

**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, (SI 2001/995), as inserted by the Financial Services and Markets Act (Markets in Financial Instruments) Regulations 2017, (SI 2017/701);
 - (3) the powers of direction, guidance and related provisions in or under the following provisions of the Data Reporting Services Regulations 2017, (SI 2017/699):
 - (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 20 (Guidance);
 - (f) regulation 21 (Reporting requirements); and
 - (g) regulation 40 (FCA: penalties, fees and exemption from liability in damages);
 - (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, (SI 2017/701):
 - (a) regulation 16 (FCA duty to establish position limits)
 - (b) regulation 17 (Exemption for non-financial entities);
 - (c) regulation 27 (FCA power to require information);

- (d) paragraph 7 of Schedule 1 (Guidance); and
 - (e) paragraph 8 of Schedule 1 (Reporting requirements); and
- (5) 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) paragraph D Commencement 3 July 2017;
 - (2) paragraph E Commencement 31 July 2017;
 - (3) paragraph F Commencement 4 December 2017
 - (4) paragraph G Commencement 31 March 2018;
 - (5) paragraph H Commencement 3 March 2019; and
 - (6) paragraph I Commencement 3 September 2019.

Commencement 3 July 2017

- D. The following provisions come into force on 3 July 2017:
- (1) FEES 2, FEES 3.1.2G, FEES 3.2.7R Part 1 (1) (zx), FEES 3.2.7R Part 1 (1)(zy) concerning fees for data reporting services providers establishing a technology connection to the FCA and FEES TP 16R, which sets out a transitional provision in relation to the payment of onboarding fees, and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
 - (2) MAR 5.7.1AD, MAR 5.7.1CD, MAR 5 Annex 1D, MAR 5A.10.1D, MAR 5A.11.1D and MAR 5A Annex 1D concerning applications for transparency waivers and deferrals and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
 - (3) MAR 9.1, 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) concerning applications for authorisation and verification and data reporting services providers establishing a technology connection to the FCA and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;

- (4) MAR 10.2.2D relating to the application of position limits, MAR 10.2.4D and MAR 10 Annex 1D concerning the application process for non-financial entities for the exemption from position limit obligations and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017;
- (5) SUP 17A for the purpose of facilitating a technology connection to the FCA and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017; and
- (6) REC 3.14A.7AD and REC 3.14A.7CD concerning applications for transparency waivers and deferrals and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017.

Commencement 31 July 2017

- E. SUP TP 1.2 which sets out transitional provisions in relation to the exercise of passport rights by UK firms and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017 comes into force on 31 July 2017.

Commencement 4 December 2017

- F. SUP 13 concerning the exercise of passport rights by UK firms and any related definitions in Part 2 of the Glossary (MiFID 2) Instrument 2017 comes into force on 4 December 2017.

Commencement 31 March 2018

- G. Amendments made to FEES 1.1.2R(2)(o), FEES 4 Annex 3AR and the part of FEES 4.2.11R concerning the payment of fees for transaction reporting under SUP 17 come into force on 31 March 2018.

Commencement 3 March 2019

- H. Until 3 March 2019, every direct and indirect reference to the term CTP in MAR 9.1; 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) concerning applications for authorisation and verification and data reporting services providers establishing a technology connection to the FCA 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.

Commencement 3 September 2019

- I. Until 3 September 2019, every direct and indirect reference to the term CTP in 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

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.

Amendments to the Handbook

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

Amendments to material outside the Handbook

- K. The Service Companies Handbook Guide (SERV) is amended in accordance with Annex P to this instrument.
- L. The Enforcement Guide (EG) is amended in accordance with Annex Q to this instrument.

Notes

- M. 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

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

Citation

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

By order of the Board
30 June 2017

Annex A

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
-----------	-------------------------

Principles 1, 2 and 3	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> .
...	
Principles 6, 7, 8, 9 and 10	<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 B

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 to 10, 12, 18, 19B, 21, 22</u>
...	...

...

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++ in 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: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0565&from=EN.]</p>	
2.8B	G	<p><u>The purpose of SYSC 1 Annex 1 2.8R and SYSC 1 Annex 1 2.8AR</u> <u>is that the <i>common platform organisational requirements</i> also</u> <u>apply when carrying on any of the activities listed in SYSC 1</u> <u>Annex 1 2.8R even where they do not involve <i>investment services</i></u> <u>and/or activities and, where relevant, <i>ancillary services</i> (unless</u> <u>provided otherwise within a specific rule).</u></p>	
2.8C	G	<p><u>SYSC 1 Annex 1 2.8AR(3) has the effect that, where the</u> <u>requirement in the <i>MiFID Org Regulation</i> that is a <i>common</i></u> <u><i>platform organisational requirement</i> includes a reference or cross</u> <u>reference to another part of the <i>MiFID Org Regulation</i>, that</u> <u>reference or cross reference is given the same meaning as for the</u> <u>purposes of SYSC 1 Annex 1 2.8AR.</u></p>	
2.8D	G	<p><u>For the purpose of SYSC 1 Annex 1 2.8AR, a firm should apply</u> <u>any guidance published by the FCA that assists with interpreting</u> <u>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 to SYSC 10.1.1AR and SYSC 10.2.1R.</p>	
2.10	R	<p>The provisions on record-keeping in SYSC 9 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 <i>ancillary activities</i> that are performed in relation to:</p>	

		...	
...			
2.14	G	...	
<u>2.14A</u>	G	<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>	G	<u>Firms should refer to articles 38 to 42 of the MiFID Org Regulation and COBS 11A 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 <u>Table A</u> 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 13(9) <u>16(11) first paragraph</u> of <i>MiFID</i>]	
...			
<u>2.18A</u>	G	<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</u>

		<u>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> ; (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>	<u>For a common platform firm (other than a dormant account fund operator not subject to MiFID), articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation apply to the firm's business other than MiFID business or structured deposits regulated</u>														

		<u>activities 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>
3.2-B	R	For a <u>common platform firm</u> that is a <u>dormant account fund operator</u> and is not subject to <u>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>		
3.2A	G	For a <u>management company</u> , they <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in accordance with <u>Column A+ in the table Table A</u> below.
<u>Full-scope UK AIFM of an authorised AIF</u>		
3.2B	R	For a <u>full-scope UK AIFM</u> of an <u>authorised AIF</u> , they <u>the common platform requirements in SYSC 4 to SYSC 10</u> apply in line <u>accordance with Column A++ in the table Table A</u> below.
<u>MiFID optional exemption firm and a third country firm</u>		
3.2C	R	For a <u>MiFID optional exemption firm</u> and a <u>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>		
3.2D	R	(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</u>

			<u>'significant' as a rule or as guidance in accordance with SYSC 1 Annex 1 3.2CR.</u>
		(2)	<u>In (1), 'significant' means a MiFID optional exemption firm that meets one of more of the conditions in paragraphs (1) to (5) of IFPRU 1.2.3R and related rules and guidance.</u>
<u>Other firms</u>			
3.3E	R	<u>SYSC 1 Annex 1 3.3R does not apply to the following:</u>	
		(1)	<u>insurers;</u>
		(2)	<u>managing agents;</u>
		(3)	<u>the Society;</u>
		(4)	<u>full-scope UK AIFMs of unauthorised AIFs;</u>
		(5)	<u>MiFID optional exemption firms; and</u>
		(6)	<u>third country firms.</u>
3.3	G R	<u>For all other firms apart from insurers, managing agents, the Society and full scope UK AIFMs of unauthorised AIFs, they :</u>	
		(1)	<u>SYSC 4 to SYSC 10 apply as rules or as guidance in accordance with Column B in the table Table A below in the following way:</u>
		(a)	<u>For these firms, where a rule is shown modified in Column B as 'Guidance', it should be read as guidance (as if "should" appeared in that rule 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 firm's business; and</u>
		(2)	<u>articles 1(2), 21 to 25, 30 to 32 and 72 of the MiFID Org Regulation do not apply.</u>
3.3A	R	<u>SYSC 1 Annex 1 3.3R(1)(b) does not apply to a firm in relation to 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</u>	

	<u>regime).</u>
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[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, <u>MiFID 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 BIPRU firm	Rule for a BIPRU firm that is a UCITS investment firm	Not applicable	<u>Third country BIPRU firms: Rule</u> <u>Other firms: Not applicable</u>
...				

SYSC 4.1.4R	Rule Not applicable	Rule	Not applicable	(1) and (3) ; Guidance ; (2) ; Rule
...				
SYSC 4.1.5R	Rule applies only to a <i>MiFID</i> investment firm Not applicable	Rule	Not applicable	Not applicable
...				
SYSC 4.1.7R	Rule for a <i>CRR</i> firm only	Rule	Not applicable	Guidance
...				
SYSC 4.1.9R	Rule Not applicable	Rule	Not applicable	Not applicable
SYSC 4.1.10R	Rule Not applicable	Rule	Not applicable	Guidance - except reference to SYSC 4.1.9R which does not apply to these firms
...				
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>
<i>SYSC</i> 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>
<i>SYSC</i> 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>
...				
<i>SYSC</i> 4.3.1R	Rule <u>Not applicable</u>	Rule	Not applicable	Rule (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
<i>SYSC</i> 4.3.2R	Rule <u>Not applicable</u>	Rule	Not applicable	Guidance (but not applicable to <i>incoming EEA firms, incoming Treaty firms or UCITS qualifiers</i>)
...				
<i>SYSC</i> 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
<i>SYSC</i>	Rule applicable	Rule for a <i>CRR</i>	Not	Not applicable

4.3A.1R	to CRR firms	firm that is a UCITS investment firm	applicable	
<u>SYSC 4.3A.1AR</u>	<u>Rule</u>	<u>Rule for a CRR firm that is a UCITS investment firm</u>	<u>Not applicable</u>	<u>Not 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	Not applicable	Not applicable

		<i>UCITS investment firm</i>		
SYSC 4.3A.10R	Rule applicable to CRR firms	Rule for a CRR firm that is a <i>UCITS investment firm</i>	Not applicable	Not applicable
...				
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</u>

				<u>persons only.</u> <u>All rules apply</u> <u>as rules and</u> <u>not as</u> <u>guidance.</u>
SYSC 4.9	Whole section applies to <i>third country relevant authorised persons</i> and <i>UK relevant authorised persons only</i>	Not applicable	Not applicable	Not applicable <u>Whole section applies to relevant authorised persons only.</u> <u>All rules apply as rules and not as guidance.</u>

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 and 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 ² 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 6.1.3R</u> and <u>SYSC 6.1.4R</u> 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</i>

				<i>investment business with or for retail clients or professional clients.</i> - Guidance for all other firms.
SYSC 6.1.4-AG	<u>Not applicable 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 - "investment services and/or activities" shall be read as "financial services and activities"
...				
SYSC 6.2.1R	<u>Rule 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	COLUMN A Application to a	COLUMN A+ Application to	COLUMN A++ A++	COLUMN B Application to
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SYSC 7	common platform firm other than to a UCITS investment firm	a UCITS management company	Application to a full-scope UK AIFM of an authorised AIF	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 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</i> in relation to its <u><i>non-MiFID business</i></u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.3R	<u>Rule Not applicable</u>	Rule for a <i>UCITS investment firm</i> in relation to its <u><i>non-MiFID business</i></u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 7.1.4AG	<u>Not applicable</u>	Rule for a <i>UCITS</i>	Not	Guidance

	<u>Guidance</u>	<i>investment firm</i> ; otherwise guidance	applicable	
...				
<i>SYSC</i> 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
<i>SYSC</i> 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
<i>SYSC</i> 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
...				
<i>SYSC</i> 7.1.8G	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>	[deleted] <u>Guidance</u>
...				
<i>SYSC</i> 7.1.16AG	<u>Guidance applies to a BIPRU firm</u> [deleted]	<u>Guidance for a UCITS investment firm</u> otherwise not applicable [deleted]	Not applicable [deleted]	Not applicable [deleted]
<i>SYSC</i> 7.1.16BG	<u>Guidance applies to a BIPRU firm</u>	<u>Guidance for a UCITS investment firm</u>	Not applicable	Not applicable [deleted]

	[deleted]	otherwise not applicable [deleted]	[deleted]	
...				
<i>SYSC</i> <u>7.1.18AG</u> <u>7.1.18AA</u> <u>G</u>	Guide <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
...				
<u><i>SYSC</i></u> <u>7.1.23G</u>	<u>Guidance</u> applies to <i>UK</i> <i>relevant</i> <i>authorised</i> <i>persons and</i> <i>third country</i> <i>relevant</i> <i>authorised</i> <i>persons only</i>	<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> <u>and third</u> <u>country firms</u>
<u><i>SYSC</i></u> <u>8.1.-2G</u>	<u>Guidance</u>	<u>Not</u> <u>applicable</u> <u>save in</u> <u>relation to a</u> <u><i>UCITS</i></u> <u><i>investment</i></u> <u><i>firm and its</i></u>	<u>Not applicable</u>	<u>Not applicable</u>

		<u>MiFID business</u>		
<u>SYSC 8.1.-1G</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
...				
SYSC 8.1.4R	Rule <u>Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.5R	Rule <u>Not applicable</u>	Rule for a <i>UCITS investment firm</i> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.1.6R	Rule <u>Not applicable</u>	Rule <u>for a UCITS investment firm in relation to its non-MiFID business</u> ; otherwise guidance	Not applicable	Rule
<u>SYSC 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	Rule <u>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	Rule Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.9R	Rule Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.10R	Rule Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
SYSC 8.1.11R	Rule Not applicable	Rule for a <i>UCITS investment firm</i> in relation to its <u>non-MiFID business</u> ; otherwise guidance	Not applicable	Guidance
...				
SYSC 8.2	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i> [deleted]	Not applicable [deleted]	Not applicable [deleted]
SYSC 8.3	<i>MiFID investment firms only</i> [deleted]	<i>UCITS investment firms only</i>	Not applicable [deleted]	Not applicable [deleted]

		[deleted]		
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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 and its 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>
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<u>SYSC</u> <u>10.1.-2G</u>	<u>Guidance</u>	<u>Guidance in relation to relation to a UCITS investment firm in relation to its MiFID business; otherwise not applicable</u>	<u>Not applicable</u>	<u>Not applicable</u>
<u>SYSC</u> <u>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 COBS 12.2, or the production or dissemination of non-independent research in accordance with COBS 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 COBS 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 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 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 12.2, or the production or dissemination of non-independent research in accordance with COBS 12.3]</i>
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 Not applicable	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>	<u>[deleted]</u>	<u>[deleted]</u>	<u>[deleted]</u>	<u>[deleted]</u>
...				

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		

<i>SYSC 4.1.-2G</i>	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

SYSC 4.3A.11R	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

<i>SYSC 7.1.1G</i>	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

SYSC 7.1.17R	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

<i>SYSC 8.1.11R</i>	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

SYSC 10.2.4R	Rule	Rule
SYSC 10.2.5G	Guidance	Guidance

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)	31/3/2017	Not applicable	Not applicable
Article 21 – General organisational requirements	(1)	31/3/2017	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)	31/3/2017	Guidance	Guidance
	(2)		Guidance	Guidance
	(3)		Guidance	(a), (c), (d) and (e): Guidance; (b): Rule
	(4)		Guidance	Guidance
Article 23 – Risk management		31/3/2017	Guidance	Guidance
Article 24 – Internal audit		31/3/2017	Guidance	Guidance
Article 25 – Responsibility of senior management		31/3/2017	Guidance	(1): Rule; (2), (3) and (4): Guidance

Article 30 – Scope of critical and important operational functions	31/3/2017	Guidance	Guidance
Article 31 – Outsourcing critical or important operational functions	31/3/2017	(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	31/3/2017	Rule	Guidance
Article 72 – Retention of records	31/3/2017	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 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)(c) 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 43~~ 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 3.3~~G~~ 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* - ;
- (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 6.2 (Internal Audit) or <u>article 24 of the <i>MiFID</i></u>	This responsibility includes responsibility for: (a) safeguarding the independence of; and (b) oversight of the performance of; a person approved to perform the <i>PRA's</i> Head of Internal Audit	<i>PRA-prescribed senior management responsibility 4.1(15)</i>

<u>Org Regulation.</u>	<i>designated senior management function for the 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) or article 22 of the <u>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 firm.	<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 firm6.1.-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 firm6.1.-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, *tiered 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)(e) 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 ~~43~~ 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 11.8~~ 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, *tied 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, every *firm*; and
- (3) in relation to SYSC 18.3.6R and SYSC 18.3.10R, *EEA relevant authorised persons* and *third-country relevant authorised persons* only in relation to a *branch* maintained by them in the *United Kingdom*; and
- (4) 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
- (5) 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.

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*).

...

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 <i>firm's</i> orderly records of services and transactions undertaken</u>	<u>Within a reasonable time</u>	<u>Adequate</u>
...				

Annex C

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 D

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 E

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 F

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* (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* [deleted]~~

(p) a *data reporting services provider* (*FEES* 4 does not apply to an *incoming 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 40 of the *DRS Regulations*; and

(h) paragraph 25 of the Schedule 1 to 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 40 of the *DRS Regulations*; and

(d) paragraph 25 of the Schedule 1 to 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* or as if they had similar effect for these purposes.

...

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 processor system; or

(b) an EEA firm connecting to the market data processor 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.
...		
<u>(zx) (1) Unless (2) applies any person applying to connect to the market data processor system to make transaction</u>	<u>(1) Unless (2) applies, 20,000.</u> <u>(2) Any incoming data reporting services provider will pay 80%</u>	<u>On the date the application is made.</u>

<p><u>reports directly to the FCA under MiFIR.</u></p> <p><u>(2) If a person has 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>of the fee at (1).</u></p>	
<p><u>(zy) (1) Subject to (2) and (3) below, any person applying to connect to the market data processor 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 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 (other than an incoming 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 services providers (other than incoming data reporting services 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 operators	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 firm (except an AIFM qualifier, ICVC or a UCITS qualifier)	<p>(1) Unless (2) applies, as specified in FEES 4.3.1R in relation to FEES 4 Annex 2AR and FEES 4 Annex 11R.</p> <p>(2) Where a firm is paying a ring-fencing implementation fee, as specified in FEES 4 Annex 2BR.</p>	<p>(1) Unless (2) or (3) apply, on or before the relevant dates specified in FEES 4.3.6R.</p> <p>...</p> <p>(3) Where the permission is for operating a multilateral trading facility or operating an organised trading facility, the date specified in FEES 4 Annex 10R (Periodic fees for MTF and OTF operators).</p>	Firm receives permission, or becomes authorised or registered under the Payment Services Regulations, article 8 of the MCD Order, the DRS Regulations or the Electronic Money Regulations; or firm extends permission or its payment service activities
...
<p>Each of the following that makes transaction reports directly to the FCA under SUP 17 (Transaction reporting):</p> <p>(1) a firm;</p> <p>(2) a third party acting on a firm's behalf;</p> <p>(3) an approved reporting</p>	FEES 4 Annex 3A	Within 30 days of the date of the invoice	<p>The FCA enters into arrangements with the fee payer under which it can make transaction reports directly to the FCA</p> <p>[deleted]</p>

<i>mechanism;</i>			
(4) an operator of a <i>regulated market</i> ; and			
(5) an operator of an <i>MTF</i>			

...

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 , *CBTL firms*, 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 , *CBTL firms*, fee-paying electronic money issuers and data reporting services providers~~) calculated as follows:

...

Calculation of periodic fee for fee-paying payment service providers, *CBTL firms*, *data reporting services providers* (other than *incoming data reporting services 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 services providers* (other than *incoming data reporting services 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 services 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 services 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	<p>(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 firm falling within this category is a <i>class (1) firm</i>);</p> <p>OR</p> <p>(2) its <i>permission</i>:</p> <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 <i>operating a multilateral trading facility</i> <u>or</u> <i>operating an organised trading facility</i> .
...	

Part 3	
This table indicates the tariff base for each fee-block set out in Part 1.	
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> .	
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 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
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.	
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.	
...	
B. MTF <u>and</u> 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 <i>FEES 4 Annex 1AR</i> .		
...		
Activity group	Fee payable	
...		
B. MTF <u>and</u> OTF operators	As set out in <i>FEES 4 Annex 10 10R</i> (Periodic fees for MTF <u>and</u> OTF operators).	
...
Part 3		
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.		
Activity group	Percentage deducted from the tariff payable under Part 1 applicable to the <i>firm</i>	
...		
B. MTF MTF <u>and</u> OTF operators	Not applicable	
...		

FEES 4 Annex 3AR is deleted in its entirety and the deleted text is not shown.

4 Annex Fees relating to the direct reporting of transactions to the FCA under SUP

3AR 17A for the period 1 April 2017 to 31 March 2018 ~~[deleted]~~

...

4 Annex 10R Periodic fees for MTF and OTF operators payable in relation to the period 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 2017; 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 <i>operating a multilateral trading facility</i> or to <u>be operating an organised trading facility</u> or whose <i>permission</i> is extended to include this <u>either</u> activity in the course of the relevant financial year.
<i>MTF</i> or <i>OTF</i> operator has a named individual fixed portfolio supervisor	...	
All other <i>MTF</i> or <i>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</i> or <i>OTF</i> operators with <i>permission</i> to operate an <i>MTF</i> or <i>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</i> or <i>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 in relation to the period 1 April 2017 to 31 March 2018~~ and data reporting services providers (other than incoming data reporting services providers) under

the DRS Regulations.

...	
<u>Part 2C – Activity group relevant to data reporting services providers</u>	
<u>Activity Group</u>	<u>Fee payer falls into this group if:</u>
<u>G.25 DRSP</u>	<u>it is a data reporting services provider (other than an incoming data reporting services provider).</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 <i>fee-paying payment service providers, fee-paying electronic money issuers, CBTL firms, data reporting services providers (other than incoming data reporting services providers)</i> and issuers of regulated covered bonds.	
<u>Activity Group</u>	<u>Tariff base</u>
...	
<u>G.25</u>	<u>Not applicable</u>

...

<u>Part 5 – Tariff rates</u>		
<u>Activity group</u>	<u>Fees payable in relation to 2017/18</u>	
...		
<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 (other than an incoming data reporting services provider) has authorisation.</u>	<u>[TBC]</u>

...

TP 16R Transitional Provisions for Market Data Processor System Connectivity Fees

(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
16.1	<u>FEES 3.2.7R Part 1 (1) (zx) and 1(1) (zy)</u>	<u>R</u>	Where a <i>person</i> has applied to connect to the <i>market data processor system</i> prior to [3 July 2017] the onboarding fees as described in <u>FEES 3.2.7R Part 1 (1) (zx) and 1(1) (zy)</u> are payable in respect of the application and are due <u>within 15 workings days of 3 July 2017.</u>	<u>From 3 July 2017</u>	<u>3 July 2017</u>

Annex G

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

...

...

Annex H

**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 ~~local~~ 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 ~~local~~ 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 I

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 J

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 K

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 firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (e) third country firms providing the *direct electronic access* in accordance with the; exclusion in article 72 of the *RAO* or
 - (f) 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
 - (g) *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* 5.3A.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 synchronization

- 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 participants to deal in a	The best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

	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 MiFID Regulation] [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 MiFID Regulation] [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 MiFID Regulation] [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.
		For the purposes of point (b), the other conditions specified in the

	<p>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><i>dealing on own account</i> 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

[Editor's note: The form can be found at this address:

<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 (as transposed in the *FCA Handbook*) 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*, as transposed in the *FCA Handbook*, 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*. The above *MiFID* provisions are transposed as follows in the *FCA Handbook*:

- (1) *SYSC* 6.1.1, *SYSC* 10.1.7, *SYSC* 4.1.6, *SYSC* 8.1.1, *SYSC* 4.1.1(1), *SYSC* 4.1.1(3), *SYSC* 9.1.1A, *SYSC* 10A, *CASS* 6.2.1 and *CASS* 7.12.1;

- (2) *COBS 2.1.1, COBS 4.2.1, COBS 4.3.1, COBS 2.2A.2, COBS 2.2A.3, COBS 2.3A.5, SYSC 19F.1.3 and COBS 6.1ZA.2.12;*
- (3) *COBS 10A.2.1, COBS 10A.2.2, COBS 10A.3.1, COBS 10A.3.2, COBS 10A.4.1, COBS 8A, COBS 16A.2.1 and COBS 9A.3.2;*
- (4) *COBS 11.2A;* and
- (5) *COBS 11.3.]*

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 firms providing the *direct electronic access* in the course of exercising rights under article 46.1 of *MiFIR*; or
 - (d) third country firms providing the *direct electronic access* in the course of exercising rights under article 47.3 of *MiFIR*; or
 - (e) third country firms providing the *direct electronic access* in accordance with the exclusion in article 72 of the *RAO*; or
 - (f) 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
 - (g) *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 synchronization

- 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

[*Editor's note:* The form can be found at this address:

<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 Deferred publication thresholds and delays [deleted] 1EU

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 of the *MiFI Regulations* sets 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 branch of a third country person seeking authorisation to provide a data reporting service;
- (3) 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*;
- (4) a *UK RIE* seeking verification of its rights to provide a *data reporting service* under regulation 5(d) of the *DRS Regulations*; and
- (5) 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

MAR 9.2	Authorisation and verification
MAR 9.3	Notification and information
MAR 9.4	Supervisory regime
MAR 9.5	Frequently Asked Questions
MAR 9 Annex 1D to MAR Annex 10D	Forms

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

[*Editor's note*: The form can be found at this address:
<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

[*Editor's note*: The form can be found at this address:
<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)

[*Editor's note*: To follow]

9 Annex 4D Cancellation of Authorisation of a Data Reporting Services Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 5D Material Change in information for a Data Reporting Services Provider (DRSP)

[*Editor's note*: To follow]

9 Annex 6D Notification form for changes to the membership of the management body

[*Editor's note*: To follow]

9 Annex 7D FCA MDP on-boarding application form

[*Editor's note*: The form can be found at this address:
<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)

[*Editor's note*: To follow]

9 Annex 9D Data Reporting Services Provider (DRSP) Ad hoc notification

[*Editor's note*: To follow]

9 Annex 10D MIS confidentiality agreement

[*Editor's note*: The form can be found at this address:

<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 and position management controls in commodity derivatives'); and
 - (b) Schedule 1 to 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 16(1) imposes an obligation on the *FCA* to establish position limits in respect of *commodity derivatives* traded on *trading venues* in the *United Kingdom* and *economically equivalent OTC contracts*;
 - (b) Regulation 16(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 16(4) imposes an obligation on the *FCA* to publish the position limits it establishes in a manner which the *FCA* considers appropriate;
 - (d) Regulation 18 imposes an obligation on the *FCA* to ensure that each position limit established by it specifies clear quantitative thresholds for the maximum size of a position in a *commodity*

derivative that a *person* can hold;

- (e) Regulation 19(1) imposes an obligation on the *FCA* to establish position limits in accordance with *ESMA*'s methodology, unless an exceptional case exists under Regulation 25 of the *MiFI Regulations*;
- (f) Regulation 19(2) imposes an obligation on the *FCA* to review position limits it has established in the presence of certain factors;
- (g) Regulation 19(3) imposes an obligation on the *FCA* to establish a new position limit following its review if it believes that the limit should be reset;
- (h) Regulation 20(2) imposes an obligation on the *FCA*, where it receives an *ESMA* opinion stating that the establishment of a position limit would be, or is, incompatible with that opinion, 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;
- (i) Regulation 21(1) imposes an obligation on the *FCA* to not establish a position limit in respect of a *commodity derivative* traded on *trading venues* in the *United Kingdom*, where there is a *central competent authority* for that *commodity derivative* other than the *FCA*;
- (j) Regulation 23 imposes general obligations on the *FCA* in respect of the position limits it establishes, so that the limits must be transparent and non-discriminatory, specify how they apply to *persons*, and take account of the nature and composition of market participants and of the use they make of the contracts admitted to trading;
- (k) Regulation 25(1) 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;
- (l) Regulation 25(2) to Regulation 25(5) impose obligations on the *FCA* where it establishes position limits which are more restrictive than permitted under *ESMA*'s methodology in accordance with Regulation 25(1) 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 proportionate, and must notify *ESMA* of the position limit and the justification for establishing it;

- (m) Regulation 20(5) and Regulation 25(6) impose obligations on the *FCA* to publish a notice on its website explaining the reasons for its decision when, under Regulation 20(2) and Regulation 25(5) of the *MiFI Regulations* respectively, it does not modify a position limit following an *ESMA* opinion incompatible with the limit; and
 - (n) Regulation 27 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 (subject to the *non-financial entity* exemption in regulation 17(1) of the *MiFI Regulations*).
 - (4) Position limits established under (1) shall apply regardless of the location of the *person* at the time of entering into the position.
 - (5) Position limits established under (1) prior to 3 January 2018, will apply from 3 January 2018.

[**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 17 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*, and which is approved by the *FCA* in accordance with the relevant criteria and procedures. Regulation 17(1) 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 17(2) 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>	MAR 10.3.2G and MAR 10.3.4G
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>	MAR 10.3.3R to MAR 10.3.5G

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>	<i>MAR</i> 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>	<i>MAR</i> 10.4.3R to <i>MAR</i> 10.4.6G
<i>UK MiFID investment firm</i>	<i>MAR</i> 10.4.7D to <i>MAR</i> 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*, *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*) 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 27 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;
- (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 28 provides that the *FCA* may, if it considers necessary, 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 more restrictive than 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) Paragraph 5 of Schedule 1 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) Paragraph 8 of Schedule 1 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) Paragraph 5 of Schedule 1 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 17 of the *MiFI Regulations* 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

[*Editor's Note*: To follow]

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 financial instrument</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 market abuse</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>MAR 6.4.1R</u>	<u><i>Systematic internaliser</i> status</u>	<u>Information of gaining or ceasing <i>systematic internaliser</i> status</u>	<u>Upon becoming or ceasing to be a <i>systematic internaliser</i></u>	<u>Without delay</u>
<u>MAR 7A.3.6R</u>	<u>Engaging in <i>algorithmic trading</i></u>	<u>Information that a member of a <i>trading venue</i> is engaging in <i>algorithmic trading</i></u>	<u>Upon engagement in <i>algorithmic trading</i></u>	<u>Without delay</u>
<u>MAR 7A.4.4R</u>	<u>Provision of <i>DEA</i> services</u>	<u>Information that a <i>firm</i> is providing <i>DEA</i> services</u>	<u>Upon engagement in <i>DEA</i> provision</u>	<u>Without delay</u>
...

Annex L

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 = UK MiFID investment firms include exempt CAD firms. An exempt CAD firm that has opted into MiFID 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) 4(8) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2007 is an exempt investment firm as defined by article 8 of the <u>MiFI Regulations</u>. If a firm does so benefit then SUP 3 will not apply to it. For further details about exempt CAD firms, 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)).

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10C FCA senior management regime for approved persons in relevant authorised persons

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10C.5 FCA governing functions

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Chairman of the nomination committee function (SMF13)

- 10C.5.3 G See SYSC 4.3A (~~CRR firms~~ Management body and nomination committee) for material about nomination committees.

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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 tied 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 tied agent established in another EEA State leads to the application of conduct requirements to the tied 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 a ~~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*₂ other than under the *auction regulation*₂ 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 *tiered agent* established in the *EEA State* in which the *branch* is established, or cease to use a *tiered 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 tiered agent in accordance with:

- (1) article 7 (Information to be notified concerning the change of branch or tiered 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 tiered 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 tiered 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 tiered 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 tied 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 *tied 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-authorized 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>	<p>(1) <u>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 <i>SUP 13</i> by [<i>FCA Handbook Instrument</i>] on 4 December 2017, and any related definitions set out in Part 2 of the Glossary (<i>MiFID 2</i>) Instrument 2017, instead take effect from 31 July 2017.</u></p> <p>(2) <u>For the purposes of this transitional provision, <i>SUP 13.5.3R(1)</i> and <i>SUP 13.8.1R(1)</i> do not apply. A <i>person</i></u></p>	From 31 July 2017 until 3 December 2017	31 July 2017

				<p>submitting a notice to which <i>SUP</i> 13.5.3R(1) or <i>SUP</i> 13.8.1R(1) would otherwise apply must do so by email to MiFID.passport@fca.org.uk.</p>		
			(3)	<p>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>.</p>		
<u>9AB</u>	<u>SUP 13</u>	<u>G</u>	(1)	<p><i>SUP</i> TP 1.2 9AAR is intended to allow a <i>person</i> to apply for a passport for an investment service or financial instrument introduced by <i>MiFID II</i>, prior 4 December 2018. It also allows other <i>persons</i> such as those who will cease to be exempt under <i>MiFID II</i>, to apply for a passport prior to 4 December 2018.</p>	From 31 July 2017 until 3 December 2017	<u>31 July 2017</u>
			(2)	<p>A <i>person</i> 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 during the transitional</p>		

			period.		
			(3) <u>This transitional provision ceases to be effective on 4 December 2017, at which point the amendments made to SUP 13 in this instrument take effect. From 4 December, all persons should submit passporting notifications in accordance with SUP 13, as amended by this instrument.</u>		
<u>9AC</u>	<u>SUP 13</u>	<u>R</u>	<u>Where the person wishing to obtain a passport is not subject to MiFID, but will be subject to MiFID II, SUP 13.5.3R(1) and SUP 13.8.1R(1) do not apply. Such a person must submit the relevant notice by email to MiFID.passport@fca.org.uk</u> :	<u>From 4 December 2017 until 2 January 2018</u>	<u>31 July 2017</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, SUP TP 9 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 SUP 17 (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</i> TP 9.1.1R(1)(a) and (b) until such time as effective compliance is achieved.	
9.1.3	R	<i>SUP</i> 15 (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</i> TP 9.1.1R.	
Purpose			
9.1.4	G	The purpose of <i>SUP</i> TP 9.1.1R is to ensure that, as appropriate, <i>firms</i> :	
		(1)	comply with the provisions of the <i>MiFID Regulation</i> and <i>SUP</i> 17 (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 M

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 N

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 O

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 4C</u>	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 4(2)(fa)</u>	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 9ZB (regulated markets only)</u>	Admission of financial instruments to trading	2.12
Paragraph Paragraphs 7B <u>and</u> , 7C and <u>9ZC (regulated markets 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>	Operation of a multilateral trading facility or an <u>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 <i>members of the management body</i> 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)	the segregation of duties in the organisation; and
		(ii)	the prevention of conflicts of interest;
	(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; and
	(c)	notify the FCA of the identity of all the members of its management body.
(6)	A [UK RIE] and, if it has a nomination committee, its nomination committee must 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.	
(7)	The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the [UK RIE's] activities.	

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 regulation 44(1) [of the <i>MiFI Regulations</i>], three non-executive directorships); or
	(ii)	four non-executive directorships (or where so authorised by the FCA under regulation 44(1) [of the <i>MiFI Regulations</i>], 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 [MiFID],
		shall be counted as a single directorship; and
	(c)	any directorship in an organisation which does not pursue predominantly 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 [UK RIE];
	(b)	identify and recommend to the [UK RIE] 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 [UK RIE] 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 and the functions of the trading venues it operates</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 <u>[UK RIE's] 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 <i>trading venues</i> that enable <i>algorithmic trading</i>]		
	(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 <i>trading venues</i> that enable <i>algorithmic trading</i>]		
	(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 or 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 <i>trading venue</i> 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>

	<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]</u>	
(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)	For the purpose of sub-paragraph (2)(o) the [UK RIE] must provide <u>environments to facilitate such testing.</u>	
(5)	The [UK RIE] must be adequately equipped to manage the risks to <u>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)	The [UK RIE] must -	
	(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 is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph 2.</u>

(2)	<u>A market making agreement must specify-</u>	
	(a)	<u>the obligations of the investment firm in relation to the provision of liquidity;</u>
	(b)	<u>where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);</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</u>
	(d)	<u>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 disruptions to the orderliness of trading.</u>
(3)		<u>The [UK RIE] must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.</u>
(4)		<u>If a trading venue operated by the [UK RIE] is material in terms of liquidity of the trading of a financial instrument and it halts trading in an EEA State in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.</u>
[Note: MiFID RTS 12 contains requirements for when a regulated market is material in terms of liquidity in a financial instrument for purposes of trading halt notifications]		
<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 is 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 the course of exercising rights under Article 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;</u>
		(v) <u>is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; 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 appropriate 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 appropriate 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 to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.</u>
[Note: MiFID RTS 7 contains requirements on <i>direct electronic access</i> permitted through a <i>trading venue's</i> systems]		
<u>Paragraph 3D – Co-location services</u>		
(1)	<u>The [UK RIE's] rules on colocation services must be transparent, fair and nondiscriminatory.</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 including execution fees and ancillary fees and rebates it grants, must -</u>	
	(a)	<u>be transparent, fair and non-discriminatory;</u>
[Note: MiFID RTS 10 contains requirements to ensure fee structures are transparent, fair and non-discriminatory]		

	(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>
	[Note: MiFID RTS 10 contains requirements concerning prohibited fee structures]	
	(c)	<u>impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.</u>
(2)	Nothing in sub-paragraph (1) prevents the [UK RIE] from -	
	(a)	<u>adjusting its fees for cancelled orders according to the length of time for 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)	The [UK RIE] must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the -	
	(a)	<u>the 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)	The [UK RIE] must adopt tick size regimes in respect of trading venues operated by it in -	
	(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]	

	<u>for shares, depositary receipts, exchange-traded funds and certificates]</u>	
	(b)	<u>any financial instrument for which regulatory technical standards are adopted by the European Commission pursuant to 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]	

2.5.1 UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)
A

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].

- 2.5.1 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.

2.5.4 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*.
A

...

~~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, 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, 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]

2.5.8 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.
A

...

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 [UK RIE] 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)	<u>The [UK RIE] must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the [UK RIE] on at least an annual basis.</u>
(2)	<u>Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.</u>

2.6.3 UK Schedule to the Recognition Requirements Regulations, Paragraph 4A
[deleted]

(1)	The [<i>UK RIE</i>] 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 [<i>MiFID Regulation</i>] [(see <i>REC 2.6.7EU</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 publish their quotes in <i>shares</i> -	
	(a)	in accordance with Article 27 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 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 [<i>UK RIE</i>], in Article 29.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.10EU</i> and <i>REC 2.6.13EU</i>); or
	(b)	in the case of <i>shares</i> to be traded on a <i>regulated market</i> operated by the [<i>UK RIE</i>], in Article 44.2 of [<i>MiFID</i>] and Chapter IV of the [<i>MiFID Regulation</i>] [(see <i>REC 2.6.10EU</i> and <i>REC 2.6.13EU</i>).

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 [<i>UK RIE</i>] 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 [<i>UK RIE</i>] 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)	Where following a decision made under sub-paragraph (2) 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 that sub-paragraph , it must make that decision public and notify the FCA.
[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]

(1)	A [UK RIE] must have non-discretionary rules for the execution of orders on a regulated market operated by it.
(2)	A [UK RIE] must not on a regulated market operated by it -
(a)	execute any client orders against its proprietary capital; or
(b)	engage in matched principal trading.

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 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, 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 REC 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 [<i>MiFID</i>] [(see <i>REC 2.6.3UK</i>)] may be granted by the [<i>FCA</i>] 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 <i>REC 2.6.11EU</i>)], 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 <i>REC 2.6.12EU</i>].
	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 [<i>MiFID</i>] [(see <i>REC 2.6.3UK</i>)], 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 <i>MTF</i> 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 <i>REC 2.6.10EU</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:	
(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)	... regulated markets, and ... market operators operating an MTF shall, with regard to transactions in respect of shares admitted to trading on regulated markets 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 REC 2.6.16EU)]
(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)];
(c)	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 transaction or in a form aggregating the volume and price of all transactions 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</i> 2.6.15EU)] 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 REC 2.6.15EU)] as a <i>transaction</i> where the exchange of shares is determined by factors other than the current market valuation of the share.
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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 REC 2.6.20EU)] 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 REC 2.6.20EU)].
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 < ADT <	€1 000 000 <	ADT < €50

		€100 000	€1 000 000	ADT < €50 000 000	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 next after trade		€60 000	Greater of 50% of ADT and €100 000	Greater of 50% of ADT and €1 000 000	100% of 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.	<i>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.</i>
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 regulated market or MTF;
(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 REC 2.6.23EU)] ... 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;

(e)	in must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
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...

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; 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 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~~

~~(e) 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 facilities.	
(2)	In particular those rules must specify the obligations for users or members of its facilities 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 trading venue 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)	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 -	
	(a)	an investment firm authorised under article 5 of [MiFID];
	(b)	a credit institution authorised in accordance with the capital requirements directive; or
	(c)	a person who –
		(i) is of sufficient good repute;
		(ii) has a sufficient level of trading ability, competence and experience;
		(iii) where applicable has adequate organisational arrangements; and
		(iv) has sufficient resources for the role it is to perform, taking account of the [UK RIE's] arrangements under paragraph 4(2)(d).

...

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 (Access to facilities) 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 [<i>UK RIE</i>] operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the [<i>UK RIE</i>] 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 submitted 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 [UK RIE] 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 directly 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)		another financial institution, including an insurance undertaking and reinsurance undertaking as defined in the Solvency 2 Directive and an institution 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.

(5)	The [UK RIE] must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.
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- 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 <u>trading venue</u> 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)	<p>The rules must ensure that all <i>financial instruments</i> admitted to trading on any <i>regulated market</i> operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable).</p> <p>[Note: the MiFI Regulations amending the Recognition Requirements Regulations]</p>	
(3)	The rules must ensure that –	
	(a)	all <i>transferable securities</i> admitted to trading on a <i>regulated market</i> operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and
	(b)	all contracts for derivatives admitted to trading on a <i>regulated market</i> 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>[<i>financial instruments</i>] admitted to trading on a [<i>regulated market</i>] operated by it are capable of being traded in a fair, orderly and efficient manner;</u>
	(b)	<u>[<i>transferable securities</i>] admitted to trading on a [<i>regulated market</i>] operated by it are freely negotiable; and</u>
	(c)	<u>contracts for derivatives admitted to trading on a [<i>regulated market</i>] 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 <u>regulated market</u> 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 <u>issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.</u>	

(4)	<u>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.</u>
(5)	<u>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.</u>
	[Note: see MiFID RTS 17]
(6)	<u>In this paragraph -</u>
	<u>“the disclosure obligations” are the initial ongoing and ad hoc disclosure requirements contained in-</u>
(a)	<u>Articles 17, 18 and 19 of the market abuse regulation;</u>
(b)	<u>Articles 3, 5, 7, 8, 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;</u>
(c)	<u>Articles 4 to 6, 15 and 16 to 19 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 relating to harmonisation of transparency requirements in relation to 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>
	<u>and the legislation referred to in paragraphs (b) and (c) is 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>

2.12.2B EU Article 35 of the MiFID Regulation

Transferable securities	
1.	<i>Transferable securities 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 transaction, and subsequently transferred without restriction, and if all securities within the same</i>

	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 <i>regulated market</i> 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 <i>issuer</i>, and information providing a business overview as is required to be prepared under [the <i>PD</i>], or is or will be otherwise publicly available.
5.	A <i>transferable security</i> that is officially listed in accordance with [<i>CARD</i>], 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 [<i>MiFID</i>] [(see <i>REC</i> 2.12.2AUK)], when assessing whether a <i>transferable security</i> referred to in Article 4(1)(18)(c) of [<i>MiFID</i>] is capable of being traded in a fair, orderly and efficient manner, the <i>regulated market</i> 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.
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[**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)(c) 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;

	(e)	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 [MiFID] [(see REC 2.12.2AUK)], 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 MiFID RTS 17]		

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 [MiFID], <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 [MiFID], point (b) of	

	paragraph 1 shall not apply if the following conditions are satisfied:	
(a)		the contact 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> ;
(c)		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> .

[**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 UK RIE] operating a <i>multilateral trading facility</i> <u>multilateral trading facility</u> or an organised trading facility must also operate a <i>regulated market</i> <u>regulated market</u> .
(2)	[A UK RIE] operating a <i>multilateral trading facility</i> <u>multilateral trading facility</u> or an organised trading facility must comply with those requirements of -
(a)	Chapter 1 of Title II of [MiFID] ; <u>and</u>
(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)	<u>A [UK RIE] operating a multilateral trading facility or organised trading facility must provide the FCA with a detailed description of -</u>
(a)	<u>the functioning of the multilateral trading facility or organised trading facility;</u>
(b)	<u>any links to another trading venue owned by the same [UK RIE] or to a systematic internaliser owned by the same exchange; and</u>
(c)	<u>a list of the facility's members, participants 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>	
(1)	<u>A [UK RIE] must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.</u>
(2)	<u>A [UK RIE] must not on a multilateral trading facility operated by it -</u>
(a)	<u>execute any client orders against its proprietary capital; or</u>
(b)	<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 it is to perform, taking account of the financial arrangements the [UK RIE] has established in order to guarantee the adequate settlement transactions.</u>
<u>Paragraph 9D – Specific requirements for multilateral 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 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>		
(1)	<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 (an “exchange-operated SME growth market”) must comply with rules made by the FCA for the purposes of this paragraph.</u>	
(2)	<u>An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.</u>	
(3)	<u>Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance</u>	

	<u>with -</u>	
	(a)	<u>any obligation relating to corporate governance, or</u>
	(b)	<u>the disclosure obligations.</u>
(4)	<u>In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.</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 -</u>	
	(a)	<u>execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);</u>
	(b)	<u>not execute any client orders on that facility 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)	<u>A [UK RIE] may only engage in -</u>	
	(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 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 the [UK RIE] provided the investment firm does not have close links with the [UK RIE].</u>
(11)		<u>In this paragraph - “close links” has the meaning given in Article 4.1.1 of the markets in financial instruments directive; “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive; “non-equities” means bonds, structured finance products, emissions</u>

	<u>allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.</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>A [UK RIE] must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of -</u>
	<u>(a) 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>
	<u>(b) how discretion will exercised in executing client orders, and in particular when an order to the organized trading facility may be retracted and when and how two or more client orders will be matched within the facility; and</u>
	<u>(c) its use of matched principal trading.</u>
(2)	<u>Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.</u>

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 9I

- | | | |
|---------|----|--|
| 2.16B.1 | UK | A [<i>UK RIE</i>] providing data reporting services must comply with Title V of the markets in financial instruments directive. |
| 2.16B.2 | G | A <i>UK RIE</i> offering, or applying to offer, the operation of a <i>data reporting service</i> should have regard to the <i>guidance</i> relating to such service in <i>MAR 9</i> (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 <i>REC 3.4</i> is to enable the <i>FCA</i> to monitor <u>the changes in the arrangements</u> a <i>UK recognised body</i> makes <u>in the arrangements</u> for the carrying out of its <i>relevant functions</i> 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 <i>UK RIE</i> a proposal has been made to appoint or elect a <i>person</i> as a key individual <u>member of the management body</u> , that <i>UK RIE</i> 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 <i>rule</i> in <i>REC 3.4.4AR</i> to the <i>FCA</i> . |
|--------|---|---|

[~~Note: Article 37(1), paragraph 1, second sentence~~ article 45(8) of *MiFID*]

- | | | |
|--------|---|---|
| 3.4.2B | R | Where, in relation to a <i>UK RIE</i> a <i>person</i> has resigned as, or has ceased to be, a key individual <u>member of the management body</u> , that <i>UK RIE</i> must immediately give notice of that event, and give the name of the person <u>the</u> |
|--------|---|---|

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 functions

Application

- 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*'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*.]

- (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 1D.
- [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.3 G Under section ~~313C(1)~~ of the *Act*, if the *FCA* exercises its power to require a *UK RIE* to suspend or remove a financial instrument from trading, it must as soon as reasonably practicable:
- (1) ~~publish its decision in such manner as it considers appropriate, unless the~~

- decision has already been published under section 313B(2)(b) of the *Act*; and (2) inform *ESMA* and the competent authorities of all other *EEA States* of its decision. [deleted]
- 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 of all other *EEA States* of the action taken by the *UK RIE*. [deleted]
- 4.2D.5 G Under sections 313C(3) and (4) of the *Act*, if the *FCA* receives notice from the 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* operated by the *UK RIE*. [deleted]
- 4.2D.6 G Under sections 313C(3) and (5) of the *Act*, if the *FCA* receives notice from the competent authority of another *EEA State* 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* operated by the *UK RIE*. [deleted]
- 4.2D.7 G Under sections 313CA(2) and (3) of the *Act*, if the *FCA* imposes a requirement to suspend or remove a *financial instrument* from trading, the *FCA* must require any trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.
- 4.2D.8 G Under sections 313CB (2) and (3) of the *Act*, if the *FCA* receives notice that a *person* operating a trading venue has suspended or removed a *financial instrument* from trading on the trading venue because the instrument no longer complies with the venue's rules, the *FCA* must require any other trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.
- 4.2D.9 G The *FCA* receives notice for the purposes of *REC* 4.2D.8G when it is informed of the suspension or removal decision by the *RIE*, *investment firm*

with a Part 4A permission enabling it to carry on MiFID business, or CRD credit institution that operates the trading venue.

4.2D.10 G Under sections 313CC (2) and (3) of the Act, if the FCA receives notice that a competent authority of another EEA State has suspended or removed a financial instrument from trading on a trading venue or systematic internaliser pursuant to articles 32.2, 52.2 or 69.2 of MiFID, the FCA must require any trading venue or systematic internaliser falling under its jurisdiction as defined in section 313D of the Act, and which trades the same instrument, to suspend or remove the instrument from trading if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of inside information about the issuer or the instrument. The same applies in relation to a derivative which relates to or is referenced to the financial instrument. The FCA must revoke the requirement if the other EEA State informs the FCA it has lifted the suspension or removal.

4.2D.11 G The FCA receives notice for the purposes of REC 4.2D.10G when it is provided by a competent authority of another EEA State or ESMA in accordance with section 313CC(4) of the Act.

...

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) <i>recognition requirements</i> , other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph; <u>and</u>
	(ii) <u>requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation;</u>
(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 requirement₂; 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	Matter to be	Contents of	Trigger event	Time allowed
--------------	--------------	-------------	---------------	--------------

legislation or Handbook	notified	notification		
<i>UK RIEs</i>				
The Act <u>Acts</u> 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 <u>Act</u> 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>				
REC 3.4	Key individuals <u>Members of the management body</u> and internal organisation	Details of change	See REC 3.4	See REC 3.4
REC 3.5	Disciplinary action and events relating	Details of disciplinary	Disciplinary action or	Immediately

	to <i>key individuals</i> <i>members of the</i> <i>management body</i>	action or event	awareness of event	
...
REC 3.14A	Operation of a <i>regulated market</i> or <i>MTF trading</i> <i>venue</i>	Details of proposal to operate a new <i>regulated market</i> or <i>MTF trading</i> <i>venue</i> or close an existing <i>regulated</i> <i>market</i> or <i>MTF</i> <i>trading venue</i>	Communication of proposal to <i>members</i> or shareholders	Immediately
...

Annex P

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 Q

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:	
FIRM REFERENCE NUMBER (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.

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:	

**to be completed only if amended*

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

1.	Business plan	1.	Business plan
	(a) How will the branch contribute to the strategy of the firm/group?	(a)	
	(b) What will the main functions of the branch be?	(b)	
	(c) Describe the main objectives of the branch.	(c)	
2.	Commercial strategy	2.	Commercial strategy
	(a) Describe the types of clients/counterparties the branch will be dealing with.	(a)	
	(b) Describe how the firm will obtain and deal with these clients.	(b)	
3.	Organisational structure	3.	Organisational structure
	(a) Briefly describe how the branch fits into the corporate structure of the firm/group (This may be facilitated by attaching an organisational chart).	(a)	
	(b) Set out the organisational structure of the branch, showing functional, geographical and legal reporting lines.	(b)	
	(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)).	(c)	
	(d) Who will be responsible for the internal control functions at the branch?	(d)	
	(e) Who will be responsible for dealing with complaints in relation to the branch?	(e)	
	(f) How will the branch report to the head office?	(f)	
	(g) Detail any critical outsourcing arrangements.	(g)	
4.	Tied agents	4.	Tied agents
	(a) Will the branch use a tied agent?	(a)	

	(b) What is the identity of the tied agent?	(b)	
	(i) Name	(i)	
	(ii) Address	(ii)	
	(iii) Telephone	(iii)	
	(iv) E-mail	(iv)	
	(v) Contact point	(v)	
	(vi) Reference or hyperlink to the public register where the tied agent is registered	(vi)	
5.	Systems & controls	5.	Systems & controls
	Provide a brief summary of arrangements for:		
	(a) safeguarding client money and assets;	(a)	
	(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);	(b)	
	(c) staff code of conduct, including personal account dealing;	(c)	
	(d) anti-money laundering;	(d)	
	(e) monitoring and control of critical outsourcing arrangements (if applicable); and	(e)	
	(f) details of the accredited compensation scheme of which the investment firm is a member.	(f)	
6.	Financial forecast	6.	Financial forecast
	Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.		

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:	
FIRM REFERENCE NUMBER (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.

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:	
Reference or hyperlink to the public register where the tied agent is registered	

** to be completed only if amended*

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.

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

1.	Business plan and structural organisation of the tied agent	1.	Business plan and structural organisation of the tied agent
	(a) How will the tied agent contribute to the strategy of the firm/group?	(a)	
	(b) What will the main functions of the tied agent be?	(b)	
	(c) Describe the main objectives of the tied agent.	(c)	
2.	Commercial strategy	2.	Commercial strategy
	(a) Describe the types of clients/ counterparties the tied agent will be dealing with.	(a)	
	(b) Describe how the firm will obtain and deal with these clients.	(b)	
3.	Organisational structure	3.	Organisational structure
	(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).	(a)	
	(b) Set out the organisational structure of the tied agent, showing functional, geographical and legal reporting lines.	(b)	

	(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 attach CV(s));	(c)	
	(d) Who will be responsible for the internal control functions at the tied agent?	(d)	
	(e) Who will be responsible for dealing with complaints in relation to the tied agent?	(e)	
	(f) How will the tied agent report to the head office?	(f)	
	(g) Detail any critical outsourcing arrangements.	(g)	
4.	Systems & controls	4.	Systems & controls
	Provide a brief summary of arrangements for:		
	(a) safeguarding client money and assets (not applicable – see note 3);	(a)	
	(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);	(b)	
	(c) staff code of conduct, including	(c)	

	personal account dealing;		
	(d) anti-money laundering;	(d)	
	(e) monitoring and control of critical outsourcing arrangements (where applicable); and	(e)	
	(f) details of the accredited compensation scheme of which the investment firm is a member.	(f)	
5.	Financial forecast	5.	Financial forecast
	Attach a forecast statement for profit and loss and cash flow, both over an initial thirty-six-month period.		

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:	
FIRM REFERENCE NUMBER (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.

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:	
FIRM REFERENCE NUMBER (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.

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:	
FIRM REFERENCE NUMBER (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.

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:	
FIRM REFERENCE NUMBER (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.

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:	
FIRM REFERENCE NUMBER (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.

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	