

SCHEDULE 3

Amendments to secondary legislation made under the Financial Services and Markets Act 2000

The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001

1.—(1) The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 ^{M1} are amended as follows.

(2) In regulation 3(1) ^{M2} (interpretation)—

- (a) in the definition of “branch” for “Article 4.1.26” substitute “ Article 4.1.30 ”;
- (b) omit the definition of “the Commission Regulation”;
- (c) in the definition of “financial instrument” for “Article 4.1.17” substitute “ Article 4.1.15 ”;
- (d) in the definition of “multilateral trading facility” for “Article 4.1.15” substitute “ Article 4.1.22 ”;
- (e) in the definition of “regulated market” for “Article 4.1.14” substitute “ Article 4.1.21 ”;
- (f) in the definition of “transferable securities” for “Article 4.1.18” substitute “ Article 4.1.44 ”;

(g) at the appropriate places insert—

““algorithmic trading” has the meaning given in Article 4.1.39 of the markets in financial instruments directive;”;

““certificates” has the meaning given in Article 2.1.27 of the markets in financial instruments regulation;”;

““commodity derivatives” has the meaning given in Article 4.1.50 of the markets in financial instruments directive;”;

““depository receipts” has the meaning given in Article 4.1.45 of the markets in financial instruments directive;”;

““derivative” means a financial instrument defined in Article 4.1.44(c) of the markets in financial instruments directive and listed in Section C(4) to (10) of Annex 1 to that directive;”;

““direct electronic access” has the meaning given in Article 4.1.41 of the markets in financial instruments directive;”;

““emission allowances” has the same meaning as in the markets in financial instruments directive;”;

““exchange-traded fund” has the meaning given in Article 4.1.46 of the markets in financial instruments directive;”;

““group” has the meaning given in Article 4.1.34 of the markets in financial instruments directive;”;

““high-frequency algorithmic trading technique” has the meaning given in Article 4.1.40 of the markets in financial instruments directive;”;

““liquid market” has the meaning given in Article 4.1.25 of the markets in financial instruments directive;”;

““management body” in relation to an exchange means—

- (a) the board of directors, or if there is no such board, the equivalent body responsible for the management of the exchange; and

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- (b) any other person who effectively directs the business of the exchange;”;
- ““matched principal trading” has the meaning given in Article 4.1.38 of the markets in financial instruments directive;”;
- ““multilateral system” has the meaning given as in Article 4.1.19 of the markets in financial instruments directive;”;
- ““senior management” has the meaning given by Article 4.1.37 of the markets in financial instruments directive;”;
- ““SME growth market” has the meaning given by Article 4.1.12 of the markets in financial instruments directive;”;
- ““sovereign debt” has the meaning given by Article 4.1.61 of the markets in financial instruments directive;”;
- ““structured finance products” has the meaning given in Article 4.1.48 of the markets in financial instruments directive;”;
- ““systematic internaliser” has the meaning given in Article 4.1.20 of the markets in financial instruments directive;”;
- ““third country firm” has the meaning given in Article 4.1.57 of the markets in financial instruments directive;”.

(3) After regulation 10 (revocation of recognition) insert—

“FCA rules

11. The FCA may make rules for the purposes of these Regulations.”.

(4) For paragraph 2(3) of the Schedule ^{M3} (suitability) substitute—

“(3) The members of the management body must be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties.”.

(5) After paragraph 2 of the Schedule insert—

“Management body

2A.—(1) The composition of the management body of an exchange must reflect an adequately broad range of experience.

(2) The management body must possess adequate collective knowledge, skills and experience in order to understand the exchange's activities and main risks.

(3) Members of the management body must—

- (a) commit sufficient time to perform their functions on the management body;
- (b) act with honesty, integrity and independence of mind; and
- (c) effectively—
 - (i) assess and challenge, where necessary, the decisions of the senior management; and
 - (ii) oversee and monitor decision-making.

(4) The management body must—

- (a) define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the exchange in a manner which promotes the integrity of the market, which at least must include—
 - (i) the segregation of duties in the organisation; and
 - (ii) the prevention of conflicts of interest;

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- (b) monitor and periodically assess the effectiveness of the exchange's governance arrangements; and
 - (c) take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).
- (5) An exchange must—
- (a) devote adequate human and financial resources to the induction and training of members of the management body;
 - (b) ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making; and
 - (c) notify the FCA of the identity of all the members of its management body.
- (6) An exchange and, if it has a nomination committee, its nomination committee must engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body.
- (7) The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the exchange's activities.

Management body: significant exchanges

- 2B.—**(1) If an exchange is significant the following requirements apply to the management body—
- (a) members of the management body must not at the same time hold positions exceeding more than one of the following combinations—
 - (i) one executive directorship with two non-executive directorships (or where so authorised by the FCA under regulation 44(1), three non-executive directorships); or
 - (ii) four non-executive directorships (or where so authorised by the FCA under regulation 44(1), five non-executive directorships); and
 - (b) the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.
- (2) For the purposes of sub-paragraph (1)(a)—
- (a) any directorship in which the person represents the United Kingdom is not counted;
 - (b) executive or non-executive directorships—
 - (i) held within the same group, or
 - (ii) held within the same undertaking where the exchange holds a qualifying holding within the meaning of Article 4.1.31 of the markets in financial instruments directive, shall be counted as a single directorship; and
 - (c) any directorship in an organisation which does not pursue predominantly commercial objectives is not counted.
- (3) The nomination committee referred to in sub-paragraph (1)(b) must—
- (a) be composed of members of the management body who do not perform an executive function in the exchange;
 - (b) identify and recommend to the exchange persons to fill management body vacancies;
 - (c) at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;

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- (d) at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;
 - (e) periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and
 - (f) be able to use any forms of resource it deems appropriate, including external advice.
- (4) In performing its functions under sub-paragraph (3) the nomination committee must take account of the need to ensure that the management body's decision-making is not dominated by—
- (a) any one individual; or
 - (b) a small group of individuals,
- in a manner that is detrimental to the interests of the exchange as a whole.
- (5) In performing its function under sub-paragraph (3)(b) the nomination committee must—
- (a) evaluate the balance of knowledge, skills, diversity and experience of the management body;
 - (b) prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
 - (c) decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
 - (d) engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.
- (6) In sub-paragraph (1), “significant” in relation to an exchange means significant in terms of the size and internal organisation of the exchange and the nature, scope and complexity of the exchange's activities.”.
- (6) In paragraph 3 of the Schedule ^{M4} (systems and controls)—
- (a) for sub-paragraph (1) substitute—

“(1) The exchange must ensure that the systems and controls, including procedures and arrangements, used in the performance of its functions and the functions of the trading venues it operates are adequate, effective and appropriate for the scale and nature of its business.”;
 - (b) at the end of sub-paragraph (2)(d) omit “and”;
 - (c) after sub-paragraph (2)(e) insert—
 - “(f) the resilience of its trading systems;
 - (g) the ability to have sufficient capacity to deal with peak order and message volumes;
 - (h) the ability to ensure orderly trading under conditions of severe market stress;
 - (i) the effectiveness of business continuity arrangements to ensure the continuity of the exchange's services if there is any failure of its trading systems including the testing of the exchange's systems and controls;
 - (j) the ability to reject orders that exceed predetermined volume or price thresholds or which are clearly erroneous;
 - (k) the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the exchange;
 - (l) the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted

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- orders to transactions that may be entered into the exchange's trading system by a member or participant, are capable of being managed;
- (m) the ability to ensure the flow of orders is capable of being slowed down if there is a risk of system capacity being reached;
 - (n) the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and
 - (o) the requirement for members and participants to carry out appropriate testing of algorithms.
- (3) For the purposes of sub-paragraph (2)(c), the exchange must—
- (a) establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by their members or participants with its rules; and
 - (b) monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behaviour that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.
- (4) For the purposes of sub-paragraph (2)(o) the exchange must provide environments to facilitate such testing.
- (5) The exchange must be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks.

Market making agreements

- 3A.—**(1) The exchange must—
- (a) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);
 - (b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;
 - (c) monitor and enforce compliance with the market making agreements;
 - (d) inform the FCA of the content of its market making agreements; and
 - (e) provide the FCA with any information it requests which is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph (2).
- (2) A market making agreement must specify—
- (a) the obligations of the investment firm in relation to the provision of liquidity;
 - (b) where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);
 - (c) any incentives in terms of rebates or otherwise offered by the exchange to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis; and
 - (d) where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).

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(3) For the purposes of this paragraph, an investment firm pursues a market making strategy if—

- (a) the firm is a member or participant of one or more trading venues;
- (b) the firm's strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on a single trading venue, or across different trading venues; and
- (c) the result is providing liquidity on a regular and frequent basis to the overall market.

Halting trading

3B.—(1) The exchange must be able to—

- (a) temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and
- (b) in exceptional cases cancel, vary, or correct, any transaction.

(2) For the purposes of sub-paragraph (1) the exchange must ensure that the parameters for halting trading are calibrated in a way which takes into account—

- (a) the liquidity of different asset classes and sub-classes;
- (b) the nature of the trading venue market model; and
- (c) the types of users,

to ensure the parameters avoid significant disruptions to the orderliness of trading.

(3) The exchange must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.

(4) If a trading venue operated by the exchange is material in terms of liquidity of the trading of a financial instrument and it halts trading in an EEA State in that instrument, it must have systems and procedures in place to ensure that it notifies the FCA.

Direct electronic access

3C. Where the exchange permits direct electronic access to a trading venue it operates it must—

- (a) ensure that a member of, or participant in, the trading venue is only permitted to provide direct electronic access to the venue if the member or participant—
 - (i) is an investment firm, as defined by Article 4.1.1 of the markets in financial instruments directive (definitions), authorised in accordance with the directive;
 - (ii) is a credit institution authorised in accordance with the capital requirements directive^{M5};
 - (iii) comes within Article 2.1(a), (e), (i), or (j) of the markets in financial instruments directive (exemptions) and has a Part 4A permission relating to investment services and activities;
 - (iv) is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) or 47.3 (equivalence decision) of the markets in financial instruments regulation;

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- (v) is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001^{M6}; or
- (vi) is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act;
- (b) ensure that appropriate criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;
- (c) ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service;
- (d) set appropriate standards for risk controls and thresholds on trading through direct electronic access;
- (e) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from—
 - (i) other orders; or
 - (ii) trading by the member or participant providing the direct electronic access;and
- (f) have arrangements in place to suspend or terminate the provision to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.

Co-location services

3D. The exchange's rules on co-location services must be transparent, fair and non-discriminatory.

Fee structures

3E.—(1) The exchange's fee structure, for all fees it charges including execution fees and ancillary fees and rebates it grants, must—

- (a) be transparent, fair and non-discriminatory;
 - (b) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and
 - (c) impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.
- (2) Nothing in sub-paragraph (1) prevents the exchange from—
- (a) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;
 - (b) calibrating its fees to each financial instrument to which they apply;
 - (c) imposing a higher fee—
 - (i) for placing an order which is cancelled than an order which is executed;
 - (ii) on participants placing a high ratio of cancelled orders to executed orders;or
 - (iii) on a person operating a high-frequency algorithmic trading technique,
- in order to reflect the additional burden on system capacity.

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Algorithmic trading

3F. The exchange must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify—

- (a) the different algorithms used for the creation of orders; and
- (b) the persons initiating those orders.

Tick size regimes

3G.—(1) The exchange must adopt tick size regimes in respect of trading venues operated by it in—

- (a) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and
- (b) any financial instrument for which regulatory technical standards are adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive which is traded on that trading venue.

(2) The tick size regime must—

- (a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and
- (b) adapt the tick size for each financial instrument appropriately.

(3) The tick size regime must comply with any regulatory technical standards adopted by the European Commission pursuant to Article 49.3 or 4 of the markets in financial instruments directive.

Synchronisation of business clocks

3H. The exchange must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with regulatory technical standards adopted by the European Commission pursuant to Article 50 of the markets in financial instruments directive.”.

(7) In paragraph 4 of the Schedule ^{M7} (safeguards for investors), in sub-paragraph (2)—

- (a) in paragraph (aa) omit “and non-discretionary”;
- (b) in paragraph (ea) in both places for “financial markets” substitute “trading venues”;
- (c) in paragraph (f) omit “(including the monitoring of transactions effected on the exchange)”;
- (d) after paragraph (f) omit “and” and insert—

“(fa) it immediately reports to the FCA any significant breaches of its rules or disorderly trading conditions or conduct that may indicate behaviour which is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument; and”.

(8) Omit paragraphs 4A (provision of pre-trade information about share trading) and 4B (provision of post-trade information about share trading) of the Schedule ^{M8}.

(9) Before paragraph 6 of the Schedule ^{M9} insert—

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“Publication of data regarding execution of transactions

4C.—(1) The exchange must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the exchange on at least an annual basis.

(2) Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.”.

(10) In paragraph 7A of the Schedule ^{M10} (admission of financial instruments to trading)—

- (a) in sub-paragraph (1) for “financial market” substitute “ trading venue ”;
- (b) omit sub-paragraphs (2) to (11).

(11) In paragraph 7B of the Schedule ^{M11} (access to the exchange's facilities)—

- (a) in sub-paragraph (2)(b) for “the market” substitute “ its trading venues ”;
- (b) in sub-paragraphs (2)(c), (d) and (e) and (4) for “financial market” substitute “ trading venue ”;
- (c) omit sub-paragraph (3).

(12) After paragraph 7B of the Schedule insert—

“Position management

7BA.—(1) An exchange operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the exchange to—

- (a) monitor the open interest positions of persons;
- (b) access information, including all relevant documentation, from persons about—
 - (i) the size and purpose of a position or exposure entered into;
 - (ii) any beneficial or underlying owners;
 - (iii) any concert arrangements; and
 - (iv) any related assets or liabilities in the underlying market;
- (c) require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
- (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(2) The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must—

- (a) be transparent;
- (b) be non-discriminatory; and
- (c) specify how they apply to persons.

(3) An exchange must inform the FCA of the details of the position management controls in relation to each trading venue it operates.

Position reporting

7BB.—(1) This paragraph applies to an exchange operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.

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- (2) The exchange must—
- (a) where it meets the minimum threshold, as specified in a delegated act adopted by the European Commission pursuant to Article 58.6 of the markets in financial instruments directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances or emission allowance derivatives traded on the trading venue specifying—
 - (i) the number of long and short positions by such categories;
 - (ii) changes of those positions since the previous report;
 - (iii) the percentage of the total open interest represented by each category; and
 - (iv) the number of persons holding a position in each category; and
 - (b) provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.
- (3) For the weekly report mentioned in sub-paragraph (2)(a) the exchange must—
- (a) categorise persons in accordance with the classifications required under sub-paragraph (4); and
 - (b) differentiate between positions identified as—
 - (i) positions which in an objectively measurable way reduce risks directly relating to commercial activities; or
 - (ii) other positions.
- (4) The exchange must classify persons holding positions in commodity derivatives, emission allowances or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as—
- (a) an investment firm or credit institution;
 - (b) an investment fund, either as an undertaking for collective investments in transferable securities as defined in the UCITS Directive ^{M12}, or an alternative investment fund or an alternative investment fund manager as defined in the alternative investment fund managers directive ^{M13};
 - (c) another financial institution, including an insurance undertaking, a reinsurance undertaking as defined in the Solvency 2 Directive ^{M14} and an institution for occupational retirement provision as defined in Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement ^{M15};
 - (d) a commercial undertaking; or
 - (e) in the case of emission allowances or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community ^{M16}.
- (5) The exchange must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA and ESMA.”.
- (13) In paragraph 7E of the Schedule ^{M17} (suspension and removal of financial instruments from trading)—
- (a) the existing text becomes sub-paragraph (1);
 - (b) in sub-paragraph (1), for “regulated market” substitute “ trading venue ”;
 - (c) after sub-paragraph (1) insert—

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“(2) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates it must also suspend or remove from trading on that venue any derivative that relates or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal from trading of that financial instrument.

(3) Where the exchange suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.

(4) Where following a decision made under sub-paragraph (2) the exchange lifts a suspension or readmits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with that sub-paragraph, it must make that decision public and notify the FCA.”.

(14) In paragraph 9 of the Schedule (complaints), after sub-paragraph (5) insert—

“(6) The exchange must have in place effective procedures for its employees to report potential or actual infringements of—

- (a) these Regulations,
- (b) provisions of the Act and subordinate legislation made under the Act (including rules) transposing the markets in financial instruments directive,
- (c) the markets in financial instruments regulation, and
- (d) directly applicable EU regulations made under the markets in financial instruments directive or the markets in financial instruments regulation,

internally through a specific, independent and autonomous channel.”.

(15) After paragraph 9 of the Schedule insert—

“Specific requirements for regulated markets: execution of orders

9ZA.—(1) An exchange must have non-discretionary rules for the execution of orders on a regulated market operated by it.

(2) An exchange must not on a regulated market operated by it—

- (a) execute any client orders against its proprietary capital; or
- (b) engage in matched principal trading.

*Specific requirements for regulated markets:
admission of financial instruments to trading*

9ZB.—(1) The rules of the exchange must ensure that all—

- (a) financial instruments admitted to trading on a regulated market operated by it are capable of being traded in a fair, orderly and efficient manner;
- (b) transferable securities admitted to trading on a regulated market operated by it are freely negotiable; and
- (c) contracts for derivatives admitted to trading on a regulated market operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

(2) The rules of the exchange must provide that where it, 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 exchange—

- (a) must inform the issuer of that security as soon as is reasonably practicable; and

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- (b) may not require the issuer of that security to demonstrate compliance with the disclosure obligations.
- (3) The exchange must maintain effective arrangements to verify that issuers of transferable securities admitted to trading on a regulated market operated by it comply with the disclosure obligations.
- (4) The exchange must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.
- (5) The exchange must maintain arrangements to review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.
- (6) In this paragraph—
“the disclosure obligations” are the initial, ongoing and ad hoc disclosure requirements contained in—
 - (a) Articles 17, 18 and 19 of the market abuse regulation ^{M18};
 - (b) Articles 3, 5, 7, 8, 14 and 16 of Directive [2003/71/EC](#) of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading ^{M19};
 - (c) Articles 4 to 6, 14 and 16 to 19 of Directive [2004/109/EC](#) of the European Parliament and of the Council of 15 December 2004 relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market ^{M20}; and
 - (d) EU legislation made under the provisions mentioned in paragraphs (a) to (c);
 and the legislation referred to in paragraphs (b) and (c) is given effect—
 - (a) in the United Kingdom by Part 6 of the Act ^{M21} and Part 6 rules (within the meaning of section 73A of the Act); or
 - (b) in another EEA State by legislation transposing the relevant Articles in that State.

Specific requirements for regulated markets: access to a regulated market

- 9ZC.** The rules of the exchange about access to, or membership of, a regulated market operated by it must permit the exchange to give access to or admit to membership (as the case may be) only—
- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
 - (b) a credit institution authorised in accordance with the capital requirements directive; or
 - (c) a person who—
 - (i) is of sufficient good repute;
 - (ii) has a sufficient level of trading ability, competence and experience;
 - (iii) where applicable, has adequate organisational arrangements; and
 - (iv) has sufficient resources for the role it is to perform, taking account of the exchange's arrangements under paragraph 4(2)(d).

Multilateral systems

9ZD. An exchange must only operate a multilateral system as a regulated market, a multilateral trading facility or an organised trading facility.”

- (16) In paragraph 9A of the Schedule ^{M22} (operation of a multilateral trading facility)—
 - (a) in the heading insert at the end “ or an organised trading facility ”;

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- (b) in sub-paragraph (1), after “multilateral trading facility” insert “ or an organised trading facility”;
- (c) in sub-paragraph (2)—
 - (i) after “multilateral trading facility” insert “ or an organised trading facility”;
 - (ii) for paragraph (b) substitute—
 - “(b) any directly applicable EU regulation made under Chapter I,”;
- (d) after sub-paragraph (3) insert—
 - “(4) An exchange operating a multilateral trading facility or an organised trading facility must provide the FCA with a detailed description of—
 - (a) the functioning of the multilateral trading facility or organised trading facility;
 - (b) any links to another trading venue owned by the same exchange or to a systematic internaliser owned by the same exchange; and
 - (c) a list of the facility's members, participants and users.
 - (5) Any multilateral trading facility or an organised trading facility operated by the exchange must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.”.
- (17) After paragraph 9A of the Schedule insert—

“Specific requirements for multilateral trading facilities: execution of orders

9B.—(1) An exchange must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.

- (2) An exchange must not on a multilateral trading facility operated by it—
 - (a) execute any client orders against its proprietary capital; or
 - (b) engage in matched principal trading.

Specific requirements for multilateral trading facilities: access to a facility

9C. The rules of the exchange about access to, or membership of, a multilateral trading facility operated by it must permit the exchange to give access to or admit to membership (as the case may be) only to—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive;
- (b) a credit institution authorised in accordance with the capital requirements directive; or
- (c) a person who—
 - (i) is of sufficient good repute;
 - (ii) has a sufficient level of trading ability, competence and experience;
 - (iii) where applicable, has adequate organisational arrangements; and
 - (iv) has sufficient resources for the role it is to perform, taking account of the financial arrangements the exchange has established in order to guarantee the adequate settlement of transactions.

Specific requirements for multilateral trading facilities: disclosure

9D.—(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on a multilateral trading facility operated by it a transferable security

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which has been admitted to trading on a regulated market, the exchange may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

SME growth markets

9E.—(1) An exchange operating a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive (an “exchange-operated SME growth market”) must comply with rules made by FCA for the purposes of this paragraph.

(2) An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.

(3) Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of sub-paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance with—

- (a) any obligation relating to corporate governance, or
- (b) the disclosure obligations.

(4) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

Specific requirements for organised trading facilities: execution of orders

9F.—(1) An exchange operating an organised trading facility must—

- (a) execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);
- (b) not execute any client orders on that facility against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the exchange unless in accordance with sub-paragraph (2);
- (c) not operate a systematic internaliser within the same legal entity;
- (d) ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and
- (e) ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.

(2) An exchange may only engage in—

- (a) matched principal trading on an organised trading facility operated by it in respect of—
 - (i) bonds,
 - (ii) structured finance products,
 - (iii) emission allowances, and
 - (iv) derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation ^{M23},

where the client has consented to that; or

- (b) dealing on own account on an organised trading facility operated by it, otherwise than in accordance with paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.
- (3) If the exchange engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading in Article 4.1.38 of the markets in financial instruments directive.
- (4) The discretion which the exchange must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.
- (5) The first discretion is whether to place or retract an order on the organised trading facility.
- (6) The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance with specific instructions received from the client and in accordance with the exchange's obligations under Article 27 of the markets in financial instruments directive.
- (7) Where the organised trading facility crosses client orders the exchange may decide if, when and how much of two or more orders it wants to match within the system.
- (8) Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the exchange may facilitate negotiation between clients so as to bring together two or more potentially comparable trading interests in a transaction.
- (9) The exchange must comply with rules made by the FCA as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.
- (10) Nothing in this paragraph prevents an exchange from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by the exchange provided the investment firm does not have close links with the exchange.
- (11) In this paragraph—
- “close links” has the meaning given in Article 4.1.35 of the markets in financial instruments directive;
 - “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive;
 - “non-equities” means bonds, structured finance products, emission allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.

Specific requirements for organised trading facilities: disclosure

9G.—(1) The rules of the exchange must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the exchange may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The exchange must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of an organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

Specific requirements for organised trading facilities: FCA request for information

9H.—(1) An exchange must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of—

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- (a) why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;
 - (b) how discretion will be exercised in executing client orders, and in particular when an order to the organised trading facility may be retracted and when and how two or more client orders will be matched within the facility; and
 - (c) its use of matched principal trading.
- (2) Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.

Provision of data reporting services

9I. An exchange providing data reporting services must comply with Title V of the markets in financial instruments directive.”.

(18) In paragraph 21A of the Schedule ^{M24} (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

(19) In paragraph 31 of the Schedule ^{M25} (access to central counterparty, clearing and settlement facilities) omit sub-paragraph (3).

Marginal Citations

- M1** [S.I. 2001/995](#).
- M2** [Regulation 3](#) was amended by [S.I. 2006/3386](#) and 2013/3115. There are other amendments but none is relevant.
- M3** [Paragraph 2\(3\)](#) was inserted by [S.I. 2006/3386](#).
- M4** [Paragraph 3](#) was amended by [S.I. 2006/3386](#).
- M5** OJ No L 176, 27.6.2013, p.338.
- M6** [S.I. 2001/544](#); [article 72](#) was amended by [S.I. 2003/1476](#), 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.
- M7** [Paragraph 4](#) was amended by [S.I. 2006/3386](#).
- M8** [Paragraphs 4A](#) and [4B](#) were inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#).
- M9** [Paragraph 5](#) was revoked by [S.I. 2005/381](#).
- M10** [Paragraph 7A](#) was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2011/1043](#) and 2016/680.
- M11** [Paragraph 7B](#) was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/472](#) and 3115.
- M12** OJ No L 302, 17.11.2009, p.32.
- M13** OJ No L 174, 1.7.2011, p.1.
- M14** OJ No L 335, 17.12.2009, p.1.
- M15** OJ No L 235, 23.9.2003, p.10.
- M16** OJ No L 275, 25.10.2003, p.32.
- M17** [Paragraph 7E](#) was inserted by [S.I. 2006/3386](#).
- M18** OJ No L 173, 12.6.2014, p.1.
- M19** OJ No L 345, 31.12.2003, p.64.
- M20** OJ No L 390, 31.12.2004, p.38.
- M21** [2000 c.8](#); [section 73A](#) was inserted by [S.I. 2005/381](#) and amended by section 16 of the Financial Services Act 2012, paragraph 3 of Schedule 15 to the Companies Act 2006 and [S.I. 2005/1433](#) and 2016/680.
- M22** [Paragraph 9A](#) was inserted by [S.I. 2006/3386](#).
- M23** OJ No L 201, 27.7.2012, p.1.
- M24** [Paragraph 21A](#) was inserted by [S.I. 2006/3386](#) and amended by [S.I. 2013/504](#).
- M25** [Paragraph 31](#) was inserted by [S.I. 2013/504](#).

Changes to legislation:

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 15A inserted by [2023 c. 29 Sch. 2 para. 45](#)
- reg. 16(1A)(1B) omitted by [2023 c. 29 Sch. 2 para. 46\(4\)](#)