

MARKETS (MiFID) (CONSEQUENTIAL AMENDMENTS) 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); and
 - (4) paragraph 17 of Schedule 1 (Fees).
- 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)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)	Annex C
Conduct of Business sourcebook (COBS)	Annex D
Market Conduct sourcebook (MAR)	Annex E
Supervision manual (SUP)	Annex F
Credit Unions sourcebook (CRED)	Annex G
Electronic Money sourcebook (ELM)	Annex H
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex I

Citation

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

By order of the Board
26 July 2007

Annex A

Amendments to the Glossary of definitions

In this Annex, striking through indicates deleted text.

~~*alternative trading system*~~ a system that brings together multiple buying and selling interests in *designated investments* (other than *life policies*, *personal pension schemes*, *stakeholder pension schemes* or rights to or interests in any of those investments), in the system and according to non-discretionary rules set by the system's operator in a way that results in a contract but does not include: (a) a system that is operated by an *RIE* or that is a *regulated market* or an *EEA commodities market*; or (b) a *bilateral system*.

ATS ~~*alternative trading system*~~.

ATS operator a *firm* that operates an *ATS* or that has accepted responsibility for the operation of an *ATS* by an *appointed representative*.

~~*bilateral system*~~ a system that brings together buying and selling interests in the way described in the definition of an *alternative trading system*, where a single *person* enters into one side of every transaction effected using the system, on his own account and not merely as a central counterparty interposed between a buyer and seller, or would enter into every trade in that way but for *client* orders that are crossed occasionally. This definition includes such a system where, rather than a single *person*, it is one of a number of *persons* in the same *group* that enters into one side of every transaction effected using the system.

~~*CESR ATS standards*~~ the Standards for the Regulation of Alternative Trading Systems published by the Committee of European Securities Regulators.

~~*large order, quote or transaction*~~ (in relation to an *ATS*) an order, quote or transaction relating to an investment traded on an *ATS*, the publication of details of which at the time of the order, quote or transaction might significantly affect the price of the relevant investment to the detriment of the *person* placing the order, providing the quote or entering into the transaction (as the case may be).

~~*price taking system*~~ an *ATS* that facilitates transactions by reference to prices established on a market or another *ATS*.

Annex B

Amendments to the Fees manual (FEES)

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

Late Payments

- 2.2.1 R If a *person* does not pay the total amount of a periodic fee (including fees relating to ~~*transactions reported*~~ *transaction reports* to the *FSA* using the *FSA's* Transaction Reporting System (see SUP 17)), *FOS* levy or case fee, or share of the *FSCS* levy, on the date on which it is due, under the relevant provision in FEES 4, 5 or 6, that *person* must pay an additional amount as follows: ...

...

Annex C

Amendments to Prudential sourcebook for Banks, Building Societies and Investment Firms (BIPRU)

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

2.2.68 G Counterparty risk *rules* only partially capture the risk of settlement failure as the quantification of risk is only based on mark-to-market values and does not take account of the volatility of the securities over the settlement period. A securities *firm's* assessment of its exposure to counterparty risk should take into account:

- (1) ...
- (2) the types of execution venues which it uses; for example, the London Stock Exchange or a retail service provider (RSP) have more depth than ~~alternative trading systems (ATS)~~ multilateral trading facilities; and

...

Annex D

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text.

- 11.4.4 G *MAR 5.8.2EU* sets out the conditions required for an arrangement to make client limit the orders public under this section. *MAR 5.8.3G* and *MAR 5.8.4G* provide guidance on these conditions.

Annex E

Amendments to the Market Conduct sourcebook (MAR)

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

Disapplication of the pre-trade transparency requirements

5.7.1 R ~~(1)~~ ~~Unless disapplication of this rule under MAR 5.7.6 G is relevant,~~
Unless (2),(3) or (4) applies, 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)~~ (a) the current bid and offer prices which are advertised through its systems; and

~~(2)~~ (b) the depth of trading interests at those prices.

[Note: Article 29(1) of MiFID]

(2) Paragraph (1) does not apply to systems operated by an MTF to the extent that those systems satisfy one of the criteria in (a) or (b), subject to (c):

(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 criteria in (i) and (ii), subject to the provisions in (iii) and (iv):

(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 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.

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

(iv) Negotiated transaction has the meaning given in Article 19 of the MiFID Regulation.

[Note: Article 19 of the MiFID Regulation is reproduced in MAR 5.7.9]

EU.]

(c) In the case of systems having functionality other than as described in (a) or (b), the disapplication does not apply to that other functionality.

(3) Paragraph (1) does not apply in relation to orders held in an order management facility maintained by the MTF pending their being disclosed to the market.

(4) (a) Paragraph (1) does not apply in relation to orders that are large in scale compared to normal market size for the share or type of share in question.

(b) An order will be considered to be large in scale if it meets the criteria set out in Article 20 of the MiFID Regulation.

[Note: Article 20 of the MiFID Regulation is reproduced in MAR 5.7.10EU.]

...

5.7.6 G The obligation in *MAR 5.7.1R(1)* to make public certain pre-trade information ~~will not be~~ is disappplied in *MAR 5.7.1R(2)* based on the market model or the type and size of orders in the cases identified in the *MiFID Regulation*, and as reproduced for reference in *MAR 5.7.8EU* In particular, the obligation ~~will not be~~ is disappplied in respect of transactions that are large in scale compared with the normal market size for the share or type of share in question.

...

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

5.8.2 EU ...

5.8.3 G The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *MAR 5.8.2EU(a)*), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

5.8.4 G (1) In respect of arrangements facilitating the consolidation of data as required in *MAR 5.8.2EU(b)*, the FSA considers information as being made public in accordance with *MAR 5.8.2EU(b)*, if it:

(a) is accessible by automated electronic means in a machine-readable way;

- (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
- (c) is accompanied by instructions outlining how users can access the information.

(2) The FSA considers that an arrangement fulfils the 'machine-readable' criteria where the data:

- (a) is in a physical form that is designed to be read by a computer;
- (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
- (c) is in a format that is known in advance by the party wishing to access the data.

(3) The FSA considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.

(4) The FSA considers that information that is made public in accordance with *MAR 5.8.2EU* should conform to a consistent and structured format based on industry standards. *Firms* operating an *MTF* can choose the structure that they use.

...

5.9.1 R (1) 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*,~~ unless *MAR 5.9.1 R(2)* applies and *MAR 5.9.7R* is satisfied, 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*]

(2) A *firm* may defer publication of trade information required in (1) for no longer than the period specified in Table 4 in Annex II of the *MiFID Regulation* for the class of share and transaction concerned, provided that the following criteria in (a) and (b) are satisfied and subject to the provision in (c):

- (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 Table 4 in Annex II.
- (c) In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares *admitted to trading* on a *regulated*

market must be classified in accordance with their average daily turnover to be calculated in accordance with Article 33 of the MiFID Regulation.

Note: Table 4 of Annex II of the MiFID regulation is reproduced in MAR 7 Annex 1.

...

5.9.6A G The deferred publication of information, referred to in MAR 5.9.6EU, is authorised by the FSA, to the extent set out in that provision, and, in particular, is given effect in MAR 5.9.1 R(2).

...

6.9.5 EU ...

6.9.6 G For the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see MAR 6.9.5EU(a)), and in respect of arrangements facilitating the consolidation of data as required in MAR 6.9.5EU(b), the guidance in MAR 5.8.3G and 5.8.4G applies equally to firms falling within this chapter, and should be read as if references to provisions and types of firm in MAR 5 were references to the corresponding provisions and types of firm in this chapter.

...

Deferred publication of large transactions

7.2.1 R (1) Unless (2) applies, 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]

(2) A firm may defer publication of trade information required in (1), for no longer than the period specified in Table 4 in Annex II of the MiFID Regulation for the class of share and transaction concerned, provided that the criteria in (a) and (b) are satisfied, subject to the provision in (c):

(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 Table 4 in Annex II.

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

Regulation.

[Note: Table 4 of Annex II of the *MiFID Regulation* is reproduced in *MAR 7 Annex 1.*]

...

7.2.6A G The deferred publication of information, referred to in *MAR 7.2.6EU*, is authorised by the *FSA*, to the extent set out in that provision, and, in particular, is given effect in *MAR 7.2.1R(2)*.

Arrangements for making information public

7.2.12 EU ...

7.2.12A G (1) The *FSA* considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see *MAR 7.2.12EU(a)*), and in respect of arrangements facilitating the consolidation of data as required in *MAR 7.2.12EU(b)*, the guidance in *MAR 5.8.3G* and *MAR 5.8.4G* (subject to additional guidance in (2)) applies equally to *firms* falling within this chapter, and should be read as if references to provisions and types of *firm* in *MAR 5* were references to the corresponding provisions and types of *firm* in this chapter.

(2) In addition to *MAR 5.8.4G*, as applied to *firms* in this chapter under (1), for the purposes of facilitating the consolidation of transparency data with similar data from other sources, the *FSA* considers information as being made public in accordance with *MAR 7.2.12EU(b)*, if, in addition to *MAR 5.8.4G(1)(a)* to (c), each trade is published through only one primary publication channel.

Annex F

Amendments to the Supervision manual (SUP)

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

SUP 13A Annex 1G Application of the Handbook to Incoming EEA Firms

...	(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...	MAR
		MAR 5 (Alternative Trading Systems Multilateral Trading Facilities) Does not apply (<i>MAR 5.1.1G</i>).	MAR 5 (Alternative Trading Systems Multilateral Trading Facilities) Does not apply (<i>MAR 5.1.1G</i>).

SUP TP 1.2

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional Provisions	(5) Transitional provisions: dates in force	(6) Handbook provision: coming into force
...					
15	SUP 17	R	Transaction Reporting	From commencement	Commencement
			(1) A firm: to whom SUP 17 applies under SUP 17.1.1 (1)(c); and		
			(2) which was authorised under the Financial Services Act 1986 immediately before commencement otherwise than through membership of the SFA;		
			must comply with SUP 17 as if it were:		
			(1) an investment		

				management firm, if it was a member of IMRO immediately before commencement, or		
			(2)	a personal investment firm, otherwise. [deleted]		
...						

SUP Sch 2 Notification requirements

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
...				
SUP 17	<p>Transaction reporting This applies to (a) securities and futures firm; or (b) a personal investment firm; or (c) an investment firm (including a credit institution which is an investment firm) not within (a) or (b) excluding a firm to whom the ISD does not apply under Article 2(2) of the ISD.</p> <p>This does not apply to</p> <p>(a) an incoming EEA firm in relation to its passported activities; or</p> <p>(b) an oil market participant in relation to its oil market activity.</p> <p>a MiFID investment firm; (b) a third country investment firm; (c) 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; or (d) a firm acting in its capacity as a manager or</p>	<p>A transaction report as specified in SUP 17.6. <u>17.1.4R</u>, <u>SUP 17.4.1EU</u> and <u>SUP 17.4.2R</u>.</p>	<p>Entering into a reportable transaction (as defined in SUP 17.5), whether on its own account or on behalf of another, subject to exceptions in SUP 17.4</p> <p><u>Executing a transaction</u>, subject to the exceptions in <u>SUP 17.2.1R</u> and <u>SUP 17.2.3R</u>.</p>	<p>As soon as practicable and in any event before the end of the next business day after the day on which the firm entered into the transaction, subject to SUP 17.7.10 (Failure of reporting system) As quickly as possible and by not later than the close of the working day following the day upon which that transaction took place.</p>

	operator of a collective investment undertaking, <u>pension scheme</u> , <u>occupational pension scheme</u> , a <u>personal pension scheme</u> or a <u>stakeholder pension scheme</u> .			
SUP 17	<p>Transaction reporting This applies to (a) a <i>securities and futures firm</i>; or (b) a <i>personal investment firm</i>; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>. This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i></p>	The fact of intending to use one of the systems specified	Before using one of the reporting systems listed in SUP 17.7.8: (1) CEDCOM system operated by Clearstream Banking AG, Frankfurt; (2) CGO – Central Gils Office; (3) CRESTCo Limited; (4) EUCLID operated by Euroclear SA (input directly into EUCLID or through SWIFT); (5) the FSA's Direct Reporting System; (6) SEQUAL 2000 system of Thomson Financial Services; (7) Tradepoint Financial Networks Plc; (8) Trade Registration System of The London International Financial Futures and Options Exchange (LIFFE); (9) TRAX	Before using the system specified

			system of the International Securities Market Association; and (10) Jiway Limited	
<i>SUP 17</i>	Transaction reporting	Whether the <i>firm</i> will adopt:	Failure of a reporting system	Before the end of the <i>business day</i> after the <i>day</i> when the failure occurs.
	<p>This applies to (a) a <i>securities and futures firm</i>; or (b) a <i>personal investment firm</i>; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>.</p> <p>This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i>.</p>	<p>(1) <i>SUP 17.7.10 (1)</i>: make the <i>transaction report</i> through another reporting system, if the <i>firm</i> considers it reasonably practicable to do so;</p> <p>(2) <i>SUP 17.7.10 (2)</i>: make the <i>transaction report</i> by the end of the <i>business day</i> after the <i>day</i> when the failure is remedied, if the <i>firm</i> does not consider it reasonably practicable to comply with (1)</p>		
<i>SUP 17</i>	Transaction reporting This applies to (a) a <i>securities and futures firm</i> ; or (b) a <i>personal investment firm</i> ; or (c) an <i>investment firm</i> (including a <i>credit institution</i> which is an <i>investment firm</i>) not	The fact of the failure of the reporting system	Any failure of the <i>firm's</i> system or that of a <i>person</i> reporting on its behalf which prevents a <i>person</i> making a <i>transaction report</i> within the specified period	Without delay

	<p>within (a) or (b) excluding a <i>firm</i> to whom the <i>ISD</i> does not apply under Article 2(2) of the <i>ISD</i>. This does not apply to: (a) an <i>incoming EEA firm</i> in relation to its <i>passport activities</i>; or (b) an <i>oil market participant</i> in relation to its <i>oil market activities</i>.</p>		(SUP 17.6.1)	
...				

Annex G

Amendments to the Credit Unions sourcebook (CRED)

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

CRED App 1.1.1

	Sourcebook or manual	Reference Code
...		
Business standards		
...		
Market conduct, including: Code of Market, Conduct Price stabilising rules, Inter-professional conduct, Alternative Trading Systems <u>Multilateral Trading Facilities</u>	<i>MAR</i>	

Annex H

Amendments to the Electronic Money sourcebook (ELM)

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

Application of other parts of the Handbook to ELMIs

ELM 1.5.2 G

...

Block	Module	Application
...		
Business Standards	...	
...	Market Conduct (MAR)	<i>MAR 1</i> (The Code of Market Conduct) applies if an <i>ELMI</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> . <i>MAR 2</i> (Price Stabilising Rules), <i>MAR 3</i> (Inter-Professional Conduct) and <i>MAR 4</i> (Endorsement of the Takeover Code) do not apply to an <i>ELMI</i> when <i>issuing e-money</i> . <i>MAR 5</i> (Alternative Trading Systems <u>Multilateral Trading Facilities</u>) will not apply to an <i>ELMI</i> , as there are restrictions on the type of business activities that an <i>ELMI</i> may carry on.

Annex I

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

In this Annex, underlining indicates new text.

Arrangements for making information public

- 2.6.33 G The FSA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see REC 2.6.24EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.
- 2.6.34 G (1) In respect of arrangements facilitating the consolidation of data as required in REC 2.6.24EU(b), the FSA considers information as being made public in accordance with REC 2.6.24EU(b), if it:
- (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
 - (c) is accompanied by instructions outlining how users can access the information.
- (2) The FSA considers that an arrangement fulfils the 'machine-readable' criteria where the data:
- (a) is in a physical form that is designed to be read by a computer;
 - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
 - (c) is in a format that is known in advance by the party wishing to access the data.
- (3) The FSA considers that publication on a non-machine-readable website would not meet the MiFID requirements.
- (4) The FSA considers that information that is made public in accordance with REC 2.6.24EU should conform to a consistent and structured format based on industry standards. Regulated markets or market operators operating an MTF can choose the structure that they use.