All the text is new and is not underlined.

6.3A Quality of execution

- 6.3A.1 R 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 R 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*]

Amend the following as shown.

6.4 Systematic internaliser reporting requirement

- 6.4.1 R An *investment firm*, ~~which is authorised by the FCA,~~ must promptly notify the *FCA* in writing of its status as a *systematic internaliser* ~~in respect of shares admitted to trading on a regulated market:~~
- (1) when it gains that status; or
 - (2) if it ceases to have that status.

[**Note:** ~~Article 21(4) of the *MiFID Regulation*~~ articles 15(1) and 18(4) of *MiFIR*]

- 6.4.2 G The notification under MAR 6.4.1R can be addressed to the *firm's* usual supervisory contact at the *FCA*.

After MAR 6.4 (Systematic internaliser reporting requirement) insert the following new section. All the text is new and is not underlined.

6.4A Quotes in respect of non-equity instruments

- 6.4A.1 R 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.

MAR 6.5 to MAR 6.14 and MAR 7 are deleted in their entirety. The deleted text is not shown.

- 6.5 Obligations on systematic internalisers in shares to make public firm quotes** [deleted]
- 6.6 Size and content of quotes** [deleted]
- 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]
- 6.11 Execution price of professional client orders** [deleted]
- 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]
- 7 Disclosure of information on certain trades undertaken outside a regulated market or MTF** [deleted]
- 7.1 Application** [deleted]
- 7.2 Making post-trade information public** [deleted]
- 7 Annex 1EU Deferred publication thresholds and delays** [deleted]

After the deleted MAR 7 insert the following new chapter. All the text is new and is not underlined.

7A Algorithmic trading

7A.1 Application

Who?

7A.1.1 R 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?

7A.1.2 R 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 and 5 of the *MiFI Regulations* set 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

7A.1.3 G *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 G 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

7A.3.1 R This section applies to a *firm* which engages in *algorithmic trading*.

Systems and controls

7A.3.2 R 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*]

7A.3.3 R 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

- 7A.3.4 R 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)*]

- 7A.3.5 R 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

- 7A.3.6 R 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*]

- 7A.3.7 R 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

7A.3.8 R 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 R This section applies to a *firm* which provides the services of *DEA* to a *trading venue*.

Systems and controls

7A.4.2 R 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*; or

- (b) 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 R (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 R 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 R 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 R 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

- 7A.5.1 R This section applies to a *firm* which provides the service of acting as a general clearing member.

Requirements

- 7A.5.2 R 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]

After *MAR 8* insert the following new chapter. All the text is new and is not underlined.

9 Data reporting service

9.1 Application, introduction, approach and structure

Application

9.1.1 G 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 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*;
- (3) a *UK RIE* seeking verification of its rights to provide a *data reporting service* under regulation 5(d) of the *DRS Regulations*; and
- (4) 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 G 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

- 9.1.3 G 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

- 9.1.4 G The following table provides an overview of this chapter:

Handbook reference	Topic and specific application
<i>MAR 9.1</i>	Application, introduction, approach and structure
<i>MAR 9.2</i>	Authorisation and verification
<i>MAR 9.3</i>	Notification and information
<i>MAR 9.4</i>	Supervisory regime
<i>MAR 9.5</i>	Frequently Asked Questions

MAR 9 Annex 1D to MAR Annex 10D	Forms
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9.2 Authorisation and verification

Application form and notification form for members of the management body

- 9.2.1 D (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
 - (c) 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 G *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 G *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

9.2.6 D 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
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

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* before any change to the membership of its *management body* or when this is impossible within 10 working days after the change.

9.3.3 G MAR 9 Annex 6D is derived from Annex III of *MiFID ITS 3*.

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
 25 The North Colonnade
 Canary Wharf

London E14 5HS.

- 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 planned significant changes to a *data reporting services provider's* IT system, 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
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

9.4 Supervisory regime

Overview of supervisory approach

- 9.4.1 G (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.
- (2) The *FCA* will, when necessary, arrange meetings between the *FCA* and key individuals of the *data reporting services provider* for this purpose.
- (3) 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 G 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 G 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 G 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 G 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 *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*.

9.5.4 G Q. Where can I find out information about fees to be charged in respect of *data reporting services providers*?

- A. See *FEES 3.2.7R* and *FEES 4 Annex 11R*.

9.5.5 G 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 G 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 G 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 G 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 G 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 G 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 G 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 G 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.

After *MAR 9* insert the following new Annexes. Each Annex consists of a link to a form.

9 Annex 1D Application form to provide the service of ARM and/or APA and/or CTP

<https://www.fca.org.uk/publication/forms/mifid-data-reporting-services-form.docx>

9 Annex 2D Notification form for list of members of a management body

<https://www.fca.org.uk/publication/forms/mifid-management-body-members-form.docx>

9 Annex 3D Variation of Authorisation of a Data Reporting Services Provider (DRSP)

<https://www.fca.org.uk/publication/forms/drsp-variation-authorisation-form.doc>

9 Annex 4D Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)

<https://www.fca.org.uk/publication/forms/drsp-cancellation-form.doc>

9 Annex 5D Material Change in information for a Data Reporting Services Provider (DRSP)

<https://www.fca.org.uk/publication/forms/drsp-material-change-notification.doc>

9 Annex 6D Notification form for changes to the membership of the management body

<https://www.fca.org.uk/publication/forms/drsp-changes-to-management-body-members.doc>

9 Annex 7D FCA MDP on-boarding application form

<https://www.fca.org.uk/publication/forms/mdp-on-boarding-application-form.doc>

9 Annex 8D Yearly Notification Form for a Data Reporting Service Provider (DRSP)

<https://www.fca.org.uk/publication/forms/drsp-annual-notification.doc>

9 Annex 9D Data Reporting Services Provider (DRSP) Ad hoc notification

<https://www.fca.org.uk/publication/forms/drsp-ad-hoc-change-notification.doc>

9 Annex 10D MIS confidentiality agreement

<https://www.fca.org.uk/publication/forms/mis-confidentiality-agreement.docx>

After MAR 9 insert the following new chapter. All the text is new and is not underlined.

10 Commodity derivative position limits and controls, and position reporting**10.1 Application**

Introduction

- 10.1.1 G (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 *MiFI Regulations* provide for a separate regulatory framework in relation to such *persons*. This framework is set out in:
- (a) Part 3 of the *MiFI Regulations* ('Position limits in commodity derivatives'); and
 - (b) Part 6 of the *MiFI 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

10.1.2 G The scope of this chapter is as follows:

- (1) 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

10.1.3 G 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

- 10.2.1 G (1) The following provisions of the *MiFI Regulations* regulate the establishment, application and resetting of position limits:
- (a) Regulation 15(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA*'s methodology;
 - (b) Regulation 15(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 15(3) imposes obligations on the *FCA* in respect of the position limits it establishes, for example that the position limits should be published in a manner which the *FCA* considers appropriate;
 - (d) Regulation 15(4) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain

factors;

- (e) Regulation 15(5) empowers the *FCA* to reset a position limit following its review if it believes that the limit should be reset;
 - (f) Regulation 15(6) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the *FCA* has established a position limit incompatible with *ESMA*'s methodology, 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;
 - (g) Regulation 15(7) 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;
 - (h) Regulation 15(8) imposes obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *ESMA*'s methodology in accordance with Regulation 15(7) of the *MiFI 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 must notify *ESMA* of the position limit and the justification for establishing it;
 - (i) Regulation 15(9) imposes an obligation on the *FCA* to publish a notice on its website explaining the reasons for its decision when, under Regulation 15(6) and Regulation 15(8) of the *MiFI Regulations*, it does not modify a position limit following an *ESMA* opinion; and
 - (j) Regulation 17 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*.
 - (3) *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 D (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.
- (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position (subject to the *non-financial entity* exemption in regulation 14(5) of the *MiFI Regulations*).

[**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 G (1) Regulation 14(5) 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*. Regulation 14(5) 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 18 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 D *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 G 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

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

Type of firm	Applicable provisions
a <i>UK market operator</i> operating a <i>trading venue</i>	<i>MAR 10.3.2G</i> and <i>MAR 10.3.4G</i>
a <i>UK firm operating a multilateral trading facility</i> or an <i>OTF</i> and a <i>UK branch of a third country investment firm operating a multilateral trading facility</i> or an <i>OTF</i>	<i>MAR 10.3.3R</i> to <i>MAR 10.3.5G</i>

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

- 10.3.2 G 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

- 10.3.3 R (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 apply position management controls which enable an *MTF* or *OTF* at least to:
 - (a) monitor the open interest positions of *persons*;
 - (b) access information, including all relevant documentation, from *persons* about:
 - (i) the size and purpose of a position or exposure entered into;
 - (ii) any beneficial or underlying owners;
 - (iii) any concert arrangements; and
 - (iv) any related assets or liabilities in the underlying market;
 - (c) 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
 - (d) 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.
- (3) 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:
 - (a) be transparent;
 - (b) be non-discriminatory; and
 - (c) specify how the controls apply to *persons*.
- (4) 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*]

Supervision of position management controls

- 10.3.4 G An operator of a *trading venue* referred to in *MAR* 10.3.1G may include provisions in its rulebook which impose appropriate obligations on its members or participants as part of compliance with its position management controls obligations.

Position management controls: Procedure for informing the *FCA*

- 10.3.5 G A *firm* must comply with the obligation in MAR 10.3.3R(4) by completing the form available at www.fca.org.uk.

10.4 Position reporting

Application

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

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

Position reporting by UK regulated markets

- 10.4.2 G 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

- 10.4.3 R (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 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

- 10.4.4 R 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*: <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2398-EN-F1-1.PDF>) 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]

Position reporting by UK firms and UK branches of a third country investment firms operating an MTF or OTF: Duplication of reporting

- 10.4.6 G For the purposes of making the weekly report referred to under *MAR* 10.4.3R(2), the *FCA* will accept an email containing a link to the report, as published on the *firm's* website. Emails should be sent to the *FCA* at COT_reports@fca.org.uk. This *guidance* does not affect the separate obligation for a *firm* to make the weekly report to *ESMA*.

Position reporting by members, participants or clients of UK trading venues: trading venue participant reporting

- 10.4.7 D (1) This direction applies to a member, participant or a *client* of a *trading venue*.
- (2) A *person* in (1) must report to the relevant operator of a *trading venue* the details of their own positions held through contracts traded on that venue, at least on a daily basis, as well as those of their clients and the clients of those clients, until the end client is reached.
- (3) Paragraph (2) above does not apply to a member, participant or a *client* of a *trading venue* that is an *EEA person*.

[**Note:** article 58(3) of *MiFID*]

UK MiFID investment firms and UK branches of third country investment firms:
OTC reporting to the FCA

- 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]

UK MiFID investment firms and UK branches of third country investment firms:
OTC reporting to EEA competent authorities other than the FCA

- 10.4.9 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 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*.

10.5 Other reporting, notifications and information requirements

Information requirement

- 10.5.1 G Regulation 17 of the *MiFI 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 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to intervene in respect of position limits:
- (1) Regulation 19 provides that the *FCA* may 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 below 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) Regulation 33 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 G The following provisions of the *MiFI Regulations* regulate the power of the *FCA* to impose reporting requirements in respect of positions taken in *commodity derivatives* and *emission allowances*:

- (1) Regulation 36 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) Regulation 33 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 D (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 G *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 6(4) of the *MiFI Regulation* as if the *person* is a *firm* to which *SUP* 15.3.11R applies.

Breaches of MAR 10 by authorised persons

- 10.5.6 G *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

- 10.5.7 G 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

- 10.5.8 G 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).

10 Annex 1D Application form for a non-financial entity for an exemption from compliance with position limits

[form to be inserted by the *FCA*]

Amend the following as shown.

Sch 1 Record ~~Keeping~~ keeping requirements

1.1G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
<u>MAR 7A.3.8R</u>	<u>Algorithmic and high-frequency algorithmic trading</u>	<u>Records necessary to meet MAR 7A.3.7R, and high-frequency algorithmic trading records and quotes</u>	<u>On initiation of algorithmic and high-frequency algorithmic trading strategies</u>	<u>5 years, or as otherwise provided for high-frequency algorithmic trading records and quotes in MiFID RTS 6</u>
<u>MAR 7A.4.6R</u>	<u>Direct electronic access providers' systems and controls</u>	<u>Records necessary to meet MAR 7A.4.2R and MAR 7A.4.5R</u>	<u>On initiation of direct electronic access provision</u>	<u>5 years</u>
...

Sch 2 Notification requirements

...

Sch 2.2G Notification requirements

Handbook reference	Matter to be notified	Contents of Notification	Trigger event	Time allowed
<u>MAR 5.3A.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a binding written agreement</u>	<u>Without delay</u>
<u>MAR 5.3A.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a <i>financial instrument</i></u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5.6.1R(1)</u>	<u>Non-compliant, disorderly or abusive trading</u>	<u>Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve <i>market abuse</i></u>	<u>Upon occurrence of the breach, conditions or conduct</u>	<u>Without delay</u>
<u>MAR 5.6A.1R(3)</u>	<u>Suspension and removal of <i>financial instruments</i></u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>
<u>MAR 5A.5.3R(4)</u>	<u>Market making agreements</u>	<u>Content of market making agreements</u>	<u>Upon formation of a binding written agreement</u>	<u>Without delay</u>
<u>MAR 5A.5.8R</u>	<u>Trading halts on material markets</u>	<u>Information that trading is halted in a <i>financial instrument</i></u>	<u>Upon trading halt</u>	<u>Without delay</u>
<u>MAR 5A.8.1R(1)</u>	<u>Non-compliant, disorderly or abusive trading</u>	<u>Information of the occurrence of significant breaches of rules, disorderly trading, system disruptions, or conduct that may involve <i>market abuse</i></u>	<u>Upon occurrence of the breach, conditions or conduct</u>	<u>Without delay</u>
<u>MAR 5A.9.1R(3)</u>	<u>Suspension and removal of <i>financial instruments</i></u>	<u>Information of the suspension or removal of a <i>financial instrument</i> and any related or referenced <i>derivative</i></u>	<u>Upon suspension or removal</u>	<u>Without delay</u>

	<u>instruments</u>	<u>removal of a financial instrument and any related or referenced derivative</u>		
<u>MAR 6.4.1R</u>	<u>Systematic internaliser status</u>	<u>Information of gaining or ceasing systematic internaliser status</u>	<u>Upon becoming or ceasing to be a systematic internaliser</u>	<u>Without delay</u>
<u>MAR 7A.3.6R</u>	<u>Engaging in algorithmic trading</u>	<u>Information that a member of a trading venue is engaging in algorithmic trading</u>	<u>Upon engagement in algorithmic trading</u>	<u>Without delay</u>
<u>MAR 7A.4.4R</u>	<u>Provision of DEA services</u>	<u>Information that a firm is providing DEA services</u>	<u>Upon engagement in DEA provision</u>	<u>Without delay</u>
...

Annex M

Amendments to the Supervision Manual (SUP)

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

3 Auditors

3.1 Application

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3.1.2 R Applicable sections (see SUP 3.1.1R)

(1) Category of firm	(2) Sections applicable to the firm	(3) Sections applicable to its auditor
...		
<p>Note 3B = <i>UK MiFID investment firms</i> include <i>exempt CAD firms</i>. An <i>exempt CAD firm</i> that has opted into <i>MiFID</i> can benefit from the audit exemption for small companies in the Companies Act legislation if it meets the relevant criteria in that legislation and fulfils the conditions of regulation 4C(3) <u>4(8)</u> of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 <i>MiFI Regulations</i>. If a <i>firm</i> does so benefit then SUP 3 will not apply to it. For further details about <i>exempt CAD firms</i>, see PERG 13, Q58.</p>		
...		

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10A FCA Approved Persons

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10A.7 FCA required functions

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Compliance oversight function (CF10)

10A.7.8 R The *compliance oversight function* is the function of acting in the capacity of:

- (1) a *director* or *senior manager* who is allocated the function set out in :
 - (a) SYSC 3.2.8R ; or
 - (b) SYSC 6.1.4R(2) ; or

- (c) article 22(3) of the *MiFID Org Regulation*; or
- (d) article 22(3) of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R); or
- (e) SYSC 6.1.4CR; or

...

...

10A.8 Systems and controls functions

Systems and controls function (CF28)

- 10A.8.1 R The *systems and controls function* is the function of acting in the capacity of an *employee* of the *firm* with responsibility for reporting to the *governing body* of a *firm*, or the audit committee (or its equivalent) in relation to:
- (1) its financial affairs;
 - (2) setting and controlling its risk exposure (see SYSC 3.2.10G and SYSC 7.1.6R, article 23(2) of the *MiFID Org Regulation* and article 23(2) of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R)); and
 - (3) adherence to internal systems and controls, procedures and policies (see SYSC 3.2.16G and SYSC 6.2, article 24 of the *MiFID Org Regulation* and article 24 of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R)).

...

10C FCA senior management regime for approved persons in relevant authorised persons

...

10C.6 FCA-required functions

Compliance oversight function (SMF16)

- 10C.6.1 R The *compliance oversight function* is the function of acting in the capacity of a *director* or *senior manager* who is allocated the function in:
- (1) SYSC 6.1.4R(2); or

- (2) article 22(3) of the *MiFID Org Regulation*; or
- (3) article 22(3) of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R).

...

13 Exercise of passport rights by UK firms

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- 13.1.6 G The chapter also explains how a *UK firm* which has already established a *branch* in, or is providing *cross border services* into, another *EEA State*, may change the details of its *branch* or of the *cross border services* it is providing: for example, where a *UK firm* wishes to establish additional *branches* in an *EEA State* in which it has already established a *branch* where this would result in a change to the details provided previously. Such changes are governed by the *EEA Passport Rights Regulations* and, where *MiFID* applies, *MiFID RTS 3A* and *MiFID ITS 4A*.

...

13.3 Establishing a branch in another EEA State

What constitutes a branch

- 13.3.1 G (1) Guidance on what constitutes a *branch* is given in SUP App 3. Note that if a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State*, the rules in SUP 13 will apply as if that *firm* were seeking to establish a *branch* in that *EEA State* unless the *firm* has already established a *branch* in that *EEA State* (paragraph 20A of Schedule 3 to the Act)
- (2) (a) Where a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State* in which a *branch* is already established, the *tiered agent* will be assimilated into the *branch*.
 - (b) If a *UK MiFID investment firm* is seeking to use a *tiered agent* established in another *EEA State* in which no *branch* is already established, the rules in SUP 13 will apply as if that *firm* were seeking to establish a *branch* in that *EEA State* (paragraph 20A of Schedule 3 to the Act).
 - (c) In any event, the appointment of a *tiered agent* established in another *EEA State* leads to the application of conduct requirements to the *tiered agent's* business, as if it were a *branch* of a *UK MiFID investment firm*.

(d) See SUP 13.3.9G for details of the MiFID branch forms.

[Note: article 35(2) of MiFID]

...

MiFID branch forms

- 13.3.9 G (1) (a) A UK MiFID investment firm wishing to use a tied agent established in another EEA State is required to complete the form in Annex VII of MiFID ITS 4A and send it to the FCA.
- [Note: article 14(1) of MiFID ITS 4A]
- (b) A UK MiFID investment firm which intends to establish a branch in another EEA State is required to complete the form in Annex VI of MiFID ITS 4A and send it to the FCA.
- [Note: article 13(1) of MiFID ITS 4A]
- (c) A UK MiFID investment firm that intends to establish a branch which in turn intends to use tied agents is required to complete the forms in Annex VI and Annex VII of MiFID ITS 4A and send them to the FCA.
- [Note: article 13(2) of MiFID ITS 4A]
- (2) (a) Each of the forms in MiFID ITS 4A referred to in SUP 13.3.9G(1)(a) to (c) is replicated in SUP 13 Annex 1AR.
- (b) These versions should be used for the purposes of notifications to the FCA.
- (c) The forms should be submitted in accordance with SUP 13.5.3R.

13.4 Providing cross border services into another EEA State

...

The conditions for providing cross border services into another EEA State

...

- 13.4.2D G (1) A MiFID investment firm that wishes to obtain a passport for the activity of operating an ~~MTF~~ multilateral trading facility or operating an organised trading facility should follow the procedures described in this chapter.
- (2) A UK market operator that operates a recognised investment

exchange, a recognised auction platform (pursuant to the RAP regulations, the definition of regulated market in the Act is read for these purposes as including a recognised auction platform) or an MTF or an OTF and wishes to provide cross border services into another EEA State should follow the procedure described in REC 4.2B.

...

MiFID services forms

- 13.4.8 G (1) A UK MiFID investment firm is required to submit an investment services and activities passport notification to the FCA by completing the form in Annex I of MiFID ITS 4A. The firm should complete a separate form for each EEA State it wishes to provide services into.
- [Note: article 4(1) of MiFID ITS 4A]
- (2) A UK MiFID investment firm wishing to provide investment services or activities through a tied agent established in the UK is required to send an investment services and activities passport notification to the FCA by completing the parts of the form in Annex I of MiFID ITS 4A that are relevant to a tied agent. The firm should complete a separate form for each EEA State into which it wishes to provide services through a tied agent.
- [Note: article 4(3) of MiFID ITS 4A]
- (3) A UK MiFID investment firm operating a multilateral trading facility or operating an organised trading facility that intends to provide appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants in another EEA State, is required to send the details of the Host State in which it intends to provide such arrangements to the FCA by completing the form in Annex IV of MiFID ITS 4A. If the firm is notifying in respect of more than one MTF or OTF, it should complete a separate form for each MTF or OTF.
- [Note: article 9 of MiFID ITS 4A]
- (4) (a) Each of the forms in MiFID ITS 4A referred to in SUP 13.4.8G(1) to (3) is replicated in SUP 13 Annex 2R.
- (b) These versions should be used for the purposes of notifications to the FCA.
- (c) The forms should be submitted in accordance with SUP 13.5.3R.

13.5 Notices of intention

Specified contents: notice of intention to establish a branch

- 13.5.1 R A *UK firm*, other than a *CRD credit institution*, wishing to establish a *branch* in a particular *EEA State* for the first time under an *EEA right*, other than under the *auction regulation*, must submit a *notice of intention* in the form set out in:

- (1) *SUP 13 Annex 1R*; or
- (2) if the *firm* is a *UK MiFID investment firm*, *SUP 13 Annex 1AR*.

...

Method of submission of notices

- 13.5.3 R (1) A *UK firm*, other than a *credit union*, must submit any notice under *SUP 13.5.1R(1)*, ~~*SUP 13.5.1AR*~~ or *SUP 13.5.2R* online at www.fca.org.uk using the *online notification and application system*.

...

...

13.6 Changes to branches

- 13.6.1 G (1) Where a *UK firm* is exercising an *EEA right*, other than under the *Insurance Mediation Directive* (see *SUP 13.6.9AG*) or the *CRD*, and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are governed by the *EEA Passport Rights Regulations*.
- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that, under regulation 18, contravention of the prohibition imposed by regulation 11(1), 13(1) or 15(1) is an offence.
- (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* and has established a *branch* in another *EEA State*, any changes to the details of the *branch* are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.

...

Firms passporting under MiFID

- 13.6.5A G If a *UK firm* has exercised an *EEA right* to establish a *branch* under *MiFID*, it must not make a change in the *requisite details* of the *branch* (see ~~*SUP 13 Annex 1*~~ *SUP 13 Annex 1AR*), use, for the first time, a *tied agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tied agent* established in the *EEA State* in which the *branch* is established, unless it has satisfied the requirements of regulation 11A(2) (see *SUP 13.6.5BG*).
- ...
- 13.6.5C G A *UK MiFID investment firm* is also required to notify the *FCA* of changes to a *branch* or *tied agent* in accordance with:
- (1) article 7 (Information to be notified concerning the change of branch or tied agent particulars) of *MiFID RTS 3A*;
 - (2) article 18 (submission of the change of branch particulars notification) of *MiFID ITS 4A*; and
 - (3) article 19 (submission of the change of the tied agent particulars notification) of *MiFID ITS 4A*.
- 13.6.5D G If any of the details in a *branch passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA* by completing the form in Annex VI of *MiFID ITS 4A*.
- [Note: article 18(1) of *MiFID ITS 4A*]
- 13.6.5E G If any of the details in a *tied agent passport notification* change, a *UK MiFID investment firm* is required to notify the *FCA*, by completing the form in Annex VII of *MiFID ITS 4A*.
- [Note: article 19(1) of *MiFID ITS 4A*]
- 13.6.5F G If a *UK MiFID investment firm* closes a *branch* or stops using a *tied agent*, it is required to notify the *FCA* using the form in Annex X of *MiFID ITS 4A*.
- [Note: articles 18(4) and 19(4) of *MiFID ITS 4A*]
- 13.6.5G G (1) Each of the forms in *MiFID ITS 4A* referred to in *SUP 13.6.5DG* to *SUP 13.6.5FG* is replicated in *SUP 13 Annex 1AR*.
- (2) These versions should be used for the purposes of notifications to the *FCA*.
- (3) The forms should be submitted in accordance with *SUP 13.8.1R*.
- ...

The process: MiFID investment firms

- 13.6.17 G (1) When the ~~appropriate UK regulator~~ FCA receives a notice from a *UK MiFID investment firm* (see SUP 13.6.5BG (1)), it is required by regulation 11A(3) to inform the relevant *Host State regulator* of the proposed change as soon as reasonably practicable.
- (2) The FCA is required to use the forms in Annex XI, Annex XII or Annex XIII of MiFID ITS 4A, as applicable.
- (3) The *firm* in question may make the change once the period of one *month* beginning with the day on which it gave notice has elapsed.

...

13.7 Changes to cross border services

- 13.7.1 G (1) Where a *UK firm* is exercising an *EEA right* under the *UCITS Directive*, *MiFID*, the *Insurance Directives* or *AIFMD* and is providing *cross border services* into another *EEA State*, any changes to the details of the services are governed by the *EEA Passport Rights Regulations*.
- (2) References to regulations in this section are to the *EEA Passport Rights Regulations*.
- (3) (a) A *UK firm* which is not an *authorised person* should note that contravention of the prohibition imposed by regulation 12(1), 12A(1) or 16(1) is an offence.
- (b) It is a defence, however, for the *UK firm* to show that it took all reasonable precautions and exercised due diligence to avoid committing the offence.
- (4) Where a *UK MiFID investment firm* exercises an *EEA right* under *MiFID* to provide *cross border services*, any changes to the details of the services are also governed by *MiFID RTS 3A* and *MiFID ITS 4A*.

...

Firms passporting under MiFID

- 13.7.3A G If a *UK firm* is providing *cross border services* in a particular *EEA State* in exercise of an *EEA right* deriving from *MiFID*, the *UK firm* must comply with the requirements of regulation 12A(2) before it makes a change to its programme of operations, including:
- (1) changing the activities to be carried on in exercise of that *EEA right*;

...

...

- 13.7.3C G A UK MiFID investment firm is also required to notify the FCA of any changes to the information in its investment services and activities passport notification, including changes relating to a UK tied agent, in accordance with:
- (1) article 4 (Information to be notified concerning the change of investment services and activities particulars) of MiFID RTS 3A; and
 - (2) article 7 (Submission of the change of investment services and activities particulars notification) of MiFID ITS 4A.
- 13.7.3D G (1) If any of the details in an investment services and activities passport notification change, a UK MiFID investment firm is required to notify the FCA by completing the form in Annex I of MiFID ITS 4A.
- [Note: article 7(1) of MiFID ITS 4A]**
- (2) When communicating a change to investment services and/or activities, ancillary services or financial instruments, the firm is required to list all:
- (a) the investment services and/or activities and ancillary services that it currently provides or intends to provide in the future; and
 - (b) the financial instruments that are relevant to those activities and services.
- 13.7.3E G If any of the details in the notification for the provision of arrangements to facilitate access to an MTF or an OTF change, the investment firm operating the MTF or the OTF is required to notify the FCA by completing the form in Annex IV of MiFID ITS 4A.
- [Note: article 11(1) of MiFID ITS 4A]**
- 13.7.3F G (1) Each of the forms in MiFID ITS 4A referred to in SUP 13.7.3DG and SUP 13.7.3EG is replicated in SUP 13 Annex 2R.
- (2) These versions should be used for the purposes of notifications to the FCA.
- (3) The forms should be submitted in accordance with SUP 13.8.1R.

Termination of an investment services and activities passport

- 13.7.3G R A UK MiFID investment firm should use the relevant form in SUP 13 Annex 2AR to notify the FCA that it intends to:
- (1) change its programme of operations by ceasing to provide cross

border services; or

- (2) change its programme of operations by ceasing to provide *cross border services* through a *tier agent* established in the *UK*; or
- (3) terminate in the territory of an *EEA State*, the provision of arrangements to facilitate access to, and trading on, an *MTF* or *OTF* by remote users, members or participants established in that *EEA State*.

...

13.8 Changes of details: provision of notices to the appropriate UK regulator

13.8.1 R (1) ~~Where a *firm* is required to submit~~ A *firm* must complete and submit the following notices in accordance with the procedures in *SUP 13.5* for notifying the establishment of a *branch* or the provision of *cross border services*:

- (a) a notice of a change to a *branch* or a *tier agent* referred to in *SUP 13.6.5G(1)*, *SUP 13.6.5BG(1)*, *SUP 13.6.5DG*, *SUP 13.6.5EG*, *SUP 13.6.5FG*, *SUP 13.6.7G(1)*, *SUP 13.6.8G*, *SUP 13.6.9BR*, *SUP 13.6.9CG*, *13.6.9DG* and *SUP 13.6.10G(1)*; ~~or~~
- (b) a notice of change to *cross border services* referred to in *SUP 13.7.3G(1)*, *SUP 13.7.3AG(1)*, *SUP 13.7.3DG*, *SUP 13.7.3EG*, *SUP 13.7.3GR*, *SUP 13.7.5G(1)*, *SUP 13.7.6G*, *SUP 13.7.13BG*, *SUP 13.7.14G* and *SUP 13.7.15G* ~~;~~

~~it must complete and submit that notice in accordance with the procedures set out in *SUP 13.5* for notifying the establishing of a *branch* or the provision of *cross border services*.~~

...

13 Annex 1R Passporting: Notification of intention to establish a branch in another EEA state

...

4 Markets in Financial Instruments Directive ('MiFID') [deleted]

Section 4 of the form at Annex 1R is deleted in its entirety. The deleted text is not shown.

...

After SUP 13 Annex 1R (Passporting: Notification of intention to establish a branch in another EEA state) insert the following new SUP 13 Annex 1AR. All the text is new and is not underlined.

[*Editor's Note:* The forms comprising SUP 13 Annex 1AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

13 Annex 1AR ~~Passporting: Branch passport notifications and tied agent notifications under MiFID ITS 4A~~

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

Passporting: Branch passport notifications and tied agent notifications under MiFID II ITS 4A of MiFID – SUP 13 Annex 1AR

...

[*Editor's Note:* The forms comprising SUP 13 Annex 2R can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)]

Amend the following as shown.

13 Annex 2R ~~Passporting: Markets in Financial Instruments Directive MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A~~

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms>.

The forms are can also ~~to be~~ found through the following address: ~~Passporting: Markets in~~

~~Financial Instruments Directive – SUP 13 Annex 2~~

Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A – SUP 13 Annex 2R

After SUP 13 Annex 2R (Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A) insert the following new section. All the text is new and is not underlined.

[*Editor's Note:* The forms comprising SUP 13 Annex 2AR can be found in the Appendix at the end of this instrument and are as follows:

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)]

13 Annex 2AR Passporting: Notification to cease the provision of cross border services under MiFID

This annex consists of only one or more forms. Forms can be completed online now by visiting: <http://www.fca.org.uk/firms/being-regulated/passporting/notification-forms> for an *FCA-authorised person*.

The forms can also be found through the following address:

Passporting: Notification to stop the provision of services under MiFID and notification to terminate the provision, within the territory of an EEA State, arrangements to facilitate access to, and trading on, an MTF or OTF by remote users, members or participants established in that EEA State – SUP 13 Annex 2AR

...

15 Notifications to the FCA

...

15.3 General notification requirements

...

Breaches of rules and other requirements in or under the Act or the CCA

15.3.11 R (1) A *firm* must notify the *FCA* of:

...

(b) ...

(ba) a breach of any requirement imposed by or under either the MiFI Regulations or the DRS Regulations; or

...

(d) a breach of any directly applicable provision ~~in the MiFID Regulation~~ imposed by MiFIR or any EU regulation adopted under MiFID or MiFIR; or

...

...

...

15.6 Inaccurate, false or misleading information

15.6.1 R A *firm* must take reasonable steps to ensure that all information it gives to the *FCA* in accordance with a *rule* in any part of the *Handbook* (including *Principle 11*) is:

- (1) factually accurate or, in the case of estimates and ~~judgments~~ judgements, fairly and properly based after appropriate enquiries have been made by the *firm*; and
- (2) complete, in that it should include anything of which the *FCA* would reasonably expect notice.

15.6.1A R SUP 15.6.1R also applies to all information given, or to be given, by a *firm* in accordance with any of the following:

- (1) a directly applicable provision imposed by MiFIR or any EU regulation adopted under MiFID or MiFIR; or
- (2) a breach of any requirement imposed by or under either the MiFI Regulations or the DRS Regulations.

...

16 Reporting requirements

...

16.7A Annual report and accounts

...

Exceptions from the requirement to submit an annual report and accounts

- 16.7A.4 R (1) ~~An adviser, local or traded options market maker~~ (as referred to in *IPRU(INV) 3-60(4)R*), is only required to submit the *annual report and accounts* if:

...

...

...

16.17 Remuneration reporting

...

High Earners Reporting Requirements

- 16.17.4 R ...

- (12) This *rule* also applies to a *BIPRU firm*, an *exempt CAD firm*, a *local firm*, or any other *firm* that is not a *bank*, a *building society* or an *IFPRU investment firm*:

...

...

...

SUP 17 is deleted in its entirety except for the purpose of SUP TP 9. The deleted text is not shown.

17 Transaction reporting [deleted]

After SUP 17 (deleted) insert the following new chapter. All the text is new and is not underlined.

17A Transaction reporting and supply of reference data

17A.1 Application

- 17A.1.1 R This chapter applies to:

- (1) a *MiFID investment firm* (excluding a *collective portfolio management investment firm*) which:
 - (a) *executes transactions* in a *reportable financial instrument*; and
 - (b) is required under article 26(1) of *MiFIR* to report its *transactions* to the *FCA*;
- (2) an operator of a *trading venue*:
 - (a) through whose systems and platforms a *transaction* in a *reportable financial instrument* is *executed* by a person not subject to *MiFIR*; and
 - (b) which is required under article 26(5) of *MiFIR* to report such *transactions* to the *FCA*;
- (3) a *third country investment firm* which *executes transactions* in a *reportable financial instrument*; and
- (4) a *systematic internaliser* or an operator of a *trading venue* which is required under article 27 of *MiFIR* to supply identifying reference data relating to *financial instruments* traded on its system or *trading venue* to the *FCA*.

[**Note:** article 26 of *MiFIR* and *MiFID RTS 22* contain requirements regarding transaction reporting that are directly applicable to a *firm* in *SUP 17A.1.1R*(1) or (2), and to an *ARM* or an operator of a *trading venue* which acts on behalf of a *MiFID investment firm* subject to article 26(1) of *MiFIR*]

- 17A.1.2 G *GEN 2.2.22AR* has the effect of requiring *third country investment firms* to comply with the transaction reporting requirements in article 26 of *MiFIR* and *MiFID RTS 22* as though they were *MiFID investment firms*.

[**Note:** article 27 of *MiFIR* and *MiFID RTS 23* contain requirements about the supply of reference data that are directly applicable to a *systematic internaliser* in relation to *financial instruments* traded on its system or a *trading venue* in relation to *financial instruments admitted to trading* on a *regulated market* or traded on an *MTF* or *OTF*]

17A.2 Connectivity with FCA systems

- 17A.2.1 R The following *firms* or operators of *trading venues* must deal with the *FCA* in an open and co-operative way when establishing a technology connection with the *FCA* for the submission of *transaction reports* and/or the supply of reference data:

- (1) a *firm* in SUP 17A.1.1R(1) or 17A.1.1R(3) that chooses to submit its reports directly to the *FCA* instead of using an *ARM*;
 - (2) an operator of a *trading venue* in SUP 17A.1.1R(2), other than a *UK RIE* that is not itself an *ARM*; and
 - (3) a *firm* or operator of a *trading venue* in SUP 17A.1.1R(4), other than a *UK RIE*.
- 17A.2.2 R To ensure the security of the *FCA*'s systems, a *firm* or operator of a *trading venue* in SUP 17A.2.1R must:
- (1) sign the *MIS confidentiality agreement* at MAR 9 Annex 10D; and
 - (2) send it by 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
25 The North Colonnade
Canary Wharf
London E14 5HS.
- 17A.2.3 G Once the *FCA* receives the *MIS confidentiality agreement* from the *firm* or operator of a *trading venue*, the *FCA* will:
- (1) provide the *firm* or operator with the *Market Interface Specification (MIS)*; and
 - (2) request the *firm* or operator to:
 - (a) confirm to the *FCA* that it can satisfy these specifications by completing the *FCA MDP on-boarding application form* at MAR 9 Annex 7D; and
 - (b) provide the completed form and any relevant documents to the *FCA* together with the associated fee in FEES 3.2.7R.
- 17A.2.4 R The *firm* or operator of a *trading venue* must confirm to the *FCA* that it can satisfy the *FCA*'s technical specifications before it can establish a technology connection with the *FCA* for the submission of *transaction reports* and/or the supply of reference data.
- 17A.2.5 G Where an *ARM* is used to satisfy a *MiFID investment firm's* or a *third country investment firm's transaction* reporting obligations in accordance with article 26 of *MiFIR* or GEN 2.2.22AR, MAR 9 applies.

SUP TP 1 Transitional Provisions

...

SUP TP 1.2

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision		(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...						
9A	...	...		
9AA	<u>SUP 13</u>	<u>R</u>	(1)	Where a <i>person</i> wishes to obtain a passport for an investment service or financial instrument to which <i>MiFID II</i> will apply, but to which <i>MiFID</i> does not apply, all changes made to <u>SUP 13</u> by [<i>FCA Handbook Instrument</i>] on 3 January 2018 instead take effect from 31 July 2017.	From 31 July 2017 until 2 January 2018	[<i>insert date that instrument comes into force</i>]
(2)	For the purposes of this transitional provision, <u>SUP 13.5.3R(1)</u> and <u>SUP 13.8.1R(1)</u> do not apply. A <i>person</i> submitting a notice to which <u>SUP 13.5.3R(1)</u> or <u>SUP 13.8.1R(1)</u> would otherwise apply must do so by email to <u>MiFID.passport@fca.org.uk</u> .					
(3)	This transitional provision also applies where a <i>person</i> to whom <i>MiFID</i> does not apply, but to whom <i>MiFID II</i> will apply, wishes to obtain a passport that takes					

				effect from the application date of <i>MiFID II</i> .		
<u>9AB</u>	<u>SUP 13</u>	<u>G</u>	(1)	<u>SUP TP 1.2 9AAR is intended to allow a person to apply for a passport for an investment service or financial instrument introduced by <i>MiFID II</i>, prior to the application date of <i>MiFID II</i>. It also allows other persons such as those who will cease to be exempt under <i>MiFID II</i>, to apply for a passport that takes effect from the application date of <i>MiFID II</i>.</u>	From 31 July 2017 until 2 January 2018	<u>[insert date that instrument comes into force]</u>
			(2)	<u>A person who wishes to obtain a passport for an investment service or financial instrument to which <i>MiFID</i> applies, as well as for an investment service or financial instrument to which <i>MiFID</i> does not apply but to which <i>MiFID II</i> will apply, should submit two separate notifications.</u>		

After SUP TP 8 (Financial Services (Banking Reform) Act 2013: Approved persons in small non-directive insurers) insert the following new chapter SUP TP 9. All this text is new and is not underlined.

TP 9 Transitional Provisions in relation to the MiFID Regulation

9.1	Continuing obligations under the MiFID Regulation		
9.1.1	R	(1)	If the condition in (2) is met, <i>SUP TP 9</i> applies in respect of an obligation or requirement in, or under, the following with which a <i>firm</i>

			must comply:
		(a)	the <i>MiFID Regulation</i> ; or
		(b)	a <i>rule</i> under <i>SUP 17</i> (Transaction reporting).
		(2)	As at 2 January 2018, a <i>firm</i> is under an obligation or requirement to comply, or to have complied, with a provision referred to in (1) in the version in force on that date.
9.1.2	R		A <i>firm</i> remains obliged to comply with the obligation, requirement or <i>rule</i> referred to in <i>SUP TP 9.1.1R</i> (1)(a) and (b) until such time as effective compliance is achieved.
9.1.3	R		<i>SUP 15</i> (Notifications to the FCA) continues to apply in respect of a breach of a requirement or a <i>rule</i> referred to in <i>SUP TP 9.1.1R</i> .
			Purpose
9.1.4	G		The purpose of <i>SUP TP 9.1.1R</i> is to ensure that, as appropriate, <i>firms</i> :
		(1)	comply with the provisions of the <i>MiFID Regulation</i> and <i>SUP 17</i> (as at 2 January 2018); and
		(2)	notify and remedy breaches of these provisions whenever those breaches come to light,
			notwithstanding the repeal of the <i>MiFID Regulation</i> on 3 January 2018.

Annex N

Amendments to the Decision Procedure and Penalties Manual (DEPP)

In this Annex, underlining indicates new text.

6 Penalties

...

6.2 Deciding whether to take action

...

Action against individuals under section 66 of the Act

...

- 6.2.5 G In some cases it may not be appropriate to take disciplinary measures against a *firm* for the actions of an individual (an example might be where the *firm* can show that it took all reasonable steps to prevent the *breach*). In other cases, it may be appropriate for the *FCA* to take action against both the *firm* and the individual. For example, a *firm* may have breached the *rule* requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1R or SYSC 4.1.10R or article 21(5) of the *MiFID Org Regulation* (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-BR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R), and an individual may have taken advantage of those deficiencies to front run orders or misappropriate assets.

...

Annex O

Amendments to the Consumer Credit sourcebook (CONC)

In this Annex, underlining indicates new text.

7 **Arrears, default and recovery (including repossessions)**

...

7.6 **Exercise of continuous payment authority**

...

7.6.15 G ...

- (3) *Firms* are reminded of their record-keeping obligations under SYSC 9.1.1R and SYSC 9.1.1AR (general rules on record-keeping) which in particular require sufficient records to be kept to ascertain that the *firm* has complied with all obligations with respect to *customers*. These should include, for example, arranging to keep records of payment requests (including refusals of payment requests) made under *continuous payment authorities* and to keep suitable written or other records of the consents referred to in CONC 7.6.1R, CONC 7.6.12R, CONC 7.6.13R and CONC 7.6.14R.

...

[*Editor's Note:* In this Annex, certain “EU” provisions are deleted and have been replaced with Notes signposting readers to the relevant EU Regulations.]

Annex P

Amendments to the Recognised Investment Exchanges sourcebook (REC)

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

1 Introduction

1.1 Application

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See www.esma.europa.eu/system/files/esma_2012_122_en.pdf]~~

- 1.1.1 G (1) The *rules and guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under the *RAP regulations*.
- (2) The recognition requirements and guidance in REC 2 relate primarily to UK RIEs which are recognised, or applying to be recognised, to operate a regulated market in the United Kingdom.
- (3) While some recognition requirements in REC 2 apply to other trading venues operated by UK RIEs, guidance in respect of those venues is set out in MAR 5 and MAR 5A.

...

- 1.1.2 G (1) *UK RIEs* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).
- (2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the ~~*MiFID implementing requirements in the MiFID Regulation*~~ *MIFID/MIFIR requirements*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the ~~*MiFID Regulation*~~ *MIFID/MIFIR requirements*. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

- (3) *UK RIEs* must also comply with the following:
- (a) notification requirements in, and ~~with~~ *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*; and
- (b) any rules made under the FCA's rule-making power in regulation 11 of the *Recognition Requirements Regulations*.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* ~~and the *MiFID implementing requirements*~~ are set out, with *guidance*, in *REC 2*. The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in *REC 2A*.

(1A) Key relevant *MiFID/MiFIR requirements* directly applicable to *UK recognised bodies* are signposted as “**Notes**”.

...

...

1.2 Purpose, status and quotations, notes or references

...

Status

1.2.2 G (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from *UK* statute or statutory instruments are marked with the letters “~~UK~~ **UK**” unless they form part of a piece of *guidance*. ~~Quotations from the directly applicable *MiFID Regulation* are marked with the letters “EU”.~~ Other informative text regarding provisions of *EU* directives or directly applicable *EU regulations* which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word “**Note**”. For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.

...

Quotations

1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* ~~and~~, the Companies Act 1989 ~~and the *MiFID Regulation*~~ and, where necessary, words have been added to, or substituted for, the text of the provisions to facilitate understanding.

...

2 Recognition requirements

2.1 Introduction

- 2.1.1 G (1) This chapter contains the *recognition requirements* for *UK RIEs* (other than *RAPs*) and sets out *guidance* on those requirements. Except for *REC 2.5A*, references to *recognised body* or *UK recognised bodies* in the rest of this chapter shall be read as referring to *UK RIEs*.
- (2) This chapter also contains ~~the *MiFID implementing requirements* for *UK RIEs*~~ “**Notes**” with informative text in relation to *MiFID/MiFIR requirements* applicable directly to *UK RIEs* operating *trading venues*.
- (3) This chapter directs *UK RIEs* to certain *recognition requirements* and *guidance* on those requirements found in other parts of the *Handbook*.

...

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2 / other parts of the Handbook
Regulation 6	Method of satisfying recognition requirements	2.2
Part 1 of the Schedule	UK RIE recognition requirements	
Paragraph 1	Financial Resources	2.3
Paragraph 2	Suitability	2.4
<u>Paragraphs 2A and 2B</u>	<u>Management Body</u>	<u>2.4A</u>
<u>Paragraph Paragraphs 3, 3A, 3B, 3C, 3D, 3E, 3G and 3H</u>	<u>Systems and controls, market making agreements, halting trading, direct electronic access, co-location services, fee structures, algorithmic trading, tick size regimes, synchronisation of business</u>	2.5

	<u>clocks</u>	
Paragraphs 4(1) and , 4(2)(aa) <u>and</u> 4C	General safeguards for investors <u>and publication of data regarding execution of transactions</u>	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(b)	Proper markets	2.12
Paragraph 4(2)(c)	Availability of relevant information	2.12
Paragraph 4(2)(d)	Settlement	2.8
Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f) <u>and</u> 4(2)(fa)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
Paragraph 4B	Provision of post-trade information about share trading	2.6
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph Paragraphs 7A <u>and</u> 9ZB (regulated <u>markets only</u>)	Admission of financial instruments to trading	2.12
Paragraph Paragraphs 7B <u>and</u> 7C <u>and</u> 9ZC (regulated markets <u>only</u>)	Access to facilities	2.7

<u>Paragraphs 7BA & 7BB</u>	<u>Position management and position reporting re commodity derivatives</u>	<u>2.7A</u>
Paragraph 7D	<u>Settlement and clearing facilitation services</u>	2.8
<u>Paragraph Paragraphs 7E and 7F</u>	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
<u>Paragraph Paragraphs 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H and 9ZD</u>	<u>Operation of a multilateral trading facility or an organised trading facility</u>	2.16A / <u>MAR 5 and MAR 5A</u>
<u>Paragraph 9ZA (regulated markets only)</u>	<u>Order execution</u>	<u>2.6</u>
<u>Paragraph 9K</u>	<u>Provision of data reporting services</u>	<u>2.16B/ MAR 9</u>
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

- 2.1.5 G ~~Recital and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in *REC 2.6*. Articles from the *MiFID Regulation* relevant to admission to trading are set out in *REC 2.12*. [deleted]~~

2.2 Method of satisfying the recognition requirements

...

Outsourcing

- 2.2.3 G It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. The *recognition requirement* referred to in Regulation 6(3) applies to the *UK recognised body* and not to any *person* who performs any function on its behalf. In this context, for a *person* to be “fit and proper” does not necessarily imply that ~~he is~~ they are an *authorised person*, or qualified to be so, or that the required standard is the same as that required either for *authorised persons* or

recognised bodies.

- 2.2.4 G If a *UK recognised body* makes arrangements for functions to be performed on its behalf by persons who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.

[Note: MiFID RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

...

- 2.2.6 G In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on its behalf:
- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
 - (2) has adequate systems and controls to manage that function and to report its performance to the *UK recognised body*;
 - (3) is managed by *persons* of sufficient skill, competence and integrity;
 - (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under *the Act*; and
 - (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act*.

[Note: MiFID RTS 7 contains further requirements for a *trading venue* whose systems enable *algorithmic trading* when outsourcing all or part of its functions]

- 2.2.7 G In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:
- (1) the contracts (and other relevant *documents*) between the *UK recognised body* and the *person* who performs the delegated function;
 - (2) the arrangements made to monitor the performance of that function; and

- (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

[Note: MiFID RTS 7 contains further requirements for a trading venue whose systems enable algorithmic trading when outsourcing all or part of its functions]

...

2.4 Suitability

2.4.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 2

(1)	The [UK RIE] must be a fit and proper <i>person</i> to perform the [relevant functions] of a [UK RIE].
(2)	In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any <i>person</i> .
(3)	The persons <u>[members of the management body]</u> who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it <u>possess sufficient knowledge, skill and experience to perform their duties.</u>
(4)	The <i>persons</i> who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

...

2.4.3 G In determining whether a UK recognised body is a fit and proper person, the FCA may have regard to any relevant factor including, but not limited to:

- (1) the commitment shown by the UK recognised body's ~~governing body~~ management body to satisfying the *recognition requirements* and to complying with other obligations in or under the Act;

...

- (3) the extent to which its constitution and organisation provide for effective governance;

[Note: MiFID RTS 7 contains further governance requirements for a trading venue whose systems enable algorithmic trading]

- (4) the arrangements made to ensure that its ~~governing body~~ management body has effective oversight of the *UK recognised body's relevant functions*;
- (5) the access which its regulatory department has to the ~~governing body~~ management body;
- (6) ~~the size and composition of its governing body, including:~~
 - (a) ~~the number of members of the governing body who represent members of the UK recognised body or other persons and the types of person whom they represent;~~
 - (b) ~~the number and responsibilities of any members of the governing body with executive roles within the UK recognised body; and~~
 - (c) ~~the number of independent members of the governing body;~~
[deleted]
- (7) ~~the structure and authorisation of its governing body, including any distribution of responsibilities among its members and committees;~~
[deleted]
- (8) ~~the integrity and competence of its governing body and key individuals;~~ [deleted]

...

2.4.4 G In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to its connections with:

...

- (3) any *person* who has the right to appoint or remove *members of the governing body or other key individuals* management body;
- (4) any *person* who is able in practice to appoint or remove *members of the governing body or other key individuals* management body;
- (5) any *person* in accordance with whose instructions the ~~governing body or any key individual~~ management body is accustomed to act; and

...

2.4.5 G In assessing whether its connection with any *person* could affect whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to:

...

- (5) the extent to which the *UK recognised body's governing body management body* is responsible for its day-to-day management and operations;

...

...

After REC 2.4 insert the following new section. The text is not underlined.

2.4A Management body

2.4A.1 UK Schedule to the Recognition Requirements Regulations, paragraph 2A

(1)	The composition of the management body of a [UK RIE] must reflect an adequately broad range of experience.		
(2)	The <i>management body</i> must possess adequate collective knowledge, skills and experience in order to understand the [UK RIE 's] activities and main risks.		
(3)	Members of the management body must -		
	(a)	commit sufficient time to perform their functions on the management body;	
	(b)	act with honesty, integrity and independence of mind; and	
	(c)	effectively -	
		(i)	assess and challenge, where necessary, the decisions of the senior management; and
		(ii)	oversee and monitor decision making.
(4)	The management body must -		
	(a)	define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the [UK RIE] in a manner which promotes the integrity of the market, which at least must include the -	
		(i)	segregation of duties in the organisation; and
		(ii)	prevention of conflicts of interest in its operation;
	(b)	monitor and periodically assess the effectiveness of the [UK RIE 's] governance arrangements; and	

	(c)	take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).
(5)	A [UK RIE] must -	
	(a)	devote adequate human and financial resources to the induction and training of members of the management body;
	(b)	ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making;
	(c)	engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body; and
	(d)	notify the FCA of the identity of all the members of its management body.

2.4A.2 UK Schedule to the Recognition Requirements Regulations, paragraph 2B

(1)	If the [UK RIE] is significant the following requirements apply to the management body -	
	(a)	members of the management body must not at the same time hold positions exceeding more than one of the following combinations –
		(i) one executive directorship with two non-executive directorships (or where so authorised by the FCA under section 299AB of the Act, three non-executive directorships); or
		(ii) four non-executive directorships (or where so authorised by the FCA under section 299AB of the Act, five non-executive directorships); and
	(b)	the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
(2)	For the purposes of sub-paragraph (1)(a) -	
	(a)	any directorship in which the person represents the United Kingdom is not counted;
	(b)	executive or non-executive directorships -
		(i) held within the same group, or
		(ii) held within the same undertaking where the [UK RIE]

		holds a qualifying holding within the meaning of Article 4.1.31 of the markets in financial instruments directive [<i>MiFID</i>],
		shall be counted as a single directorship; and
	(c)	any directorship in an organisation which does not predominantly pursue commercial objectives is not counted.
(3)	The nomination committee referred to in sub-paragraph (1)(b) must -	
	(a)	be composed of members of the management body who do not perform an executive function in the [<i>UK RIE</i>];
	(b)	identify and recommend to the [<i>UK RIE</i>] persons to fill management body vacancies;
	(c)	at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;
	(d)	at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively and report to the management body accordingly; and
	(e)	periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
	(f)	be able to use any forms of resource it deems appropriate, including external advice.
(4)	In performing its functions under sub-paragraph (3), the nomination committee must take account of the need to ensure that the management body's decision making is not dominated by-	
	(a)	any one individual; or
	(b)	a small group of individuals,
	in a manner that is detrimental to the interests of the [<i>UK RIE</i>] as a whole.	
(5)	In performing its function under sub-paragraph 3(b) the nomination committee must -	
	(a)	evaluate the balance of knowledge, skills, diversity and experience of the management body;
	(b)	prepare a description of the roles, capabilities and expected time

		commitment for any particular appointment;
	(c)	decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
	(d)	engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.
(6)		In sub-paragraph (1), “significant” in relation to a [UK RIE] means significant in terms of the size and internal organisation of the [UK RIE] and the nature, scale and complexity of the [UK RIE’s] activities.

- 2.4A.3 G The FCA will assess an application under section 299AB of the Act for a person on a management body to hold an additional non-executive directorship on a case-by-case basis, having regard to the person’s ability to commit sufficient time to perform their functions on the management body and the complexity, nature and scale of operations of the UK RIE.

Amend the following as shown.

2.5 Systems and controls, algorithmic trading and conflicts

- 2.5.1 UK Schedule to the Recognition Requirements Regulations, ~~paragraph~~ paragraphs 3 – 3H

<u>Paragraph 3 – Systems and controls</u>	
(1)	The [UK RIE] must ensure that the systems and controls, <u>including procedures and arrangements</u> , used in the performance of its [relevant functions] <u>functions</u> are adequate, <u>effective</u> and appropriate for the scale and nature of its business.
(2)	Sub-paragraph (1) applies in particular to systems and controls concerning -
	...
(e)	(where relevant) the safeguarding and administration of assets belonging to users of the [UK RIE’s] <u>facilities</u> ;
(f)	<u>the resilience of its trading systems</u> ;
	[Note: MiFID RTS 7 contains requirements on the resilience of trading systems operated by trading venues that enable <u>algorithmic trading</u>]

	(g)	<u>the ability to have sufficient capacity to deal with peak order and message volumes;</u>
	[Note: MiFID RTS 7 contains requirements on the adequacy of capacity of trading systems operated by trading venues that enable algorithmic trading]	
	(h)	<u>the ability to ensure orderly trading under conditions of severe market stress;</u>
	(i)	<u>the effectiveness of business continuity arrangements to ensure the continuity of the [UK RIE's] services if there is any failure of its trading systems including the testing of the [UK RIE's] systems and controls;</u>
	(j)	<u>the ability to reject orders that exceed predetermined volume and price thresholds or which are clearly erroneous;</u>
	(k)	<u>the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the [UK RIE];</u>
	(l)	<u>the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the [UK RIE's] trading system by a member or participant are capable of being managed;</u>
	[Note: MiFID RTS 9 contains requirements on the ratio of unexecuted orders to transactions to be taken into account by a trading venue that operates electronic continuous auction order book, quote-driven or hybrid trading systems]	
	(m)	<u>the ability to ensure the flow of orders is able to be slowed down if there is a risk of system capacity being reached;</u>
	(n)	<u>the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and</u>
	(o)	<u>the requirement for members and participants to carry out appropriate testing of algorithms.</u>
	[Note: MiFID RTS 7 contains requirements on the appropriate testing of algorithms to ensure that trading systems, when they enable algorithmic trading, cannot create or contribute to disorderly trading conditions]	
(3)	For the purposes of sub-paragraph 2(c), the [UK RIE] must -	

	(a)	<u>establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by members or participants with its rules; and</u>
	(b)	<u>monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behavior that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.</u>
(4)		<u>For the purpose of sub-paragraph (2)(o) the [UK RIE] must provide environments to facilitate such testing.</u>
(5)		<u>The [UK RIE] must be 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 to put in place effective measures to mitigate those risks.</u>
<u>Paragraph 3A – Market making arrangements</u>		
(1)		<u>The [UK RIE] must -</u>
	(a)	<u>have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);</u>
	(b)	<u>have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such 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;</u>
	(c)	<u>monitor and enforce compliance with the market making agreements;</u>
	(d)	<u>inform the FCA of the content of its market making agreements; and</u>
	(e)	<u>provide the FCA with any information it requests which it reasonably requires to satisfy itself that the market making agreements comply with this sub-paragraph.</u>
(2)		<u>A written agreement of the kind mentioned in sub-paragraph (1)(a) must specify-</u>
	(a)	<u>the obligations of the investment firm in relation to the</u>

		<u>provision of liquidity;</u>
	(b)	<u>where applicable, any obligations arising, or rights accruing, from the participation in a scheme mentioned in sub-paragraph (1)(b); and</u>
	(c)	<u>any incentives in terms of rebates or otherwise offered by the [UK RIE] to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis and, where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).</u>
(3)	<u>For the purposes of this paragraph, an investment firm pursues a market making strategy if -</u>	
	(a)	<u>the firm is a member or participant of one or more trading venues;</u>
	(b)	<u>the firm's strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size at competitive prices relating to one or more financial instruments on a single trading venue, across different trading venues; and</u>
	(c)	<u>the result is providing liquidity on a regular and frequent basis to the overall market.</u>
<u>Paragraph 3B – Halting trading</u>		
(1)	<u>The [UK RIE] must be able to -</u>	
	(a)	<u>temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and</u>
	(b)	<u>in exceptional cases be able to cancel, vary, or correct any transaction.</u>
(2)	<u>For the purposes of sub-paragraph (1), the [UK RIE] must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account -</u>	
	(a)	<u>the liquidity of different asset classes and subclasses;</u>
	(b)	<u>the nature of the trading venue market model; and</u>
	(c)	<u>the types of users.</u>
	<u>to ensure the parameters are sufficient to avoid significant</u>	

	<u>disruptions to the orderliness of trading.</u>	
(3)	<u>The [UK RIE] must report the parameters mentioned in sub-paragraph (2) to the FCA in a format to be specified by the FCA to ensure consistent and comparable reporting.</u>	
(4)	<u>If a regulated market operated by the [UK RIE] is material in terms of liquidity of the trading of a financial instrument in the EEA and trading is halted in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.</u>	
<u>[Note: MiFID RTS 12 contains requirements for when a <i>regulated market</i> is material in terms of liquidity in a <i>financial instrument</i> for purposes of trading halt notifications]</u>		
<u>Paragraph 3C – Direct electronic access</u>		
<u>Where the [UK RIE] permits direct electronic access to a trading venue it operates, it must -</u>		
(1)	(a)	<u>ensure that a member of, or participant in that trading venue are only permitted to provide direct electronic access to the venue if the member or participant -</u>
		(i) <u>is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;</u>
		(ii) <u>is a credit institution authorised in accordance with the capital requirements directive;</u>
		(iii) <u>comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;</u>
		(iv) <u>is a third country firm providing the direct electronic access in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation; or</u>
		(v) <u>is a third country firm providing the direct electronic access in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation; or</u>

		(vi)	<u>is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act.</u>
	(b)		<u>ensure that criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;</u>
	(c)		<u>ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service;</u>
	(d)		<u>set standards regarding risk controls and thresholds on trading through direct electronic access;</u>
	(e)		<u>be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from -</u>
		(i)	<u>other orders; or</u>
		(ii)	<u>trading by the member or participant providing the direct electronic access; and</u>
	(f)		<u>have arrangements in place to suspend or terminate the provision of direct electronic access on that market by a <i>member of, or participant in, the trading venue</i> in the case of non-compliance with this sub-paragraph.</u>
[Note: MiFID RTS 7 contains requirements on <i>direct electronic access</i> permitted through a <i>trading venue</i>'s systems]			
(2)	<u>In this regulation the provision of the direct electronic access is in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation if it is an activity subject to the exclusion in Article 72 (overseas persons) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000.</u>		
<u>Paragraph 3D – Co-location services</u>			
(1)	<u>The [UK RIE's] rules on colocation services must be transparent, fair and non-discriminatory.</u>		
[Note: MiFID RTS 10 contains requirements to ensure co-location services are transparent, fair and non-discriminatory]			
<u>Paragraph 3E – Fee structures</u>			

(1)	<u>The [UK RIE's] fee structure, for all fees it charges and rebates it grants, must -</u>	
	(a)	<u>be transparent, fair and non-discriminatory;</u>
	<u>[Note: MiFID RTS 10 contains requirements to ensure fee structures are transparent, fair and non-discriminatory]</u>	
	(b)	<u>not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and</u>
	<u>[Note: MiFID RTS 10 contains requirements concerning prohibited fee structures]</u>	
	(c)	<u>impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.</u>
(2)	<u>Nothing in sub-paragraph (1) prevents the [UK RIE] from -</u>	
	(a)	<u>adjusting its fees for cancelled orders according to the length of time which the order was maintained;</u>
	(b)	<u>calibrating its fees to each financial instrument to which they apply;</u>
	(c)	<u>imposing a higher fee -</u>
	(i)	<u>for placing an order which is cancelled than an order which is executed;</u>
	(ii)	<u>on participants placing a high ratio of cancelled orders to executed orders; or</u>
	(iii)	<u>on a person operating a high-frequency algorithmic trading technique,</u>
	<u>in order to reflect the additional burden on system capacity.</u>	
<u>Paragraph 3F – Algorithmic trading</u>		
(1)	<u>The [UK RIE] must require members and participants of trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the -</u>	
	(a)	<u>different algorithms used for the creation of orders; and</u>
	(b)	<u>the persons initiating those orders.</u>
<u>Paragraph 3G – Tick size regimes</u>		

(1)	<u>The [UK RIE] must adopt tick size regimes in respect of trading venues operated by it in -</u>	
	(a)	<u>shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and</u>
	[Note: MiFID RTS 11 contains requirements on the tick size regime for <u>shares, depositary receipts, exchange-traded funds and certificates</u>]	
	(b)	<u>any financial instrument as required by a regulated technical standard made under article 49(3) or (4) of the markets in financial instruments directive which is traded on that trading venue.</u>
	[Note: MiFID RTS 11]	
(2)	<u>The tick size regime must -</u>	
	(a)	<u>be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and</u>
	(b)	<u>adapt the tick size for each financial instrument appropriately.</u>
(3)	<u>The tick size regime must comply with any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive.</u>	
	[Note: MiFID RTS 11]	
	<u>Paragraph 3H – Synchronisation of business clocks</u>	
(1)	<u>The [UK RIE] must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards adopted by the European Commission pursuant to Article 50 of the markets in financial instruments directive.</u>	
	[Note: MiFID RTS 25]	

2.5.1A UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
appropriate arrangements are made to -

(i)	identify conflicts between the interests of the [UK RIE], its owners and operators and the interests of the [persons] who make use of its [facilities] or the interests of the financial markets <u>trading venues</u> operated by it; and
(ii)	manage such conflicts so as to avoid adverse consequences for the operation of the financial markets <u>trading venues</u> operated by the [UK RIE] and for the [persons] who make use of its [facilities].

2.5.1B R In paragraph 3B(3) of the Schedule to the Recognition Requirements Regulations, under which a UK RIE must report the parameters for halting trading to the FCA, such information must be provided to the FCA in writing and delivered by any one of the methods in REC 3.2.3R.

...

2.5.3 G In assessing whether the systems and controls used by a *UK recognised body* in the performance of its relevant functions are adequate, effective and appropriate for the scale and nature of its business, the *FCA* may have regard to the *UK recognised body's*:

- (1) arrangements for managing, controlling and carrying out its *relevant functions*, including:
 - (a) the distribution of duties and responsibilities among ~~its key individuals~~ the members of the management body and the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (b) (where the staffing requirements in MiFID RTS 7 do not apply to the UK RIE) the staffing and resources of the departments of the *UK recognised body* responsible for performing its *relevant functions*; and
 - (c) the arrangements made to enable ~~key individuals~~ members of the management body to supervise the departments or functions for which they are responsible;
 - (d) ~~the arrangements for appointing and supervising the performance of key individuals (and their departments); and~~
 - (e) ~~the arrangements by which the governing body is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of key individuals under review;~~
- (2) arrangements for the identification and management of conflicts of interest;
- (3) arrangements for internal and external audit; and

(4) information technology systems.

2.5.4 G ~~The following paragraphs REC 2.5.5G to REC 2.5.20G set out other matters to which the *FCA* may have regard in assessing the *UK RIE*'s systems and controls used for the transmission of information, risk management, ~~the effecting and monitoring of transactions~~, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the *Recognition Requirements Regulations*) ~~and~~ the safeguarding and administration of assets and certain other aspects of its operations.~~

2.5.4A G Where the *MiFID/MiFIR Systems Regulations* apply to a *UK RIE*, the *FCA* will, in assessing the *UK RIE*'s systems and controls, additionally have regard to the *UK RIE*'s satisfaction of any relevant requirements in those regulations. Of particular importance is *MiFID RTS 7*, which will apply where a *trading venue* allows or enables *algorithmic trading*.

...

~~Effecting and monitoring of transactions and operation~~ Operation of settlement arrangements ~~and effecting and monitoring of transactions~~

2.5.8 G In assessing a *UK RIE*'s systems and controls for ~~the effecting and monitoring of transactions~~, and for the operation of settlement arrangements, the *FCA* may have regard to the totality of the arrangements and processes through which the *UK RIE*'s transactions are ~~effected~~, cleared ⁵ and settled, including:

- (1) (in relation to non-derivatives transactions) a *UK RIE*'s arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its arrangements with another ~~person~~ *person* under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or *clearing house*;
- (2) (in relation to non-derivatives transactions and if relevant), a *UK RIE*'s arrangements under which instructions relating to a transaction ² to be cleared by another ~~person~~ *person* by means of a *clearing facilitation service*, are entered into its systems by the relevant other ~~person~~ *person* and transmitted to the other ~~person~~ *person*; and
- (3) the arrangements made by the *UK RIE* for monitoring and reviewing the operation of these systems and controls.

[Note: In relation to derivative transactions, *MiFID RTS 26* contains requirements on the systems for clearing such transactions]

2.5.8A G Where the requirements of *MiFID RTS 7* in respect of effecting and monitoring transactions do not apply to a *UK RIE*, the *FCA* may, in addition, assess the *UK RIE*'s systems and controls for the effecting and monitoring of transactions. In doing so, it will have regard to the *UK RIE*'s

arrangements under which orders are received and matched, and its arrangements for trade and transaction reporting.

...

Management of conflicts of interest

2.5.10 G A conflict of interest arises in a situation where a *person* with responsibility to act in the interests of one *person* may be influenced in his or her action by an interest or association of his or her own, whether personal or business or employment related. Conflicts of interest can arise both for the *employees of UK recognised bodies* and for the *members* (or other *persons*) who may be involved in the decision-making process, for example where they belong to committees or to the ~~governing body~~ management body. Conflicts of interest may also arise for the *UK recognised body* itself as a result of its connection with another *person*.

...

2.5.13 G The *FCA* may have regard to the arrangements a *UK recognised body* makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

- (1) the size and composition of the ~~governing body~~ management body and relevant committees;
- (2) the roles and responsibilities of ~~key individuals~~ members of the management body, especially where they also have responsibilities in other organisations;
- (3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
- (4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

...

2.5.15 G The *FCA* may also have regard to the contracts of employment, staff rules, letters of appointment for ~~members of the governing body~~ members of the management body, members of relevant committees ~~and other key individuals~~ and other guidance given to individuals on handling conflicts of interest. Guidance to individuals may need to cover:

...

...

Information technology systems

2.5.18 G ~~Information technology is likely to be a major component of the systems and controls used by an *UK recognised body*. In assessing the adequacy of the information technology used by a *UK recognised body* to perform or support its *relevant functions*. Where *MiFID RTS 7* applies to the *UK RIE*, the *FCA* may, in assessing the adequacy of the *UK recognised body's* information technology systems, have regard to:~~

- (1) the organisation, management and resources of the information technology department within the *UK recognised body*;
- (2) the arrangements for ~~controlling and~~ documenting the design, development, implementation and use of information technology systems; and
- (3) ~~the performance, capacity and reliability~~ arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including the procedures for the evaluation and selection of information technology systems.

2.5.19 G Where *MiFID RTS 7* does not apply to a *UK RIE*, the *FCA* may in addition have regard to the performance, capacity and reliability of its systems. The *FCA* may also have regard in these cases to the arrangements for maintaining, recording and enforcing technical and operational standards and specification for information technology systems, including:

...

...

2.6 ~~General safeguards for investors, provision of pre and post-trade information about share trading and~~ suspension and removal of financial instruments from trading and order execution on regulated markets

...

2.6.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [<i>UK RIE</i>] must ensure that –	
it has transparent and non-discretionary rules and procedures -	
(i)	to provide for fair and orderly trading, and
(ii)	to establish objective criteria for the efficient execution of orders;

2.6.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 4C

(1)	The [UK RIE] must make available to the public, without any charges, data relating to the quality of execution of transactions on the [UK RIE] on at least an annual basis.
(2)	Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.

2.6.3 UK Schedule to the Recognition Requirements Regulations, Paragraph 4A
[deleted]

(1)	The [UK RIE] must have arrangements for-	
	(a)	current bid and offer prices for <i>shares</i> , and
	(b)	the depth of trading interest in <i>shares</i> at the prices which are advertised through its systems,
	to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7EU and REC 2.6.21EU to REC 2.6.24EU)].	
(2)	If [a UK RIE] decides to give <i>investment firms</i> and <i>credit institutions</i> required to publish their quotes in <i>shares</i> -	
	(a)	in accordance with Article 27 of [MiFID], or
	(b)	by the [FCA],
	access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.	
(3)	The [FCA] may waive the requirements of sub-paragraph (1) in the circumstances specified-	
	(a)	in the case of <i>shares</i> to be traded on a multilateral trading facility operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)]; or
	(b)	in the case of <i>shares</i> to be traded on a <i>regulated market</i> operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)].

2.6.4 UK Schedule to the Recognition Requirements Regulations, Paragraph 4B
[deleted]

(1)	The [<i>UK RIE</i>] must make arrangements for the price, volume and time of transactions executed in <i>shares</i> to be made available to the public as soon as possible after the time of transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.15EU</i> and <i>REC 2.6.21EU</i> to <i>REC 2.6.24EU</i>)].	
(2)	If [a <i>UK RIE</i>] decides to give <i>investment firms</i> and <i>credit institutions</i> required to make public details of their transactions in <i>shares</i> -	
	(a)	in accordance with Article 28 of [<i>MiFID</i>], or
	(b)	by the [<i>FCA</i>],
	access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.	
(3)	The [<i>FCA</i>] may permit [<i>UK RIEs</i>] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-	
	(a)	in the case of <i>shares</i> to be traded on a <i>multilateral trading facility</i> operated by [a <i>UK RIE</i>], in Article 30.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.18EU</i>); or
	(b)	in the case of <i>shares</i> to be traded on a <i>regulated market</i> operated by [a <i>UK RIE</i>], in Article 45.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.18EU</i>).

2.6.5 G Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. [deleted]

2.6.6 UK Schedule to the Recognition Requirements Regulations, Paragraph 7E

(1)	The rules of the [<i>UK RIE</i>] must provide that the [<i>UK RIE</i>] must not exercise its power to suspend or remove from trading on a <i>trading venue</i> operated by it any <i>financial instrument</i> which no longer complies with its rules, where such step would be likely to cause
-----	---

	significant damage to the interests of investors or the orderly functioning of the financial markets.
(2)	<u>Where the [UK RIE] suspends or removes any financial instrument from trading on a trading venue it operates, it must also suspend or remove from trading on that venue any derivative that relates to or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal of trading of that financial instrument.</u>
(3)	<u>Where the [UK RIE] suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.</u>
(4)	<u>Where the [UK RIE] lifts a suspension or re-admits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with sub-paragraph (2), following a decision made under sub-paragraph (2), it must make that decision public and notify the FCA.</u>
[Note: MiFID RTS 18 contains requirements on the suspension and removal of financial instruments from trading]	

2.6.6B UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZA

[Note: This paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*]

<u>A [UK RIE] must -</u>	
(a)	<u>have non-discretionary rules for the execution of orders on a regulated market operated by it; and</u>
(b)	<u>not on a regulated market operated by it -</u>
	(i) <u>execute any client orders against its proprietary capital; or</u>
	(ii) <u>engage in matched principal trading.</u>

2.6.7 EU Article 17 of the MiFID Regulation

Pre-trade transparency obligation	
(1)	A ... market operator operating an MTF or a regulated market shall, in respect of each share admitted to trading on a regulated market that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8EU)], make public the information set out in paragraphs 2 to 6.
(2)	Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each

	share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.
(3)	Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.
	The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.
	In exceptional market conditions, however, indicative or one-way prices maybe allowed for a limited time.
(4)	Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
(5)	Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.
	In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.
(6)	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see <i>REC</i> 2.6.8EU)]

[Note: article 3 of *MiFIR* covers pre-trade transparency requirements for trading venues in respect of shares, *depository receipts*, *ETFs*, *certificates* and other similar *financial instruments*, and article 8 of *MiFIR* imposes similar requirements in respect of bonds, *structured finance products*, *emission allowances* and derivatives]

2.6.8 EU Table 1 of Annex II to the MiFID Regulation: Information to be made

public in accordance with Article 17 (see REC 2.6.9EU)

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
continuous auction order book trading system	a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.
quote driven trading system	a system where <i>transactions</i> are concluded on the basis of firm quotes that are continuously made available to participants, which requires the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	the best bid and offer by price of each market maker in that share together with the volumes attaching to those prices
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by [the] first three rows	adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

[Note: MiFID RTS 1 on transparency requirements for trading venues in respect of shares, *depository receipts*, *exchange traded funds*, *certificates* and other similar *financial instruments* and the obligation for *investment firms* to execute *transactions* in certain *shares* on a *trading venue* or a *systematic internaliser*]

2.6.9 EU Recital 14 to the MiFID Regulation [deleted]

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [see REC 2.6.3UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those *transactions* in liquid shares which they conclude on a bilateral basis under the rules of a *regulated market* or an *MTF* where, if carried out outside the rules of the *regulated market* or *MTF*, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10 EU Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction			
(1)	Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)] maybe granted by the [FCA] for systems operated by an <i>MTF</i> or a <i>regulated market</i> , if those systems satisfy one of the following criteria:		
	(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 [(see REC 2.6.11EU)], each of which meets one of the following criteria:	
		(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 <i>regulated market</i> or <i>MTF</i> 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 [see REC 2.6.12EU)].
For the purposes of point (b), the other conditions specified in the rules of the <i>regulated market</i> or <i>MTF</i> for a transaction of this kind must also have been fulfilled.			

	In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.
(2)	Waivers in accordance with Articles 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or MTF pending their being disclosed to the market.

[Note: articles 4 and 5 of MiFIR, MiFID RTS 1 and MiFID RTS 3 on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations]

2.6.11 EU ~~Article 19 of the MiFID Regulation~~

References to negotiated transaction	
For the purposes of Article 18(1)(b) [(see REC 2.6.10EU)] a negotiated transaction shall mean a transaction involving members or participants of a <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:	
(a)	dealing on own account with another member or participant who acts for the account of a <i>client</i>;
(b)	dealing with another member or participant, where both are executing orders on own account;
(c)	acting for the account of both the buyer and seller;
(d)	acting for the account of the buyer, where another member or participant acts for the account of the seller;
(e)	trading for own account against a <i>client</i> order.

[Note: article 5 of MiFIR, and MiFID RTS 3]

2.6.11A EU [Note: article 8 of MiFIR]

2.6.11B EU [Note: MiFID RTS 2 with regard to regulatory technical standards on transparency requirements for trading venues with respect to bonds, structured finance products, emission allowances and derivatives]

2.6.11C EU [Note: article 9 of MiFIR]

2.6.12 EU ~~Article 3 of the MiFID Regulation [deleted]~~

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

(1)	A <i>transaction</i> related to an individual share in a <i>portfolio trade</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.
(2)	A volume weighted average price <i>transaction</i> shall be considered, for the purposes of Article 18(1)(b)(ii) [(see <i>REC 2.6.10EU</i>)], as a <i>transaction</i> subject to conditions other than the current market price.

2.6.13 EU Article 20 of the MiFID Regulation [~~deleted~~]

Waivers in relation to transactions which are large in scale
An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see <i>REC 2.6.14EU</i>)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a <i>regulated market</i> shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

2.6.14 EU Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size [~~deleted~~]

Class in terms of average daily turnover	ADT < €500 000	€500 000 < ADT < €1 000 000	€1 000 000 < ADT < €25 000 000	€25 000 000 < ADT < €50 000 000	ADT < €50 000 000
Minimum size of order qualifying as large in scale compared with normal market size	€50 000	€100 000	€250 000	€400 000	€500 000

2.6.15 EU Article 27(1) of the MiFID Regulation

Post-trade transparency obligation	
(1)	... <i>regulated markets</i>, and ... <i>market operators</i> operating an <i>MTF</i> shall, with regard to transactions in respect of shares admitted to trading on <i>regulated markets</i> concluded ... within their systems, make public the following details:
(a)	the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see <i>REC 2.6.16EU</i>)]

	(b)	an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17EU)];
	(e)	an indication that the trade was a negotiated trade, where applicable;
	(d)	any amendments to previously disclosed information, where applicable.
Those details shall be made public either by reference to each <i>transaction</i> or in a form aggregating the volume and price of all <i>transactions</i> in the same share taking place at the same price at the same time.		

[Note: article 6 of MiFIR now covers post-trade transparency requirements for trading venues in respect of shares, *depository receipts*, *ETFs*, *certificates* and other similar *financial instruments* and article 10 of MiFIR imposes similar requirements in respect of bonds, *structured finance products*, *emission allowances* and *derivatives*]

2.6.16 EU Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	Trading Day	The trading day on which the <i>transaction</i> was executed.
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
6.	Instrument Identification	This shall consist in:
		— a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is subject of the <i>transaction</i>;
		— if the [share] in question does not have a unique identification code, the report must include the name of the [share]...
16.	Unit Price	The price per [share] excluding commission and (where relevant) accrued interest. ...
17.	Price Notation	The currency in which the price is expressed ...

18.	Quantity	The number of units of the [shares].
21.	Venue identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i> 's] ... unique harmonised identification code;
		...

[Note: MiFID RTS 1]

2.6.17 EU Article 3 of the MiFID Regulation [deleted]

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions	
1.	A <i>transaction</i> related to an individual share in a <i>portfolio trade</i> ... shall ... be considered, for the purposes of Article 27(1)(b) [(see <i>REC 2.6.15EU</i>)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.
2.	A volume weighted average price <i>transaction</i> ... shall be considered, for the purposes of Article 27(1)(b) [(see <i>REC 2.6.15EU</i>)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.

2.6.18 EU Article 28 of the MiFID Regulation

Deferred publication of large transactions	
The deferred publication of information in respect of <i>transactions</i> may authorised, for a period no longer than the period specified in Table 4 in Annex II [(see <i>REC 2.6.20EU</i>)] for the class of share and <i>transaction</i> concerned, provided the following criteria are satisfied:	
(a)	the <i>transaction</i> is between [a <i>MiFID investment firm</i>] <i>dealing on own account</i> and a <i>client</i> of the firm;
(b)	the size of that <i>transaction</i> is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see <i>REC 2.6.20EU</i>)].
In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a <i>regulated market</i> shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.	

[Note: article 7 of MiFIR]

2.6.18A EU [Note: article 10 of MiFIR]

2.6.18B EU [Note: MiFID RTS 22]

2.6.18C EU [Note: article 11 of MiFIR]

2.6.19 EU Article 29(3), second sentence of the MiFID Regulation [deleted]

~~Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see REC 2.6.18EU).~~

2.6.20 EU Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays [deleted]

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

		Class of share in terms of average daily turnover (ADT)			
		ADT < €100 000	€100 000 < ADT < €1 000 000	€1 000 000 < ADT < €50 000 000	ADT < €50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
	180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 12 hours of trading day)		€45 000	Greater of 25% of ADT and €100 000	Lower of 25% of ADT and €10 000 000	Lower of 30% of ADT and €30 000 000
Until end of trading day		€60 000	Greater of 50% of	Greater of 50% of	100% of

next after trade		ADT and €100 000	ADT and €1 000 000	ADT
Until end of second trading day next after trade	€80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third trading day next after trade		250% of ADT	250% of ADT	

2.6.21 EU Article 29 of MiFID Regulation [deleted]

Publication and availability of pre- and post-trade transparency data	
1.	A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.
2.	Pre trade information, and post trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post trade information relating to such transactions shall be made available in any case within three minutes of the relevant transaction.
3.	Information relating to a portfolio trade shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares....
4.	Post trade information referring to transactions taking place on a [regulated market or MTF] but outside its normal trading hours shall be made public before the opening of the next trading day of the [regulated market or MTF] on which the transaction took place.

2.6.22 EU Recital to the MiFID Regulation [deleted]

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time

2.6.23 EU Article 30 of the MiFID Regulation [deleted]

Public availability of pre- and post-trade information	
... pre and post trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:	
(a)	the facilities of a <i>regulated market</i> or <i>MTF</i>;
(b)	the facilities of a third party;
(c)	proprietary arrangements.

2.6.24 EU Article 32 of the MiFID Regulation [~~deleted~~]

Arrangements for making information public	
Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see <i>REC 2.6.23</i> EU)] ... shall satisfy the following conditions:	
(a)	it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
(b)	it must facilitate the consolidation of the data with similar data from other sources;
(c)	in must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

...

Orderly markets

...

2.6.29 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to whether the *UK RIE's* arrangements and practices:

- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
- (2) ~~ensure~~ demonstrate that the *UK RIE* is able to satisfy:
 - (a) ~~sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and either or both of the following:~~
 - (i) (for shares, depositary receipts, *exchange traded funds*, *certificates* and other similar *financial*

- instruments traded on its trading venues) the pre-trade transparency requirements in article 3 of MiFIR, unless waived by the FCA under article 4 of MiFIR in which case the FCA will have regard to the UK RIE's ability to demonstrate that it is able to satisfy article 5(7) of MiFIR; or
- (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) the pre-trade transparency requirements in article 8 of MiFIR, unless waived or temporarily suspended by the FCA under article 9 of MiFIR; and
- (b) ~~sufficient post-trade transparency in the UK RIE's markets taking into account the nature and liquidity of the specified investments traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for members and clients for whom they act, and the needs of different markets participants for timely price information; either or both of the following:~~
- (i) (for shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments traded on its trading venues) the post-trade transparency requirements set out in article 6 of MiFIR, unless the FCA has provided for deferred publication in accordance with article 7 of MiFIR; or
- (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) the directly applicable post-trade transparency requirements set out in article 10 of MiFIR, unless the FCA has provided for deferred publication or temporarily suspended such post-trade transparency requirements in accordance with article 11 of MiFIR. In the event the FCA has provided for deferred publication of the post-trade transparency requirements, regard would be had to the UK RIE's ability to demonstrate that it is able to satisfy any other requests made by the FCA pursuant to article 11(3) of MiFIR; and
- (c) (for all financial instruments referred to in REC 2.6.29G(2)(a) or REC 2.6.29G(b) traded on its trading venue) the obligation to make pre-trade and post-trade data available separately and on a reasonable commercial basis in accordance with articles 12 and 13 of MiFIR, and MiFID RTS 14 on the specification of the offering of pre-trade data and post-trade data and the level of disaggregation.

- (2A) ~~(2) does not apply to a UK RIE's markets for shares admitted to trading on a regulated market. For pre-trade and post-trade transparency for a UK RIE's markets for shares admitted to trading on a regulated market, see in particular REC 2.6.3UK and REC 2.6.4UK and REC 2.6.7EU to EU 2.6.24EU; [deleted]~~
- (3) ~~include procedures which enable the UK RIE to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and [deleted]~~
- (4) ~~if they include arrangements to support or encourage liquidity:~~
- ~~(a) are transparent;~~
 - ~~(b) are not likely to encourage any person to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any client for whom he acts);~~
 - ~~(c) are consistent with a reliable, undistorted price formation process; and~~
 - ~~(d) alleviate dealing or other identified costs associated with trading on the UK RIE's markets and do not subsidise a market position of a user of its facilities. [deleted]~~

2.6.29A G In addition to the matters set out in REC 2.6.29G, the FCA may have regard to the UK recognised body's compliance with relevant requirements of MiFID RTS 7 on the prevention of disorderly trading conditions.

- 2.6.30 G (1) ~~The FCA accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a UK RIE, subject to any necessary safeguards, where appropriate.~~
- (2) ~~(1) does not apply to a UK RIE's markets for shares admitted to trading on a regulated market. For pre-trade and post-trade transparency for a UK RIE's markets for shares admitted to trading on a regulated market, see in particular REC 2.6.3UK and REC 2.6.4UK and REC 2.6.7EU to REC 2.6.24EU. [deleted]~~

~~Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements~~

- 2.6.31 G ~~The FCA has exercised its power referred to in REC 2.6.3UK(3) to waive the pre-trade transparency requirements referred to in REC 2.6.3UK(1). The waivers granted are those based on market model (See REC~~

~~2.6.10EU1), type of order (see REC 2.6.10EU2) and transactions which are large in scale (see REC 2.6.13EU). These waivers apply to all regulated markets and MTFs operated by UK RIEs. [deleted]~~

- 2.6.32 G ~~The FCA has exercised its power referred to in REC 2.6.4UK(3) to permit the deferral of the post-trade transparency requirements referred to in REC 2.6.4UK(1). This permission is with respect to large transactions (see REC 2.6.17EU). This permission applies to all regulated markets and MTFs operated by UK RIEs. [deleted]~~

Arrangements for making information public

- 2.6.33 G ~~The FCA 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 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. [deleted]~~

- 2.6.34 G (1) ~~In respect of arrangements facilitating the consolidation of data as required in REC 2.6.24EU(b), the FCA 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 FCA considers that an 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 FCA considers that publication on a non-machine-readable website would not meet the MiFID requirements.~~

- (4) ~~The FCA 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. [deleted]~~

2.7 Access to facilities

2.7.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –

access to the [UK RIE's] facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A UK Schedule to the Recognition Requirements Regulations, Paragraph 7B

(1)	The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its <i>facilities</i> .	
(2)	In particular those rules must specify the obligations for users or members of its <i>facilities</i> arising from -	
	(a)	the constitution and administration of the [UK RIE];
	(b)	rules relating to transactions on the market <u>its trading venues</u> ;
	(c)	its professional standards for staff of any <i>investment firm</i> or <i>credit institution</i> having access to or membership of a financial market operated by the [UK RIE];
	(d)	conditions established under sub-paragraph 3(c) for access to or membership of a financial market <u>trading venue</u> operated by the [UK RIE] by persons other than <i>investment firms</i> or <i>credit institutions</i> ; and
	(e)	the rules and procedures for clearing and settlement of transactions concluded on a financial market <u>trading venue</u> operated by the [UK RIE].
(3)	Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only –	
	(a)	an <i>investment firm</i>;

	(b)	a <i>credit institution</i> ;
	(c)	a <i>person who</i> :
	(i)	is fit and proper,
	(ii)	has a sufficient level of trading ability and competence,
	(iii)	where applicable, has adequate organisational arrangements, and
	(iv)	has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).
	[Note: see paragraph 9ZC below, replacing paragraph 7B(3)]	
(4)	Rules under this paragraph must enable -	
	(a)	an <i>investment firm</i> authorised under Article 5 of [MiFID], or
	(b)	a <i>credit institution</i> authorised under the <i>Banking Consolidation Directive</i> [CRD],
	by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have direct or remote access to or membership of, any financial market <u>trading venue</u> operated by the [UK RIE] on the same terms as a <i>UK firm</i> .	
(5)	The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or <i>members</i> of its <i>facilities</i> .	
(6)	This paragraph is without prejudice to the generality of paragraph 4.	

2.7.1B UK ...

2.7.1C UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZC

[Note: this sub-paragraph is relevant to *regulated markets* only. See REC 2.16A regarding *MTFs* or *OTFs*.]

(1)	<u>The rules of the [UK RIE] about access to, or membership of, a regulated market operated by it must permit the [UK RIE] to give access to or admit membership to (as the case may be) only -</u>	
	(a)	<u>an investment firm authorised under article 5 of [MiFID];</u>

	(b)	<u>a credit institution authorised in accordance with the capital requirements directive; or</u>	
	(c)	<u>a person who –</u>	
		(i)	<u>is of sufficient good repute;</u>
		(ii)	<u>has a sufficient level of trading ability, competence and experience;</u>
		(iii)	<u>where applicable has adequate organisational arrangements; and</u>
		(iv)	<u>has sufficient resources for the role they are to perform, taking account of the [UK RIE's] arrangements under paragraph 4(2)(d).</u>

...

2.7.3 G In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FCA* may have regard to whether:

(1) ...

...

(d) (if appropriate) who have adequate financial resources in relation to their exposure to the *UK recognised body* or its central counterparty; and

...

(3) ~~indirect access to the *UK recognised body's facilities* is subject to suitable criteria, remains the responsibility of a *member* of the *UK recognised body* and is subject to its rules; and [deleted]~~

(4) ...

2.7.3A G ...

Electronic access

2.7.4 G ~~The *FCA* may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:~~

(1) ~~the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;~~

- (2) ~~the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;~~
- (3) ~~the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;~~
- (4) ~~the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and~~
- (5) ~~procedures to determining whether to suspend trading by those systems or access to them by or through individual *members*.~~
[deleted]

After REC 2.7 insert the following new section. The text is not underlined.

2.7A Position management and position reporting in relation to commodity derivatives

2.7A.1

UK

Paragraph 7BA – Position management	
(1)	A [UK RIE] operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the [UK RIE] to -
	(a) monitor the open interest positions of persons;
	(b) access information, including all relevant documentation, from persons about-
	(i) the size and purpose of a position or exposure entered into;
	(ii) any beneficial or underlying owners;
	(iii) any concert arrangements; and
	(iv) any related assets or liabilities in the underlying market;
	(c) require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
	(d) where appropriate, 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 or dominant position.

(2)	The position management controls 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-	
	(a)	be transparent;
	(b)	be non-discriminatory; and
	(c)	specify how they apply to persons.
(3)	A [<i>UK RIE</i>] must inform the FCA of the details of the position management controls in relation to each trading venue it operates.	
Paragraph 7BB – Position reporting		
(1)	This paragraph applies to a [<i>UK RIE</i>] operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.	
(2)	The [<i>UK RIE</i>] must -	
	(a)	where it meets the minimum threshold, as specified in a delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances, or emission allowance derivatives traded on the trading venue specifying -
		(i) the number of long and short positions by such categories;
		(ii) changes of those positions since the previous report;
		(iii) the percentage of the total open interest represented by each category; and
		(iv) the number of persons holding a position in each category; and
	(b)	provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.
(3)	For the weekly report mentioned in sub-paragraph (2)(a) the [<i>UK RIE</i>] must -	
	(a)	categorise persons in accordance with the classifications required under sub-paragraph (4); and

	(b)	differentiate between positions identified as-
	(i)	positions which in an objectively measurable way reduce risks relating to commercial activities; or
	(ii)	other positions.
(4)		The [UK RIE] must classify persons holding positions in commodity derivatives, emission allowances, or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as -
	(a)	an investment firm or credit institution;
	(b)	an investment fund, either as an undertaking for collective investments in transferrable securities as defined in the UCITS Directive, or an alternative investment fund or alternative investment fund manager as defined in the alternative investment fund managers directive;
	(c)	other financial institutions, including insurance undertakings and reinsurance undertakings as defined in the Solvency 2 Directive and institutions for occupational retirement provision as defined in Directive and 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;
	(d)	a commercial undertaking; or
	(e)	in the case of emission allowances, or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.
(5)		The [UK RIE] must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.

- 2.7A.2 G The *recognition requirements* in respect of position management and position reporting set out in *REC 2.7A.1UK* apply to a *UK RIE* operating a *trading venue*. An *investment firm* operating a *trading venue* which trades:
- (1) *commodity derivatives* must apply position management controls on that venue in accordance with *MAR 10.3*.
 - (2) *commodity derivatives* or *emission allowances* must provide position reports in accordance with *MAR 10.4*.

Amend the following as shown.

2.8 Settlement and clearing facilitation services

2.8.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)

[Note: This sub-paragraph is relevant to *regulated markets* only. See *REC 2.16A* regarding *MTFs* or *OTFs*.]

Without prejudice to the generality of sub-paragraph [4(1), the [UK RIE] must ensure that –

satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);

[Note: article 29 of *MiFIR* and *MiFID RTS 26* contain requirements for the clearing of *derivative* transactions for operators of *regulated markets*]

...

2.8.3 G In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *regulated markets*, the *FCA* may have regard to ~~the UK~~ *recognised body's*:

(1A) (in relation to transactions in *derivatives*) the UK recognised body's ability to demonstrate that such transactions are cleared by a CCP in accordance with article 29(1) of *MiFIR*;

(1B) (in relation to transactions in *derivatives* which are to be cleared pursuant to article 29(1) of *MiFIR* or under article 4 of *EMIR*) the UK recognised body's ability to demonstrate that its *regulated markets* ensure such transactions are submitted and accepted for clearing as quickly as technologically practicable using automated systems in accordance with article 29(2) of *MiFIR* and *MiFID RTS 26*; and

(1C) (in relation to other types of transactions effected on the UK recognised body's *regulated markets*) the following factors:

(a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and

settlement services;

- (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 - (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
 - (d) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
 - (e) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
 - (f) arrangements for monitoring its *members*' settlement performance; and
 - (g) (where appropriate) *default rules* and default procedures.
- (1) ~~rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services; [deleted]~~
 - (2) ~~arrangements for matching trades and ensuring that the parties are in agreement about trade details; [deleted]~~
 - (3) ~~where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions; [deleted]~~
 - (4) ~~procedures to detect and deal with the failure of a *member* to settle in accordance with its rules; [deleted]~~
 - (5) ~~arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules; [deleted]~~
 - (6) ~~arrangements for monitoring its *members*' settlement performance; and [deleted]~~
 - (7) ~~(where appropriate) *default rules* and default procedures. [deleted]~~

...

2.9 Transaction recording

2.9.1 UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(c)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that –
--

satisfactory arrangements are made for recording transactions effected on the [UK RIE], and transactions (whether or not effected on the [UK RIE])
--

which are cleared or to be cleared by means of its *facilities*;

[Note: article 25 of *MiFIR* requires the operator of a *trading venue* to keep relevant data relating to all orders in *financial instruments* which are advertised through their systems at the disposal of the *FCA*]

...

2.9.3 G ...

- (1) whether the *UK recognised body* has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least ~~three years~~ (five years in respect of transactions carried out by ~~members who are not incorporated in the United Kingdom if the UK recognised body is a regulated market~~); and
- (2) the type of information recorded and the extent to which the record includes ~~details for each transaction of~~ :
 - (a) ~~the name of the investment (and, if relevant, the underlying asset) and the price, quantity and date of the transaction; for each transaction traded on or completed through its facilities which the UK recognised body is responsible for reporting in accordance with article 26 of MiFIR, the details set out in:~~
 - (i) article 26(3) of MiFIR;
 - (ii) MiFID RTS 22 on the reporting of transactions to competent authorities;
 - (iii) article 27(1) of MiFIR; and
 - (iv) MiFID RTS 23 on the data standards and formats for financial instrument reference data;
 - (b) ~~the identities and, where appropriate, the roles of the counterparties to the transaction; for other transactions effected on the UK recognised body's facilities, details of:~~
 - (i) the name of the investment (and if relevant, the underlying asset) and the price, quantity and date of the transaction;
 - (ii) the identities and, where appropriate, the roles of the counterparties to the transaction;
 - (iii) if the UK recognised body's rules make provision for transactions or clearing facilitation services to be effected, in more than one type of facility, or under more than one part of its rules, the type of facility in which, or the part of its rules under which, the transaction or clearing facilitation service was

effected; and

(iv) the date and manner of settlement of the transaction.

~~(e) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and~~

~~(d) the date and manner of settlement of the transaction.~~

...

2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

...

2.12.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(3)

In sub-paragraph [4(2)(c)],
“ <i>relevant information</i> ” means information which is relevant in determining the current value of the [<i>specified investments</i>].

2.12.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 7A

(1)	The [<i>UK RIE</i>] must make clear and transparent rules concerning the admission of <i>financial instruments</i> to trading on any financial market trading venue operated by it.
[Note: <i>MiFID RTS 17</i> specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>]	
(2)	The rules must ensure that all <i>financial instruments</i> admitted to trading on any <i>regulated market</i> operated by the [<i>UK RIE</i>] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [<i>MiFID Regulation</i>], where applicable). [Note: the <i>MiFI Regulations</i> amending the <i>Recognition Requirements Regulations</i>]
(3)	The rules must ensure that –
(a)	all <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by the [<i>UK RIE</i>] are freely negotiable (in accordance with Chapter V of the [<i>MiFID Regulation</i>], where

		applicable); and
	(b)	all contracts for derivatives admitted to trading on a regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions. [deleted]
(4)		The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a <i>multilateral trading facility</i> operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded. [deleted]
(5)		The [UK RIE] must maintain effective arrangements to verify that issuers of <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by it comply with the <i>disclosure obligations</i> . [deleted]
(6)		The [UK RIE] must maintain arrangements to assist users of a <i>regulated market</i> operated by it to obtain access to information made public under the <i>disclosure obligations</i> . [deleted]
(7)		The [UK RIE] must maintain arrangements regularly to review whether the <i>financial instruments</i> admitted to trading on a <i>regulated market</i> operated by it comply with the admission requirements for those instruments. [deleted]
(8)		The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>regulated market</i> operated by it a <i>transferable security</i> which has been admitted to trading on another <i>regulated market</i> , the [UK RIE]—
	(a)	must inform the issuer of that security as soon as is reasonably practicable; and
	(b)	may not require the issuer of that security to demonstrate compliance with the <i>disclosure obligations</i> . [deleted]
(9)		The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a <i>multilateral trading facility</i> operated by it a transferable security which has been admitted to trading on a <i>regulated market</i> , it may not require the issuer of that security to demonstrate compliance with the <i>disclosure obligations</i> . [deleted]
...		
(11)		This paragraph is without prejudice to the generality of paragraph 4. [deleted]

2.12.2AA UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZB

[Note: This paragraph is relevant to *regulated markets* only. See *REC 2.16A* regarding *MTFs* or *OTFs*.]

(1)	The rules of the [UK RIE] must ensure that all -	
	(a)	<u>[financial instruments] admitted to trading on a [regulated market] operated by it are capable of being traded in a fair, orderly and efficient manner;</u>
	(b)	<u>[transferable securities] admitted to trading on a [regulated market] operated by it are freely negotiable; and</u>
	(c)	<u>contracts for derivatives admitted to trading on a [regulated market] operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.</u>
[Note: <i>MiFID RTS 17</i> specifies further conditions for <i>financial instruments</i> to be admitted to trading on <i>regulated markets</i>]		
(2)	The rules of the [UK RIE] must provide that where the [UK RIE], without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market, the [UK RIE] -	
	(a)	<u>must inform the issuer of that security as soon as is reasonably practicable; and</u>
	(b)	<u>may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(3)	The [UK RIE] must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.	
(4)	The [UK RIE] must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.	
(5)	The [UK RIE] must maintain arrangements to regularly review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.	
	[Note: see <i>MiFID RTS 17</i>]	
(6)	In this paragraph -	
	<u>“the disclosure obligations” are the initial ongoing and ad hoc</u>	

	<u>disclosure requirements contained in the relevant articles and which are not directly applicable given effect -</u>
(a)	<u>in the United Kingdom by Part 6 of the [Financial Services and Markets Act 2000] Act and Part 6 rules (within the meaning of section 73A of the Act); or</u>
(b)	<u>in another EEA State by legislation transposing the relevant articles in that State;</u>
	<u>“the relevant articles” means -</u>
(a)	<u>articles 17, 18 and 19 of the market abuse regulation; Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation);</u>
(b)	<u>articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading the [Prospectus Directive];</u>
(c)	<u>articles 4 to 6, 14, 16 to 19 and 30 of the [Transparency Directive] 2004/109/EC of the European Parliament and of the Council of Europe December 2004 relating to the harmonisation of transparency requirements in relation to the information about issuers whose securities are admitted to trading on a regulated market; and</u>
(d)	<u>EU legislation made under the provisions mentioned in paragraphs (a) to (c).</u>

2.12.2B EU Article 35 of the MiFID Regulation

Transferable securities	
1.	<i>Transferable securities</i> shall be considered freely negotiable for the purposes of Article 49(1) of [MiFID] [(see REC 2.12.2AUK)] if they can be traded between the parties to a <i>transaction</i>, and subsequently transferred without restriction, and if all securities within the same class as the security in question are fungible.
2.	<i>Transferable securities</i> which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.
3.	<i>Transferable securities</i> that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid,

	and the implications of that fact for shareholders, is publicly available.
4.	When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:
	(a) the distribution of those shares to the public; and
	(b) such historical information, information about the issuer, and information providing a business overview as is required to be prepared under [the PD], or is or will be otherwise publicly available.
5.	A transferable security that is officially listed in accordance with [CARD], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.
6.	For the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2AUK)], when assessing whether a transferable security referred to in Article 4(1)(18)(c) of [MiFID] is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:
	(a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
	(b) the price or other value measure of the underlying is reliable and publicly available;
	(c) there is sufficient information publicly available of a kind needed to value the security;
	(d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;
	(e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

[**Note:** article 1 of *MiFID RTS 17*]

2.12.2C EU Recital 19 to the MiFID Regulation [deleted]

For the purposes of the provisions of [the *MiFID Regulation*] as to the admission to trading on a *regulated market* of a *transferable security* as defined in article 4(1)(18)(e) of [*MiFID*], [(see *REC 2.12.2BEU6(e)*)], in the case of a security within the meaning of [the *PD*], there should be considered to be sufficient information publicly available of a kind needed to value that *financial instrument*.

2.12.2D EU Article 36 of the MiFID Regulation

Units in collective investment undertakings	
1.	A <i>regulated market</i> shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the <i>UCITS Directive</i>], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the <i>regulated market</i> .
2.	Without prejudice to [the <i>UCITS Directive</i>] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a <i>regulated market</i> .
3.	When assessing whether units in an open-ended investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], the <i>regulated market</i> shall take the following aspects into account:
	(a) the distribution of those units to the public;
	(b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;
	(c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.
4.	When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [<i>MiFID</i>] [(see <i>REC 2.12.2AUK</i>)], the <i>regulated market</i> shall take the following aspects into account:
	(a) the distribution of those units to the public;

	(b)	whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of the net asset value.
[Note: article 2 of <i>MiFID RTS 17</i>]		

2.12.2E EU Article 37 of the MiFID Regulation

Derivatives		
1.		When admitting to trading a <i>financial instrument</i> of a kind listed in points 4 to 10 of Section C of Annex I to [<i>MiFID</i>], <i>regulated markets</i> shall verify that the following conditions are satisfied:
	(a)	the terms of the contract establishing the <i>financial instrument</i> must be clear and unambiguous, and enable a correlation between the price of the <i>financial instrument</i> and the price or other value measure of the underlying;
	(b)	the price or other value measure of the underlying must be reliable and publicly available;
	(c)	sufficient information of a kind needed to value the derivative must be publicly available;
	(d)	the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying;
	(e)	where the settlement of the derivative requires or provides for the possibility of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.
2.		Where the <i>financial instruments</i> concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [<i>MiFID</i>], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:
	(a)	the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
	(b)	the <i>regulated market</i> must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such <i>financial instruments</i> ;

	(e)	the <i>regulated market</i> must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those <i>financial instruments</i> .
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[**Note:** article 3 of *MiFID RTS 17*]

...

Proper information

2.12.11 G ~~In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing in specified investments admitted to trading* on the *UK RIE*, the *FCA* may have regard to:~~

- (1) ~~the extent to which *members* and *clients* for whom they act are able to obtain information about those *specified investments*, either through accepted channels for dissemination of information or through regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those *specified investments* in a timely fashion;~~
- (2) ~~what restrictions, if any, there are on the dissemination of *relevant information* to the *UK RIE's members* and *clients* for whom they act; and~~
- (3) ~~whether *relevant information* is or can be kept in restricted groups of *persons* in such a way as to facilitate or encourage *dealing* in contravention of the *Code of Market Conduct* (see *MAR 1*). [deleted]~~

Own means of dissemination

2.12.12 G ~~*UK RIEs* do not need to maintain their own arrangements for disseminating news or information about *specified investments* (or underlying assets) to their *members* where they have made adequate arrangements for other *persons* to do so on their behalf or there are other effective and reliable arrangements for this purpose. [deleted]~~

...

Rules concerning admission of financial instruments to trading on a multilateral trading facility

2.12.14 G ~~In determining whether a *UK RIE* has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the *FCA* considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see *REC 2.6.2UK*). In determining whether the rules are based on such criteria, the *FCA* may have regard to:~~

- (1) ~~whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;~~
- (2) ~~the extent to which there are any limitations on the *persons* who may hold or deal in the *financial instrument*, or the amounts of the *financial instrument* which may be held; and~~
- (3) ~~whether the *UK RIE* has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that *financial instrument*. [deleted]~~

...

2.16A Operation of a multilateral trading facility (MTF) or an organised trading facility (OTF)

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

(1)	[A <i>UK RIE</i>] operating a <i>multilateral trading facility</i> <u>multilateral trading facility or an organised trading facility</u> must also operate a <i>regulated market</i> <u>regulated market</u> .
(2)	[A <i>UK RIE</i>] operating a <i>multilateral trading facility</i> <u>multilateral trading facility or an organised trading facility</u> must comply with those requirements of -
(a)	Chapter 1 of Title II of [<i>MiFID</i>] ; and
(b)	<i>MiFID implementing Directive</i> , <u>any directly applicable EU legislation made under Chapter I;</u>
	which are applicable to a <i>market operator</i> <u>market operator</u> ...operating such a facility.
(3)	The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).
(4)	A [<i>UK RIE</i>] operating a <u>multilateral trading facility or organised trading facility</u> must provide the FCA with a detailed description of -
(a)	<u>the functioning of the multilateral trading facility or organised trading facility; and</u>
(b)	<u>any links to another trading venue owned by the same [<i>UK RIE</i>] and a list of their members and users.</u>

[Note: MiFID ITS 19 prescribes the content and format of the description of the functioning of a MTF or OTF to be provided to the FCA]	
(5)	<u>Any multilateral trading facility or an organised trading facility operated by the [UK RIE] must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.</u>
<u>Paragraph 9B – Specific requirements for multilateral trading facilities: execution of orders</u>	
<u>A [UK RIE] must -</u>	
(a)	<u>have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it; and</u>
(b)	<u>not on a multilateral trading facility operated by it –</u>
(i)	<u>execute any client orders against its proprietary capital; or</u>
(ii)	<u>engage in matched principal trading.</u>
<u>Paragraph 9C – Specific requirements for multilateral trading facilities: access to a facility</u>	
<u>The rules of the [UK RIE] about access to, or membership of, a multilateral trading facility regulated market operated by it must permit the [UK RIE] to give access to or admit to membership to (as the case may be) only -</u>	
(a)	<u>an investment firm authorised under Article 5 of the markets in financial instruments directive;</u>
(b)	<u>a credit institution authorised in accordance with the capital requirements directive; or</u>
(c)	<u>a person who –</u>
(i)	<u>is of sufficient good repute;</u>
(ii)	<u>has a sufficient level of trading ability, and competence and experience;</u>
(iii)	<u>where applicable, has adequate organisational arrangements; and</u>
(iv)	<u>has sufficient resources for the role they are to perform, taking account of the arrangements the [UK RIE] has established in order to guarantee the adequate settlement transactions.</u>
<u>Paragraph 9D – Specific requirements for multilateral trading</u>	

<u>facilities: disclosure</u>	
(1)	<u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(2)	<u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.</u>
(3)	<u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</u>
<u>Paragraph 9E – SME growth markets</u>	
<u>A [UK RIE] operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive must comply with rules made by the FCA for the purposes of this paragraph.</u>	
<u>Paragraph 9F – Specific requirements for organised trading facilities: execution of orders</u>	
(1)	<u>[A UK RIE] operating an organised trading facility must, on that facility -</u>
(a)	<u>execute orders on a discretionary basis in accordance with sub-paragraph (4);</u>
(b)	<u>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 [UK RIE] unless in accordance with sub-paragraph (2);</u>
(c)	<u>not operate a systematic internaliser within the same legal entity;</u>
(d)	<u>ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and</u>
(e)	<u>ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.</u>

(2)	A [UK RIE] may only engage in -	
	(a)	<u>matched principal trading on an organised trading facility operated by it in respect of-</u>
	(i)	<u>bonds,</u>
	(ii)	<u>structured finance products,</u>
	(iii)	<u>emission allowances,</u>
	(iv)	<u>derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation,</u>
	<u>where the client has consented to that; or</u>	
	(b)	<u>dealing on own account on an organised trading facility operated by it, otherwise than in accordance with sub-paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.</u>
(3)	<u>If the [UK RIE] engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading in article 4.1.38 of the markets in financial instruments directive.</u>	
(4)	<u>The discretion which the [UK RIE] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.</u>	
(5)	<u>The first discretion is whether to place or retract an order on the organised trading facility.</u>	
(6)	<u>The second discretion is whether to match a specific client order with other orders available on the organised trading facility 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 [UK RIE's] obligations under Article 27 of the markets in financial instruments directive.</u>	
(7)	<u>Where the organised trading facility crosses client orders the [UK RIE] may decide if, when and how much of two or more orders it wants to match within the system.</u>	
(8)	<u>Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the [UK RIE] may facilitate negotiation between clients so as to bring together two or more comparable potentially trading interests in a transaction.</u>	

(9)	<u>The [UK RIE] must comply with rules made by the FCA as to how articles 16, 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.</u>
(10)	<u>Nothing in this paragraph prevents a [UK RIE] from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by it provided the investment firm does not have close links with the [UK RIE].</u>
(11)	<u>For the purposes of sub-paragraph (10) “close links” has the same meaning as in article 4.1.35 of the markets in financial instruments directive.</u>
<u>Paragraph 9G – Specific requirements for organised trading facilities: disclosure</u>	
(1)	<u>The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.</u>
(2)	<u>The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of the organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.</u>
(3)	<u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</u>
<u>Paragraph 9H – Specific requirements for organised trading facilities: FCA request for information</u>	
(1)	<u>The FCA may at any time require a [UK RIE] to provide in respect of an organised trading facility operated by it, or such a facility it proposes to operate, a detailed explanation of -</u>
(a)	<u>why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;</u>
(b)	<u>how discretion will exercised in executing client orders; and</u>
(c)	<u>its use of matched principal trading.</u>
(2)	<u>Any information required under sub-paragraph (1) must be provided</u>

	to the <i>FCA</i> in the manner which it considers appropriate.
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- 2.16A.1A G In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its *multilateral trading facility*, the *FCA* may have regard to:
- (1) (in relation to transactions in derivatives which are to be cleared pursuant to article 4 of *EMIR* or otherwise agreed by the relevant transacting parties to be cleared) the *UK recognised body's* ability to demonstrate that its *multilateral trading facility* ensures such transactions are submitted and accepted for clearing as quickly as technologically practicable in accordance with article 29(2) of *MiFIR* and *MiFID RTS 26*; and
 - (2) (in relation to other types of transactions effected on the *UK recognised body's multilateral trading facility*) the following factors:
 - (a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;
 - (b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
 - (c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;
 - (d) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;
 - (e) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
 - (f) arrangements for monitoring its *members'* settlement performance; and
 - (g) where relevant, *default rules* and default procedures.
- 2.16A.1B R For the purposes of compliance with paragraph 9F(9) of the Schedule to the *Recognition Requirements Regulations*, *MAR 5A.3.9R* applies to a *UK RIE* as though it was a *firm*.
- 2.16A.1C R In paragraphs 9H(1) and (2) of the Schedule to the *Recognition Requirements Regulations* where the *UK RIE* must provide information in respect of an *organised trading facility* operated by it, such information must be provided to the *FCA* in writing and delivered by any one of the

methods set out in REC 3.2.3R.

- 2.16A.2 G In determining whether a *UK RIE* operating a *multilateral trading facility* (including an *SME growth market*) or *organised trading facility*) complies with those requirements of Chapter I of Title II of *MiFID* and the *MIFID implementing Directive* which are applicable to a *market operator* operating such a facility this chapter, the *FCA* will have regard to the compliance of the *UK RIE* with equivalent *recognition requirements*. A *UK RIE* operating such facilities should also have regard to the guidance set out in MAR 5 (Multilateral trading facilities (MTFs)) and MAR 5A (Organised trading facilities (OTFs)).

After REC 2.16A insert the following new section. The text is not underlined.

2.16B Operation of a data reporting service

Schedule to the Recognition Requirements Regulations, Paragraph 9K

- 2.16B.1 UK A [*UK RIE*] providing data reporting services must comply with Title V of the markets in financial instruments directive.
- 2.16B.2 G A *UK RIE* offering, or applying to offer, the operation of a *data reporting service* should have regard to the *guidance* relating to such service in MAR 9 (Data reporting services).

Amend the following as shown.

3 Notification rules for UK recognised bodies

...

3.4 ~~Key individuals~~ Members of the management body and internal organisation

Purpose

- 3.4.1 G The purpose of REC 3.4 is to enable the *FCA* to monitor the changes in the arrangements a *UK recognised body* makes in the arrangements for the carrying out of its *relevant functions* ~~or for overseeing the work of key individuals or departments responsible for its relevant functions.~~

...

~~Key individuals~~

- 3.4.2A R Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a ~~key individual~~ member of the management body, that

UK RIE must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this *rule* in *REC 3.4.4AR* to the *FCA*.

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of MiFID]

3.4.2B R Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a ~~*key individual member of the management body*~~, that *UK RIE* must immediately give notice of that event, and give ~~the name of the person~~ the information specified for the purposes of this *rule* in *REC 3.4.4AR* to the *FCA*.

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of MiFID]

3.4.3 G (1) ~~*Key individuals*~~ *Members of the management body* include the *persons* who, under the operational or managerial arrangements of the *UK recognised body*, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A *person* appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a ~~*key individual member of the management body*~~.

(2) A ~~*key individual member of the management body*~~ need not be an employee of a UK recognised body. For example, an employee of an undertaking in the same group or a self-employed contractor of a UK recognised body might be a ~~*key individual member of the management body*~~, depending on the role he or she plays in that body.

(3) A department of a UK recognised body should be regarded as responsible for carrying out a relevant function if it is responsible for any activity or activities which form a significant part of a relevant function or which make a significant contribution to the performance of a relevant function.

(4) The *FCA* does not need to be notified where minor changes are made to the responsibilities of a ~~*key individual member of the management body*~~, but where a major change in responsibilities is made which amounts to a new appointment, the *FCA* should be notified under *REC 3.4.2AR*.

...

3.4.4A R The following information is specified for the purposes of *REC 3.4.2AR*:

(1) that *person's* name;

(2) his or her date of birth;

(3) where applicable, a description of the responsibilities which he or she will have in the post to which he or she is to be appointed or

elected, including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body ;

- (4) where applicable, a description of the responsibilities in the post from which he or she resigned or otherwise ceased to act, including for a *UK RIE* which operates an *RAP* where the *person* had responsibilities both in the *UK RIE* and the *RAP*, a description of the responsibilities he or she had in respect of each body; and
- (5) the information necessary for the *FCA* to assess whether the *UK RIE* complies with *REC 2.4.1UK*, *REC 2.4A.1UK* and *REC 2.4A.2UK* in relation to the *member of the management body's* appointment, election, resignation or otherwise ceasing to act.

[**Note:** ~~Article 37(1), paragraph 1, second sentence~~ article 45(8) of *MiFID*]

...

3.5 **Disciplinary action and events relating to ~~key individuals~~ members of the management body**

Disciplinary action

- 3.5.1 R Where any ~~*key individual*~~ *member of the management body* of a *UK recognised body*:
- (1) is the subject of any disciplinary action because of concerns about his or her alleged misconduct; or
 - (2) resigns as a result of an investigation into his or her alleged misconduct; or
 - (3) is dismissed for misconduct;
- that body must immediately give the *FCA* notice of that event, and give the information specified for the purposes of this *rule* in *REC 3.5.2R*.
- 3.5.2 R The following information is specified for the purposes of *REC 3.5.1R*:
- (1) the name of the ~~*key individual*~~ *member of the management body* and his or her responsibilities within the *UK recognised body*;
 - (2) details of the acts or alleged acts of misconduct by that ~~*key individual*~~ *member of the management body*; and
 - (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that ~~*key individual*~~ *member of the management body*.

Other events

- 3.5.3 R Where a *UK recognised body* becomes aware that any of the following events has occurred in relation to a *key individual member of the management body*, it must immediately give the *FCA* notice of that event:
- (1) a petition for bankruptcy is presented (or similar analogous proceedings under the law of a jurisdiction outside the *United Kingdom* are commenced) against that *key individual member of the management body*; or
 - (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him or her; or
 - (3) he or she enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his or her creditors.

...

3.13 Delegation of relevant functionsApplication

- 3.13.1-2 R This section applies to a *UK RIE* where it is outsourcing its operational functions other than in relation to systems allowing or enabling *algorithmic trading*.
- 3.13.1-1 G The notification requirements in *MiFID RTS 7*, specifying organisational requirements of *regulated markets* allowing *algorithmic trading* through their systems, apply to a *UK RIE* where those operational functions are to be outsourced.
- 3.13.1 G (1) The purpose of REC 3.13 is to enable the FCA to monitor any significant instances where UK recognised bodies outsource their functions to other persons (as permitted under Regulation 6 of the Recognition Requirements Regulations or, in relation to an RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

...

...

3.14 Products, services and normal hours of operation

...

- 3.14.2A R When a *UK RIE* removes a *financial instrument* from trading on a ~~*regulated market trading venue*~~, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument*, any derivative that is also removed from trading that relates or is referenced to that *financial instrument*, and the reasons for the action taken.

[Note: ~~Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of *MiFID*. *REC 2.6.6AR(3)* requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.14A ~~Operation of a regulated market or MTF~~ trading venue

Purpose

- 3.14A.1 G The purpose of *REC 3.14A* is to ensure that the *FCA* is informed of planned changes to a ~~*UK RIE RIE's*~~ markets and their regulatory status as either a ~~*regulated market or*~~ *MTF* or *OTF*.

[Note: *MiFID RTS 3* and *MiFID ITS 4*, Annex IV provide for the format for notification by the operator of an *MTF* or *OTF* to its *Home State competent authority* of any arrangements to facilitate access to and trading on the *trading venue* by remote users, members or participants within the territory of another *EEA State*]

...

Operation of an *MTF* or *OTF*

- 3.14A.4 R Where a *UK RIE* proposes to operate a new *MTF* or *OTF* or close an existing *MTF* or *OTF* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in *REC 3.14A.5R*, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

- 3.14A.5 R The following information is specified for the purposes of *REC 3.14A.4R*:

- (1) ~~where the *UK RIE* proposes to operate a new *MTF*:~~
- (a) ~~a description of the *MTF*; and~~
 - (b) ~~a description of the *specified investments* which will be admitted to trading on that *MTF*.~~

[Note: *REC 2.16A.1(2)* requires the *FCA* to be provided with a detailed description of the operation of an *MTF* or *OTF*. The

description must be provided in the form set out in *MiFID ITS 19.1*

- (2) ~~where~~ Where the UK RIE proposes to close a MTF or OTF, the name of that MTF or OTF.

Operation of a recognised auction platform

3.14A.6 G ...

Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

3.14A.7A D A UK RIE operating a trading venue that proposes to take advantage of 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 an application for it to the FCA using the form in MAR 5 Annex 1R.

[Note: articles 4 and 9 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

3.14A.7B 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.

3.14A.7C D A UK RIE operating a trading venue that proposes to take advantage of a deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must apply for it in writing to the FCA.

[Note: articles 7 and 11 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

3.14A.7D G A UK RIE 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 written notification. Oral notifications should be given directly to its usual supervisory contact at the FCA. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1 G (1) The purpose of REC 3.15.2R to REC 3.15.5G is to enable the FCA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular *investments* or (for

an *RAP*) decides to cancel an auction. Planned changes to the provision of services should be notified to the *FCA* under *REC* 3.14.

- (2) *REC* 3.15.6R to *REC* 3.15.7R provide for notification to the *FCA* where a *UK recognised body* is unable to operate or provide its *facilities* for reasons outside its control or where it decides to extend its hours of operation in an emergency.
- (3) *REC* 3.15.8R to *REC* 3.15.9G provide for notification to the *FCA* where an *RAP* has to cancel an auction in specified circumstances.

[Note: *REC* 2.5.1(8) also requires a *UK RIE* to report its parameters for halting trading to the *FCA*]

Suspension of services

- 3.15.2 R Where, for any reason, an *RIE*: halts trading in a *financial instrument* on a *trading venue* which is material in terms of liquidity in that *financial instrument*,
- (1) ~~suspends trading in any *derivative* (other than an *option* in relation to a *security*), in any type of *security* or in any type of *option* in relation to a *security*; or~~
 - (2) ~~temporarily calls a trading halt in respect of any type of *security* or in any type of *option* in relation to a *security*;~~

it must immediately give the *FCA* notice of that event, particulars of that ~~*derivative*, type of *security* or type of *option* in relation to a *security*, as the case may be~~ *financial instrument*, and the reasons for the action taken.

[Note: article 48(5) of *MiFID* and *MiFID RTS 12*]

- 3.15.2A R When a *UK RIE* suspends trading on a ~~*regulated market trading venue*~~ in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: ~~Article 41(1), paragraph 2~~ articles 32(2) and 52(2), paragraph 1 of *MiFID*. *REC* 2.6.6A(3) requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

...

3.16 Information technology systems

- 3.16.1 G The purpose of *REC* 3.16 is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the

documents containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

[Note: MiFID RTS 7 requires that the operator of a trading venue assess whether the capacity of its trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, the operator of the trading venue must inform its competent authority about any measures planned to expand capacity or add new capabilities, and the timeframe for such measures. MiFID RTS 7 also requires the operator to report to its competent authority any severe trading interruption not due to market volatility and any other material connectivity disruptions.]

...

3.18 Membership

3.18.1 G ...

- (3) The information required under *REC 3.18* is relevant to the *FCA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the *FCA's* broader responsibilities concerning integrity of the *UK* financial system and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of members based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both *REC 3.18.2R* and *REC 3.18.3R*, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FCA*.

[Note: REC 2.5.1R(4)(d) requires a UK RIE to inform the FCA about the content of a written agreement entered into with a member investment firm pursuing a market making strategy on a trading venue operated by the UK RIE]

...

3.21 Criminal offences and civil prohibitions

3.21.1 R Where a *UK recognised body* has evidence tending to suggest that any *person* has:

- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or

- (2) been engaged in *market abuse*; or
- (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
- (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (Insider dealing); or
- (5) committed a criminal offence under the *Money Laundering Regulations*;

it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.

[~~Note: Article 26(2)~~ article 31(2), first sentence (part) and ~~Article 43(2)~~ article 54(2), first sentence (part) of *MiFID*. The rest of ~~Article 26(2)~~ article 31(2), first sentence (in so far as it relates to *market operators* operating an *MTF* or *OTF*) and ~~Article 43(2)~~ article 54(2), first sentence of *MiFID* is implemented by *REC 3.25.1R*]

...

3.24 Transfers of ownership

- 3.24.1 R When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:
- (1) give the name of the *person(s)* concerned; and
 - (2) give details of the transfer.

[~~Note: Article 38(2)(b)~~ article 46(2)(b) of *MiFID*]

...

3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R A *UK RIE* and an *RAP* must immediately notify the *FCA* of:
- (1) significant breaches of its rules; or
 - (2) disorderly trading conditions on any of its markets or auctions; or
 - (3) conduct that may indicate behaviour prohibited under the *Market Abuse Regulation*; or
 - (4) system disruptions in relation to a *financial instrument*.

[~~Note: Article 26(2)~~ article 31(2), first sentence (part) and ~~Article 43(2)~~

article 54(2), first sentence (part) of MiFID. The rest of Article 26(2) article 31(2), first sentence (in so far as it relates to market operators operating an MTF or OTF) and Article 43(2) article 54(2), first sentence of MiFID is implemented by REC 3.21.1R(2).]

4 Supervision

...

4.2 The supervisory relationship with UK recognised bodies

- 4.2.1 G ... The FCA will usually arrange meetings between the ~~Markets Division~~ Infrastructure and Trading Firms Department and ~~key individuals~~ members of the management body of the UK recognised body for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the UK recognised body.

...

4.2A Publication of information by UK RIEs and RAPs

...

- 4.2A.3 G Under subsection 292A(5) of the Act, a UK RIE must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it, or lift a suspension or readmit the instrument, as the FCA may reasonably require.

4.2B Exercise of passport rights by a UK RIE

- 4.2B.1 G Under section 312C of the Act, if a UK RIE wishes to make arrangements in an EEA State other than the UK to facilitate access to or use of a *regulated market, multilateral trading facility, organised trading facility or auction platform* operated by it, it must give the FCA written notice of its intention to do so. The notice must:

- (1) describe the arrangements; and
- (2) identify the EEA State in which the UK RIE intends to make them.

[Note: MiFID RTS 3 and MiFID ITS 4, Annex IV provide for the format for notification by the operator of an MTF or OTF to its Home State competent authority of any arrangements to facilitate access to and trading on the trading venue by remote users, members or participants within the territory of another EEA State]

...

4.2D Suspension and removal of financial instruments from trading by the FCA

...

- 4.2D.4 G Under section 313C(2) of the *Act*, if the *FCA* receives notice from a *UK RIE* that the *UK RIE* has suspended or removed a *financial instrument* from trading on a *regulated market* operated by it, the *FCA* must inform the ~~competent authorities~~ competent authorities of all other *EEA States* of the action taken by the *UK RIE*, including any decision whether or not to remove from trading a derivative that relates to or is referenced by that financial instrument.
- 4.2D.5 G Under sections 313C(3) and (4) of the *Act*, if the *FCA* receives notice pursuant to article 52.2 of *MiFID* from the ~~competent authority~~ competent authority of another *EEA State* that that authority, ~~pursuant to Article 41.2 of MiFID~~ has required the suspension of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to suspend the instrument from trading on any ~~regulated market or multilateral trading facility~~ trading venue operated by the *UK RIE* unless such a step would be likely to cause significant damage to the interests of investors or to the orderly functioning of the financial markets.
- 4.2D.6 G Under sections 313C(3) and ~~(5)~~ (4) of the *Act*, if the *FCA* receives notice from the ~~competent authority~~ competent authority of another *EEA State* pursuant to article 52.2 of *MiFID* that that authority, ~~pursuant to Article 41.2 of MiFID~~ has required the removal of a *financial instrument* from trading, the *FCA* must require each *UK RIE* to remove the instrument from trading on any ~~regulated market or multilateral facility~~ trading venue operated by the *UK RIE* unless such a step would be likely to cause significant damage to the interests of investors or to the orderly functioning of the financial markets.

...

4.3 Risk assessments for UK recognised bodies

...

- 4.3.3 G The risk assessment will guide the *FCA*'s supervisory focus. It is important, therefore, that there is good dialogue between the *FCA* and the *recognised body*. The *FCA* expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with ~~key individuals~~ members of the management body of the *UK recognised body*. ...

...

4.8 The section 298 procedure

...

- 4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will usually discuss its intention, and the basis for this, with the ~~*key individuals*~~ *members of the management body* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

...

6 Overseas Investment Exchanges

6.1 Introduction and legal background

- 6.1.1 G The *Act* prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:
- (1) obtain a *Part 4A permission* from the *FCA*;
 - (2) (in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or
 - (3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under ~~Articles 31(5) and 31(6)~~ article 34(6) of MiFID (in the case of arrangements relating to a *multilateral trading facility* or *organised trading facility*) or ~~Article 42(6)~~ article 53(6) of MiFID (in the case of arrangements relating to a *regulated market*); or
 - (4) obtain *exempt person* status by being declared by the *FCA* to be an *ROIE*.

...

6.2 Applications

...

- 6.2.2 G A prospective applicant may wish to contact the ~~Markets Division~~ Infrastructure and Trading Firms Department at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.
- 6.2.3 G Applicants for *authorised person* status should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation>. Applications for recognition as an *overseas recognised body* should be

addressed to:

The Financial Conduct Authority (~~Markets Division~~ Infrastructure and Trading Firms Department)
 25 The North Colonnade
 Canary Wharf
 London E14 5HS

...

6.3 Recognition requirements

...

6.3.2 UK Sections 292(3) and 292(4) state:

Section 292(3)	
	The requirements are that -
(a)	investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with <i>recognition requirements and requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation</i> other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph;
(b)	there are adequate procedures for dealing with a <i>person</i> who is unable, or likely to become unable, to meet his obligations in respect of one or more <i>market contracts</i> connected with the [ROIE]
(c)	the applicant is able and willing to co-operate with the [FCA] by the sharing of information and in other ways; and
(d)	adequate arrangements exist for co-operation between the [FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
Section 292(4)	
	In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [FCA] is to have regard to -
(a)	the relevant law and practice of the country or territory in which the applicant's head office is situated;

	(b)	the rules and practices of the applicant.
--	-----	---

...

6A EEA market operators in the United Kingdom

...

6A.2 Removal of passport rights from EEA market operator

6A.2.1 G Under section 312B of the *Act*, the *FCA* may prohibit an *EEA market operator* from making or, as the case may be, continuing arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* ~~;~~ or *organised trading facility* operated by the operator if:

- (1) the *FCA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement~~;~~ and
- (2) the *FCA* has first complied with sections 312B(3) to (9) of the *Act*.

...

6A.2.6 G The operator's right to make arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, ~~or~~ *multilateral trading facility* or *organised trading facility*, operated by the operator may be reinstated (together with its *exempt person* status) if the *FCA* is satisfied that the contravention which led the *FCA* to exercise its prohibition power has been remedied.

...

Sch 2 Notification requirements

2.1G The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in REC 3 (Notification rules for UK recognised bodies) and *REC 6.7* and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the Companies ~~Act~~ Act 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FCA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *ROIEs* is given in *REC 6.6*.

2.2G

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>UK RIEs</i>				
The Act <i>Acts</i> 293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay
The Act s300B(1)	Proposal to make regulatory provision	Details of proposal	Proposal to make regulatory provision	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
The Act s293(6)(a)	Changes to arrangements for <i>clearing facilitation services</i> in respect of <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The Acts <i>Act</i> s293(6)(b)	Changes to criteria determining to whom it will provide <i>clearing facilitation services</i>	Details of change	Change to criteria	Without delay
The Act s300B(1)	Proposal to make regulatory provision	Details of proposal	Proposal to make regulatory provision	Without delay
<i>RAPs</i>				
...
<i>Notification rules for UK recognised bodies (see REC 3 (Notification rules for UK recognised bodies))</i>				
<i>REC 3.4</i>	<i>Key individuals</i> <i>Members of the management body</i> and internal	Details of change	See <i>REC 3.4</i>	See <i>REC 3.4</i>

	organisation			
REC 3.5	Disciplinary action and events relating to <i>key individuals members of the management body</i>	Details of disciplinary action or event	Disciplinary action or awareness of event	Immediately
...
REC 3.14A	Operation of a regulated market or <u>MTF trading venue</u>	Details of proposal to operate a new regulated market or <u>MTF trading venue</u> or close an existing regulated market or <u>MTF trading venue</u>	Communication of proposal to <i>members</i> or shareholders	Immediately
...

Annex Q

Amendments to the Service Companies Handbook Guide (SERV)

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

1 Handbook requirements for service companies

...

1.2 Parts of the Handbook applicable to service companies

...

Parts of the Handbook applicable to service companies

1.2.2 G This table belongs to *SERV* 1.2.1G

	Part of Handbook	Applicability to service companies
...		
Business Standards	...	...
	Market Conduct sourcebook (<i>MAR</i>)	<p><i>MAR</i> 1 (Market Abuse), <i>MAR</i> 2 (Stabilisation) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i>.</p> <p><i>MAR</i> 5 (Multilateral Trading Facilities), <u><i>MAR</i> 5A (Organised Trading Facilities)</u>, <i>MAR</i> 6 (Systematic Internalisers) and <i>MAR</i> 7 (Disclosure of information on certain trades undertaken outside a regulated market or <i>MTF</i>), <u><i>MAR</i> 7A (Algorithmic Trading)</u>, and <u><i>MAR</i> 8 (Benchmarks)</u>, do not apply to <i>service companies</i>.</p>
	...	
...		

Annex R

Amendments to the Enforcement Guide (EG)

In this Annex, striking through indicates deleted text.

8 Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

...

8.4 Limitations and requirements that the FCA may impose when exercising its section 55J and 55L powers

...

8.4.2 Examples of the *limitations* that the *FCA* may impose when exercising its *own-initiative variation power* in support of its enforcement function include *limitations* on: the number, or category, of *customers* that a *firm* can deal with; the number of specified investments that a *firm* can deal in; and the activities of the *firm* so that they fall within specific regulatory regimes (for example, so that *oil market participants*, ~~*traders*~~, *corporate finance advisory firms* and service providers are permitted only to carry on those types of activities).

...

Appendix

This appendix comprises the following forms by reference to corresponding provisions in SUP 13:

SUP 13 Annex 1AR (Passporting: Branch passport notifications and tied agent notifications under MiFID ITS 4A)

Part 1: Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

Part 2: Notice of intention to use a tied agent established in another EEA State or to amend the details of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (tied agent passport notification)

Part 3: Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

SUP 13 Annex 2R (Passporting: MiFID investment services and activities passport notification and notification for the provision of arrangements to facilitate access to an MTF or OTF under MiFID ITS 4A)

Part 1: Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

Part 2: Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)

SUP 13 Annex 2AR (Passporting: Notification to cease the provision of cross border services under MiFID)

Part 1: Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

Part 2: Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)



Notice of intention to establish a branch or change branch particulars in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (Branch passport notification)

FIRM NAME:

FRN:

DATE:

Purpose of this form

This form replicates Annex VI of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A.

You should complete this form if you are a UK firm that wishes to exercise a passport right to establish a branch in another EEA state or wishes to make changes to the details of your current branch in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
- 3.** All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: Branch passport notification/ Changes to existing branch notification

Member State in which the investment firm intends to establish a branch:

Name of investment firm:

Address of investment firm:*

Telephone number of investment firm:*

E-mail of investment firm:

Name of the contact person at the investment firm:

Name of the branch:

Address of the branch:*

Telephone number of the branch:*

E-mail of the branch:

Name(s) of those responsible for the management of the branch:

Home Member State: United Kingdom

Authorisation Status: Authorised by the Financial Conduct Authority

Authorisation Date:

Note:

- 1) If you are applying to change the branch manager, i.e. the name of the person responsible for the management of the branch, please submit a CV for the new branch manager.
- 2) If the investment firm has more than one branch in the considered country, please include the first line of the address next to the name of the branch.

2 Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments provided by the branch.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.*

3 Business Plan and structural organisation of the branch

<p>1. Business plan</p> <p>(a) How will the branch contribute to the strategy of the firm/group?</p> <p>(b) What will the main functions of the branch be?</p> <p>(c) Describe the main objectives of the branch.</p>	<p>1. Business plan</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>2. Commercial strategy</p> <p>(a) Describe the types of clients/counterparties the branch will be dealing with.</p> <p>(b) Describe how the firm will obtain and deal with these clients.</p>	<p>2. Commercial strategy</p> <p>(a)</p> <p>(b)</p>
<p>3. Organisational structure</p> <p>(a) Briefly describe how the branch fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).</p> <p>(b) Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines.</p> <p>(c) Who will be responsible for the branch operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the branch (Please attach CV(s)).</p>	<p>3. Organisational structure</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>

<p>(d) Who will be responsible for the internal control functions at the branch?</p> <p>(e) Who will be responsible for dealing with complaints in relation to the branch?</p> <p>(f) How will the branch report to the head office?</p> <p>(g) Detail any critical outsourcing arrangements.</p>	<p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>
<p>4. Tied agents</p> <p>(a) Will the branch use a tied agent?</p> <p>(b) What is the identity of the tied agent?</p> <p>(i) Name</p> <p>(ii) Address</p> <p>(iii) Telephone</p> <p>(iv) E-mail</p> <p>(v) Contact point</p> <p>(vi) Reference or hyperlink to the public register where the tied agent is registered</p>	<p>4. Tied agents*</p> <p>(a)</p> <p>(b)</p> <p>(i)</p> <p>(ii)</p> <p>(iii)</p> <p>(iv)</p> <p>(v)</p> <p>(vi)</p>
<p>5. Systems & controls</p> <p>Provide a brief summary of arrangements for:</p> <p>(a) safeguarding client money and assets;</p> <p>(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8)</p>	<p>5. Systems & controls</p> <p>(a)</p> <p>(b)</p>

<p>and record keeping under Art 16(6);</p> <p>(c) staff code of conduct, including personal account dealing;</p> <p>(d) anti-money laundering;</p> <p>(e) monitoring and control of critical outsourcing arrangements (if applicable); and</p> <p>(f) details of the accredited compensation scheme of which the investment firm is a member.</p>	<p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p>
<p>6. Financial forecast</p> <p>Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.</p>	<p>6. Financial forecast</p>

Note:

Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.

*An investment firm that intends to use tied agents in another Member State shall complete a separate notification in respect of each tied agent it intends to use.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



**Notice of intention to use a tied agent established in another EEA State
or to amend the details of a tied agent established in another EEA State
in accordance with the Markets in Financial Instruments Directive
(MiFID) (tied agent passport notification)**

FIRM NAME:

FRN:

DATE:

Purpose of this form

This form replicates Annex VII of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to exercise a passport right to use a tied agent established in another EEA state or wishes to make changes to the details of a tied agent established in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a tied agent in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer sections 1, 2 and 3. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification:

Tied agent passport notification under the right of establishment/ Change of tied agent particulars notification

Member State in which the investment firm intends to use/is using a tied agent:

Name of investment firm:

Address of investment firm:*

Telephone number of investment firm:*

E-mail of investment firm:

Name of the contact person at the investment firm:

Name of the tied agent:

Address of the tied agent:*

Telephone number of the tied agent:*

E-mail of the tied agent:

Name(s) of those responsible for the management of the tied agent:

Home Member State:

United Kingdom

Authorisation Status:

Authorised by the Financial Conduct Authority

Authorisation Date:

Note:

If you are applying to change the person responsible for the management of the tied agent, please submit a CV for the new manager.

** to be completed only if amended*

2 Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments provided by the tied agent.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments, please list all the investment services, activities or financial instruments the tied agent will provide.*

3 Business Plan and structural organisation of the tied agent

<p>1. Business plan and structural organisation of the tied agent</p> <p>(a) How will the tied agent contribute to the strategy of the firm/group?</p> <p>(b) What will the main functions of the tied agent be?</p> <p>(c) Describe the main objectives of the tied agent.</p>	<p>1. Business plan and structural organisation of the tied agent</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>
<p>2. Commercial strategy</p> <p>(a) Describe the types of clients/ counterparties the tied agent will be dealing with.</p> <p>(b) Describe how the firm will obtain and deal with these clients.</p>	<p>2. Commercial strategy</p> <p>(a)</p> <p>(b)</p>
<p>3. Organisational structure</p> <p>(a) Briefly describe how the tied agent fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).</p> <p>(b) Set out the organisational structure of the tied agent, showing functional, geographical and legal reporting lines.</p> <p>(c) Who will be responsible for the tied agent operations on a day-to-day basis? Provide details of the professional experience of the persons responsible for the management of the tied agent (Please</p>	<p>3. Organisational structure</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>

<p>attach CV(s));</p> <p>(d) Who will be responsible for the internal control functions at the tied agent?</p> <p>(e) Who will be responsible for dealing with complaints in relation to the tied agent?</p> <p>(f) How will the tied agent report to the head office?</p> <p>(g) Detail any critical outsourcing arrangements.</p>	<p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p>
<p>4. Systems & controls</p> <p>Provide a brief summary of arrangements for:</p> <p>(a) safeguarding client money and assets (not applicable – see note 3);</p> <p>(b) compliance with the conduct of business and other obligations that fall under the responsibility of the Competent Authority of the host Member State according to Art 35(8) and record keeping under Art 16(6);</p> <p>(c) staff code of conduct, including personal account dealing;</p> <p>(d) anti-money laundering;</p> <p>(e) monitoring and control of critical outsourcing arrangements (where applicable); and</p> <p>(f) details of the accredited compensation scheme of which the investment firm is a member.</p>	<p>4. Systems & controls</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p>

<p>5. Financial forecast</p> <p>Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.</p>	<p>5. Financial forecast</p>
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Note:

- 1) Please make sure you provide sufficiently detailed answers to the questions in this section, or your notification may experience processing delays.
- 2) Please make sure you submit a separate notification for each tied agent you wish to appoint.
- 3) Point 4(a) is not applicable to tied agents in the UK. See SUP 12.6.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



Notice of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:

FRN:

DATE:

Purpose of this form

This form replicates Annex X of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to notify us of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to establish a branch in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
- 3.** All firms should answer sections 1 and 2.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: Termination of the operation of a branch/ the use of a tied agent

Member State in which the branch/ tied agent is established:

Name of investment firm:

Address of investment firm:

Telephone number of investment firm:

E-mail of investment firm:

Name of the contact person responsible for the termination of the operations of the branch/ tied agent:

Name of the branch/ tied agent in the territory of the host Member State:

Home Member State:

United Kingdom

Home Member State Competent Authority:

Financial Conduct Authority

Authorisation Status:

Authorised by the Financial Conduct Authority

Authorisation Date:

Date from which the termination will be effective:

2 Schedule for the planned termination

Description of the schedule for the planned termination:

Information on the process of winding down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged:

3 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



Notice of intention to provide cross border services and activities in another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID) (investment services and activities passport notification)

FIRM NAME:

FRN:

DATE:

Purpose of this form

This form replicates Annex 1 of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm that wishes to:

- exercise a passport right to provide investment services and activities in another EEA State;
or
- use one or several tied agent(s) established in the UK to provide investment services in another EEA State; or
- change the particulars of an investment services and activities passport notification under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services into another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 4.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 4.
- 3.** An investment firm wishing to provide investment services or activities through a tied agent shall complete only those parts of the form relevant to the tied agent.
- 4.** If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 5.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: New/Change to investment services and activities passport notification

Member State in which the investment firm intends to operate:

Name of investment firm:

Trading name:*

Address:*

Telephone number:*

E-mail:

Name of the contact person at the investment firm:

Home Member State: United Kingdom

Authorisation Status: Authorised by the Financial Conduct Authority

Authorisation Date:

** to be completed only if information amended*

Note:

Please submit one passport notification for each country.

2 Intended investment services, activities and ancillary services

Please indicate all the investment services, activities, ancillary services or financial instruments the firm will provide.

		Investment services and activities									Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C7	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C8	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	C11	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities, ancillary services or financial instruments, please list all the investment services, activities, ancillary services or financial instruments the firm will provide.*

3 Details of tied agent located in the home Member State

Please provide separate matrices with the intended investment services for each tied agent the investment firm intends to use.

FRN	Name of tied agent	Address	Telephone	E-mail	Contact

Intended investment services to be provided by the tied agent:*

	Investment services and activities										Ancillary services						
		A1	A2	A3	A4	A5	A6	A7	A8	A9	B1	B2	B3	B4	B5	B6	B7
Financial instruments	C1	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C2	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C3	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C4	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C5	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C6	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C7	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C8	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C9	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C10	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									
	C11	<input type="checkbox"/>				<input type="checkbox"/>		<input type="checkbox"/>									

* Please place an (x) in the appropriate boxes. If the intention is to make changes to the investment services, activities or financial instruments provided by the tied agent, please list all the investment services, activities or financial instruments the firm will provide.

4 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



Notice of intention to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State under the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:

FRN:

Date:

Purpose of this form

This form replicates Annex IV of ITS 4A and should be completed in accordance with ITS 4A and RTS 3A

You should complete this form if you are a UK firm or market operator that wishes to provide arrangements to facilitate the access to an MTF or an OTF from another EEA State, or to make changes to existing arrangements, under MiFID.

Important information you should read before completing this form

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP) and REC 4.2B). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 3.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 3.
- 3.** All firms should answer sections 1 and 2. If you are notifying us of a change in particulars, complete only those parts of the form relevant to the change in particulars.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: Provision of/ Changes to the particulars of the notification for the provision of arrangements to facilitate access to MTF /OTF

Member State in which the investment firm/ market operator intends to provide arrangements:

Name of investment firm/ market operator:

Address:*

Telephone number:*

E-mail:

Name of the contact person at the investment firm / market operator:

Home Member State: United Kingdom

Authorisation Status: Authorised by the Financial Conduct Authority

Applicable Law:

Authorisation Date:

Name of the MTF/ OTF:

Date at which the arrangements will be provided: With immediate effect

** to be completed only if information amended*

2 Business Model's description

Type of traded financial instruments:*

Type of trading participants:*

Type of appropriate arrangements:*

Marketing:*

** to be completed only if information amended*

Note:

Please note you can only use this form to provide access to an MTF or OTF. If you would like to passport other activities, please submit another notification.

3 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



Notice of cancellation of a cross border services and activities passport or cessation of the use of a tied agent providing cross border services in another EEA State under the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:

FRN:

DATE:

Purpose of this form

You should complete this form if you are a UK firm that wishes to notify us that it wishes to cancel its passport right to provide cross border services and activities or to cease using a tied agent providing cross border services under MiFID.

Important information you should read before completing this form

A UK firm can only use this form if it is entitled to provide cross border services in another EEA State subject to the conditions of MiFID (see Schedule 3 to the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer section 1.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: Cancellation of service passport/ termination of the use of a tied agent

Member State in which the investment firm operated:

Name of investment firm:

Address of investment firm:

Telephone number of investment firm:

E-mail of investment firm:

Name of the contact person at the investment firm:

Name of the tied agent located in the Home Member State:

Home Member State: United Kingdom

Home Member State Competent Authority: Financial Conduct Authority

Authorisation Status:

Authorisation Date:

Date from which the termination will be effective:

Note:

Please submit one passport notification for each country.

2 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory

Signature (to be signed on the printed version only)

Date



Notice of intention to cancel arrangements to facilitate the access to an MTF or an OTF from another EEA State in accordance with the Markets in Financial Instruments Directive (MiFID)

FIRM NAME:

FRN:

Date:

Purpose of this form

You should complete this form if you are a UK firm or market operator that wishes to cancel existing arrangements to facilitate the access to an MTF or an OTF from another EEA State under the MiFID Directive.

Important information you should read before completing this form

A UK firm or market operator can only use this form if it is entitled to provide such arrangements subject to the conditions of MiFID (see Schedule 3 to, and section 312C of, the Financial Services and Markets Act 2000 (FSMA)). By completing this form, you are confirming this is the case. UK firms and market operators should consult the legislation or take professional advice both in the UK and in the relevant EEA State(s) if they are in any doubt.

We give guidance on this in the Supervision manual (SUP). In particular, a UK firm or market operator that wants to exercise an EEA right must have the corresponding permission included in its Scope of Permission.

Filling in the form

- 1.** If you are using your computer to complete the form, use the TAB key to move from question to question and press SHIFT TAB to move back to the previous question. Once completed, print the relevant sections and sign the declaration in section 2.
- 2.** If you are filling in the form by hand, use black ink, write clearly and, once you have completed the relevant sections, sign the declaration in section 2.
- 3.** All firms should answer section 1.
- 4.** Please e-mail this form to passport.notifications@fca.org.uk

1 Contact Information

Type of notification: Cancel the provision of arrangements to facilitate access to MTF / OTF

Member State in which the investment firm/ market operator provided arrangements:

Name of investment firm/ market operator:

Address of investment firm/ market operator:

Telephone number of investment firm/ market operator:

E-mail of investment firm/ market operator:

Name of the contact person at the investment firm / market operator:

Name of the MTF/ OTF:

Home Member State: United Kingdom

Home Member State Competent Authority: Financial Conduct Authority

Authorisation Status: Authorised by the Financial Conduct Authority

Applicable Law:

Authorisation Date:

Date from which the termination will be effective:

2 Declaration

Warning

Knowingly or recklessly giving the FCA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA and to notify the FCA immediately if materially inaccurate information has been provided. If necessary, please take appropriate professional advice before supplying information to us.

If any information is inaccurate or incomplete this notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. If you do not, it may take longer to be processed.

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this notification may be used by the FCA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the notifying firm.

Declaration

I am authorised to make this notification on behalf of the notifying firm named on the front of this notification.

I have attached the relevant documents where requested.

I confirm that the information in this notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given in this notification.

I understand that the FCA may require the notifying firm to provide further information or documents at any time after I have sent this notification.

- Tick here to confirm that the person submitting this notification on behalf of the notifying firm and (if applicable) the individual named below have read and understood the declaration.

Signature

- I confirm that a permanent copy of this notification will be retained for an appropriate period, for inspection at the FCA's request.

Name of authorised signatory _____

Signature (to be signed on the printed version only) _____

Date _____

Financial Conduct Authority



PUB REF: 005403

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