

**MARKETS (MIFID) INSTRUMENT 2007****Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 293 (Notification requirements); and
  - (5) section 395(5) (The Authority's procedures).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 November 2007.

**Amendments to the Handbook**

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

(1)	(2)
Market Conduct sourcebook (MAR)	Annex A
Market Conduct sourcebook (MAR) – insertion of MAR 6	Annex B
Market Conduct sourcebook (MAR) – insertion of MAR 7	Annex C
Supervision Manual – SUP	Annex D
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex E
Decision Making manual (DEC)	Annex F

**Citation**

- E. This instrument may be cited as the Markets (MiFID) Instrument 2007.

By order of the Board  
25 January 2007

## Annex A

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Delete MAR 5 and replace it with the following chapter:

#### 5 Multilateral trading facilities (MTFs)

##### 5.1 Application

5.1.1 R This chapter applies to:

- (1) a *UK domestic firm* which operates an *MTF* from an establishment in the *United Kingdom* or elsewhere; or
- (2) an *overseas firm* which operates an *MTF* from an establishment in the *United Kingdom*.

5.1.2 R In this chapter, provisions marked "EU" apply to an *overseas firm* as if they were *rules*.

##### 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 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

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(1) of *MiFID*]

- (2) objective criteria for the efficient execution of orders;

[Note: Article 14(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(2) of *MiFID*]

- (4) transparent rules, based on objective criteria, governing access to its facility, which rules must provide that its members or participants

are *investment firms*, *BCD credit institutions* or other persons who:

- (a) are fit and proper;
- (b) have a sufficient level of trading ability and competence;
- (c) where applicable, have adequate organisational arrangements;
- (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) of *MiFID*]

- (5) where applicable must provide, or be satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgment, taking into account both the nature of the users and the types of instrument traded.

[Note: Subparagraph 2 of Article 14(2) of *MiFID*]

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 *FSA* 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.

- 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.

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 *FSA* 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.
- 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.

- 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.

Operation of a primary market in shares not admitted to trading on a regulated market

- 5.3.7 G The *FSA* will be minded to impose a variation on the *Part IV permission* of an *MTF* operator that operates a primary market in shares *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) of *MiFID*]

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 *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) of *MiFID*]

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 *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 or conduct that may involve market abuse.

[Note: Article 26(1) of *MiFID*]

5.6 Reporting requirements

5.6.1 R A *firm* operating an *MTF* must:

- (1) report to the *FSA*:
  - (a) significant breaches of the *firm's* rules;
  - (b) disorderly trading conditions; and
  - (c) conduct that may involve market abuse;
- (2) supply the information required under this *rule* without delay to the *FSA* and any other authority competent for the investigation and prosecution of market abuse; and
- (3) provide full assistance to the *FSA*, 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 26(2) of *MiFID*]

5.7 Pre-trade transparency requirements for shares

5.7.1 R Unless disapplication of this *rule* under *MAR* 5.7.6G is relevant, in respect of shares admitted to trading on a *regulated market*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and on a continuous basis during *normal trading hours*:

- (1) the current bid and offer prices which are advertised through its systems; and
- (2) the depth of trading interests at those prices.

[Note: Article 29(1) of *MiFID*]

Pre-trade information

- |       |    |  |
|-------|----|--|
| 5.7.2 | EU | <ol style="list-style-type: none"><li>1. An <i>investment firm</i> or <i>market operator</i> operating an <i>MTF</i> or a <i>regulated market</i> shall, in respect of each share <i>admitted to trading</i> on a <i>regulated market</i> that is traded within a system operated by it and specified in Table 1 of Annex II [of the <i>MiFID Regulation</i>], make public the information set out in paragraphs 2 to 6.</li><li>2. Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.</li></ol> |
|-------|----|--|

3.	<p>Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.</p> <p>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.</p> <p>In exceptional market conditions, however, one-way prices may be allowed for a limited time.</p>
4.	<p>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.</p>
5.	<p>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.</p> <p>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.</p>
6.	<p>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>].</p>
[Note: Article 17 of the <i>MiFID Regulation</i> ]	

5.7.3 EU Table 1: Information to be made public in accordance with Article 17

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	The aggregate number of orders and the shares they represent at each price level, for at least the five best bid and

	orders on the basis of the best available price on a continuous basis	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 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 first three rows	Adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two-way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit
[Note: Table 1, Annex II of the <i>MiFID Regulation</i> ]		

#### 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*]

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*]

#### Disapplication of the pre-trade transparency requirements

5.7.6 G The obligation in *MAR 5.7.1R* to make public certain pre-trade information will not be applied 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 will not be applied 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*]

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*]

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 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 *regulated market* or *MTF* 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 rules of the *regulated market* or *MTF* 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 [the *MiFID*] 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 *regulated market* or the *MTF* pending their being disclosed to the market.

[Note: Article 18 of the *MiFID Regulation*]

5.7.9

EU

For the purpose of Article 18(1)(b) [of the *MiFID Regulation*] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* 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 *client*;
- (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 *client* order.

[Note: Article 19 of the *MiFID Regulation*]

5.7.10

EU

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 *MiFID Regulation*]. 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 *MiFID Regulation*].

[Note: Article 20 of the *MiFID Regulation*]

5.7.11 EU Table 2: Orders large in scale compared with normal market size

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 *MiFID Regulation*]

5.7.12 G The *FSA* will publish on its website the calculations and estimates for shares *admitted to trading* on a *regulated market*, made by the *FSA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

5.8 Provisions common to pre- and post-trade transparency requirements for shares

5.8.1 EU For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the *MiFID*] Directive 2004/39/EC and of this [*MiFID*] *Regulation*, 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 an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: Article 30 of the *MiFID Regulation*]

5.8.2	EU	<p>Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the <i>MiFID Regulation</i>], shall satisfy the following conditions:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) it must facilitate the consolidation of the data with similar data from other sources;</li> <li>(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.</li> </ul> <p>[Note: Article 32 of the <i>MiFID Regulation</i>]</p>
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5.9 Post-trade transparency requirements for shares

5.9.1 R In respect of shares *admitted to trading on a regulated market*, and subject to the deferred publication provisions in *MAR 5.9.6EU* and *MAR 5.9.7R*, a *firm* operating an *MTF* must make public, on reasonable commercial terms and as close to real-time as possible, the price, volume and time of the transactions which are advertised through its systems. This requirement does not apply to the details of a transaction executed on an *MTF* that is made public under the systems of a *regulated market*.

[Note: Article 30(1) of *MiFID*]

5.9.2	EU	<p>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.</p> <p>[Note: Recital 18 to the <i>MiFID Regulation</i>]</p>
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Post-trade information

5.9.3	EU	<p>1. <i>Investment firms, regulated markets and investment firms and market operators</i> operating an <i>MTF</i> shall, with regard to transactions in respect of shares admitted to trading on <i>regulated markets</i> concluded by them or, in the case of <i>regulated markets</i> or <i>MTFs</i>, within their systems, make public the following details:</p> <ul style="list-style-type: none"> <li>(a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [of the <i>MiFID Regulation</i>];</li> <li>(b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;</li> </ul>
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- (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 27(1) of the *MiFID Regulation*]

#### Publication of post-trade information

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|-------|----|--|
| 5.9.4 | EU | <p>2. ... post-trade information relating to transactions taking place on trading venues within <i>normal trading hours</i>, 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.</p> <p>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. Each constituent transaction shall be assessed separately for the purpose of determining whether deferred publication in respect of that transaction is available under Article 28 [of the <i>MiFID Regulation</i>].</p> <p>4. Post-trade information relating to transactions taking place on a trading venue but outside its <i>normal trading hours</i> shall be made public before the opening of the next trading day of the trading venue on which the transaction took place.</p> |
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[Note: Article 29 (2) to (4) of the *MiFID Regulation*]

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|-------|----|--|
| 5.9.5 | EU | <p>1. ... A reference to the opening of the trading day shall be a reference to the commencement of the <i>normal trading hours</i> of the trading venue....</p> |
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[Note: Article 4(1) of the *MiFID Regulation*]

#### Deferred publication of post-trade information

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|-------|----|--|
| 5.9.6 | EU | <p>The deferred publication of information in respect of transactions may be authorised, for a period no longer than the period specified in Table 4 in Annex II [of the <i>MiFID Regulation</i>] [reproduced in <i>MAR 7 Annex 1</i>] for the class of share and transaction concerned, provided that the following criteria are satisfied:</p> <ul style="list-style-type: none"> <li>(a) the transaction is between an <i>investment firm dealing on own account</i> and a <i>client</i> of that firm;</li> </ul> |
|-------|----|--|

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 [of the *MiFID Regulation*].

[Note: Article 28 of the *MiFID Regulation*]

5.9.7 R An *MTF* must obtain the prior approval of the *FSA* to proposed arrangements for deferred post-trade publication and must clearly disclose such arrangements to market participants and the investing public.

[Note: Article 30(2) of *MiFID*]

## Annex B

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Insert the following text as MAR 6:

#### 6.1 Application

- 6.1.1 R Except as regards the reporting requirement in *MAR 6.4.1R*, this chapter applies to:
- (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.
- 6.1.2 R The *systematic internaliser* reporting requirement in *MAR 6.4.1R* applies to an *investment firm* which is authorised by the *FSA*.
- 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*.

#### 6.2 Purpose

- 6.2.1 G The purpose of this chapter is to implement Article 27 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. It also provides a rule requiring *investment firms* to notify the *FSA* when they become, or cease to be, a *systematic internaliser*, and which gives effect to Article 21(4) of the *MiFID Regulation*. The chapter sets out for reference other provisions of the *MiFID Regulation* relevant to the articles being implemented.

#### 6.3 Criteria for determining whether an investment firm is a systematic internaliser

- 6.3.1 EU 1. Where an *investment firm deals on own account* by executing *client orders* outside a *regulated market* or an *MTF*, it shall be treated as a *systematic internaliser* if it meets the following criteria indicating that it performs that activity on an organised, frequent and systematic basis:
- (a) the activity has a material commercial role for the *firm* and is carried on in accordance with non-discretionary rules and procedures;
  - (b) the activity is carried on by personnel, or by means of an automated technical system, assigned to that purpose,

	<p>irrespective of whether those personnel or that system are used exclusively for that purpose;</p> <p>(c) the activity is available to <i>clients</i> on a regular or continuous basis.</p> <p>2. An <i>investment firm</i> will cease to be a <i>systematic internaliser</i> in one or more shares if it ceases to carry on the activity specified in paragraph 1 in respect of those shares, provided that it has announced in advance that it intends to cease that activity using the same publication channels for that announcement as it uses to publish its quotes or, where that is not possible, using a channel which is equally accessible to its <i>clients</i> and other market participants.</p> <p>3. The activity of <i>dealing on own account</i> by executing <i>client</i> orders shall not be treated as performed on an organised, frequent and systematic basis where the following conditions apply:</p> <p>(a) the activity is performed on an ad-hoc and irregular bilateral basis with wholesale counterparties as part of business relationships which are themselves characterised by dealings above standard market size;</p> <p>(b) the transactions are carried out outside the systems habitually used by the <i>firm</i> concerned for any business that it carries out in the capacity of a <i>systematic internaliser</i>.</p>
	[Note: Article 21(1) to (3) of the <i>MiFID Regulation</i> ]

6.3.2	EU	<p>An activity should be considered as having a material commercial role for an <i>investment firm</i> if the activity is a significant source of revenue, or a significant source of cost. An assessment of significance for these purposes should, in every case, take into account the extent to which the activity is conducted or organised separately, the monetary value of the activity, and its comparative significance by reference both to the overall business of the firm and to its overall activity in the market for the share concerned in which the firm operates. It should be possible to consider an activity to be a significant source of revenue for a firm even if only one or two of the factors mentioned is relevant in a particular case.</p>
		[Note: Recital 15 to the <i>MiFID Regulation</i> ]

6.4 Systematic internaliser reporting requirement

6.4.1	R	<p>An <i>investment firm</i>, which is authorised by the <i>FSA</i>, must promptly notify the <i>FSA</i> in writing of its status as a <i>systematic internaliser</i> in respect of shares <i>admitted to trading</i> on a <i>regulated market</i>:</p>
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- (1) when it gains that status; or
- (2) if it ceases to have that status.

[Note: Article 21(4) of the *MiFID Regulation*]

6.4.2 G The notification under *MAR* 6.4.1R can be addressed to the *firm's* usual supervisory contact at the *FSA*.

6.5 Obligations on systematic internalisers in shares to make public firm quotes

6.5.1 R A *systematic internaliser* in shares when dealing in sizes up to standard market size must publish a firm quote in relation to any share *admitted to trading* on a *regulated market* for which it is:

- (1) a *systematic internaliser* in that share; and
- (2) there is a liquid market for that share.

[Note: Subparagraphs 1 and 2 of Article 27(1) of *MiFID*]

6.5.2 R Where there is no liquid market for a share, the *systematic internaliser* must disclose quotes to its *clients* on request.

[Note: Subparagraph 1 of Article 27(1) of *MiFID*]

6.5.3 R A *systematic internaliser* may:

- (1) update a quote at any time; and
- (2) under exceptional market conditions, withdraw a quote.

[Note: Subparagraph 1 of Article 27(3) of *MiFID*]

6.6 Size and content of quotes

6.6.1 R (1) A *systematic internaliser* may decide the size or sizes at which it will quote.

- (2) The quote can be up to standard market size for the class of shares to which the share belongs.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.6.2 R Each quote must include:

- (1) a firm bid price; or
- (2) a firm offer price;

in respect of each size for which the *systematic internaliser* quotes.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]



6.6.3 G A *systematic internaliser* is not obliged to publish firm quotes in relation to transactions above standard market size.

[Note: Recital 51 to *MiFID*]

6.7 Prices reflecting prevailing market conditions

6.7.1 R A firm bid or offer price in respect of a particular share must reflect the prevailing market conditions for that share.

[Note: Subparagraph 3 of Article 27(1) of *MiFID*]

6.7.2 EU A *systematic internaliser* shall, for each liquid share for which it is a *systematic internaliser*, maintain the following:

(a) a quote or quotes which are close in price to comparable quotes for the same share in other trading venues; and

(b) a record of its quoted prices, which it shall retain for a period of 12 months or such longer period as it considers appropriate.

The obligation laid down in point (b) is without prejudice to the obligation of the *investment firm* under Article 25(2) [implemented at *SUP* 17.4.6R] of [the *MiFID*] Directive 2004/39/EC to keep at the disposal of the competent authority for at least 5 years the relevant data relating to all transactions it has carried out.

[Note: Article 24 of the *MiFID Regulation*]

6.8 Liquid market for shares, share class, standard market size and relevant market

6.8.1 G A *systematic internaliser* will need to refer to the provisions in *MAR* 6.8.3EU, *MAR* 6.8.4EU, *MAR* 6.8.5EU, *MAR* 6.8.6EU and *MAR* 6.8.7EU and the material the *FSA* publishes in relation to those provisions to determine:

(1) whether there is a liquid market for a share;

(2) the class to which a share should be allocated;

(3) the standard market size for each class of shares; and

(4) the relevant market for a share.

[Note: Article 27(1), (2) and (7) of *MiFID*]

6.8.2 G The *FSA* will publish on its website the material referred to in *MAR* 6.8.1R as regards liquid market for shares, share class, standard market size and the relevant market for a share.

6.8.3 EU Shares not traded daily should not be considered as having a liquid market for the purposes of [the *MiFID*] Directive 2004/39/EC. However, if, for exceptional reasons, trading in a share is suspended for reasons related to

the preservation of an orderly market or force majeure and therefore a share is not traded during some trading days, this should not mean that the share cannot be considered to have a liquid market.

[Note: Recital 16 to the *MiFID Regulation*]

6.8.4

EU

1. The most relevant market in terms of liquidity for a financial instrument which is *admitted to trading* on a *regulated market*, hereinafter "the most relevant market", shall be determined in accordance with paragraphs 2 to 8.
2. In the case of a share or other transferable security covered by Article 4(1)(18)(a) of [the *MiFID*] Directive 2004/39/EC or of a unit in a collective investment undertaking, the most relevant market shall be the Member State where the share or the unit was first *admitted to trading* on a *regulated market*. ...
8. Where a financial instrument covered by paragraphs 2 ... was first *admitted to trading* on more than one *regulated market* simultaneously, and all those *regulated markets* share the same home Member State, that Member State shall be the most relevant market.  
  
Where the *regulated markets* concerned do not share the same home Member State, the most relevant market in terms of liquidity for that instrument shall be the market where the turnover of that instrument is highest.  
  
For the purposes of determining the most relevant market where the turnover of the instrument is highest, each competent authority that has authorised one of the *regulated markets* concerned shall calculate the turnover for that instrument in its respective market for the previous calendar year, provided that the instrument was *admitted to trading* at the beginning of that year.  
  
Where the turnover for the relevant financial instrument cannot be calculated by reason of insufficient or non-existent data and the issuer has its registered office in a Member State, the most relevant market shall be the market of the Member State where the registered office of the *issuer* is situated.  
  
However, where the *issuer* does not have its registered office in a Member State, the most relevant market for that instrument shall be the market where the turnover of the relevant instrument class is the highest. For the purposes of determining that market, each *competent authority* that has authorised one of the *regulated markets* concerned shall calculate the turnover of the instruments of the same class in its respective market for the preceding calendar year.  
  
The relevant classes of financial instrument are the following:  
  
(a) shares; ...

[Note: Article 9(1),(2) and (8) of the *MiFID Regulation*]

1. A share admitted to trading on a *regulated market* shall be considered to have a liquid market if the share is traded daily, with a free float of less than EUR 500 million, and one of the following conditions is satisfied:
  - (a) the average daily number of transactions in the share is not less than 500;
  - (b) the average daily turnover for the share is not less than EUR 2 million.

However, a Member State may, in respect of shares for which it is the most relevant market, specify by notice that both those conditions are to apply. That notice shall be made public.

2. A Member State may specify the minimum number of liquid shares for that Member State. The minimum number shall be no greater than five. The specification shall be made public.
3. Where, pursuant to paragraph 1, a Member State would be the most relevant market for fewer liquid shares than the minimum number specified in accordance with paragraph 2, the *competent authority* for that Member State may designate one or more additional liquid shares, provided that the total number of shares which are considered in consequence to be liquid shares for which that Member State is the most relevant market does not exceed the minimum number specified by that Member State.

The *competent authority* shall designate the additional liquid shares successively in decreasing order of average daily turnover from among the shares for which it is the relevant *competent authority* that are *admitted to trading* on a *regulated market* and are traded daily.

4. For the purposes of the first subparagraph of paragraph 1, the calculation of the free float of a share shall exclude holdings exceeding 5% of the total voting rights of the *issuer*, unless such a holding is held by a collective investment undertaking or a pension fund.

Voting rights shall be calculated on the basis of all the shares to which voting rights are attached, even if the exercise of such a right is suspended.

5. A share shall not be considered to have a liquid market for the purposes of Article 27 of [the *MiFID*] Directive 2004/39/EC until six weeks after its first *admission to trading* on a *regulated market*, if the estimate of the total market capitalisation for that share at the start of the first day's trading after that admission, provided in accordance with Article 33(3) [of the *MiFID Regulation*], is less than EUR 500 million.

6. Each *competent authority* shall ensure the maintenance and publication of a list of all liquid shares for which it is the relevant *competent authority*.

It shall ensure the list is current by reviewing it at least annually.

The list shall be made available to the Committee of European Securities Regulators. It shall be considered as published when it is published by the Committee of European Securities Regulators in accordance with Article 34(5) [of the *MiFID Regulation*].

[Note: Article 22 of the *MiFID Regulation*]

6.8.6 EU In order to determine the standard market size for liquid shares, those shares shall be grouped into classes in terms of the average value of orders executed in accordance with Table 3 in Annex II [of the *MiFID Regulation*].

[Note: Article 23 of the *MiFID Regulation*]

6.8.7 EU Table 3: Standard market sizes

Class in terms of average value of transactions (AVT)	AVT < €10 000	€10 000 ≤ AVT < €20 000	€20 000 ≤ AVT < €30 000	€30 000 ≤ AVT < €40 000	€40 000 ≤ AVT < €50 000	€50 000 ≤ AVT < €70 000	€70 000 ≤ AVT < €90 000	Etc
	€10 000	≤ AVT < €20 000	≤ AVT < €30 000	≤ AVT < €40 000	≤ AVT < €50 000	≤ AVT < €70 000	≤ AVT < €90 000	
Standard market size	€7 500	€15 000	€25 000	€35 000	€45 000	€60 000	€80 000	Etc

[Note: Table 3 of Annex II of the *MiFID Regulation*]

6.8.8 G The *FSA* will publish on its website the calculations and estimates for shares admitted to trading on a regulated market, made by the *FSA* under the provisions in Articles 33 and 34 of the *MiFID Regulation*.

6.9 Publication of quotes

6.9.1 R Where a publication obligation arises under *MAR* 6.5.1R, a *systematic internaliser* must make its quotes public:

- (1) on a regular and continuous basis during normal trading hours; and
- (2) in a manner which is easily accessible to other market participants on a reasonable commercial basis.

[Note: Subparagraphs 1 and 2 of Article 27(3) of *MiFID*]

6.9.2 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

	<p><i>regulated market, MTF or systematic internaliser</i> concerned, and remains available until it is updated.</p> <p>2. Pre-trade information, and post-trade information relating to transactions taking place within <i>normal trading hours</i>, 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.</p> <p>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. Each constituent transaction shall be assessed separately for the purposes of determining whether deferred publication in respect of the transaction is available under Article 28 [of the <i>MiFID Regulation</i>].</p>
	[Note: Article 29(1) to (3) of the <i>MiFID Regulation</i> ]

6.9.3	EU	Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter period of time.
		[Note: Recital 18 to the <i>MiFID Regulation</i> ]

6.9.4	EU	For the purposes of Articles 27, 28, 29, 30, 44 and 45 of [the <i>MiFID</i> ] Directive 2004/39/EC and of this Regulation, pre- and post-trade information shall be considered to have been made public or available to the public if it is made available generally through one of the following to investors located in the Community: <ul style="list-style-type: none"> <li>(a) the facilities of a <i>regulated market</i> or an <i>MTF</i>;</li> <li>(b) the facilities of a third party;</li> <li>(c) proprietary arrangements.</li> </ul>
		[Note: Article 30 of the <i>MiFID Regulation</i> ]

6.9.5	EU	Any arrangement to make information public, adopted for the purposes of Articles 30 and 31 [of the <i>MiFID Regulation</i> ] shall satisfy the following conditions: <ul style="list-style-type: none"> <li>(a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for</li> </ul>
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	errors, and corrected as soon as errors are detected;
(b)	it must facilitate the consolidation of the data with similar data from other sources;
(c)	it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.
[Note: Article 32 of the <i>MiFID Regulation</i> ]	

## 6.10 Execution price of retail client orders

- 6.10.1 R A *systematic internaliser* must, while complying with the obligation to execute orders on terms most favourable to the *client* set out in *COBS* 12.2, execute an order up to standard market size received from a *retail client* in relation to shares for which it is a *systematic internaliser*:
- (1) at the price quoted at the time of the reception of the order; or
  - (2) if the order does not match the quotation size or sizes, in compliance with the execution price rules in *MAR* 6.12.1R or *MAR* 6.12.2R.

[Note: Subparagraphs 3 and 6 of Article 27(3) of *MiFID*]

## 6.11 Execution price of professional client orders

- 6.11.1 R A *systematic internaliser* may execute an order up to standard market size received from a *professional client* in relation to shares for which it is a *systematic internaliser*:
- (1) at the price quoted at the time of the reception of the order; or
  - (2) at a better price for the *professional client* where:
    - (a) this price falls within a published range close to market conditions; and
    - (b) the order is of a size bigger than the size customarily undertaken by a retail investor; or
  - (3) at a different price which benefits the *professional client* where:
    - (a) execution in several securities is part of one transaction; or
    - (b) the order is subject to conditions other than the current market price.

[Note: Subparagraphs 4 and 5 of Article 27(3) of *MiFID*]

- |        |    |  |
|--------|----|--|
| 6.11.2 | EU | For the purposes of the fourth subparagraph of Article 27(3) of [the <i>MiFID</i> ] Directive 2004/39/EC, an order shall be regarded as being of a size bigger than the size customarily undertaken by a retail investor if it exceeds |
|--------|----|--|

EUR 7 500.

[Note: Article 26 of the *MiFID Regulation*]

- 6.11.3 EU 1. For the purposes of the fifth sub-paragraph of Article 27(3) of [the *MiFID*] Directive 2004/39/EC, execution in several securities shall be regarded as part of one transaction if that one transaction is a portfolio trade that involves 10 or more securities.
- For the same purposes, an order subject to conditions other than the current market price means any order which is neither an order for the execution of a transaction in shares at the prevailing market price, nor a *limit order*.

[Note: Article 25(1) of the *MiFID Regulation*]

6.12 Execution price of client orders not matching quotation sizes

6.12.1 R Where a *systematic internaliser* quotes:

- (1) in only one quote in a share; or
- (2) its highest quote is lower than the standard market size for the class of shares to which the share belongs;

and it receives a *client* order that is bigger than the quotation size, but lower than the standard market size, the order may be executed, but that part of the order which exceeds the quotation size must either be executed at the quoted price or, if it is a *professional client* order, as permitted under the execution price provisions in *MAR* 6.11.1R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.12.2 R Where a *systematic internaliser* quotes in different sizes and it receives a *client* order between those sizes, the order may be executed:

- (1) at one of the quoted prices in compliance with the *client* order handling rules set out in *COBS* 12.3, *COBS* 12.4.1R and *COBS* 12.4.5R; or
- (2) if it is a *professional client* order, as permitted under the execution price provisions in *MAR* 6.11.1R.

[Note: Subparagraph 6 of Article 27(3) of *MiFID*]

6.13 Standards and conditions for trading

6.13.1 R A *systematic internaliser* must have clear standards which set out and govern the basis on which it will decide which investors are given access to its quotes. The standards must operate:

- (1) in an objective, non-discriminatory way within the categories of *retail* and *professional clients*; and

(2) on the basis of its commercial policy, including considerations such as:

- (i) investor credit status;
- (ii) counterparty risk; and
- (iii) final settlement of the transaction;

and a *systematic internaliser* may refuse to enter into or discontinue business relationships with investors on this policy basis.

[Note: Recital 50 and Article 27(5) of *MiFID*]

6.13.2 G *Systematic internalisers* might decide to give access to their quotes only to *retail clients*, only to *professional clients*, or to both. They should not be allowed to discriminate within those categories of *clients*.

[Note: Recital 50 to *MiFID*]

6.14 Limiting risk of exposure to multiple transactions

6.14.1 R A *systematic internaliser* may limit the number of transactions from the same *client* that it undertakes to enter at the published quote, provided it does so in a non-discriminatory way within the categories of *retail* and *professional clients*.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.2 R A *systematic internaliser* may limit the total number of transactions from different *clients* at the same time that it undertakes to enter at the published quote, provided that it does so:

- (1) in a non-discriminatory way within the categories of *retail* and *professional clients*;
- (2) in accordance with the provisions of the *client* order handling rules set out in *COBS* 12.3, *COBS* 12.4.1R and *COBS* 12.4.5R; and
- (3) that the number or volume of orders sought by *clients* considerably exceeds the norm.

[Note: Recital 50 and Article 27(6) of *MiFID*]

6.14.3	EU	2. For the purposes of Article 27(6) of [the <i>MiFID</i> ] Directive 2004/39/EC, the number or volume of orders shall be regarded as considerably exceeding the norm if a <i>systematic internaliser</i> cannot execute those orders without exposing itself to undue risk.  In order to identify the number and volume of orders that it can execute without exposing itself to undue risk, a <i>systematic internaliser</i> shall maintain and implement as part of its risk management policy under Article 7 of Commission Directive
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2006/73/EC [the *MiFID implementing Directive*] a non-discriminatory policy which takes into account the volume of the transactions, the capital that the firm has available to cover the risk for that type of trade, and the prevailing conditions in the market in which the *firm* is operating.

3. Where, in accordance with Article 27(6) of [the *MiFID*] Directive 2004/39/EC, an *investment firm* limits the number or volume of orders it undertakes to execute, it shall set out in writing, and make available to *clients* and potential *clients*, the arrangements designed to ensure that such a limitation does not result in the discriminatory treatment of *clients*.

[Note: Article 25(2) and (3) of the *MiFID Regulation*]

Insert the following text into MAR TP 1. In this section underlining indicates new text.

MAR TP 1

Transitional Provisions

...

3) Transitional provisions for *MAR 6* (*systematic internaliser* reporting requirements)

A provision giving effect to Article 21 (4) of the *MiFID Regulation* as regards creating the initial list of all *systematic internalisers*.

(1)	(2) Material provision to which transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
<u>2</u>	<u>MAR 6</u>	<u>R</u>	<u>An investment firm, which is authorised by the FSA, must notify the FSA in writing by 1 December 2007 if at 1 November 2007 it is a systematic internaliser in respect of shares admitted to trading on a regulated market.</u>	<u>From 1 November 2007 to 2 December 2007</u>	<u>1 November 2007</u>

## Annex C

### Amendments to the Market Conduct sourcebook (MAR)

In this Annex, all the text is new and is not underlined.

Insert the following text as MAR 7:

7 Disclosure of information on certain trades undertaken outside a regulated market or MTF

7.1 Application

Who?

7.1.1 R This chapter applies to:

- (1) a *MiFID investment firm*; and to
- (2) a *third country investment firm*.

What?

7.1.2 R A *firm*, which, either on its own account or on behalf of *clients*, concludes *transactions* in shares *admitted to trading* on a *regulated market* outside a *regulated market* or *MTF*, must make public the volume and price of those *transactions* and the time at which they were concluded.

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

Where?

7.1.3 R This chapter applies in respect of *transactions* in shares (which are admitted to trading on a *regulated market*) executed in the *United Kingdom*.

7.1.4 G Article 32 (7) of *MiFID* provides that the *competent authority* of the Member State in which a *branch* is located shall assume responsibility for ensuring that the services provided by the *branch* within its territory comply with the obligations under Article 28.

Status of EU provisions as rules in certain instances

7.1.5 R In this chapter, paragraphs marked "EU", including *MAR 7 Ann 1 EU*, shall

apply to a *third country investment firm* as if those provisions were *rules*.

## 7.2 Making post-trade information public

### Publication of information

- 7.2.1 R The information required by *MAR 7.1.2R* shall be made public as close to real-time as possible, on a reasonable commercial basis, and in a manner which is easily accessible to other market participants.

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

### Details of information to be made public

- 7.2.2 EU A *firm* ... shall, with regard to *transactions* in respect of shares *admitted to trading on regulated markets* concluded by them ... make public the following details:

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of *SUP 17 Ann 1EU*;
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable;
- (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 time.

[Note: article 27(1) of the *MiFID Regulation*]

### Information requirements specific to systematic internalisers

- 7.2.3 EU By way of exception, a *systematic internaliser* shall be entitled to use the acronym 'SI' instead of the venue identification referred to in *MAR 7.2.2EU (a)* in respect of a *transaction* in a share that is executed in its capacity as a *systematic internaliser* in respect of that share.

The *systematic internaliser* may exercise that right only as long as it makes available to the public aggregate quarterly data as to the *transactions* executed in its capacity as a *systematic internaliser* in respect of that share relating to the most recent calendar quarter, or part of a calendar quarter, during which the firm acted as a *systematic internaliser* in respect of that share. That data shall be made available no later than one month after the end of each calendar

quarter.

It may also exercise that right during the period between 1 November 2007, or the date on which the firm commences to be a *systematic internaliser* in relation to a share, whichever is the later, and the date that aggregate quarterly data in relation to a share is first due to be published.

[Note: article 27(2) of the *MiFID Regulation*. The date, '1 November 2007', is specified in article 41(2) of the *MiFID Regulation*]

7.2.4 EU The aggregated quarterly data referred to in the second subparagraph of *MAR* 7.2.3EU shall contain the following information for the share in respect of each *trading day* of the calendar quarter concerned:

- (a) the highest price;
- (b) the lowest price;
- (c) the average price;
- (d) the total number of shares traded;
- (e) the total number of *transactions*;
- (f) such other information as the *systematic internaliser* decides to make available.

[Note: article 27(3) of the *MiFID Regulation*]

#### Arrangements between firms for making information public

7.2.5 EU Where the *transaction* is executed outside the rules of a *regulated market* or an *MTF*, one of the following ... *firms* shall, by agreement between the parties, arrange to make the information public:

- (a) the *firm* that sells the share concerned;
- (b) the *firm* that acts on behalf of or arranges the *transaction* for the seller;
- (c) the *firm* that acts on behalf of or arranges the *transaction* for the buyer;
- (d) the *firm* that buys the share concerned.

In the absence of such an agreement, the information shall be made public by the *firm* determined by proceeding sequentially from point (a) to point (d) until the first point that applies to the case in question.

The parties shall take all reasonable steps to ensure that the *transaction* is made public as a single *transaction*. For those purposes two matching trades entered at the same time with a single party interposed shall be considered to be a single *transaction*.

[Note: article 27(4) of the *MiFID Regulation*]

#### Deferred publication of large transactions

7.2.6 EU The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in *MAR 7 Ann1EU* for the class of share and *transaction* concerned, provided that the following criteria are satisfied:

- (a) the *transaction* is between an investment *firm dealing on own account* and a *client* of that firm;
- (b) the size of the *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in *MAR 7 Ann1EU*.

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading* on a *regulated market* shall be classified in accordance with their average daily *turnover* to be calculated in accordance with Article 33 of the *MiFID Regulation*.

[Note: article 28 of the *MiFID Regulation*]

#### Publication and availability of post trade transparency data

7.2.7 EU Post-trade information relating to *transactions* taking place on *trading venues* 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*.

[Note: article 29(2) of the *MiFID Regulation*]

7.2.8 EU 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. Each constituent *transaction* shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under *MAR 7.2.6EU*.

[Note: article 29(3) of the *MiFID Regulation*]

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7.2.9 EU Post-trade information relating to *transactions* taking place on a *trading venue* but outside its normal trading hours shall be made public before the opening of the next *trading day* of the *trading venue* on which the *transaction* took place.

[Note: article 29(4) of the *MiFID Regulation*]

7.2.10 EU For *transactions* that take place outside a *trading venue*, post-trade information shall be made public:

- (a) if the *transaction* takes place during a *trading day* of the most relevant market for the share concerned, or during the *firm's* normal trading hours, 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*;
- (b) in a case not covered by point (a), immediately upon the commencement of the *firm's* normal trading hours or at the latest before the opening of the next *trading day* in the most relevant market for that share.

[Note: article 29(5) of the *MiFID Regulation*.]

#### Public availability of post-trade information

7.2.11 EU For the purposes of *MAR 7*, 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 an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

[Note: article 30 of the *MiFID Regulation*]

#### Arrangements for making information public

7.2.12 EU Any arrangement to make information public, adopted for the purposes of *MAR 7.2.11EU*, 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

<p>errors, and corrected as soon as errors are detected;</p> <p>(b) it must facilitate the consolidation of the data with similar data from other sources;</p> <p>(c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.</p>
<p>[Note: article 32 of the <i>MiFID Regulation</i>]</p>

Publication of results of calculations and estimates made by the FSA.

- 7.2.13 G The information relating to 'minimum qualifying size' referred to in Article 28 of the *MiFID Regulation* (see *MAR 7.2.6EU*) and the results of calculations and estimates required to be published as a result of Articles 33 and 34 of the *MiFID Regulation* are available at [*insert FSA web-site address*] and at [*insert CESR web address*].

#### Trade Data Monitors

- 7.2.14 G A trade data monitor is a provider of services and facilities for the verification of post-trade information as contemplated by this chapter and an approved trade data monitor is a provider which has been assessed by the *FSA* as having the capacity to provide services and facilities in accordance with the service criteria published on the *FSA's* web-site at [*insert FSA web-site address*].

The *FSA* will consider that use of an approved trade data monitor by a *firm* will satisfy a *firm's* obligations under *MAR 7.2.12EU*, though the approved trade data monitor must continue to have the capacity to provide the services and facilities in accordance with the above service criteria at the time that the *firm* uses the approved trade data monitor.

Use of an approved trade data monitor does not affect a *firm's* obligations under *MAR 7.2.10EU* regarding the timing of the disclosure of post-trade information.

#### MAR 7 Annex 1

EU *MAR 7 Ann1EU*: Deferred publication thresholds and delays

Table 4: Deferred publication thresholds and delays

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 shares in terms of average daily turnover (ADT)			
		ADT < €100 000	€100 000 ≤ ADT < €1 000 000	€1 000 000 ≤ ADT < €50 000 000	ADT ≥ €50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	€10 000	Greater of 5% of ADT and €25 000	Lower of 10% of ADT and €3 500 000	Lower of 10% of ADT and €7 500 000
	180 minutes	€25 000	Greater of 15% of ADT and €75 000	Lower of 15% of ADT and €5 000 000	Lower of 20% of ADT and €15 000 000
	Until end of <i>trading day</i> (or roll-over to noon of next <i>trading day</i> if trade undertaken in final 2 hours of <i>trading day</i> )	€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 <i>trading day</i> 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 <i>trading day</i> next after trade	€80 000	100% of ADT	100% of ADT	250% of ADT
	Until end of third <i>trading day</i> next after trade		250% of ADT	250% of ADT	

## Annex D

### Amendments to the Supervision manual (SUP)

In this Annex, all the text is new and is not underlined.

Delete SUP 17 and replace it with the following chapter:

#### 17 Transaction Reporting

##### 17.1 Application

Who?

17.1.1 R This chapter applies to:

- (1) a *MiFID investment firm*;
- (2) a *third country investment firm*; and to
- (3) a *person* who is the operator of an *approved reporting mechanism* or of a *regulated market* or *MTF* that is used by a *firm* to report *transactions* to the *FSA*; and
- (4) a firm acting in its capacity as a manager or operator of:
  - (i) a *collective investment undertaking*; or
  - (ii) a *pension scheme*; or
  - (iii) an *occupational pension scheme*; or
  - (iv) a *personal pension scheme*; or
  - (v) a *stakeholder pension scheme*.

17.1.2 G Article 32(7) of *MiFID* requires the *FSA* to apply the *transaction* reporting requirements in Article 25 to the *UK branches* of *EEA investment firms* and branches of *credit institutions* in respect of reportable transactions arising in the course of services provided in the UK.

17.1.3 G Article 32(7) of *MiFID* provides that the branch of a *UK firm* operating from an establishment in another *EEA state* must satisfy the *transaction* reporting requirements of the *competent authority* in that other Member State in respect of reportable transactions arising in the course of services provided in that other Member State.

What?

- 17.1.4 R A *firm* which executes a *transaction*:
- (1) in any *financial instrument* admitted to trading on a *regulated market* or a *prescribed market* (whether or not the *transaction* was carried out on such a market); or
  - (2) in any *OTC derivative* the value of which is derived from, or which is otherwise dependent upon, an equity or debt-related *financial instrument* which is *admitted to trading* on a *regulated market* or on a *prescribed market*;

must report the details of the *transaction* to the *FSA*.

[Note: article 25(3) of *MiFID*].

Where?

- 17.1.5 R This chapter applies in respect of transactions executed in the *United Kingdom*.

Status of EU provisions as rules in certain instances

- 17.1.6 R In this chapter, paragraphs marked "EU", including *SUP 17 Ann 1EU*, shall apply to a *firm* as if those provisions were *rules* to the extent that it executes a *transaction* in a *financial instrument* which is specified by *SUP 17.1.4R* but which is beyond the scope of article 25(3) of *MiFID*.

Guidance on the reporting of certain transactions

- 17.1.7 G (1) The movement, reallocation or transfer of *financial instruments* within the accounts of one legal entity will be reportable where the movement, reallocation or transfer is as a result of an agreement to transfer rights in a *financial instrument* to which this chapter applies between *clients* of the *firm* or between the *firm* (or a member of its *group*) and a *client*, and where the movement, reallocation or transfer involves a *transaction* within the meaning of Article 5 of the *MiFID Regulation*.
- (2) For a rolling *spread bet*, only the initial opening of the betting contract and the final closure of the contract need to be reported. Openings and closings for technical purposes such as daily roll-over, which are intended to maintain a particular *spread bet* position, need not be reported. Final closings of a portion of a bet should be reported as required by *SUP 17.2.7R*.

## 17.2 Making transaction reports

Transaction reports made through third party agents

- 17.2.1 R A *firm* may rely on a third party acting on the firm's behalf to make a *transaction* report to the *FSA*.

[Note: article 25(5) of *MiFID*]

- 17.2.2 G The *FSA* will treat a *firm* as acting in accordance with *SUP* 17.2.1R in circumstances where the *firm* enters into a *transaction* with another *person* in the course of providing a service of *portfolio management* on behalf of one or more clients, provided it:
- (1) enters into the *transaction* in the exercise of a discretion conferred on it by an investment mandate or does so having specifically recommended the *transaction* to its *client*;
  - (2) has reasonable grounds to be satisfied that the other *person* will, in respect of the *transaction*, make a *transaction report* to the *FSA* (or to another *competent authority*) which, as to content, will include all such information as would have been contained in a *transaction report* by the *firm* (other than as to the identity of the *firm's client*).

Transaction reports made through trade matching or reporting systems, regulated markets or MTFs

- 17.2.3 R A *firm* is relieved of its obligation to make a *transaction report* if the *transaction* is instead reported directly to the *FSA* by a trade-matching or reporting system approved by the *FSA*, or by a *regulated market* or *MTF* through whose systems the *transaction* was completed.
- [Note: article 25(5) of *MiFID*]

Verifying that transaction reports will be made

- 17.2.4 G The *FSA* will expect a *firm* which seeks to rely upon the waiver in *SUP* 17.2.3R to take reasonable steps to verify that *transaction reports* will be made in accordance with the standards laid down in this chapter and in particular should ascertain and remain satisfied that:
- (1) the provider of the *transaction reporting facility* maintains an automated reporting system which the *firm* is able to access through the efficient inputting of *transactions* into the system;
  - (2) the terms of the agreement between itself and the relevant trade matching or reporting system, *regulated market* or *MTF*, make appropriate provision obliging the provider of the transaction reporting service to make *transaction reports* on its behalf;
  - (3) the arrangements provide for confirmation in each case that a *transaction report* has been made on its behalf.

Compliance by trade matching or reporting systems or MTFs with the provisions of this Chapter

- 17.2.5 R The operator of a trade-matching or reporting system approved by the *FSA*, or the operator of an *MTF* or a *market operator* through whose systems a reportable *transaction* is to be completed and which has, pursuant to *SUP* 17.2.3R, agreed to make *transaction reports* to the *FSA* on behalf of a *firm*, must:

- (1) make reports to the *FSA* in respect of each *transaction* to which the agreement relates; and
- (2) ensure such reports conform with the requirements of this chapter (both as to the time limits for making reports and as to content) as if it were the transacting *firm*.

- 17.2.6 G
- (1) A *transaction* report should distinguish each individual *transaction*, using the *firm's* identifying code.
  - (2) Reporting obligations under this chapter do not affect any obligation to report *transactions* under the rules of any market, trading system, matching or reporting system or exchange, whether or not that market, system or exchange is a *regulated market*.

#### Time period for making reports

- 17.2.7 R A *firm* must report the required details of the *transaction* to the *FSA* as quickly as possible and by not later than the close of the working day following the day upon which that *transaction* took place.

[Note: article 25(3) of *MiFID*]

### 17.3 Reporting channels

- 17.3.1 EU
- The reports of *transactions* in *financial instruments* shall be made in an electronic form except under exceptional circumstances, when they may be made in a medium which allows for the storing of the information in a way accessible for future reference by the competent authorities other than an electronic form, and the methods by which those reports are made shall satisfy the following conditions:
- (a) they ensure the safety and confidentiality of the data reported;
  - (b) they incorporate mechanisms for identifying and correcting errors in a *transaction* report;
  - (c) they incorporate mechanisms for authenticating the source of the *transaction* report;
  - (d) they include appropriate precautionary measures to enable the timely resumption of reporting in the case of system failure;
  - (e) they are capable of reporting the information required under Article 13 of the *MiFID Regulation* in the format specified in *SUP* 17 Ann 1EU required by the *FSA* and in accordance with this paragraph, within the time-limits set out in *SUP* 17.2.7R.

[Note: article 12(1) of the *MiFID Regulation*]

Methods of a *firm* reporting *transactions* either directly or through a third party acting on its behalf

- 17.3.2 G A *firm* that proposes reporting to the *FSA* either directly or through a third party that is an *approved reporting mechanism*, should notify the *FSA* of its intention to do so, in order for the *FSA* to be able in particular to verify that the *firm's* or third party's technical arrangements for the submission of reports are consistent and compatible with the *FSA's* arrangements.

#### Approval and monitoring of trade matching and reporting systems

- |           |  |
|-----------|--|
| 17.3.3 EU | A trade matching or reporting system shall be approved by the <i>FSA</i> for the purposes of Article 25(5) of <i>MiFID</i> if the arrangements for reporting <i>transactions</i> established by that system comply with <i>SUP</i> 17.3.1EU and are subject to monitoring by a <i>competent authority</i> in respect of their continuing compliance. |
|-----------|--|

[Note: article 12(2) of the *MiFID Regulation*]

- 17.3.4 G The approved reporting trade matching or reporting systems that have been approved by the *FSA* are:

[Note: These systems will be listed following the approval of a trade matching or reporting system].

- 17.3.5 G Section 412A of the *Act* contains provisions which are concerned with the manner in which the *FSA* will carry out its approval and monitoring of trade matching or reporting systems.

#### Receipt of transaction reports by the *FSA*

- 17.3.6 G A report is made to the *FSA* when it is received by the *FSA*. The delivery of a report by a *MiFID investment firm* to a reporting *person*, channel or system by the close of the working day following the day of the *transaction* does not amount to the making of a report to the *FSA*.

#### 17.4 Information in transaction reports

##### Information to appear in transaction reports

- |           |  |
|-----------|--|
| 17.4.1 EU | Reports of <i>transactions</i> made in accordance with Articles 25 (3) and (5) of <i>MiFID</i> shall contain the information specified in <i>SUP</i> 17 Ann1EU which is relevant to the type of <i>financial instrument</i> in question and which the <i>FSA</i> declares is not already in its possession or is not available to it by other means. |
|-----------|--|

[Note: article 13(1) of the *MiFID Regulation*.]

- 17.4.2 R The reports referred to in *SUP* 17.4.1EU shall, in particular include details of the names and the numbers of the instruments bought or sold, the quantity, the dates and times of execution and the *transaction* prices and means of identifying the *firms* concerned.

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

#### Data retention

- 17.4.3 R A *firm* must keep at the disposal of the *FSA*, for at least five years, the relevant data relating to all *transactions* in *financial instruments* which it has carried out, whether on own account or on behalf of a *client*. In the case of *transactions* carried out on behalf of *clients*, the records shall contain all the information and details of the identity of the *client*, and the information required under the *money laundering directive*.

[Note: article 25(2) of *MiFID*]

#### Maintenance of information by firm

- 17.4.4 G The requirement to keep information at the disposal of the *FSA* means that a *firm* should maintain that information in such a form that it can readily be gathered and transmitted to the *FSA* upon request. Where more than one *firm* has given effect to a *transaction*, each *firm* should be considered to have carried out the *transaction* for the purposes of *SUP 17.4.3R* and should keep the records, even where only one *firm* makes a *transaction* report as contemplated in this Chapter.

#### SUP 17 Ann 1

EU SUP 17 Ann 1 EU: Minimum content of a transaction report

Table 1: List of fields for reporting purposes

[Note: This table includes information required under *MiFID* Article 25 (4) and contains additional *FSA* requirements permitted under Articles 13 (3) and (4) of the *MiFID Regulation*]

*Firms* should complete these fields in the formats described, or these formats must be contained in the fields that their *approved reporting mechanism* will use when sending a *transaction report* to the *FSA* on behalf of a *firm*.

Field Identifier	Description
1. Reporting Firm Identification	A unique code to identify the <i>firm</i> which executed the <i>transaction</i> . This code should be the <i>FSA</i> reference number of the <i>firm</i> or the Swift Bank Identifier Code (BIC).
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 <i>competent authority</i> to which the <i>transaction</i> will be reported and the basis in which the <i>transaction</i> is reported expressed as Coordinated Universal Time (UTC) +/- hours. The time should be specified in hours, minutes and seconds (hhmmss). Where it is not possible to input seconds, '00' may be entered in this field.

4. Buy/Sell Indicator	Identifies whether the <i>transaction</i> was a buy or sell from the perspective of the reporting <i>MiFID investment firm</i> or, in the case of a report to a <i>client</i> , of the <i>client</i> .
5. Trading Capacity	Identifies whether the <i>firm</i> executed the <i>transaction</i>
	- on its own account (either on its own behalf or on behalf of a <i>client</i> ) (that is as principal);
	- for the account and on behalf of a <i>client</i> (that is as agent);
	- in an agency cross capacity; (that is where the <i>firm</i> has acted as agent for both the selling and the buying counterparties and the single report made to the <i>FSA</i> represents both of these <i>transactions</i> );
	- in a principal cross capacity (that is where the <i>firm</i> has acted simultaneously for two counterparties as principal in a single product at the same price and quantity and the single report made to the <i>FSA</i> represents both of these <i>transactions</i> ).
6. Instrument Identification	This shall consist in:
	- an ISO 6166 ISIN the <i>financial instrument</i> which is the subject of the <i>transaction</i> .
	- or, where a <i>financial instrument</i> which is an <i>OTC derivative</i> is the subject of the <i>transaction</i> , the name of the underlying <i>financial instrument</i> and the characteristics of the <i>financial instrument</i> in a separate description field.
7. Underlying Instrument Identification	<p>The instrument identification applicable to the security that is the underlying asset in a derivative contract as well as the transferable security included within article 4(1)(18)(c) of <i>MiFID</i>. An ISO 6166 ISIN should be used.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. Where the <i>financial instrument</i> is an <i>OTC derivative</i> this field will only be mandatory where the underlying is single equity or single debt.</p>
8 Instrument Type	<p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i> and must be used to indicate the instrument type of the underlying financial instrument, e.g.</p>



	equity, bond, index, or other.
9. Maturity Date	<p>The maturity date of a bond or other form of securitized debt, or the exercise date / maturity date of a derivative contract.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i> where applicable.</p>
10. Derivative Type	<p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>, where applicable, and must indicate the derivative type, e.g. <i>option, future, contract for difference, warrant, spread bet</i>, credit default swap or other <i>swap</i>.</p>
11. Put/Call	<p>Specification whether an option or any other <i>financial instrument</i> is a put or call.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided. This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
12. Strike Price	<p>The strike price of an option or other <i>financial instrument</i>.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
13. Price Multiplier	<p>The number of units of the <i>financial instrument</i> in question which are contained in a trading lot; for example, the number of derivatives or securities represented by one contract.</p> <p>This field is not mandatory when the <i>transaction</i> is in a <i>financial instrument</i> and an ISO 6166 ISIN has been provided.</p> <p>This field will be mandatory where the <i>financial instrument</i> is an <i>OTC derivative</i>.</p>
14. Unit Price	<p>The price per security or derivative contract excluding commission and (where relevant) accrued interest. In the case of a debt instrument, the price may be expressed either in terms of currency or as a percentage.</p>

15. Price Notation	The currency in which the price is expressed. If, in the case of a bond or other form of securitised debt, the price is expressed as a percentage, that percentage shall be included. The ISO 4217 currency code must be used. The major currency must be used (e.g. pounds rather than pence). If the price is expressed as a percentage of nominal value then the ISO 4217 currency code of the nominal value must be used.
16. Quantity	The number of units of the <i>financial instruments</i> , the nominal value of bonds, or the number of derivative contracts included in the <i>transaction</i> .
17. Counterparty	Identification of the counterparty to the <i>transaction</i> . That identification shall consist in:
	- where an <i>FSA</i> reference number or a Swift Bank Identification Code (BIC) exists one of these codes must be used, or in the case that a <i>firm</i> has neither an <i>FSA</i> reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.
18. Venue Identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist in where the venue is a trading venue or an <i>MTF</i> the four character Swift Market Identifier Code ISO 10383 must be used. If the <i>transaction</i> is made off market or <i>over the counter</i> then this must be made clear.
19. Transaction Reference Number	A unique identification number for the <i>transaction</i> provided by the <i>MiFID investment firm</i> or a third party reporting on its behalf.
20. Cancellation Flag	An indication as to whether the <i>transaction</i> was cancelled.
21. Customer/ <i>Client</i> Identification	This field contains the identification of the <i>client</i> or customer on whose behalf the reporting <i>firm</i> was acting and should be completed as follows.
	- For agency <i>transactions</i> a customer/client identifier is required to identify the client on whose behalf the <i>transaction</i> has been conducted.  Where an <i>FSA</i> reference number or a Swift Bank Identification Code (BIC) exists, one of these codes must be used, or in the case that a <i>firm</i> has neither an <i>FSA</i> reference number or a BIC, a unique internal code allocated by the reporting <i>firm</i> must be used and that unique internal code must be used consistently across all instrument types and platforms for that counterparty.

22. Any other fields	Any other mandatory fields required by the reporting system.
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## Annex E

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

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

- 1.1.1A G The guidance in REC 6A applies to EEA market operators exercising passporting rights in the United Kingdom.
- ...
- 1.1.2 G (2) UK recognised bodies 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. Overseas recognised bodies must satisfy recognition requirements laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).
- ...
- 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.
- ...
- (5A) Guidance for EEA market operators exercising their passporting rights in the United Kingdom is set out in REC 6A.
- ...
- 1.2 Purpose, status and ~~statutory~~ quotations
- Purpose
- 1.2.1 G The purpose of the guidance (other than in REC 6A) in this sourcebook is to give information on ~~how the FSA interprets the recognition requirements, and~~ other obligations on recognised bodies in or under the Act and the MiFID implementing requirements. The purpose of the guidance in REC 6A is to give EEA market operators information about their passporting rights in the United Kingdom. Explanations of the purposes of the rules in this sourcebook are given in the chapters concerned.

...

## 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" unless they form part of a piece of *guidance*. Quotations from the directly applicable MiFID Regulation are marked with the letters "EU". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.
- (2) Where the *guidance* states that the *FSA* may have regard to any factor in assessing or determining whether a *recognition requirement* is satisfied, or ~~that~~whether there is compliance with another obligation under the *Act*, or whether a MiFID implementing requirement is satisfied, it means that the *FSA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the *recognition requirements* or complies with other obligations in or under the *Act*, or a UK RIE satisfies the MiFID implementing requirements, the *FSA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

## Statutory Quotations

- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations* and the Companies Act 1989 and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.
- ...
- (5) None of the editorial changes made by the *FSA* in these quotations can supersede or alter the meaning of the ~~statutory~~ provision concerned.
- ...

2.1.1 G This chapter contains the *recognition requirements* for *UK recognised bodies* and sets out *guidance* on those requirements. This chapter also contains the MiFID implementing requirements for UK RIEs. (The *recognition requirements* for *overseas recognised bodies* are set out in REC 6.)

2.1.2 G These *recognition requirements* must be satisfied by applicants for *recognised body* status before recognition is granted and by all *UK recognised bodies* at all times while they are recognised. In addition the MiFID implementing requirements must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. The same standards apply both on initial

recognition and throughout the period *recognised body* status is held. The terms *UK RIE* or *UK RCH* in the *guidance* should be taken, therefore, to refer also to an applicant when appropriate.

2.1.3 G (1) ...

(2) The table in *REC 2.1.4G* indicates in which section each of those paragraphs (and the associated *guidance*) can be found. ~~The *recognition requirement* is reproduced at the start of the section.~~

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
...		
<u>Paragraphs 4(1) and 4(2)(aa)</u>	General safeguards for investors	2.6
...	...	
<u>Paragraph 4(3)</u>		
<u>Paragraph 4(2)(ea)</u>	<u>Conflicts</u>	<u>2.5</u>
...		
<u>Paragraph 4A</u>	<u>Provision of pre-trade information about share trading</u>	<u>2.6</u>
<u>Paragraph 4B</u>	<u>Provision of post-trade information about share trading</u>	<u>2.6</u>
...		
<u>Paragraph 7A</u>	<u>Admission of financial instruments to trading</u>	<u>2.12</u>
<u>Paragraphs 7B and 7C</u>	<u>Access to facilities</u>	<u>2.7</u>
<u>Paragraph 7D</u>	<u>Settlement</u>	<u>2.8</u>
<u>Paragraph 7E</u>	<u>Suspension and removal of financial instruments from trading</u>	<u>2.6</u>
...		
<u>Paragraph 9A</u>	<u>Operation of a multilateral trading facility</u>	<u>2.16A</u>

...		
-----	--	--

2.1.5 G Recitals 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*.

...

2.2.1 D ...  
UK

...

2.3.1 D Schedule to the Recognition Requirements Regulations, Paragraph 1  
UK

(2) In considering whether this requirement is satisfied, the [FSA] ~~may~~ must (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any *person*, and any activity carried on by the [UK RIE], whether or not it is an *exempt activity*.

2.3.2 D ...  
UK

2.3.3 G In determining whether a *UK recognised body* has financial resources sufficient for the proper performance of its *relevant functions*, the *FSA* may have regard to:

(7) in relation to a *UK RIE*, the nature and extent of the transactions concluded on the *UK RIE*.

...

2.4.1 D Schedule to the Recognition Requirements Regulations, Paragraph 2  
UK

(3) The *persons* 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.

(4) The *persons* who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

2.4.2 D ...  
UK

...

2.4.6      G      In assessing whether the *persons* who effectively direct the business and operations of the *UK RIE* are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets it, the *FSA* may have regard to the repute and experience of the *UK RIE*'s *key individuals*.

2.5          Systems and controls and conflicts

2.5.1        Ð          Schedule to the Recognition Requirements Regulations, paragraph 3  
UK

...

(2)          Sub-paragraph (1) applies in particular to systems and controls concerning -

...

(b)          the assessment, mitigation and management of risks to the performance of the [*UK RIE*'s *relevant functions*];

...

(ca)        the technical operation of the [*UK RIE*], including contingency arrangements for disruption to its *facilities*;

...

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

Without prejudice to the generality of sub-paragraph [4(1)], the [*UK RIE*] must ensure that –

appropriate arrangements are made to -

(i)          identify conflicts between the interests of the [*UK RIE*], its owners and operators and the interests of the *persons* who make use of its *facilities* or the interests of the financial markets operated by it; and

(ii)         manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the [*UK RIE*] and for the *persons* who make use of its *facilities*.

2.5.2        Ð          ...  
UK

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 and appropriate for the scale and nature of its business, the *FSA* may have regard to the *UK recognised body*'s:



- ...
- (2) arrangements for the identification and management of conflicts of interest;
- ...
- ...
- 2.5.11 G The *FSA* recognises that a *UK recognised body* RCH has legitimate interests of its own and that its general business policy may properly be influenced by other *persons* (such as its owners). ...
- ...
- 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
- 2.6.1 ~~Ð~~ ...  
UK
- 2.6.2 ~~Ð~~ Schedule to the Recognition Requirements Regulations, Paragraph 19(1)
- The [*UK RCH*] must ensure that its *facilities* are such as to afford proper protection to investors.
- 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;
- 2.6.3 ~~G~~ In determining whether:
- (1) ~~business conducted by means of a *UK RIE's facilities* is conducted so;~~  
~~or~~
- (2) ~~a *UK RCH's facilities* are such;~~
- ~~as to afford proper protection to investors, the *FSA* may, in addition to the matters dealt with in REC 2.7 to REC 2.12, have regard to all the arrangements made by the *UK recognised body* concerning the operation of its *facilities*.~~
- UK Schedule to the Recognition Requirements Regulations, Paragraph 4A
- (1) The [*UK RIE*] must make arrangements for—

- (a) current bid and offer prices for *shares*, and
- (b) the depth of trading interest in *shares* at the prices which are advertised through its systems,

to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7EU and REC 2.6.21EU to REC 2.6.24EU)].

(2) If [a UK RIE] decides to give *investment firms* and *credit institutions* required to publish their quotes in *shares*-

- (a) in accordance with Article 27 of [MiFID], or
- (b) by the [FSA],

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 [FSA] may waive the requirements of sub-paragraph (1) in the circumstances specified-

- (a) in the case of *shares* to be traded on a *multilateral trading facility* operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)]; or
- (b) in the case of *shares* to be traded on a *regulated market* operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10EU and REC 2.6.13EU)].

2.6.4 G ~~The FSA may also have regard to the extent to which the UK recognised body's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities:~~

- ~~(1) include appropriate measures to prevent the use of its facilities for abusive or improper purposes;~~
- ~~(2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;~~
- ~~(3) provide appropriate information to enable users of its facilities to~~

monitor their use of the *facilities*;

- (4) ~~include appropriate arrangements to enable users of its *facilities* to raise queries about any use of those *facilities* which they are reported to have made;~~
- (5) ~~include appropriate arrangements to enable users of its *facilities* to comply with any relevant regulatory or legal requirements; and~~
- (6) ~~include appropriate arrangements to reduce the risk that those *facilities* will be used in ways which are incompatible with relevant regulatory or legal requirements;~~

~~and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the *UK recognised body's facilities*, the types of *persons* who will use the *facilities* and the use which they will make of those *facilities*.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 4B

- |  |
|--|
| <p>(1) <u>The [UK RIE] 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 the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.16.15EU and REC 2.6.21EU to REC 2.6.24EU)].</u></p> <p>(2) <u>If [a UK RIE] decides to give <i>investment firms and credit institutions</i> required to make public details of their transactions in <i>shares</i>-</u></p> <ul style="list-style-type: none"><li>(a) <u>in accordance with Article 28 of [MiFID], or</u></li><li>(b) <u>by the [FSA],</u></li></ul> <p><u>access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non discriminatory basis.</u></p> <p>(3) <u>The [FSA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained—</u></p> <ul style="list-style-type: none"><li>(a) <u>in the case of <i>shares</i> traded on a <i>multilateral trading facility</i> operated by [a UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18EU)]; or</u></li></ul> |
|--|

- (b) in the case of *shares* traded on *regulated market* operated by [a *UK RIE*], in Article 45.2 of [*MiFID*] and Chapter IV of the [*MiFID Regulation*] [(see *REC 2.6.18EU*)].
- (7) If the [*FSA*] permits [*UK RIEs*] to defer the publication required by sub-paragraph (1), those [*UK RIEs*] must ensure that the existence of and the terms of the permission are disclosed to users and members of their *facilities* and to investors.

2.6.5 G Orderly markets

~~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 *FSA* may have regard to the extent to which the *UK RIE's* rules and procedures:~~

- ~~(1) are consistent with the *Code of Market Conduct* (see *MAR 1*);~~
- ~~(2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and~~
- ~~(3) prohibit or prevent:~~
  - ~~(a) trades in which a party is improperly indemnified against losses;~~
  - ~~(b) trades intended to create a false appearance of trading activity ("wash trades");~~
  - ~~(c) cross trades executed for improper purposes;~~
  - ~~(d) improperly prearranged or prenegotiated trades;~~
  - ~~(e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and~~
  - ~~(f) trades which one party does not intend to close out or settle.~~

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.

2.6.6 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 *FSA* 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:
  - (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~~
  - (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 market participants for timely price information;~~
- (3) ~~include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and~~
- (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* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.~~

UK Schedule to the Recognition Requirements Regulations, Paragraph 7E

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a *regulated market* operated by it any *financial instrument* 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.

- 2.6.7 G The *FSA* 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.

EU Article 17 of the MiFID Regulation

Pre-trade transparency obligations

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 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 normal trading hours 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)]

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)

<u>Type of system</u>	<u>Description of system</u>	<u>Summary of information to be made public, in accordance with Article 17</u>
<u>continuous auction order book trading system</u>	<u>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</u>	<u>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.</u>
<u>quote-driven trading system</u>	<u>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 commercial size and the risk to which the market maker exposes itself</u>	<u>the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices</u>
<u>periodic auction trading system</u>	<u>a system that matches orders on the basis of a periodic auction and a trading algorithm</u>	<u>the price at which the auction trading system would best satisfy its trading algorithm and</u>

	<u>operated without human intervention</u>	<u>the volume that would potentially be executable at that price</u>
<u>trading system not covered by first three rows</u>	<u>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</u>	<u>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</u>

2.6.9 EU Recital 14 to the MiFID Regulation

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [(see REC 2.6.3UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10 EU Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction

1. Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)] may be granted by the [FSA] 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 [(see REC 2.6.11EU)], each of which meets one of the following criteria:

(i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a



percentage and a reference price set in advance by the system operator;

- (ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12EU)].

For the purposes of point (b), the other conditions specified in the rules of the regulated market or MTF for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

2. Waivers in accordance with Articles 29(2) and 44(2) of [MiFID] [(see REC 2.6.3UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the regulated market or the MTF pending their being disclosed to the market.

2.6.11 EU Article 19 of the MiFID Regulation

References to negotiated transaction

For the purpose of Article 18(1)(b) [(see REC 2.6.10EU)] a negotiated transaction shall mean a transaction involving members or participants of a regulated market or an MTF which is negotiated privately but executed within the regulated market or MTF 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 client;
- (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 client order.

2.6.12 EU Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

1. A transaction related to an individual share in a portfolio trade shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10EU)], as a transaction subject to conditions other than the current market price. ...
2. A volume weighted average price transaction shall be considered, for

the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10EU)], as a transaction subject to conditions other than the current market price ...

2.6.13 EU Article 20 of the MiFID Regulation

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 REC 2.6.14EU)]. 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.

2.6.14 EU Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size

<u>Class in terms of average daily turnover (ADT)</u>	<u>ADT &lt; €500 000</u>	<u>€500 000 ≤ ADT &lt; €1 000 000</u>	<u>€1 000 000 ≤ ADT &lt; €25 000 000</u>	<u>€25 000 000 ≤ ADT &lt; €50 000 000</u>	<u>ADT ≥ €50 000 000</u>
<u>Minimum size of order qualifying as large in scale compared with normal market size</u>	<u>€50 000</u>	<u>€100 000</u>	<u>€250 000</u>	<u>€400 000</u>	<u>€500 000</u>

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.

2.6.16 EU Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	<u>Trading Day</u>	<u>The trading day on which the transaction was executed.</u>
3.	<u>Trading Time</u>	<u>The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.</u>
6.	<u>Instrument Identification</u>	<u>This shall consist in:</u> <u>- a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is the subject of the transaction;</u> <u>- if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...</u>
16.	<u>Unit Price</u>	<u>The price per [share] excluding commission and (where relevant) accrued interest. ...</u>
17.	<u>Price Notation</u>	<u>The currency in which the price is expressed ...</u>
18.	<u>Quantity</u>	<u>The number of units of the [shares].</u>
21.	<u>Venue identification</u>	<u>Identification of the venue where the transaction was executed. That identification shall consist ... [of the regulated market or MTF's] ... unique harmonised identification code;</u>  ...

2.6.17 EU Article 3 of the MiFID Regulation

<u>Transactions related to an individual share in a portfolio trade and volume weighted average price transactions</u>	
1.	<u>A transaction related to an individual share in a portfolio trade ... shall ... be considered, for the purposes of Article 27(1)(b) [(see REC</u>

2.6.15EU] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2 A volume weighted average price *transaction* ... shall ... be considered, for the purposes of Article 27(1)(b) [(see *REC 2.6.15EU*)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2.6.18 EU Article 28 of the MiFID Regulation

Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be 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 *transaction* concerned, provided the following criteria are satisfied:

- (a) the *transaction* is between [a *MiFID investment firm*] *dealing on own account* and a *client* of that firm;
- (b) the size of that *transaction* 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 *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

2.6.19 EU Article 29(3), second sentence of the MiFID Regulation

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

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 shares in terms of average daily turnover (ADT)

<u>ADT &lt; €100 000</u>	<u>€100 000 ≤ ADT ≤ €1 000 000</u>	<u>€1 000 000 ≤ ADT &lt; €50 000 000</u>	<u>ADT ≥ €50 000 000</u>
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Minimum qualifying size of transaction for permitted

		<u>delay</u>			
<u>Permitted delay for publication</u>	<u>60 minutes</u>	<u>€10 000</u>	<u>Greater of 5% of ADT and €25 000</u>	<u>Lower of 10% of ADT and €3 500 000</u>	<u>Lower of 10% of ADT and €7 500 000</u>
	<u>180 minutes</u>	<u>€25 000</u>	<u>Greater of 15% of ADT and €75 000</u>	<u>Lower of 15% of ADT and €5 000 000</u>	<u>Lower of 20% of ADT and €15 000 000</u>
	<u>Until end of trading day (or roll-over to noon of next trading day if trade undertaken in final 12 hours of trading day)</u>	<u>€45 000</u>	<u>Greater of 25% of ADT and €100 000</u>	<u>Lower of 25% of ADT and €10 000 000</u>	<u>Lower of 30% of ADT and €30 000 000</u>
	<u>Until end of trading day next after trade</u>	<u>€60 000</u>	<u>Greater of 50% of ADT and €100 000</u>	<u>Greater of 50% of ADT and €1 000 000</u>	<u>100% of ADT</u>
	<u>Until end of second trading day next after trade</u>	<u>€80 000</u>	<u>100% of ADT</u>	<u>100% of ADT</u>	<u>250% of ADT</u>
	<u>Until end of third trading day next after trade</u>		<u>250% of ADT</u>	<u>250% of ADT</u>	

2.6.21 EU Article 29 of the MiFID Regulation

Publication and availability of pre- and post-trade transparency data

1. A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF ... concerned, and remains available until it is updated.
2. Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating to such transactions shall be made available in

any case within three minutes of the relevant *transaction*.

3. Information relating to a *portfolio trade* shall be made available with respect to each constituent *transaction* as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
  4. Post-trade information referring to *transactions* taking place on a [*regulated market* or *MTF*] but outside its *normal trading hours* shall be made public before the opening of the next trading day of the [*regulated market* or *MTF*] on which the *transaction* took place.
- ...

2.6.22 EU Recital 18 to the MiFID Regulation

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

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 an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

2.6.24 EU Article 32 of the MiFID Regulation

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;

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

2.6.25 UK Schedule to the Recognition Requirements Regulations, Paragraph 19(1)

The [UK RCH] must ensure that its facilities are such as to afford proper protection to investors.

2.6.26 G In determining whether:

(1) business conducted by means of a UK RIE's facilities is conducted so; or

(2) a UK RCH's facilities are such;

as to afford proper protection to investors, the FSA may, in addition to the matters dealt with in REC 2.7 to REC 2.12, have regard to all the arrangements made by the UK recognised body concerning the operation of its facilities.

2.6.27 G The FSA may also have regard to the extent to which the UK recognised body's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities:

(1) include appropriate measures to prevent the use of its facilities for abusive or improper purposes;

(2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;

(3) provide appropriate information to enable users of its facilities to monitor their use of the facilities;

(4) include appropriate arrangements to enable users of its facilities to raise queries about any use of those facilities which they are reported to have made;

(5) include appropriate arrangements to enable users of its facilities to comply with any relevant regulatory or legal requirements; and

(6) include appropriate arrangements to reduce the risk that those facilities will be used in ways which are incompatible with relevant regulatory or legal requirements;

and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the UK recognised body's facilities, the types of persons who will use the facilities and the use which they will make of those facilities.

2.6.28 G Orderly markets

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 FSA may have regard to the extent to which the UK

RIE's rules and procedures:

- (1) are consistent with the *Code of Market Conduct* (see *MAR 1*);
- (2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
- (3) prohibit or prevent:
  - (a) trades in which a party is improperly indemnified against losses;
  - (b) trades intended to create a false appearance of trading activity ("wash trades");
  - (c) cross trades executed for improper purposes;
  - (d) improperly prearranged or prenegotiated trades;
  - (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
  - (f) trades which one party does not intend to close out or settle.

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 *FSA* 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:
  - (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
  - (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 market participants for timely price information;
- (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 *REC 2.6.24EU*;
- (3) include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and



- (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* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.

- 2.6.30 G (1) The *FSA* 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*.

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

- 2.6.31 G The *FSA* 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*.
- 2.6.32 G The *FSA* 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*.

...

- 2.7.1 D Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)  
UK

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;
  - (c)    its professional standards for staff of any *investment firm* or *credit institution* having access to or membership of a financial market operated by the [*UK RIE*];
  - (d)    conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the [*UK RIE*] by persons other than *investment firms* or *credit institutions*; and
  - (e)    the rules and procedures for clearing and settlement of transactions concluded on a financial market 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 *investment firm*,
  - (b)    a *credit institution*, or
  - (c)    a *person* who -
    - (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).
- (4)    Rules under this paragraph must enable –

- (a) an investment firm authorised under Article 5 of [MiFID], or
- (b) a credit institution authorised under the Banking Consolidation Directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have direct or remote access to or membership of, any financial market operated by the [UK RIE] on the same terms as a UK firm.

- (5) The [UK RIE] must make arrangements regularly to provide the [FSA] with a list of users or members of its facilities.
- (6) This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B UK Schedule to the Recognition Requirements Regulations, Paragraph 7C

- (1) This paragraph applies to [a UK RIE] which provides central counterparty, clearing or settlement facilities.
- (2) The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those facilities.
- (3) The rules under sub-paragraph (2) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.
- (4) The [UK RIE] may refuse access to those facilities on legitimate commercial grounds.

2.7.2 D ...  
UK

2.7.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 21A

- (1) The [UK RCH] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement facilities provided by it.
- (2) The rules under sub-paragraph (1) must enable an investment firm or a credit institution authorised by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to have access to those facilities on the same terms as a UK firm for the purposes of finalising or arranging the finalisation of transactions in financial instruments.

		(3) <u>The [UK RCH] may refuse access to those facilities on legitimate commercial grounds.</u>
...		
2.7.3	G	...
		(2) <u>[deleted]</u>
		...
<u>2.7.3A</u>	<u>G</u>	<u>REC 2.7.3G does not apply to a UK RIE's arrangements to grant access to investment firms or credit institutions.</u>
...		
2.8.1	Ð <u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)
		Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -  satisfactory arrangements <u>which comply with paragraph 7D</u> 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);
<u>2.8.1A</u>	<u>UK</u>	<u>Schedule to the Recognition Requirements Regulations, Paragraph 7D</u>
		(1) <u>The rules of the [UK RIE] must permit a user or member of a regulated market operated by it to use whatever settlement facility he chooses for a transaction.</u>  (2) <u>Sub-paragraph (1) only applies where -</u>  (a) <u>such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and</u>  (b) <u>the [UK RIE] is satisfied that the smooth and orderly functioning of the financial markets will be maintained.</u>
2.8.2	Ð <u>UK</u>	...
...		
2.9.1	Ð <u>UK</u>	...
2.9.2	Ð	...

	<u>UK</u>	
...		
2.10.1	<del>DK</del> <u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(f)
		<p>Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-</p> <p>appropriate measures (including the monitoring of transactions effected on the [UK RIE]) are adopted to reduce the extent to which the [UK RIE's] facilities can be used for a purpose connected with <i>market abuse</i> or <i>financial crime</i>, and to facilitate their detection and monitor their incidence;</p>
2.10.2	<del>DK</del> <u>UK</u>	...
...		
2.11.1	<del>DK</del> <u>UK</u>	...
2.11.2	<del>DK</del> <u>UK</u>	...
...		
2.12		<del>Proper markets and disclosure of</del> <u>Availability of relevant information and admission of financial instruments to trading</u> (UK RIEs only)
2.12.1	<del>DK</del> <u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraphs <del>4(2)(b) and</del> 4(2)(c)
		<p>...</p> <p>(b) <del>dealings in [specified investments] on the [UK RIE] are limited to [specified investments] in which there is a proper market;</del></p> <p>...</p>
2.12.2	<del>DK</del> <u>UK</u>	...
2.12.2A	<u>UK</u>	Schedule to the Recognition Requirements Regulations, Paragraph 7A
		<p>(1) <u>The [UK RIE] must make clear and transparent rules concerning the admission of <i>financial instruments</i> to trading on any <i>financial market</i> operated by it.</u></p> <p>(2) <u>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</u></p>

applicable).

- (3) The rules must ensure that -
  - (a) all transferable securities admitted to trading on a regulated market 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 regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.
- (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 multilateral trading facility operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.
- (5) The [UK RIE] must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations
- (6) The [UK RIE] must maintain arrangements to assist users of a regulated market operated by it to obtain access to information made public under the disclosure obligations.
- (7) The [UK RIE] must maintain arrangements regularly to review whether the financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.
- (8) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a regulated market operated by it a transferable security which has been admitted to trading on another regulated market, the [UK RIE] -
  - (a) 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 disclosure obligations.
- (9) The rules must provide that where a [UK RIE], 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, it may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

...

(11) This paragraph is without prejudice to the generality of paragraph 4.

2.12.2B EU Article 35 of the MiFID Regulation

Transferable securities

1. *Transferable securities shall be considered freely negotiable for the purposes of Article 40(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 class as the security in question are fungible.*
2. *Transferable securities 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. *Transferable securities that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.*
4. *When exercising its discretion whether to admit a share to trading, a regulated market shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:*
  - (a) *the distribution of those shares to the public; and*
  - (b) *such historical financial information, information about the issuer, and information providing a business overview as is required to be prepared under [the PD], or is or will be otherwise publicly available.*
5. *A transferable security that is officially listed in accordance with [CARD], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.*
6. *For the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2AEU)], when assessing whether a transferable security referred to Article 4(1)(18)(c) of [MiFID] is capable of being traded in a fair, orderly and efficient manner, the regulated market shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:*
  - (a) *the terms of the security are clear and unambiguous and allow*

for a correlation between the price of the security and the price or other value measure of the underlying;

- (b) the price or other value measure of the underlying is reliable and publicly available;
- (c) there is sufficient information publicly available of a kind needed to value the security;
- (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;
- (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

2.12.2C EU Recital 19 to the MiFID Regulation

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(c)*)], 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 *regulated market* shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [*the UCITS Directive*], 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 *regulated market*.
2. Without prejudice to [*the UCITS Directive*] 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 *regulated market*.
3. When assessing whether units in an open-ended 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 *regulated market* shall take the



following aspects into account:

- (a) the distribution of those units to the public;
- (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;
- (c) whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.

4. When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2AUK)], the regulated market 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 net asset value.

2.12.2E EU Article 37 of the MiFID Regulation

Derivatives

1. When admitting to trading a financial instrument of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], regulated markets shall verify that the following conditions are satisfied:

- (a) the terms of the contract establishing the financial instrument must be clear and unambiguous, and enable a correlation between the price of the financial instrument 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 the delivery 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 *financial instruments* 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 contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
- (b) the *regulated market* must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such *financial instruments*;
- (c) the *regulated market* 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 *financial instruments*.

...

2.12.4 G [deleted]

2.12.5 G [deleted]

2.12.6 G [deleted]

2.12.7 G [deleted]

2.12.8 G [deleted]

2.12.9 G [deleted]

2.12.10 G [deleted]

...

Rules concerning the 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 *FSA* 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 *FSA* 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*.

...

2.13.1    ~~Ð~~    ...  
                  UK

2.13.2    ~~Ð~~    ...  
                  UK

...

2.14.1    ~~Ð~~    ...  
                  UK

2.14.2    ~~Ð~~    ...  
                  UK

...

2.15.1    ~~Ð~~    Schedule to the Recognition Requirements Regulations, Paragraph 8  
                  UK

(1) ~~The [UK RIE] must have effective arrangements for monitoring and enforcing compliance with -~~ The [UK RIE] must have -

- (a) ~~its rules (including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE]); and~~ effective arrangements (which include the monitoring of transactions effected on the [UK RIE]) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE];
- (b) ~~the arrangements made by it as mentioned in paragraph 4(2)(d) ...~~ effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and
- (c) effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.

...

2.15.2    ~~Ð~~    ...  
                  UK

...

2.16.1 D ...  
UK

2.16.2 D ...  
UK

...

2.16A Operation of a multilateral trading facility

2.16A.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 9A

- |     |   |
|-----|---|
| (1) | <u>[A UK RIE] operating a <i>multilateral trading facility</i> must also operate a <i>regulated market</i>.</u>   |
| (2) | <u>[A UK RIE] operating a <i>multilateral trading facility</i> must comply with those requirements of-</u><br><br>(a) <u>Chapter I of Title II of [MiFID], and</u><br><br>(b) <u>MiFID implementing Directive,</u><br><br><u>which are applicable to a <i>market operator</i>...operating such a <i>facility</i>.</u> |
| (3) | <u>The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the <i>Act</i> (requirements for overseas investment exchanges and overseas clearing houses).</u>   |

2.16A.2 G In determining whether a UK RIE operating a *multilateral 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*, the *FSA* will have regard to the compliance of the UK RIE with equivalent *recognition requirements*.

...

2.17.2 D Schedule to the Recognition Requirements Regulations, Part II  
UK

Paragraph 10 (Default rules in respect of market contracts)	
...	
(3)	The [ <i>default rules</i> ] must enable action to be taken in respect of all unsettled <i>market contracts</i> , other than those entered into by <del>an <i>RCH</i></del> for the purposes of or in connection with the provision of clearing services for the [ <i>UK RIE</i> ].
...	

2.17.3 D ...  
UK

...

3.4.2 R Where, in relation to a UK ~~recognised body~~ RCH, a person has been

appointed or elected, has resigned as, or has ceased to be, a *key individual*, that ~~UK recognised body~~*RCH* must immediately give notice of that event, and give the information specified for the purposes of this *rule* in *REC* 3.4.4R to the *FSA*.

3.4.2A R Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a *key individual*, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this *rule* in *REC* 3.4.4AR to the *FSA*.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

3.4.2B R Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a *key individual*, that *UK RIE* must immediately give notice of that event, and give the name of the *person*.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

...

3.4.4A R The following information is specified for the purposes of *REC* 3.4.2AR:

- (1) that *person's* name;
- (2) his date of birth;
- (3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected.

[Note: Article 37(1), paragraph 1, second sentence of MiFID]

...

3.14.2A R When a *UK RIE* removes a *financial instrument* from trading on a *regulated market*, it must immediately give the *FSA* 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 of MiFID]

...

3.14A Operation of a regulated market or MTF

Purpose

3.14A.1 G The purpose of *REC* 3.14A is to ensure that the *FSA* is informed of planned changes to a *UK RIE's* markets and their regulatory status as either a *regulated market* or *MTF*.

Operation of a regulated market

3.14A.2 R Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FSA* notice of that event and the

information specified for the purposes of this rule in REC 3.14A.3R, 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.3 R The following information is specified for the purposes of REC 3.14A.2R:

(1) where the UK RIE proposes to operate a new regulated market:

(a) a description of the regulated market; and

(b) a description of the specified investments which will be admitted to trading on that regulated market.

(2) where the UK RIE proposes to close a regulated market, the name of that regulated market.

Operation of an MTF

3.14A.4 R Where a UK RIE proposes to operate a new MTF or close an existing MTF it must give the FSA 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.

(2) where the UK RIE proposes to close a MTF, the name of that MTF.

...

3.15.2A R When a UK RIE suspends trading on a regulated market in any financial instrument, it must immediately give the FSA 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 of MiFID]

...

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, whether directly or indirectly, it must immediately notify the FSA 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) of MiFID]

3.24.2 G The *FSA* may regard a *person* who falls within any of the cases in section 301(B)(2) of the *Act* as being in a position to exercise significant influence.

3.25 Significant breaches of rules and disorderly trading conditions

3.25.1 R A *UK RIE* must immediately notify the *FSA* of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets;

[Note: Article 43(2), first sentence (part) of MiFID. The rest of Article 43(2), first sentence of MiFID is implemented by *REC 3.21.1R(2)*]

...

4.1.3 G The *FSA's* general approach to supervision is intended to ensure that:

- (1) the *FSA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognition requirements* and other obligations imposed by or under the *Act* and *UK RIEs* continue at all times to satisfy the *MiFID implementing requirements*; and

...

...

4.2.2 G *UK recognised bodies* are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act*.

4.2.3 G The *FSA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act* when considering any changes to its business or operations.

4.2.4 G However, the *FSA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with its plans and operational initiatives, and will provide it with appropriate assurance that the *recognition requirements* and the *MiFID implementing requirements* (in the case of a *UK RIE*) will continue to be satisfied.

#### 4.2A Publication of information by UK RIEs

- 4.2A.1 G Under subsections 292A(1) and (2) of the Act, a UK RIE must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the UK RIE, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, as the FSA may reasonably require.
- 4.2A.2 G Under subsections 292A(3) and (4) of the Act, a UK RIE must as soon as practicable after becoming aware of a transfer of ownership of the UK RIE which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the UK RIE, whether directly or indirectly, publish such particulars of any such transfer as the FSA may reasonably require.
- 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 as the FSA 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* or *multilateral trading facility* operated by it, it must give the FSA 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.
- 4.2B.2 G The FSA must, within one *month* of receiving the UK RIE's notice, send a copy of it to the *Host State regulator*.
- 4.2B.3 G The UK RIE may not make the arrangements until the FSA has sent a copy of the notice to the *Host State regulator*.
- 4.2B.4 G The requirements that a UK RIE must give the FSA written notice and the UK RIE may not make the arrangements until the FSA has sent a copy of it to the *Host State regulator* do not apply to arrangements made by a UK RIE on or before 31 October 2007.

#### 4.2C Control over a UK RIE

- 4.2C.1 G Chapter 1A of Part XVIII of the Act places an obligation on controllers and proposed controllers of UK RIEs to notify the FSA of acquisitions of or increases in control. Furthermore, those *persons* are required to obtain the FSA's approval before becoming a controller or increasing the level of control held (in certain circumstances).
- 4.2C.2 G The FSA will approve an acquisition of control if it is satisfied that the



acquisition of control by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE*.

- 4.2C.3    G    If a proposed controller or controller has complied with the obligation to notify, the procedure the *FSA* will follow if it approves or does not approve of that *person* becoming a controller or increasing the level of control held is set out in section 301C of the *Act*.
- 4.2C.4    G    If a controller or proposed controller has not complied with the duty to notify, the procedure the *FSA* will follow if it approves or does not approve of that *person* becoming a controller or increasing the level of control held is set out in section 301D of the *Act*.
- 4.2C.5    G    If the *FSA* becomes aware of matters as a result of which it is satisfied that the criterion set out in *REC 4.2C.2G* is not met, the procedure it will follow is set out in section 301D of the *Act*.
- 4.2C.6    G    The *FSA*'s internal arrangements provide for any decisions to refuse to approve a change of control of object to an existing control to be taken at an appropriately senior level.
- 4.2C.7    G    If the *FSA* refuses to approve a change of control or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal*. More information on the process for referrals to the *Tribunal* is set out in *DEC 5.1*.
- 4.2C.8    G    The powers the *FSA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FSA*'s refusal to approve the acquisition of control or the *FSA*'s objection to the exercise of control are set out in section 301E of the *Act*.
- 4.2C.9    G    The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section 301F of the *Act*.

4.2D    Suspension and removal of financial instruments from trading

- 4.2D.1    G    (1)    Under section 313A of the *Act*, the *FSA* may for the purpose of protecting:
- (a)    the interests of investors; or
- (b)    the orderly functioning of the financial markets;
- require a *UK RIE* to suspend or remove a *financial instrument* from trading.
- (2)    If the *FSA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.
- 4.2D.2    G    The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in

section 313B of the Act. The FSA's internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the FSA exercises this power, the UK RIE concerned and the issuer (if any) of the relevant financial instrument may refer the matter to the Tribunal. More information on the process for referrals to the Tribunal is set out in DEC 5.1.

4.2D.3 G Under section 313C(1) of the Act, if the FSA exercises its power to require a UK RIE to suspend or remove a financial instrument from trading, it must as soon as reasonably practicable:

(a) publish its decision in such manner as it considers appropriate; and

(b) inform the competent authorities of all other EEA States of its decision.

4.2D.4 G Under section 313C(2) of the Act, if the FSA 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 FSA must inform the competent authorities of all other EEA States of the action taken by the UK RIE.

4.2D.5 G Under sections 313C(3) and (4) of the Act, if the FSA 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 FSA must require each UK RIE to suspend the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.

4.2D.6 G Under sections 313C(3) and (5) of the Act, if the FSA 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 FSA must require each UK RIE to remove the instrument from trading on any regulated market or multilateral trading facility operated by the UK RIE.

4.2E Information: compliance of UK RIEs with the MiFID Regulation

4.2E.1 G Under section 293A of the Act, the FSA may require a UK RIE to give such information as it reasonably requires in order to satisfy itself that the UK RIE is complying with the MiFID Regulation.

...

4.6.1 G Under section 296 of the Act (FSA's power to give directions), the FSA has the power to give directions to a recognised body to take specified steps in order to secure its compliance with the recognition requirements or other obligations in or under the Act or, in the case of a UK RIE, the MiFID implementing requirements. In the case of a UK RIE those steps may include granting the FSA access to the UK RIE's premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any regulated activity by the UK RIE for the period specified in the direction.

...

- 4.6.3 G The *FSA* is likely to exercise its power under section 296 of the *Act* if it considers that:
- (1) there has been, or was likely to be, a failure to satisfy the *recognition requirements* or there has been a failure to comply with any other obligation in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements which has serious consequences;
  - (2) compliance with the direction would ensure that the *recognition requirements*, or other obligation in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements, were satisfied; and

...

- 4.6.4 G Under section 298(7) of the *Act* (Directions and revocation: procedure), the *FSA* need not follow the consultation procedure set out in the rest of section 298 (see *REC* 4.8), or may cut short that procedure, if it considers it essential to do so. The *FSA* is likely to consider it essential to cut short the procedure if, in the absence of immediate action, there would be:
- (1) a serious risk of substantial losses to investors, particularly ~~private customers~~ retail clients; or

...

...

- 4.7.3 G The *FSA* will usually consider revoking a *recognition order* if:
- (1) the *recognised body* is failing or has failed to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements and that failure has or will have serious consequences; or
- ...
- (3) for some other reason, it would not be appropriate for the *FSA* to give a direction under section 296; or
  - (4) in the case of a UK RIE, it has not carried on the business of an investment exchange during the 12 months beginning with the day on which the recognition order took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six months ending with the day the recognition order is revoked.

- 4.7.4 G The *FSA* would be likely to consider the conditions in *REC* 4.7.3G(2) or *REC* 4.7.3G(3) to be ~~satisfied~~ triggered in the following circumstances:

- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements;

or

- (2) the *recognised body* does not appear to be willing to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements;  
or

...

- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies the *recognition requirements* or, in the case of a UK RIE, the MiFID implementing requirements in respect of the *regulated activities* for which *recognised body* status is relevant.

4.7.5 G In addition to the relevant factors set out in *REC 4.7.4G*, ...

...

4.8.3 G In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act*, the *FSA* will have regard to all relevant information and factors including:

...

- (3) the extent to which the failure or likely failure to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the MiFID implementing requirements may affect the *regulatory objectives*.

...

5.2.1 G An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements at all times. (*Guidance on the recognition requirements* applicable to *UK recognised bodies* (and applicants) is given in *REC 2*).

...

5.2.3 G An application should:

...

- (2) be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the Act information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC 5.2.3AG*) (the material specifically prescribed in section 287 or section 288);
- (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the *recognition requirements* and in the case of a UK RIE, the MiFID implementing requirements will

be met; and

...

5.2.3A G The information required pursuant to sub-sections 287(c), (d) and (e) of the Act is:

- (1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;
- (2) particulars of the persons who effectively direct the business and operations of the exchange; and
- (3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

...

5.2.6A G In the case of an application to become a UK RIE, under subsection 290(1B) of the Act, the application must be determined by the FSA before the end of the period of six months beginning with the date on which it receives the completed application.

...

5.2.10 G Where the FSA considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a UK RIE, the *MiFID implementing requirements*, ...

...

5.2.14 G Information and supporting documentation (see REC 5.2.4G).

(1)	Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i> ) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance ( <u>if not contained in the information listed in REC 5.2.3AG</u> ).
(2)	Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> ( <u>if not contained in the information listed in REC 5.2.3AG</u> ).
...	
(5)	Details of its business plan for the first three years of operation as a <i>UK recognised body</i> ( <u>if not contained in the information listed in REC 5.2.3AG</u> ).
(6)	A full organisation chart and a list of the posts to be held by <i>key individuals</i> (with details of the duties and responsibilities) and the names of the <i>persons</i> proposed for these appointments when these

names are available (if not contained in the information listed in <i>REC 5.2.3AG</i> ).
--

...

...

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* or *overseas clearing house* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

...

(3) (in the case of an *EEA market operator*) obtain *exempt person* status by ~~being a *regulated market* under the *Investment Services Directive* exercising its passport rights under Articles 31(5) and 31(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or Article 42(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or~~

...

...

6.3.2 D ...  
UK

...

6A EEA market operators in the United Kingdom

6A.1 Exercise of passport rights by EEA market operator

6A.1.1 G Under section 312A of the Act, an *EEA market operator* may make arrangements in the *United Kingdom* to facilitate access to, or use of, a *regulated market* or *multilateral trading facility* operated by it if:

(1) the operator has given its *Home State regulator* notice of its intention to make such arrangements; and

(2) the *Home State regulator* has given the *FSA* notice of the operator's intention.

6A.1.2 G In making these arrangements, the operator has *exempt person* status as respects any *regulated activity*, which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of that business.

6A.1.3 G An *EEA market operator* has *exempt person* status as respects any *regulated activity* which is carried on as a part of its business of operating a *regulated market* or *multilateral trading facility* if the operator made arrangements in the *United Kingdom* on or before 31 October 2007 to facilitate access to, or use of, that *regulated market* or *multilateral trading facility*.

6A.2      Removal of passport rights from EEA market operator

6A.2.1    G      Under section 312B of the Act, the FSA 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, operated by the operator if:

- (1)      the FSA has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (2)      the FSA has first complied with sections 312B(3) to (9) of the Act.

6A.2.2    G      A requirement is relevant if it is imposed:

- (1)      by the operator’s Home State regulator in the implementation of MiFID or any Community legislation made under MiFID;
- (2)      by provision implementing MiFID, or any Community legislation made under it, in the operator’s Home State; or
- (3)      by any directly applicable Community regulation made under MiFID.

6A.2.3    G      The procedure the FSA will follow if it is to exercise this prohibition power is set out in sections 313B(3) to (9) of the Act.

6A.2.4    G      If the FSA exercises this prohibition power it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.

6A.2.5    G      The operator’s exempt person status ceases to apply if the FSA exercises this prohibition power.

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, operated by the operator may be reinstated (together with its exempt person status) if the FSA is satisfied that the contravention which led the FSA to exercise its prohibition power has been remedied.

...

Sch 2.2	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...						
<i>Notification rules for UK recognised bodies (see Notification rules for UK recognised bodies)</i>						
		REC 3.4	Key individuals and internal	Details of change	Change in key individual or standing	Immediately See REC 3.4

	organisatio n		eommittee See <u>REC</u> <u>3.4</u>	
...				
<u>REC 3.14</u>	Products, services and normal hours of operation	<del>Proposals to change products, services or normal hours of operation</del> See <u>REC 3.14</u>	<del>Communica tion of proposal to <i>members</i> or shareholders</del> See <u>REC</u> <u>3.14</u>	Immediately
<u>REC</u> <u>3.14A</u>	<u>Operation</u> of a <u>regulated</u> <u>market</u> or <u>MTF</u>	<u>Details of</u> <u>proposal to</u> <u>operate a new</u> <u>regulated</u> <u>market</u> or <u>MTF</u> or close an <u>existing</u> <u>regulated</u> <u>market</u> or <u>MTF</u>	<u>Communica</u> <u>tion of</u> <u>proposal to</u> <u>members</u> or <u>shareholders</u>	<u>Immediately</u>
...				
<u>REC 3.24</u>	<u>Transfers</u> of <u>ownership</u>	<u>Details of</u> <u>transfer of</u> <u>ownership</u>	<u>When the</u> <u>UK RIE</u> becomes aware of the <u>transfer of</u> <u>ownership</u>	<u>Immediately</u>
<u>REC 3.25</u>	<u>Significant</u> <u>breaches</u> of <u>rules</u> and <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Significant</u> <u>breaches of</u> <u>rules and</u> <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Significant</u> <u>breaches of</u> <u>rules and</u> <u>disorderly</u> <u>trading</u> <u>conditions</u>	<u>Immediately</u>
...				



## Annex F

### Amendments to the Decision Making manual (DEC)

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

DEC 2 Annex 1 Statutory notice procedure: Warning notice and decision notice procedure

G List of warning notices and decision notices under the Act and certain other enactments

Section of the Act	Description	Handbook reference	Decision maker
...			
280(1)/(2)	...		
<u>301C(5)/(7)</u>	<u>when the FSA is proposing/deciding to object to a change in control of a UK RIE following receipt of a notice of control</u>	<u>REC 4.2C</u>	<u>Executive procedures</u>
<u>301D(1)/(3) and (4)</u>	<u>When the FSA is proposing/deciding to object to a person who has failed to submit a notice of a UK RIE or a notice on acquiring, or increasing control, or to object to an existing controller of a UK RIE</u>	<u>REC 4.2C</u>	<u>Executive procedures</u>
<u>313B(10)/(11)</u>	<u>when the FSA has required a UK RIE to suspend or remove a financial instrument from trading and is proposing/deciding to refuse an application by the UK RIE or the issuer (if any) of that financial instrument to revoke that requirement</u>	<u>REC 4.2.4</u>	<u>Executive procedures</u>