FINANCIAL CONDUCT AUTHORITY

Improving Equity Secondary Markets

Consultation Paper
CP22/12**

July 2022

How to respond

We are asking for comments on this Consultation Paper (CP) by **16 September 2022**.

You can send them to us using the form on our website at: www.fca.org.uk/publications/consultation-papers/cp22-12-improving-equity-secondary-markets

Or in writing to:

Trading and Wholesale Conduct Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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1 Summary

Why we are consulting

1.1 We are consulting on proposals that are intended to improve how UK-based equity markets operate. Our proposals change aspects of trade reporting, waivers from pre-trade transparency and the tick size regime. They intend to maximise execution quality for investors. They also aim to improve the content and the efficient consolidation of post-trade reports. We also propose to remove or amend some provisions that impose material operational and compliance costs on firms but have not delivered material benefits to end users or to market functioning.

1.2 This consultation paper is part of the Wholesale Markets Review (WMR), the review of UK wholesale financial markets we have been conducting with the Treasury. We are consulting now because the proposed reforms concern parts of the regime that are already set out in regulatory rules and guidance and are therefore not contingent on changes that are intended to be implemented via the Financial Services and Markets Bill. This is to ensure that burdensome and unnecessary requirements are removed as soon as possible. We have engaged extensively with market participants on these proposals as part of the WMR. We will consider in due course if we need to do a broader review of equity markets in other areas covered by our existing powers or for which we will receive new powers, subject to parliamentary approval, as part of the outcomes of the Future Regulatory Framework.

1.3 In the CP we also set out our approach to improving UK markets' resilience to outages and seek views on the structure of UK markets for retail orders.

Who this applies to

1.4 The proposals in this CP will apply to:

i. trading venues
ii. investment firms
iii. UK branches of overseas firms undertaking investment services and activities

1.5 Our proposals will also interest law firms, market data and analytics firms, consultancies, retail investors and trade associations.

What we want to change

1.6 We want to change our rules to enhance the quality of execution for investors and improve the information content of post-trade transparency. We are also seeking views about the content of future guidance on outages to enhance the resilience of UK markets. We want to:

a. Improve the content of post-trade transparency by enabling market participants to better identify transactions that contribute to the price discovery process and to improve the consolidation of trade reports from multiple sources.
b. Simplify the reporting of over the counter (OTC) transactions for all classes of financial instruments by removing the systematic internaliser status as a criterion for establishing when an investment firm is required to report transactions. We propose to adopt a new regime based on designated reporting firms.
c. Improve choice and competition by allowing UK trading venues to use reference prices from overseas venues, where those prices are robust, reliable and transparent. We also propose to remove size thresholds for orders benefiting from the order management facility waiver by allowing trading venues to calibrate them according to the characteristics of their markets.
d. Improve the quality of execution by removing restrictions preventing trading venues from using the same tick size used by trading venues established overseas where the overseas venues are the primary markets in a financial instrument.
e. Enhance market resilience by consulting on what future guidance should cover in relation to the operation of markets before and during an outage.

1.7 We are also seeking views on whether improvements can be made to the way retail orders for shares are executed in the UK.

Measuring success

1.8 We will evaluate the effect of the changes by monitoring markets and gathering data on the quality of execution. As indicated in Our Strategy 2022 to 2025 and the 2022/23 Business Plan, we will use a variety of metrics to assess whether our work is strengthening the UK's position in global wholesale markets.

1.9 On our reforms to the post-trade transparency regime, we will seek feedback from firms, including through surveys, to understand whether our reforms to the post-trade transparency regime have lowered costs and improved the information content of post-trade reports. We will seek to gather views from across financial markets, trading venues, sell-side and buy-side firms and data analytics firms.

1.10 For our changes to waivers, we will measure success by assessing whether investors have greater access to liquidity on UK trading venues operating under the reference price waiver for equity instruments that have their primary markets outside the UK. We will look at the number of overseas shares available for trading and the volume traded by trading venues operating under the reference price waiver.

1.11 We will assess the effect of our changes to the tick size regime for shares that have their primary markets overseas based on metrics that measure the quality of execution (such as spreads) for those shares.

Next steps

1.12 We want to know what you think of our proposals in this CP.

1.13 Please send your comments to us by 16 September 2022, using the options in the 'How to respond' section above. Unless you have indicated that your response is confidential, we will not treat it as such.

1.14 Following consideration of responses, we will submit the relevant updated technical standards to the Treasury for approval, in line with section 138R of FSMA. If the Treasury approves them, we will make and publish a policy statement and amend the technical standards.

2 The wider context

2.1 The UK Markets in Financial Instruments Directive (UK MiFID) is the collection of laws that regulate the buying, selling and organised trading of financial instruments. The rules are derived from European Union (EU) legislation that took effect in November 2007 and was amended in January 2018 (MiFID II). These were amended to address deficiencies arising as a result of the UK's withdrawal from the EU at the end of the Transition Period.

2.2 In July 2021, the Treasury published a consultation document, the Wholesale Markets Review, with proposals to reform the UK's secondary markets framework. The proposed changes included the repeal of the mechanism to cap the volume of dark trading and the share trading obligation. The consultation also proposed substantial reforms to other parts of the regime, including but not limited to the transparency regime for bonds and derivatives and of commodity derivatives position limits. The consultation document covered the need for the FCA to develop guidance clarifying the trading venue perimeter and reforms aimed at establishing the conditions for a consolidated tape to emerge.

2.3 On 1 March 2022, the Treasury published the feedback statement, which confirmed the government's intention to deliver some of the proposals contained in the WMR in this year's Financial Services and Markets Bill. In the WMR, and as indicated in our Business Plan 2022/2023, we committed to take forward consultations about parts of the proposed changes that fall within our rules and guidance.

2.4 Enactment of the Bill provisions will also implement the outcomes of the Future Regulatory Framework Review under which responsibility for financial market rules in areas of retained EU law will be transferred to the regulators. Under the Future Regulatory Framework (FRF), the firm-facing requirements of the MiFID II regime which currently sit in Parliamentary legislation will move to our Handbook. When this occurs, we will be able to revise them through our rule-making powers.

2.5 Our approach to the implementation of the WMR is to stagger the topics on which we consult. We are consulting first on changes to the requirements that we already have the power to implement because they relate to parts of the regime that are already set out in regulatory rules and guidance and that we do not expect to be materially affected by the changes to primary legislation in the Bill. We intend to consult on other reforms covered in the WMR which are more closely linked to changes to legislation over the course of this year and next. This approach will allow firms to absorb and respond to our proposals in a more manageable way.

2.6 In March 2022, the European Securities and Markets Authority (ESMA) published final reports on draft amendments to RTS 1 on transparency for equity markets and RTS 2 on transparency for non-equity markets. We have had regard to the responses to ESMA's review on RTS 1 for those changes that are relevant to our consultation.

2.7 Respondents to the WMR noted that it is difficult to interpret trading data in the equities market and identify addressable liquidity, i.e. liquidity that firms can interact with and use for trading decisions. Market participants also raised concerns that there is a degree of uncertainty about who should report OTC trades and that the current

reporting regime creates operational complexity for firms. Firms have also told us that there is a need for clearer and more timely communications from trading venues during an outage. Finally, market participants expressed concerns about how the tick size regime applies to overseas shares and to newly issued shares.

2.8 We met market participants this year to discuss changes to the rules that apply to equity secondary markets. This follows on from discussions about possible changes to these requirements that we had with market participants since before the WMR consultation document was published in July 2021. This dialogue will continue, in particular through our new Secondary Markets Advisory Committee[1], as we look in detail at a range of issues and consider what guidance would be helpful for market participants.

2.9 In April, we published our Strategy 2022-2025 and the Business Plan for this year. It included a commitment to strengthening the UK's position in wholesale markets. To achieve this, we said that we would tailor our rules better to suit our markets and to promote competition and positive change. We said that we would develop proposals on secondary markets, including on the transparency regime for equity markets. This consultation supports those objectives and delivers against our commitments.

How it links to our objectives

Consumer protection

2.10 One of our operational objectives is to secure an appropriate degree of protection for consumers. The rules we are consulting on do not directly affect the relationship between consumers and their service providers. However, the efficiency of equity markets is of direct relevance to consumers, affecting the costs of buying and selling shares and therefore impacting on the returns they earn from investing.

2.11 The aim behind the proposed changes in relation to post-trade transparency is to improve the quality of information that is available to market participants. This should help to make the process of price formation more efficient because market participants are better informed about market activity. It might also improve the ability of those executing orders on behalf of clients to achieve the best possible result for their clients. The information may enable them to understand better the likely impact of different trading strategies and to distinguish the execution quality that can be achieved using different execution venues.

2.12 While we are not consulting on changes to our Handbook, Chapter 7 on the UK market for retail orders is of relevance to consumers. We are gathering views on whether there are improvements that can be made to the way in which retail orders for shares are executed in the UK.

Market integrity

2.13 The changes we are proposing bear on our operational objective of market integrity in two main ways. First, in respect of transparency where the changes we are proposing to the post-trade transparency rules are intended to ensure that the information that is made available to the public is as useful as it can be to understanding liquidity in the

1 https://www.fca.org.uk/news/news-stories/fca-appoints-members-new-secondary-markets-advisory-committee

market. The changes to post-trade transparency flags should make it easier for firms to produce higher quality data and for users of the data to better interpret trends in trading in the marketplace. If well calibrated, greater transparency is associated with markets that are perceived as fairer which foster greater confidence and participation.

2.14 Second, the work proposed on outages seeks to enhance the resilience of trading on UK trading venues and markets. We want to avoid unnecessary uncertainty when an outage occurs through better communication and for market participants to be well placed to react to outages on the venues that they use. Greater transparency and predictability of the actions of trading venues during an outage can improve market resilience.

Competition

2.15 We expect that the proposed changes will improve competition. By allowing UK trading venues to source reference prices from overseas markets, market participants should have more choice and see greater competition on where they can execute their trades. This should also lower the cost of trading for end-investors.

2.16 Permitting the use of the same tick size as overseas primary markets should support the establishment of transparent electronic order books for shares that have their primary market outside the UK, which would increase competition and choice for intermediaries and end-investors.

2.17 The separation of the status of systematic internaliser from the rules setting out when an investment firm is responsible for the public reporting of OTC transactions is likely to lower the cost of doing business for firms. Currently, firms that want to take on the responsibility for reporting transactions with clients have to notify us their status as systematic internalisers and comply with pre-trade transparency obligations. It is likely that the additional pre-trade transparency requirements increase barriers to entry which lowers competition.

Wider effects of this consultation

2.18 Annex 3 sets out our analysis of benefits and costs to firms and consumers from our proposals.

Equality and diversity considerations

2.19 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper (CP).

2.20 It is our assessment that these proposals do not have an Equality and Diversity impact, but we will continue to consider the equality and diversity implications of the proposals during the consultation period and will revisit them when making the final rules.

3 Post-trade transparency

Introduction

3.1 Post-trade transparency deals with public disclosure of the details of transactions executed in the market. Trading venues are required to publish information about the price, the volume and the time of all transactions executed under their systems in respect of equity instruments such as shares, depositary receipts and Exchange Traded Funds (ETFs). The same requirement applies to investment firms for the transactions they execute on own account or on behalf of clients outside the systems operated by trading venues, that is OTC.

3.2 Unless a deferral applies, publication of executed transactions must be made as close to real-time as is technically possible. For equities, deferred publication is permitted only for large transactions. Trading venues must publish post-trade information through their own arrangements whereas investment firms, including systematic internalisers (SIs), are required to use approved publication arrangements (APAs), which are firms authorised by us for the specific purpose of publishing trade reports.

3.3 The purpose of the post-trade transparency regime is to make financial markets fairer and more efficient. Transparency supports the price formation process, which is the mechanism by which all the available information on a financial instrument is embedded in prices through the interaction of buying and selling trading by investors. Transparent markets enable investors to receive – and monitor if they receive – best execution from their brokers.

3.4 Our focus on improving the quality of post-trade transparency fits within international best standards. The IOSCO Objectives and Principles of Securities Regulation include the promotion of transparency of trading as one of the regulator's objectives for secondary markets. A large body of academic research[2] confirms that transparency has important effects on market outcomes and that post-trade transparency, when properly calibrated, lowers transactions costs for end-investors and enhances the price discovery process.

3.5 Under UK MiFIR, we are empowered to make technical standards to further specify the types of transactions that should be reported, the content of the information that must be made public, the calibration of the deferral regime and the conditions setting out who is required to report in relation to OTC trades. Those technical standards are in onshored RTS 1.

3.6 In this CP, we are consulting on changes that aim to:

a. make post-trade transparency more useful by excluding non-price forming transactions that add noise to post-trade reporting and that increase the cost of reporting for firms

2 See for example Bloomfield, Robert, and Maureen O'Hara (1999). "Market Transparency: Who Wins and Who Loses?" Review of Financial Studies, 12(1): 5–35.

b. achieve greater consistency and limit duplications in the use of flags for trades that are exempted from post-trade transparency, the share trading obligation and pre-trade transparency under the negotiated trade waiver

c. improve the information content of trade reports by simplifying trade flags and other reporting fields

d. reform the framework that establishes the conditions under which investment firms are required to report trades executed OTC, to lower the cost of reporting for firms.

3.7 We are not consulting on the calibration of thresholds for large trades or the length of the deferral regime. We will consider in due course what changes to those elements of the post-trade transparency regime are necessary to improve equity markets. We also plan to consider which changes to pre-trade transparency would improve market integrity and efficiency – but this will depend upon powers being delegated to us through legislation to make rules in this area, as set out in Treasury's WMR Consultation Response.

Exemptions from post-trade transparency

Introduction

3.8 We are allowed in technical standards to exempt from post-trade transparency certain types of transactions which, given their nature, do not contribute to the price discovery process. Reporting those types of transactions to the public not only adds noise to the market but also imposes unnecessary costs on firms who need to publish or use post-trade reports.

Analysis

3.9 Article 13 of onshored RTS 1 lists the types of transactions that, when executed OTC, are exempted from post-trade transparency. The empowerment underpinning Article 13 requires us to consider transactions where the exchange of financial instrument is determined by factors other than the current market valuation of the financial instrument. The list within Article 13 currently includes:

a. Transactions that are exempted from transaction reporting purposes under Article 2(5) of onshored RTS 22. These transactions are technical and, while they involve the transfer of ownership of a financial instrument from one counterparty to another, they do not contain relevant information about the pricing or the liquidity of the instrument.

b. Transactions executed by investment management companies that transfer shares or other equity instruments from one collective investment to another managed by the same company

c. Give-up and give-in transactions

d. Transfers of shares or other equity instruments that arise in the context of investment firms complying with margin or collateral requirements or that are part of the default management of a CCP

3.10 We propose to:

- maintain the exemption under point a) which cross-refers to transactions that are not subject to the transactions reporting regime for the purposes of monitoring against market abuse
- amend b) on transactions executed by portfolio managers by addressing deficiencies in our current rules as to the scope of the exemption
- amend c) on give-ups by extending the scope
- delete d) which covers transactions that arise in the context of margin or collateral requirements for the purposes of clearing because they are already included under Article 2(5)(b) of RTS 22
- introduce a new exemption for intra-group transactions.

3.11 It is our view that the exemption from post-trade reporting set out in a) above remains appropriate and therefore we propose to keep the current reference to Article 2(5) of onshored RTS 22. A full list of the transactions in Article 2(5) of onshored RTS 22 is in Annex 1.

3.12 The intended purpose of the exemption under point b) of Article 13 of RTS 1 was to provide relief from post-trade transparency to transactions where a portfolio manager transfers shares or other equity instruments from one collective investment to another managed by the same portfolio manager. The added condition that no other investment firm is party to the transaction is intended to ensure that the transfer is non-price forming, in line with the empowerment underpinning Article 13 that transfer must occur at conditions other than the current market valuation of the instrument. We understand that the current market practice is to price the transfer at a benchmark price like the closing price of the relevant market of the instrument.

3.13 The exemption in point b) does not currently work as intended because investment management companies like UCITS and AIF managers are not subject to trade reporting under MiFIR. Instead, investment firms carrying out portfolio management have reporting obligations when dealing in financial instruments. Our proposal is to maintain the intended purpose of the exemption for inter-funds transfers but to ensure that it provides relief to firms that are subject to transparency obligations under MiFIR.

Proposals

3.14 We propose the following new definition for inter-funds transfers:

"b) transactions executed by an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no other investment firm is a party to the transaction."

Q1: Do you agree with maintaining the exemption for inter-funds transfers in Article 13?

Q2: Do you agree with the new definition of inter-funds transfers?

Analysis

3.15 Give-ups and give-ins are important arrangements that support the orderly and efficient operation of post-trade processes. They may take different forms. For example, in futures markets they typically involve three counterparties, a client, an executing broker and a clearing broker. In a give-up, an executing broker passes a trade executed for a client to the client's clearing broker for the purposes of clearing.

3.16 Give-ups/give-ins are exempted from post-trade transparency as they represent post-trade processes that do not provide information about the pricing or the liquidity of the relevant financial instrument. Under RTS 1, the definition of give-up/give-in is:

"a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing".

3.17 In equity markets, clients use prime brokers to receive a bundle of services such as execution, stock lending, financing and custody. Request for market data (RFMD) is a market practice involving a client, the prime broker of the client and an executing broker. For example, in a request for market data a client, e.g. a buy side firm, wants to get exposure to a particular share or basket of shares. The client makes a request to an executing broker, instead of the prime broker, for information about the price and other information about a share or basket of shares with a view to entering into a swap with the prime broker. Upon receiving an RFMD, the executing broker enters the market to buy the shares or basket of shares. The shares are then given up to the prime broker who in turn sells the swap to the client with the equity position acquired from the executing broker as a hedge.

3.18 We understand that the structure of a give-up/give-in in a RFMD raises the question as to whether they fit into the existing definition of give-ups/ins. We are of the view that give-ups/ins in the context of RFMD should not be reported as they do not provide any additional information to the one already provided by the reporting of the market leg of trades concluded by the executing broker.

3.19 Before Brexit, ESMA developed guidance on how give-ups/ins related to RFMD should be treated. It said they should be reported and considered as OTC transactions. They should also carry a flag indicating that they are benchmark trades. As we said at the time of Brexit, we have regard to ESMA guidance insofar it was part of our supervisory approach before Brexit. The guidance helped improving post-trade transparency, as previously give-ups in the context of an RFMD were often reported as transactions carried out by SIs. However, we propose a different approach, because, in our view, it is not appropriate to treat them in the same way as other benchmark trades.

Proposals

3.20 We agree with market participants who have advised us that give-ups and give-ins in the context of RFMD are distinct from benchmark trades and that their reporting does not support the price formation process. We propose to expand the definition of give-up/in transactions to include RFMD give-ups where the trade that is passed is to hedge the prime broker's derivative position with the client. We propose the following definition of give up/in transaction:

"give-up transaction" or "give-in transaction" means:

a. *a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or*

b. *where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging a derivative position that it has committed to enter into with a client.*

3.21 We will also consider developing guidance to further clarify the types of give-ups/ins that can be included in the list of trades exempted from post-trade transparency. FCA guidance that benefits from industry best practices provides a flexible and quick tool to keep the rulebook up to date as new types of technical transactions arise.

Q3: **Do you agree with amending the exemption from post-trade reporting for give-ups and give-ins?**

Q4: **Do you think guidance to clarify further the types of give-ups and give-ins that can benefit from the exemption from post-trade transparency is required, and, if so, what issues do you think it should cover?**

Analysis

3.22 Investment firms often execute transactions between entities within the same group that are not carried out at arm's length but that arise exclusively for risk management purposes. The centralisation of transactions in an entity within the group can facilitate effective risk hedging and limit the fragmentation of exposures across entities. There can also be benefits from consolidating the expertise and the systems and controls in the same place. Those transactions are particularly relevant for UK markets as many investment firms with global operations have elected London as their hub for booking transactions originated from subsidiaries overseas.

3.23 These trades do not represent liquidity anyone can interact with, nor do they carry relevant information for the pricing of financial instruments. Furthermore, these transactions mirror trades that are already reported when the market leg is executed. Given their relevance and their technical nature, we are of the view that the reporting regime should be properly calibrated for those transactions.

Proposals

3.24 It is our view that such trades do not add meaningful information to the pricing of a financial instrument or to the understanding of the level of liquidity in the market for that instrument. We therefore propose to introduce an exemption from post-trade transparency for such trades when undertaken OTC. We propose the following definition for inter-affiliate transactions:

'Inter-affiliate transaction' means a transaction between entities within the same group carried out exclusively as part of centralised booking for intra-group risk management purposes.

3.25 Similarly to give-ups/ins, we consider that guidance clarifying the types of inter-affiliate transactions that can benefit from the exemption would assist firms in discharging their reporting obligations.

Q5: **Do you agree with introducing an exemption for inter-affiliate trades?**

Q6: **Do you agree with our proposed definition of inter-affiliate trades?**

Analysis

3.26 The exemption under point d) of Article 13 is for transactions that are executed in the context of various obligations to which members of a CCP may be subject to. Those transactions relate to margin and collateral requirements or to processes managed by a CCP in the case of the default of a member. The case for maintaining the exemption for those types of trades remains.

Proposal

3.27 Article 2(5) of RTS 22 includes contracts that arise exclusively for clearing and settlement purposes. To limit unnecessary duplications, we propose to delete point d) as the types of transactions currently covered by it overlap with the list of exemptions in Article 2(5) of RTS 22.

Q7: **Do you agree with the deletion of point d) from Article 13? If not please explain why.**

Analysis

3.28 The exemption from post-trade transparency in Article 13 of RTS 1 relies on an empowerment from Article 20 of UK MiFIR. Article 20 only applies to transactions executed OTC. Consequently, when a transaction of the type included in Article 13 is executed on a trading venue because, for example, the counterparties want to bring the trade under the rules of the venue to benefit from exchange default rules, the transaction is subject to reporting on a real-time basis. While the use of flags permits the separation of those types of transaction from price forming trades, reporting in real time imposes unnecessary costs to firms and adds noise to the public tape of executed trades.

3.29 There is no reason why the same types of transactions are exempted from post-trade transparency when executed OTC but are subject to real-time reporting when reported under the rules of a trading venue. We intend to address the deficiency in UK MiFIR once the delegation of power to us is implemented, subject to parliamentary approval, through the Future Regulatory Framework. However, Article 7(2)(d) of UK MiFIR already allows us to partially mitigate the problem by means of an empowerment allowing the deferred publication of transactions based on their type. The empowerment has not been used before as currently only transactions in large blocks are exempted from real-time reporting.

Proposal

3.30 We propose to allow trading venues to defer publication for all transactions in Article 13 until before the opening of the next trading day. Allowing deferred publication for these transactions would provide two benefits. First, it would reduce unnecessary noise in the real-time post-trade tape. Second, we expect that the proposal would lower operational costs for trading venues who are currently required to report those types of transactions in real time. Delayed reporting should also assist users of post-trade data who want to filter out those trades.

Q8: **Do you agree with the proposal to introduce a deferral for all transactions within scope of Article 13 of RTS 1? If not, please explain why.**

Alignment between Article 13, Article 2 and Article 6 in UK RTS 1

Introduction

3.31 UK MiFIR distinguishes between market transactions that carry information for the purposes of the valuation of financial instruments from other transactions that do not support the price formation process. The former are subject to full public disclosure (pre- and/or post-trade) while the latter can be exempted from transparency and the share trading obligation because there is no benefit to force them through the systems of a trading venue or a systematic internaliser.

3.32 There are currently several types of transactions that do not support the price formation process. Those listed in Article 13 of RTS 1 are deemed as transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument. Article 2 of RTS 1 lists the types of transactions that do not contribute to the price discovery process and can be exempted from the share trading obligation. Article 6 of RTS 1 covers transactions that are subject to conditions other than the current market price and that can be executed under the negotiated trade waiver when concluded under the rules of a trading venue.

Analysis

3.33 The types of transactions listed under Articles 2, 6 and 13 of RTS 1 largely overlap. There are various issues that arise from such overlap. The main one is that it complicates the use of flags which makes it more challenging to identify liquidity and extract information from the post-trade transparency reports. Flags are discussed in greater detail in the next section.

3.34 We are of the view that most of the transactions that fall within Article 2 and 6 of RTS 1 are already covered in Article 13 through the cross reference to Article 2(5) of RTS 22. The table below provides the mapping of articles 2 and 6 against those

Table 1 – mapping of transactions in Articles 2 and 6 of RTS 1 to Article 2(5) of RTS 22

Article 2	Article 6	Equivalent transaction covered in Article 2(5) of RTS 22
(a) the transaction is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;	(a) the transaction is executed in reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price;	
(b) the transaction is part of a portfolio trade;	(b) the transaction is part of a portfolio trade;	
(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;	(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;	

Article 2	Article 6	Equivalent transaction covered in Article 2(5) of RTS 22
(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, or a UK AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;	(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;	
(e) the transaction is a give-up transaction or a give-in transaction;	(e) the transaction is a give-up transaction or a give-in transaction;	
(f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;	(f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;	(b) a contract arising exclusively for clearing or settlement purposes;
(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;	(g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;	(h) the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument;
(h) the transaction is a securities financing transaction;	(h) the transaction is a securities financing transaction;	(a) securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council;
(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or a similar third country law for the same type of transactions, where applicable).	(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or similar third country law for the same type of transactions, where applicable);	(b) a contract arising exclusively for clearing or settlement purposes;
	(j) any other transaction equivalent to one of those described in points (a) to (i) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.	

3.35 Within the list of trades in Articles 2 and 6 there is an issue with the wording to describe benchmark trades in point (a). Market participants often execute transactions that are priced at a predetermined benchmark. For example, at the beginning of the day a client may ask its broker to buy or sell a certain number of shares at the volume-weighted price calculated over the course of the trading day. Other benchmarks can be used depending on the client's investment and hedging needs.

3.36 Currently, benchmark trades are excluded from the share trading obligation in Article 2 of RTS 1. They are also eligible trades for the purposes of the negotiated trade waiver under Article 6 of RTS 1. This means that it is possible for trading venue members to report those trades under the rules of the trading venue without publicly disclosing them before execution.

3.37 The definition of benchmark trade for the purposes of Articles 2 and 6 of RTS 1 is a transaction that "*is executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price*".

3.38 While benchmark trades may not carry significant price information, they are transactions that can be valuable to understand the level of liquidity in the market. To be able to use post-trade transparency, market participants must be able to separate price forming transactions from other types of trades using flags.

Proposal

3.39 We propose to delete points (d) to (i) from Articles 2 and 6 of RTS 1 and to add a cross reference to Article 13. We also propose retaining points (a) to (c) from Articles 2 and 6 but expanding the concept of benchmark trade. The deletion of points (d) to (i) will not have any effect on how those transactions are treated currently given the overlap with Article 2(5) of RTS 22. We note that in the consultation response to the WMR, the Treasury has committed to removing the share trading obligation. We will also delete Article 2 of RTS 1 once the proposed legislation is adopted.

3.40 The current definition of benchmark trade does not cover transactions executed at the closing market price, which have increased in relevance over the past few years. The exclusion prevents the flagging of those trades as benchmark trades, lowering the quality of post-trade transparency. It is our view that trades benchmarked at the closing market price are akin to the other types of benchmark trades included in the existing definition. We therefore propose to extend the definition of benchmark transactions to include trades priced at the closing market price so that in post-trade transparency they can use the benchmark trades flag.

3.41 We propose the following new definition of benchmark trades under point (a) of Articles 2 and 6:

"benchmark trade" means the transaction is executed by reference to a price that is:

a. *calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price, or*
b. *at the market closing price.*

Q9: **Do you agree with our proposals to align the definitions of non-price forming trades in Articles 2, 6 and 13? If not, please explain why.**

Q10: **Do you agree with our proposal to amend the definition of benchmark transaction to include transactions that reference to the market closing price? If not, please explain why.**

Table 2: proposed content of articles 2, 6 and 13 of RTS 1

Article 2	Article 6	Article 13
(a) the transaction is a benchmark trade;	(a) the transaction is a benchmark trade;	(a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable;
(b) the transaction is part of a portfolio trade;	(b) the transaction is part of a portfolio trade;	(b) the transaction is an inter-fund transfer
(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;	(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;	(c) give-up transactions and give-in transactions;
(ca) the transaction is of a type listed in Article 13	(ca) the transaction is of a type listed in Article 13	(ca) inter-affiliate transactions
	(j) any other transaction equivalent to one of those described in points (a) to (ca) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.	

Improving the information content of trade reports

3.42 Assessing the information content of OTC trade reports has historically proved more challenging than for transactions executed on trading venues. OTC post-trade data usually contain a significant number and variety of trades that are not the result of buying and selling interests at prevailing market prices.

3.43 Our proposals in relation to exemptions from post-trade transparency are specifically intended to address that problem. For example, exempting certain types of give-up/give-in trades and intra-affiliate transactions from the scope of post-trade transparency aims to ensure that those types of trades do not complicate the interpretation of post-trade data.

3.44 Post-trade identifiers (or flags) facilitate, among other things, the identification of addressable liquidity and more generally the interpretation and use of post-trade transparency information.

Post-trade flags

Introduction

3.45 The content of post-trade reports is set in Annex I of RTS 1. Along with other information about the economics of a transaction, trade reports contain identifiers, known as flags, which provide information on certain characteristics of the transaction. Whilst some transactions do not carry relevant pricing information, they can provide insights about the overall liquidity of a financial instrument. On the other hand, other transactions do not provide information relevant for either pricing valuation or for liquidity assessment. The purpose of trade-reporting flags is to support price formation by enabling users to separate trades that have information content from other trades that do not provide meaningful information.

Analysis

3.46 The introduction of flags by MiFID II only partially achieved the objective of improving the usability of OTC trading data. There are instances where the interaction between certain types of transactions and their corresponding flags have created uncertainty and unnecessary complexity. Market participants have pointed to inconsistencies in the use of several non-price forming transactions flags. This means that the same type of trade can be reported using different flags. This makes it challenging to identify non-price forming transactions, which in turn hampers the ability to find optimal trading opportunities.

3.47 Furthermore, limited use is made of certain flags. We believe there could be benefit in reducing the number of flags, removing those that add little or no value to the quality of the information that is disseminated through the market. In our view, this would create cleaner post-trade data whilst reducing operational costs for reporting firms.

3.48 We propose to address those problems by i) deleting those flags which are of limited use to the market and ii) aggregating flag types of trades which share similar characteristics. We are also interested in views as to whether new flags should be introduced to support price formation.

3.49 Table 4 in Annex I of RTS 1 lists 17 different flags. Some of those flags can be used in conjunction with others while others are mutually exclusive. Lack of clarity about the use and interpretation of flags poses challenges to firms aggregating post-trade reports for transaction cost analysis or for other purposes.

Table 3: current table 4 in Annex I on the list of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
"BENC"	Benchmark transactions	RM, MTF APA CTP	Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.

Flag	Name	Type of execution or publication venue	Description
"ACTX"	Agency cross transactions	APA CTP	Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.
"NPFT"	Non-price forming transactions	RM, MTF CTP	Transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument as listed under Article 13.
"TNCP"	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014	RM, MTF APA CTP	Transaction not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 and as set out in Article 2.
"SDIV"	Special dividend transaction	RM, MTF APA CTP	Transactions that are either: executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
"LRGS"	Post-trade large in scale transaction	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
"RFPT"	Reference price transaction	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
"NLIQ"	Negotiated transaction in liquid financial instruments	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.
"OILQ"	Negotiated transaction in illiquid financial instruments	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.
"PRIC"	Negotiated transaction subject to conditions other than the current market price	RM, MTF CTP	Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.
"ALGO"	Algorithmic transaction	RM, MTF CTP	Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701).

Flag	Name	Type of execution or publication venue	Description
"SIZE"	Transaction above the standard market size	APA CTP	Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.
"ILQD"	Illiquid instrument transaction	APA CTP	Transactions in illiquid instruments as determined in accordance with Articles 1 to 9 of Commission Delegated Regulation (EU) 2017/567 executed on a systematic internaliser.
"RPRI"	Transactions which have received price improvement	APA CTP	Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.
"CANC"	Cancellation	RM, MTF APA CTP	When a previously published transaction is cancelled.
"AMND"	Amendment	RM, MTF APA CTP	When a previously published transaction is amended.
"DUPL"	Duplicative trade reports	APA	When a transaction is reported to more than one APA in accordance with Article 17(1) of Delegated Regulation (EU) 2017/571.

Proposals

3.50 Following on from our proposal to amend Articles 2, 6 and 13, we propose that all transactions executed under Article 13 should be reported using a single flag, which is currently "NPFT". Any trade type under Articles 2 and 6 which is not included in Article 13 should instead display the separate flag "TNCP" with no overlap with the "NPFT" flag.

3.51 The rationale is that while benchmark trades, portfolio trades and transactions that are contingent on the execution of a derivative provide information about the underlying liquidity in a financial instrument, they do not individually provide valuable pricing information.

3.52 The current system of flags identifies certain types of trades undertaken by SIs. They are the "SIZE", "ILQD" and "RPRI flags. The first is used when an SI executes a trade against an order that is above the standard market size. The second is used for transactions that SIs execute in illiquid instruments. The flag "RPRI" identifies whether a trade has received a price improvement upon the quotes that an SI makes available to its clients.

3.53 Those flags reflect the different transparency obligations SIs are subject to rather than information relevant for the price formation process. We understand that there is very limited use of these flags. The information on the size of the trade or the liquidity status of the instrument can be equally determined from the post-trade information and the reference data that are already publicly available. The price improvement flag "RPRI" may be used to allow a quicker identification of orders that benefited from a price improvement. However, we understand that the use of the "RPRI" has limited value for the purpose of sound transactions cost analysis which requires, among other things, comprehensive information about the magnitude of the price improvement rather than whether a price improvement is offered to a client.

3.54 We believe that the "SIZE" and "ILQD" flag can be safely removed without undermining the ability of market participants to perform analysis. We are also proposing to remove the "RPRI" flag, although we acknowledge that the case for change here is more finely balanced.

> **Q11: Do you agree with the deletion of the SI related flags "SIZE" and "ILQD" and "RPRI". If not, please explain why by distinguishing your current use of each flag.**

3.55 The current list of flags also includes i) a flag related to the crossing of client orders by an investment firm, "ACTX"; ii) a flag to identify whether the same trade has been reported by more than one APA on behalf of the same client, "DUPL"; and iii) a flag to identify whether the trade is an algorithmic trade, "ALGO".

3.56 While covering different trade types, it is unclear how the flagging of trades using those identifiers contributes to the price formation process. Whether a trade is conducted using an algorithm is relevant for certain requirements investment firms are subject to rather than to support price formation. The "DUPL" flag, which would provide meaningful information to market participants by highlighting trades that are double reported, is in practice rarely used as firms do not report the same trades to multiple APAs.

3.57 For the reasons set out above, we are of the view that these trade flags do not add meaningful information to the post-trade data tape and should be removed.

> **Q12: Do you agree with the deletion of the agency cross flag "ACTX", the duplicate trade flag "DUPL" and the algorithmic trade flag "ALGO"? If not, please explain the value these flags offer, how providing practical examples.**

Aggregation of flags

3.58 Following the changes to the list of trades in Articles 2, 6 and 13 of RTS 1 and to the definitions in Article 1, we believe there is room for further streamlining the current flagging system. We seek views on whether it would improve the content of trade reports and lower the cost of reporting grouping all the three types of trades specified in points (a) to (c) of Articles 2 and 6 of RTS 1 under a single flag, "TNCP".

3.59 The reason to provide a single flag to identify all types of non-price forming transactions in Articles 2 and 6 is that while they are different, they have the same value in terms of their contribution to the price discovery process.

3.60 This would mean that transactions currently falling under the definition of benchmark transactions as per Articles 2(a) and 6(a) of RTS 1 (currently flagged with "BENC") and transactions falling under the definition of portfolio trade and trades that are contingent on the execution of a derivative contract as per Article 2(b) and (c) and 6(b) and (c) could be covered by a single flag.

3.61 The use of a single flag would also simplify post-trade reporting for transactions that currently share the characteristics of more than one flag. For example, there may be instances where a portfolio trade is priced at a benchmark price. The reason for using a single flag is that market participants use non-price forming flags just to filter out those trades rather than to analyse them separately.

3.62 Alternatively, we could maintain the "BENC" flag and either use the TNCP flag for portfolio and contingent trades or create two new flags for portfolio trades and contingent trades. This would ensure continuity with the current reporting regime through the retention of "BENC" and it would allow market participants to separate benchmark flags from the other types of non-price forming trades like portfolio trades and trades that are contingent to the execution of a derivative contract.

> **Q13: Do you agree with the proposal of identifying "benchmark", "portfolio" and "contingent" trades with one single flag, "TNCP"? If not, please explain why and set out your preferred approach.**

3.63 Currently there are three flags to identify trades which benefit from the negotiated trade waiver under Article 4(b) of UK MiFIR. Each flag refers to one of the three conditions under which transactions can be executed under the waiver. These flags are "NLIQ", "OILQ" and "PRIC". The first one is used to identify transactions that are executed within the available spread in the market in a liquid equity. The second is for transactions in illiquid equities. The third is for transactions subject to conditions other than the current market price.

3.64 Non-price forming trades that are executed under the negotiated trade waiver are already flagged as such and the information about whether a financial instrument is liquid is separately available through our Financial Instruments Transparency System.

3.65 We see little value in having these three flags because they do not provide meaningful additional information about the price or the level of liquidity of a financial instrument. Their inclusion in the list of flags is largely driven by the different treatment of those types of negotiated trades for the purposes of the volume cap mechanism. However, we have suspended the volume cap mechanism since the UK's withdrawal from the EU and HMT intends to repeal it. Therefore, we propose to replace these flags by a single flag, "NETW".

> **Q14: Do you agree with our proposal to aggregate the three negotiated transactions flags into one single flag, "NETW"? If not, please explain why.**

> **Q15: Are there any other flags that we should consider removing, amending or adding?**

Table 4: proposed new table 4 in Annex I on the list of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
TNCP	Transactions not contributing to the price discovery process	RM, MTF, APA, CTP	To be used for when the transaction is: • a benchmark trade, • part of a portfolio trade or • contingent on the purchase, sale or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot.
NPFT	Non-Price forming transactions	RM, MTF, CTP	Transactions where the exchange of financial instruments is determined by factors other than the current valuation of the financial instrument as listed under Article 13.
SDIV	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
LRGS	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
RFPT	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
NETW	Negotiated transaction	RM, MTF, CTP	Transactions executed in accordance with Article 4(1) of Regulation (EU) No 600/2014.
CANC	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled.
AMND	Amendment flag	RM, MTF APA CTP	When a previously published transaction is amended.

3.66 Certain flags that we propose to delete, amend or group for the purpose of trade reporting are also part of the information that is reported under Article 26 of UK MiFIR. They are currently reported under fields 61 (waiver indicator) and 63 (OTC post-trade indicator) of onshored RTS 22. We are not proposing changes to RTS 22 at this time. We will consider in due course whether similar changes are necessary for transaction reporting purposes. However, we are interested in views as to the impact of our proposals on post-trade transparency flags on firms' transaction reporting systems.

Q16: Do our proposals to modify the flags for trade reporting impact your systems for transaction reporting? If yes, could you describe how and what problems maintaining the flags for transaction reporting would cause?

Content of the reporting fields

Analysis

3.67 Tables 2 and 3 in Annex I of onshored RTS 1 provide the details and the format used by trading venues and investment firms when publishing post-trade reports. Market participants have raised some concerns around the quality of post-trade information. The main feedback we received is that it can be challenging to aggregate and utilise post-trade data. This is due to some lack of harmonization in the published data feed.

3.68 Currently, trading venues and APAs are not all using a common naming convention for the 9 fields in Table 3 in Annex I of RTS 1. This means that the files and the live data feeds published by different trading venues and APAs will use different names for the same data fields. This makes it unnecessarily harder for aggregators and end users to consolidate data from different sources.

3.69 Currently, the field "Price" can be populated with both decimal and alphanumerical values. The latter case is to identify those instances in which the price is pending and the field would be populated with the text "PNDG". For example, in the ETF markets certain transactions are concluded at the net asset value which is available only at the end of the day. Market participants have flagged that allowing the same field to be populated with decimal and alphanumerical values increases operational complexity in using the data through automated systems.

Proposals

3.70 We do not think it is necessary to change onshored RTS 1 to ensure the use of common naming conventions for the reporting fields. We will engage with market participants and consider the adoption of guidance as part of our work on the quality of market data.

3.71 We propose to allow only numerical values to be used to populate the field "Price". This will be done in conjunction with the introduction of a new field "Price conditions" to be used in those instances where the price is not available but pending. This field should only be populated with pre-defined text "PNDG".

3.72 We received feedback that further clarity is needed around the use of the field "Price currency". This is because currently this field is populated using both major and minor currency units. Again, this increases the operational burden on users. This field should be populated following the ISO 4217 standards for currency codes. This only includes major currency codes. To provide more clarity on how to populate this field we propose to include major currency in the description of the field "Price currency" in Table 3.

Q17: Do you agree with the proposed changes to the reporting fields? If not, please explain why.

Q18: Are there other changes that you suggest we should make to the fields of reported transactions?

Designated reporter regime

Introduction

3.73 MiFID II requires investment firms to publish in real-time post-trade information about trades executed outside the systems or the rules of trading venues, i.e. OTC, unless an exemption applies. This obligation applies to the trading of all types of financial instruments that are traded on a trading venue.

3.74 Under MiFID, counterparties could either bilaterally agree who would discharge the obligation to report trades to the public or, in absence of such agreement, followed a waterfall of conditions based on whether the investment firm was buying or selling the financial instrument and acting on a proprietary basis or on behalf of a client. The MiFID approach was, at least in the UK, particularly well-suited to buy-side firms as they could agree with sell-side firms to be relieved from the obligation to report executed transactions. This meant they could avoid making the necessary investments to publish trades and the cost of connecting to firms like trade data monitors (the UK precursors of MiFID II's APAs).

3.75 To improve the quality and timeliness of post-trade reporting, MiFID II – RTS 1 and RTS 2 – sets out new rules for reporting OTC trades when a transaction involves two investment firms. The reporting obligation is currently linked to the SI status of the counterparty to a trade. Where a transaction is between two investment firms and one is an SI in the instrument being traded, the SI is required to take on post-trade regulatory reporting obligations regardless of whether it is acting as a buyer or a seller.

Analysis

3.76 In principle, the framework introduced by MiFID II based on SIs has the advantage of clearly allocating the obligation to report. It also has the advantage of generally relieving buy-side firms from the obligation to report. In practice, however, the current regime has proved operationally complex for firms to comply with and has created some unintended consequences.

3.77 SIs are currently determined at an instrument level (i.e. a firm can be an SI in one share but not for another) and there is no official source that sets out who is an SI at the instrument level. To help firms determine who takes on the reporting responsibility, a consortium of market participants created the SI Registry (SIR), which includes over 150 SIs, from the UK and the EU, at an ISIN or asset class level. SIs that participate in the project declare which ISINs or classes of financial instruments they have an SI status in and this input is used by firms to check who must report the trade. Whereas firms may not be charged specifically for this service, feedback received from markets participants indicates that the service may be bundled or tied together as a 'package' with other services. The SIR is not made public and, due to it being a voluntary arrangement, it includes the vast majority but not all of the UK SIs.

3.78 The current regime creates operational complexity as firms must take a transaction-by-transaction approach to determine whether they are required to report a trade. An unintended consequence of the current regime is that it forces firms to opt in as SIs to be able to offer to buy-side clients and smaller firms the reporting service in relation to trades executed with them. Therefore, SI "liquidity" may be overrepresented in trade reports.

3.79 To improve the reporting regime, the WMR consultation proposed determining an SI at an entity level rather than on an 'instrument-by-instrument' basis for the purpose of trade reporting. Most respondents to the WMR agreed with the proposed approach but said that the designation of SIs for reporting should be only for that purpose and should be distinct from transferring other regulatory obligations for firms that are acting in an SI capacity.

3.80 Some respondents proposed the creation of a central database to keep a register of all reporters. Others suggested reverting to the MiFID reporting regime, whereby the counterparties agree through contractual arrangements who should take on the reporting obligation.

3.81 Because this part of the regime is already in our rules, HMT identified that we are best placed to address this issue and in the WMR consultation response HM Treasury recommended to consult on the reporting obligation.

Proposals

3.82 Based on the feedback received from industry participants and following further engagement with firms, we propose to create a regime where firms can elect themselves as designated trade reporters by notifying us. Firms will be able to register as designated reporters regardless of whether they are an SI in any instrument. Registration will be at entity level. The regime will apply across all classes of financial instruments, equities and non-equities. Designated reporters will be responsible for reporting only trades to which they are a counterparty. Where both or neither of the counterparties are designated reporters, the seller will report.

3.83 If a firm wishes to become a designated reporter, it will have to submit a notification form to us and provide relevant information (e.g. business name, address). Firms will be able to stop being a designated reporter by notifying us in writing. We may keep historical records of designated reporter status changes on our website for audit purposes and to facilitate backdated post-trade reporting actions.

3.84 The proposal does not impose new regulatory requirements. The fundamental principles of the regime will continue to apply, i.e. firms executing trades OTC will have to report transactions through APAs.

3.85 The advantage of the proposed approach is that it will provide greater clarity about who should report, which will reduce operational complexity and lower compliance costs. Sell-side firms indicated that most of the cost relating to reporting OTC trades were sunk, and that moving to the designated-reporter regime will not entail material costs. The proposal will reduce ongoing reporting costs as firms will no longer have to check on an instrument by instrument and trade by trade basis who takes on the reporting obligation, a practice which adds to firms' operating costs.

3.86 We acknowledge that smaller firms may not want to opt-in as reporters due to costs of building the reporting infrastructure. However, the problem is more acute under the current regime than it would be under our proposal. Under the current regime smaller sell-side firms need also to register as SIs, in addition to having reporting capabilities, when dealing with buy-side clients.

3.87 We propose the approach to OTC will apply to trades in all financial instruments.

Q19: Do you agree with our proposal to create a regime where firms will be able to opt in as designated reporters at an entity level? Please explain your answer.

Q20: Do you agree that the FCA should maintain the register of designated reporters for firms to determine who reports OTC trades? Please explain your answer.

Implementation of changes to post-trade transparency

3.88 We acknowledge, as per our CBA, that the implementation of the changes to the post-trade transparency regime that we are proposing will require some changes to IT systems and internal processes of the affected firms. In particular, the designated reporter regime will require firms to notify us and for us to create a new register that firms will use to comply with their reporting obligations. In light of that, we propose to give firms 6 months to implement the changes from when we finalise our rules.

Q21: Do you agree with the proposed implementation timetable? If not please explain your answer.

4 Waivers from pre-trade transparency

Introduction

4.1 Pre-trade transparency refers to the publication of information about current orders and quotes (i.e. the prices and volumes of buying and selling interests). This transparency provides market participants with information about current trading opportunities. Transparency supports the efficient price discovery process, which is about how information relevant for the valuation of a financial instrument is incorporated into its price through the interaction of buyers and sellers. Market participants trade with greater confidence in transparent markets, which in turn increases liquidity and lowers execution costs. Transparent markets also facilitate the delivery and monitoring of best execution, which improves competition between execution venues.

4.2 There are instances where transparency can impair liquidity and harm investors. It is widely accepted that the disclosure of large orders to the market lowers liquidity and increases the cost of execution because of market impact. Sometimes, the disclosure of orders before execution is not just unnecessary and costly but it can confuse the market. For example, the disclosure of non-price forming trades or trades that are non-addressable by market participants (because they are bilaterally agreed at specific terms between the counterparties) could detract from the efficiency of the price discovery process.

4.3 For those reasons, trading venues are permitted to use waivers that, in specified circumstances, allow orders to be broadcasted and to interact without pre-trade transparency. There are four types of waivers for trading in equities: for orders that are large in scale (LISW), for orders held in an order management facility (OMFW), for systems that formalise negotiated transactions (NTW) and for systems where orders are matched based on a reference price (RPW). Trading venues must submit applications to us to obtain approval to use a waiver.

4.4 Waivers are widely used by trading venues. Under MiFIR we have approved over 70 waiver applications for equities and equity-like instruments, which includes 28 large in scale waivers, 24 waivers for negotiated transactions, 7 reference price waivers and 8 waivers for orders held in an order management facility. We have also approved 7 applications for trading protocols based on a combination of waivers (e.g. the reference price waiver and the waiver for large in scale orders). The volumes traded under the LISW and the RPW ranged between 13% and 16% in the course of 2021.

4.5 Following consultation on the WMR, the government proposed changes to the reference price waiver, which is used by trading venues operating dark pools. The changes proposed are to allow trading venues to:

- **a.** derive reference prices from non-UK trading venues, subject to the prices being reliable, transparent and consistent with best execution; and
- **b.** use reference prices that are composite prices from multiple venues, subject to the same conditions set out above.

4.6 The Financial Services and Markets Bill will include changes to UK MiFIR to give us the power to make rules to set the pre-trade equities waivers regime. Changes to UK MiFIR, are necessary to permit the use of reference prices derived from multiple venues (point b) above). However, amending onshored RTS 1 would allow the use of reference prices derived from overseas trading venues.

4.7 We propose targeted changes to the reference price and to the order management facility waivers. Once the waiver regime is delegated to us, we will consider whether broader changes to the waivers regime, including changes that allow the use of reference prices that are composite prices from multiple venues, are needed.

The reference price waiver

Introduction

4.8 The reference price waiver is available to systems where orders are matched at a reference price determined by other systems. A trading venue using the reference price waiver is not required to publish the number or volume of bid and offer prices provided it derives the price of the financial instrument from the trading venue where that instrument was first admitted to trading or the most relevant market in terms of liquidity (MRMTL). The trading venue must also be satisfied that the reference price used to match orders is widely published and is regarded by market participants as a reliable reference price.

Analysis

4.9 The concept of the MRMTL is further defined in technical standards. Under the onshored RTS 1, the MRMTL is the trading venue with the highest turnover within the relevant area for that financial instrument. The 'relevant area' means the UK and other countries or regions as specified by our direction. As of today, no such directions have been issued. In the absence of such directions, the MRMTL is the trading venue with the highest turnover within the UK. Consequently, UK trading venues cannot derive the reference price from an overseas venue even where it is the venue where a share is listed and which is the main pool of liquidity for that share.

4.10 Our analysis shows that not allowing the use of reference prices from overseas venues harms UK investors and deprives them of using the most reliable and transparent prices. For example, we compared the spreads for Eurostoxx 50 shares across the UK and the EU between March 2021 and March 2022. Over this period spreads were larger on average on UK trading venues than on the EU primary markets. Liquidity available on EU primary markets was also higher than that on UK secondary trading venues.

Proposals

4.11 To address the limitation in UK MiFIR and support an orderly transition to Brexit, in October 2020 we published a Supervisory Statement[3] to allow UK trading venues to use reference prices derived from EEA venues for waivers granted prior to Brexit.

3 Supervisory Statement on the Operation of the MiFID Markets Regime after the end of the EU withdrawal transition period.

4.12 We therefore propose to make amendments to RTS 1 to implement the proposal that was consulted on as part of the WMR reform to enable reference prices to be derived from trading venues outside the UK, subject to the prices being reliable, transparent and consistent with best execution. This would allow prices to be derived not only from EEA venues, but also from other jurisdictions such as the United States or Switzerland whose shares are regularly traded on trading venues in the UK.

4.13 The proposed amendment to the definition of the MRMTL will not affect transparency calculations. To determine the MRMTL we will continue to calculate the turnover in accordance with the existing methodology as set out in RTS 1.

4.14 Changes to the definition of the MRMTL have a bearing on the tick size regime. This is because the tick size liquidity bands are based on the average daily number of trades (ADNT) in instruments traded on the MRMTL as defined in RTS 1. We determine the MRMTL for in-scope instruments that are traded on UK trading venues and calculate the ADNT for these instruments in the MRMTL. If we expand the definition of the MRMTL to also cover overseas markets, we will have to calculate the ADNT on these markets for the purposes of the tick size regime. This will pose a challenge to us as overseas markets do not operate under our regulatory oversight and we do not have access to data from these markets.

4.15 To address the problem caused for tick sizes by our proposal to amend the MRMTL to change the way the reference price waiver operates, we propose to create a separate definition of the MRMTL for the purposes of determining a tick size. This will ensure the change to the MRMTL for the purposes of the reference price waiver does not affect calculations of the tick size of instruments.

Q22: Do you agree with the proposal to change the definition of the MRMTL to allow trading venues to derive the price from a non-UK venue provided that the price is transparent, robust and offers the best execution result?

Q23: Do you agree with the proposal to change the definition of the MRMTL for the purpose of the tick size regime?

The order management facility (OMF) waiver

Introduction

4.16 Under the order management facility waiver, trading venues can operate reserve (also known as iceberg) and stop orders. Reserve orders are orders where only part of the volume (the peak) is visible to the market while the remainder remains hidden. Once the visible part is executed, the system discloses the rest of the order until the order is fully executed, or it is withdrawn. A stop order, either an unpriced market or a limit order, is an order that remains undisclosed until a certain price condition is met. Once the price condition is met, the order is released into the order book in accordance with the rules applicable to all orders of that kind at the time of disclosure.

Analysis

4.17 Orders that benefit from the OMF waiver must meet a minimum size threshold. The purpose of setting a minimum threshold for orders held on an OMF was to ensure a harmonised single rulebook in the EU while maintaining high standards of pre-trade transparency. For reserve orders, the minimum size is €10,000 and for all other orders the minimum size is a size that is greater than or equal to the minimum tradable quantity set by the trading venue under its rules and protocols. Therefore, the setting of the threshold for stop orders is already left to trading venues under the current framework.

4.18 We are not convinced that setting a minimum threshold mitigates harm. In absence of evidence that the existing approach contributes to the integrity and transparency of the equity markets, we think there is no case to maintain the minimum monetary threshold. Instead, we propose to allow trading venues and trading participants to choose the order type that they think will achieve the best execution outcome.

Proposals

4.19 We believe trading venues should be responsible for setting the minimum size of reserve and stop orders in financial instruments they trade on their systems. They should have the power and the responsibility to set thresholds that are appropriate to the type of financial instrument and considering the market in which it is traded. We therefore propose to repeal the fixed threshold of €10,000 and allow trading venues to determine minimum size thresholds in respect of financial instruments traded in their systems. This approach will apply to reserve and stop orders held in the OMF.

4.20 We consider that this approach strikes the right balance between achieving a high level of transparency while allowing trading venues to tailor appropriately the size thresholds to market dynamics.

Q24: Do you agree with the proposal to delegate the decision to set a minimum size threshold for reserve and other orders to trading venues using the OMF waivers? Please explain why.

5 Tick size

Introduction

5.1 The tick size is the minimum increment between quoted prices in a financial instrument. The tick size is an important component of the market microstructure. The tick size affects transaction costs, liquidity and the orderliness of markets. It also has broader implications for market transparency.

5.2 A larger tick size incentivises liquidity provision by widening the spread. The spread is the difference between the highest price that a buyer is willing to bid for a share and the lowest price that a seller is willing to offer for the same share. Wider spreads generally result in larger profits for market makers. However, larger tick sizes also increase transaction costs for investors who need to cross the spread when buying and selling shares. Larger tick sizes impact negatively retail investors in particular, who trade in smaller sizes and generally execute at the best bid or offer price. Large tick sizes resulting in wider spreads may incentivise trading on systems that match at the mid-price and do not offer pre-trade transparency, such as dark trading pools operating under the reference price waiver.

5.3 A smaller tick size results in tighter spreads (and hence in smaller transactions costs), but it reduces market makers' incentives to provide liquidity. It also lowers the depth of orders available at the best bid and offer prices as liquidity is spread on a larger number of price points. Very small tick sizes may also have negative consequences on the efficiency and orderliness of the price formation process.

5.4 Before MiFID II, the tick size regime applicable to shares was left to the discretion of trading venues. It was one of the ways in which they could compete. MiFID II imposed a minimum tick size regime for trading venues dealing in shares, depositary receipts and ETFs. The rationale behind MiFID II is that venues in competition for order flow have an incentive to set tick sizes lower than others to attract participants like HFT firms who benefit from smaller tick sizes. The MiFID II regime is intended to prevent the risk of a race to the bottom and harm to the price formation process.

5.5 Whilst we are vigilant to the harms caused by ever decreasing tick sizes, we also need to be mindful of potential drawbacks brought about through maintaining a minimum tick size regime, such as that relating to increase in transaction costs for traders. Therefore, a balancing act is necessary to calibrate the tick size regime.

5.6 Onshored RTS 11 sets out the tick size requirements that trading venues shall comply with for equities, in particular for shares. It achieves this by establishing the minimum tick size for each share according to: (i) the price of the share; and (ii) the liquidity of the share as measured by the instrument's average daily number of transactions (ADNT) on the trading venue with the highest turnover within the UK for that instrument (most relevant market in terms of liquidity, MRMTL). The higher the liquidity of a share, the lower the tick – and conversely the higher the price, the higher the tick. RTS 11 directs the FCA to calculate the ADNT on the MRMTL for each instrument at least on a yearly basis.

5.7 Since the implementation of MiFID II, we have identified some aspects of the tick size regime that could be improved. They were reflected in the WMR consultation which proposed changes to the tick size regime to: (i) allow trading venues to use the tick sizes applicable in the relevant primary market located overseas; (ii) recalibrate the tick size regime for new shares; and (iii) consider the benefits and risks of delegating the tick size regime to trading venues.

5.8 In the WMR consultation response, HM Treasury said that the feedback from market participants supported improving how the tick sizes for overseas shares, i.e. shares traded on UK venues and whose main pool of liquidity is located on a trading venue outside the UK (which is usually the exchange where they are listed), and for newly issued shares are calibrated. In relation to the delegation of the tick size to trading venues, the government said that the case is not conclusive and that further consideration is needed. We will carry out further work in due course, assuming the Future Regulatory Framework Review transfers to us the powers to implement the broader changes to the tick size regime that might be needed.

5.9 In this CP we are consulting on changes to RTS 11 in relation to establishing tick sizes for overseas shares. We will consider reforms to the approach to newly issued shares when we look at the broader issue of the calibration of the current framework of the tick size regime, including the delegation to trading venues.

Analysis

5.10 The tick size regime currently applies to shares that are traded on UK trading venues, including overseas shares that are listed and have their most liquid market outside the UK. Determining tick sizes for overseas shares based solely on the ADNT of domestic trading venues, without consideration for the trading activity in those shares on more liquid third country trading venues, results in tick sizes being set which are overly wide compared with their primary markets. This causes harm to investors and restricts the ability of UK trading venues to compete.

5.11 A 2019 amendment made to RTS 11 gives us the power to factor in liquidity from overseas trading venues in the calculation of the tick size, which is necessary when the main venue of trading for a share is a third country market. The RTS instructs us to do this by taking into account the transactions executed on the overseas trading venue with the highest turnover for trading of that share. We then publish an adjusted ADNT which can be used by trading venues to calculate the minimum tick size.

5.12 However, the end outcome is not always optimal even when the FCA exercises the power to make manual adjustments to the ADNT. Data pertaining to transaction volumes on overseas venues requires sourcing from outside the UK. This sourcing can be cumbersome and requires additional systems and oversight resources.

5.13 Once the liquidity from the overseas primary market is factored in, differences between the tick size in the primary market and the one determined according to RTS 11 may still persist. For example, in the US all shares with a price of $1 or above have a tick size of 1¢, or $0.01. The application of the RTS 11 methodology would potentially deliver a tick size that is a multiple of that even for some of the most liquid US shares that are constituents of the S&P500 index.

5.14 Post Brexit we have used our supervisory powers to permit UK trading venues to continue to determine tick sizes for EU shares based on trading data, i.e. the ADNT, from EU trading venues. These data are published by ESMA through its Financial Instruments Transparency System (FITRS). The best long-term way to address the deficiency in RTS 11 for overseas shares is to amend it.

Proposals

5.15 Given these considerations, the WMR proposed to allow trading venues to use the tick size applicable in the relevant primary market located outside the UK. Doing so is operationally simpler than performing ad hoc calculations and achieves an outcome that delivers a level playing field with overseas exchanges. Respondents to the WMR, across the range of stakeholders representing the buy and sell sides alongside trading venues, were overwhelmingly supportive of this proposal.

5.16 Our proposal will allow the use of tick sizes from overseas primary markets from any jurisdiction. For EU shares our supervisory statement already allows, until 2024, the use of the same tick size regime from EU primary markets. For the other jurisdictions that don't benefit from our supervisory statement, the impact of our proposal will be more significant. For instance, US shares traded on UK venues are assigned ticks that could be as wide as $1 under the current regime. Our proposal would equalise the ticks of impacted shares with that of their respective primary overseas exchange. For US shares priced above $1, this would be 1¢. Currently, there are over 2,000 US shares that are admitted to trading on UK trading venues. We estimate that many of the most liquid US shares that currently would trade in the UK with a larger tick size would stand to benefit from our proposal. Such shares are typically large-cap equities and widely traded on overseas exchanges.

5.17 We therefore propose to amend RTS 11 and allow trading venues to set the minimum tick size at the level of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues. Trading venues should be able to use the tick size from an overseas market where they are satisfied that that market is the most liquid market for the share.

> **Q25: Do you agree with the proposal to allow trading venues to adopt the minimum tick size of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues? Please explain your views.**

6 Improving market-wide resilience during outages

Introduction

6.1 Resilience of trading venues is fundamental to maintaining transparent and orderly markets. A market outage occurs when the provision of essential services provided by a trading venue (such as order processing, execution of transactions and publication of trading interests) is temporarily interrupted. An outage causes various harms to market participants. When there is an outage, firms' ability to trade and hedge are limited. The interruption of the price discovery mechanism that public markets provide increases uncertainty and lowers confidence in markets.

6.2 A failure of controls to prevent disorderly trading conditions could lead to price movements that do not reflect the underlying supply and demand for an instrument. The lack of ability to trade because a trading venue is shut down may transmit financial instability if it prevents market participants from managing their risk.

6.3 Resilience requires trading venues to have effective arrangements to seek to avoid, as far as possible, market outages, and to manage them effectively when they do occur. Outages do not occur often, but when they do occur, they are highly disruptive to a trading venue itself and a wide range of market participants.

Analysis

6.4 In 2021 we published a policy statement (PS21/3) on "building operational resilience". The statement contains final rules and guidance applicable across various financial services firms, including RIEs (Recognized Investment Exchanges), MTFs and OTFs, which came into force on 31 March of this year. We updated the FCA Handbook to include a section on expected communication standards during operational disruptions (SYSC 15A.8). While these new rules and guidance provide an overall framework for improving communications, they do not address, because of broader application, specific issues linked to trading venue outages and market-wide resilience.

6.5 Outages can occur on trading venues across any asset class. However, there are some issues related to outages of primary markets that are specific to the trading of shares. A primary market is the market where a share is listed. It is also the market ensuring that an issuer complies with the relevant disclosure requirements. Primary markets generally account for the largest market share in terms of number and volume of executed transactions and are often characterised by a larger and more diverse set of market participants.

6.6 When a primary market experiences an outage, it affects price formation and liquidity to the whole market, including alternative venues. There are a number of reasons this happens. Primary markets are generally leading the price discovery process which means that in absence of a price "formed" on the primary market, liquidity on other markets is affected as there is greater uncertainty about the fair price of the affected instruments.

6.7 The interconnectedness created by trading venues operating under the reference price waiver further exacerbates the impact of an outage on the primary market as those venues are unable to match orders on the basis of primary market's bid and offer prices. Under current rules they can't use an alternative reference price. Market participants may hence prefer to wait for greater clarity as to when the primary market will reopen instead of immediately moving their trading to an alternative venue. For those reasons, the outage of a primary market for shares is more disruptive than outages at secondary trading venues.

6.8 Coordination problems may also affect the ability of alternative trading venues to gather liquidity during an outage at the primary market. Trading at an alternative venue is not a viable alternative if only a fraction of market participants do the same. An internal FCA study by our economics department and a paper published by the Plato Partnership[4] noted that trading activity did not move to alternative venues during an outage. The research by the Plato Partnership also estimated that for a three-hour outage on Euronext, trading volume reduced by about 40%. The important benefits from increased competition between trading venues in the trading of shares have not been accompanied by an equivalent strengthening of the overall resilience of trading.

6.9 There is also a specific issue related to outages which affect opening and closing auctions on the primary market. Without an opening auction to establish an initial price, it is difficult for trading in an instrument to commence. The lack of a closing auction also deprives market participants of a price which plays an important role in pricing benchmark trades and valuing funds.

6.10 There were seven outages across trading venues in Europe in 2020 and 2021. These have led to concerns about market resilience that surfaced in discussions we and the Treasury had with market participants. HMT sought further views through the WMR consultation paper. It made three main policy proposals about outages: that we and the industry should work on a playbook for handling outages; the authorities should explore an alternative to the closing auction operated by the primary market; and that the reference price waiver should be amended to allow for greater flexibility in terms of the reference price that can be used.

6.11 Market participants broadly endorsed all three proposals on outages in the WMR. No strong preference was expressed in responses on whether the playbook should be FCA guidance or industry guidance that benefits from our recognition[5]. On the issue of alternative closing mechanism, industry suggestions included having an industry agreed closing reference price, which could be the last available price before the outage or an average of the previous 5 days' closing price on the primary exchange, while others preferred an alternative closing auction. In wider discussions other suggestions made on this topic have included enforcing standards through best execution requirements for participants to connect to a range of venues and designating alternative venues to take over from the primary market. Many market participants have also stressed the significance of a consolidated tape for facilitating trading.

4 Plato Partnership (May 2021) - How do you solve a problem like a market outage?
5 See our process to confirm industry guidance: https://www.fca.org.uk/about/rules-and-guidance/confirmed-industry-guidance

6.12 An additional concern raised in WMR responses was about Article 15(2) in onshored RTS 7 covering organisational requirements of trading venues. This requires trading venues experiencing disruptions to resume services within or close to two hours. Some market participants said that that this requirement could lead to trading venues re-opening the market when they are not ready, resulting in further disruptions to the market.

Proposals

6.13 In our immediate policy work we propose to focus on actions which are likely to be effective and can be delivered more quickly and will improve market resilience through FCA or industry guidance. The first of these areas is clarifying our expectations on communications and protocols during market outages on trading venues.

6.14 We therefore want to work with market participants on guidance on communications and protocols on market outages on trading venues. This guidance would be relevant to firms' obligations under the requirements in SYSC 15A.8 as well as requirements in the Recognition Requirements for Recognised Investment Exchanges dealing with Systems and Controls and Safeguards for Investors, and requirements in MAR 5.3A and 5A.5 for MTFs and OTFs.

6.15 Based on discussions so far with industry, we set out below the key areas we believe guidance for trading venues and market participants on outages should cover.

For trading venues:

i. **Monitoring and flagging:** Expectations in respect of monitoring for system disruption and mechanisms for market participants to raise issues.
ii. **Communication during an outage:** Trading venues' procedures for communicating during an outage, including but not limited to system status, whether it affects all or part of the listed securities, estimated time of re-opening and orderbook status; the frequency of updates; the standardised and unique systems statuses used for the different types of outage and the format of these messages; and communication around re-opening, including timeframes.
iii. **Playbook:** Expectations in respect of procedures setting out different types of outage and policies on the treatment of the orderbook for these types of outage. This should cover issues such as the publication of the last time stamp and last reference price to be used, considerations on order validity for different order types, the last trade confirmations to affected market participants and the accessibility of the playbook to market participants.
iv. **Post-outages:** The need for trading venues to provide the FCA with a root cause analysis and remedial plan after all incidents.
v. **Closing prices:** Expectations on the determination of alternative closing and settlement prices in the event of an outage.

For market participants:

i. **Pre-outages:** Expectations of market participants to be well-informed about trading venue communication channels and protocols in case of a trading venue outage and have clear policies in place around best execution for clients.

ii. **Routing:** Expectations on market participants to ensure that their system set-up (e.g. smart order router) allows for orders to be routed to an alternative venue during a market outage if it is appropriate to do so.

iii. **Closing price:** Expectations on market participants, including index providers, in respect of policies and procedures to specify the use of an alternative closing reference price during a primary market outage.

6.16 The Treasury is proposing, through the Financial Services and Markets Bill, to enable us to make rules governing pre-trade transparency equity waivers. Subject to parliamentary approval, when we consult on rules to be made under that power, we will propose amending the waivers regime to allow dark pools to consolidate prices from other markets, subject to meeting conditions about the robustness and transparency of those prices, as a reference price to match orders. That should make dark pools more resilient to outages at the primary market.

6.17 The Treasury is also proposing that we will be given powers through the Financial Services and Markets Bill, including its provisions on the Future Regulatory Framework, that would enable us to bring forward proposals for a consolidated tape. We will consult in due course on such proposals once the powers have got parliamentary approval.

6.18 We have considered the concerns about Article 15 (2) of RTS 7 requiring trading venues to resume services within or close to two hours. We are not currently persuaded of the case for change. A specific recovery time objective provides trading venues with a clear and objective parameter for their business continuity planning, enabling a more consistent resilience posture across UK trading venues. Our expectation is that a trading venue should restart its systems only when it is sufficiently safe and stable to do so. And, as noted above, we would expect guidance on outages to include an expectation of frequent updates to the market about when and whether the market could be reopened.

Q26: Do you agree with the above proposals to be included in the FCA/industry guidance for trading venues? If not, please explain why.

Q27: Are there other areas we need to consider for the guidance?

Q28: Is the current arrangement for an alternative closing price on the primary market appropriate?

Q29: Is an alternative closing auction needed?

Q30: Do you agree with the above proposals to be included in the FCA/industry guidance for market participants? If not, please explain why.

Q31: Are there other areas we need to consider for the guidance?

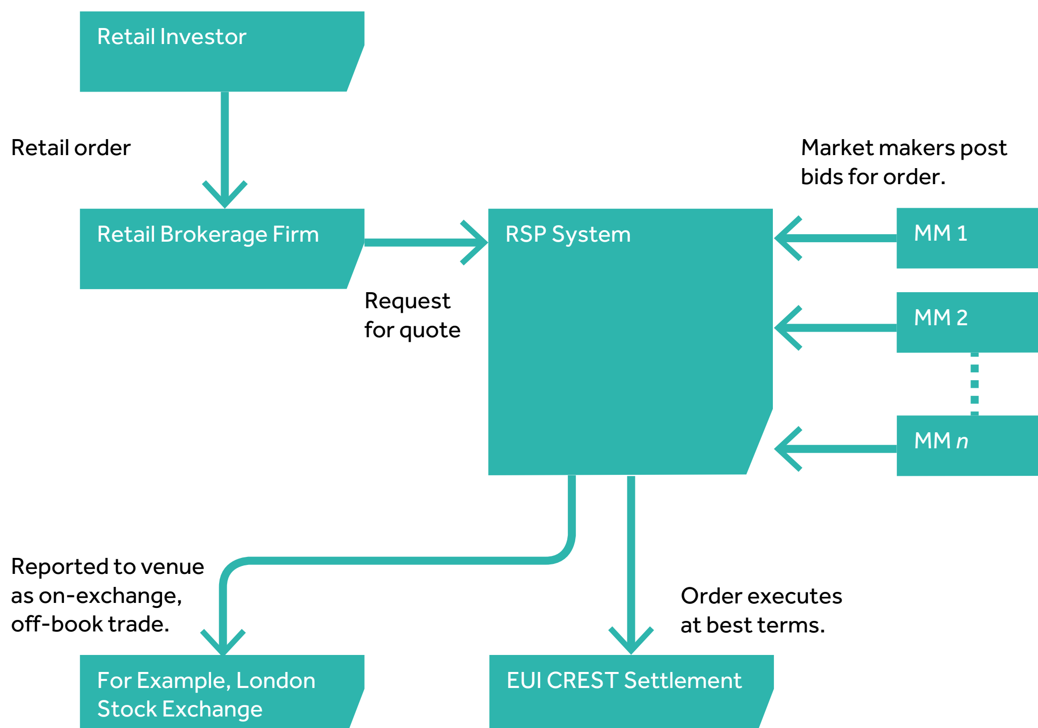
7 The UK market for retail orders

Retail Service Providers

7.1 In the UK, about 95% of retail orders for shares are executed through the so-called Retail Service Provider (RSP) system rather than on the central limit order books operated by trading venues[6].

7.2 When a consumer places an order through a broker or platform connected to the RSP system, the broker or platform typically sends requests for quotes to several RSP market makers either directly or more commonly via RSP hubs, which are platforms provided by third-party technology firms. The RSP market makers respond with a quote or reject the request. The RSP hubs collate the market makers' quotes and return them to the broker or platform. Depending on the configuration, the client has between 10 and 30 seconds to accept a quote and place an order.

Chart 1: retail market making in the UK (from "Payment for order flow in the United Kingdom", CFA Institute 2016)



Source: Based on data from APCIMS (2013).

6 Investment Platforms Market Study – Interim

7.3 RSP trades are usually off book, on exchange transactions on the London Stock Exchange (LSE). The RSP market makers are LSE members who provide pre-trade transparency by making public two-way quotes in shares. When asked for a quote through the RSP system they may improve on the prices they make public. Price improvement of retail orders is a common practice in the UK and other major markets as market makers or liquidity providers face less risk of the market moving against them when dealing with retail investors who are generally considered uninformed traders.

Investment Platforms Markets Study and RSPs

7.4 The last time we published commentary on the RSP system was in the Investment Platforms Market Study ('the Study'), as part of which an interim report was published in July 2018 and a final report in December 2019. The Study looked at the quality of execution achieved through the RSP system:

"Our analysis showed that approximately 85% of the execution prices achieved by retail investors were at least as good as the prevailing best price available on the primary exchange (LSE). But when we also compare the RSP trading data with the best prices from all the available UK trading venues, rather than just the LSE, the percentage of orders that receive a price as at least as good as the best available price falls to 80%. Based on our sample analysis, we estimate that this could cost retail investors £195 million on an annualised basis. However, firms also need to consider the overall cost of trading including clearing and settlement."

7.5 The Study made three key points about best execution and the RSP system. These were:

- Firms should make clear to clients in their order handling policies or best execution policies that they use the RSP system.
- Firms using the RSP system need contingency arrangements if the RSP system is not available at a time of market volatility.
- Firms using the RSP system need to undertake thorough assessments to confirm that the venue selection that is part of their execution arrangements, particularly where they rely on a small number of RSP market makers, delivers a consistently high quality of execution for their clients.

Wholesale Markets Review

7.6 The WMR consultation asked about retail access to secondary trading. In the responses to the WMR, and in meetings that we and the Treasury have held to discuss it with market participants, several comments have been made about the RSP system in this context.

7.7 Some of the comments from retail market intermediaries said that any changes to the regulatory regime around the secondary trading of shares need to build on the existing strengths of the RSP system. The points that have been made are similar to those that were made in response to the Study. Below are the benefits of the system as described in a response to the interim report of the Study:

- price competition – up to 30 market makers may be competing for each order, bidding to secure the trade, ensuring the best possible price for the investors
- segregation – RSP trades are always executed as agency transactions, with the result that client assets are segregated from the assets of the relevant market counterparties
- single execution and settlement – no requirement for central clearing, single-fill and single settlement keep costs to a minimum
- immediacy – RSP trades are executed immediately (with up to 30 second holds for the investor to confirm acceptance) unlike trades placed on an order book which could remain unexecuted for days
- liquidity – RSPs often provide significantly more liquidity at the touch price than is available on the London Stock Exchange's SETS order book
- access to Pan-European and North American equities;
- flexible settlement terms
- settlement – straight through processing via CREST and in a range of currencies;
- transparency – all RSP trades are reported "on-exchange" under the rules of the relevant Stock Exchange
- low cost – there is no charge for firms to use the RSP service

7.8 Other market participants had a different view. They argued that the RSP system has some significant weaknesses. The main points they made were as follows:

- execution – the RSP system discourages retail brokers and platforms from thoroughly searching for the best sources of liquidity and therefore results in a lower quality of execution than would otherwise be the case
- market quality – keeping retail order flow away from the order books of UK trading venues diminishes the overall quality of the market, limiting the opportunities for that flow to interact with other sources of liquidity including institutional long-only funds
- settlement risk – executing orders away from central limit order books supported by central counterparties unnecessarily exposes retail clients to counterparty risk prior to the settlement of trades

Proposals

7.9 We recognise that in this area it is important to ensure that any change will improve the service that retail clients receive. There have also been few suggestions in the discussions we have had about what change might look like. At this stage therefore we are not making proposals for rule changes linked to the execution of retail orders for shares. However, we are interested in views on whether there are ways further to improve best execution for retail orders while enhancing the efficiency and liquidity of public markets.

7.10 In the meantime, we re-emphasise that the messages in the Study about the RSP system and best execution are relevant to all firms who use the RSP system to execute client orders, and not just to the platforms' operators.

Q32: Do you think the RSP system works well for retail clients? If not, please explain your views.

Q33: Do you have any suggestions for changing the regulatory regime as it applies to the execution of orders by retail clients?

Annex 1
Article 2(5) of UK RTS 22

A transaction for the purposes of Article 26 of Regulation (EU) No 600/2014 shall not include the following:

a. securities financing transactions as defined in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council (1);
b. a contract arising exclusively for clearing or settlement purposes;
c. a settlement of mutual obligations between parties where the net obligation is carried forward;
d. an acquisition or disposal that is solely a result of custodial activity;
e. a post-trade assignment or novation of a derivative contract where one of the parties to the derivative contract is replaced by a third party;
f. a portfolio compression;
g. the creation or redemption of units of a collective investment undertaking by the administrator of the collective investment undertaking;
h. the exercise of a right embedded in a financial instrument, or the conversion of a convertible bond and the resultant transaction in the underlying financial instrument;
i. the creation, expiration or redemption of a financial instrument as a result of pre-determined contractual terms, or as a result of mandatory events which are beyond the control of the investor where no investment decision by the investor takes place at the point in time of the creation, expiration or redemption of the financial instrument;
j. a decrease or increase in the notional amount of a derivative contract as a result of pre-determined contractual terms or mandatory events where no investment decision by the investor takes place at the point in time of the change in the notional amount;
k. a change in the composition of an index or a basket that occurs after the execution of a transaction;
l. an acquisition under a dividend re-investment plan;
m. an acquisition or disposal under an employee share incentive plan, or arising from the administration of an unclaimed asset trust, or of residual fractional share entitlements following corporate events or as part of shareholder reduction programmes where all the following criteria are met:

  i. the dates of acquisition or disposal are pre-determined and published in advance;
  ii. the investment decision concerning the acquisition or disposal that is taken by the investor amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary the terms of the transaction;
  iii. there is a delay of at least ten business days between the investment decision and the moment of execution;
  iv. the value of the transaction is capped at the equivalent of EUR 1 000 for a one-off transaction for the particular investor in the particular instrument or, where the arrangement results in transactions, the cumulative value of the transaction shall be capped

n. an exchange and tender offer on a bond or other form of securitised debt where the terms and conditions of the offer are pre-determined and published in advance and the investment decision amounts to a choice by the investor to enter into the transaction with no ability to unilaterally vary its terms;

o. an acquisition or disposal that is solely a result of a transfer of collateral.

Annex 2
Questions in this paper

Q1: **Do you agree with maintaining the exemption for inter-funds transfers in Article 13?**

Q2: **Do you agree with the new definition of inter-funds transfers?**

Q3: **Do you agree with amending the exemption from post-trade reporting for give-ups and give-ins?**

Q4: **Do you think guidance to further clarify the types of give-ups and give-ins that can benefit from the exemption from post-trade transparency is required, and, if so, what issues do you think it should cover?**

Q5: **Do you agree with introducing an exemption for inter-affiliate trades?**

Q6: **Do you agree with our proposed definition of inter-affiliate trades?**

Q7: **Do you agree with the deletion of point d) from Article 13? If not please explain why.**

Q8: **Do you agree with the proposal to introduce a deferral for all transactions within scope of Article 13 of RTS 1? If not, please explain why.**

Q9: **Do you agree with our proposals to align the definitions of non-price forming trades in Articles 2, 6 and 13? If not, please explain why.**

Q10: **Do you agree with our proposal to amend the definition of benchmark transaction to include transactions that reference to the market closing price? If not, please explain why.**

Q11: **Do you agree with the deletion of the SI related flags "SIZE" and "ILQD" and "RPRI"? If not, please explain why by distinguishing your current use of each flag.**

Q12: **Do you agree with the deletion of the agency cross flag "ACTX", the duplicate trade flag "DUPL" and the algorithmic trade flag "ALGO"? If not, please explain the value these flags offer, how providing practical examples.**

Q13: **Do you agree with the proposal of identifying "benchmark", "portfolio" and "contingent" trades with one single flag, "TNCP"? If not, please explain why and set out your preferred approach.**

Q14: **Do you agree with our proposal to aggregate the three negotiated transactions flags into one single flag, "NETW"? If not, please explain why.**

Q15: **Are there any other flags that we should consider removing, amending or adding?**

Q16: **Do our proposals to modify the flags for trade reporting impact your systems for transaction reporting? If yes, could you describe how and what problems maintaining the flags for transaction reporting would cause?**

Q17: **Do you agree with the proposed changes to the reporting fields? If not, please explain why.**

Q18: **Are there other changes that you suggest we should make to the fields of reported transactions?**

Q19: **Do you agree with our proposal to create a regime where firms will be able to opt in as designated reporters at an entity level? Please explain your answer.**

Q20: **Do you agree that the FCA should maintain the register of designated reporters for firms to determine who reports OTC trades? Please explain your answer.**

Q21: **Do you agree with the proposed implementation timetable? If not please explain your answer.**

Q22: **Do you agree with the proposal to change the definition of the MRMTL to allow trading venues to derive the price from a non-UK venue provided that the price is transparent, robust and offers the best execution result?**

Q23: **Do you agree with the proposal to change the definition of the MRMTL for the purpose of the tick size regime?**

Q24: **Do you agree with the proposal to delegate the decision to set a minimum size threshold for reserve and other orders to trading venues using the OMF waivers? Please explain why.**

Q25: **Do you agree with the proposal to allow trading venues to adopt the minimum tick size of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues? Please explain your views.**

Q26: **Do you agree with the above proposals to be included in the FCA/industry guidance for trading venues? If not, please explain why.**

Q27: **Are there other areas we need to consider for the guidance?**

Q28: **Is the current arrangement for an alternative closing price on the primary market appropriate?**

Q29: **Is an alternative closing auction needed?**

Q30: **Do you agree with the above proposals to be included in the FCA/industry guidance for market participants? If not, please explain why.**

Q31: **Are there other areas we need to consider for the guidance?**

Q32: **Do you think the RSP system works well for retail clients? If not, please explain your views.**

Q33: **Do you have any suggestions for changing the regulatory regime as it applies to the execution of orders by retail clients?**

Annex 3
Cost benefit analysis

Executive summary

1. We set out here our assessment of the costs and benefits of our proposals. We are proposing to:

a. Change the content of post-trade transparency.
b. Adopt a new trade reporting regime based on designated reporting firms instead of SI status.
c. Allow UK trading venues to use reference prices from overseas venues, where those prices are robust, reliable and transparent. We also propose to remove size thresholds for orders benefiting from the order management facility.
d. Remove restrictions preventing trading venues from using the same tick size used by trading venues established overseas where the overseas venues are the primary markets in a financial instrument.

2. We consider that our proposals will lower operating costs for the affected firms while increase choice and competition for users of equity secondary markets. We also expect our proposals on post-trade transparency to improve the content and usability of post-trade reports.

3. Whilst some of the proposals require firms to make changes (e.g. on post-trade transparency and the designated reporter regime), others provide the option (but not the obligation) for firms to exercise greater flexibility when establishing the rules applicable to their markets (e.g. on tick sizes and waivers). Consequently, the real extent to which the benefits will materialise will depend on whether firms will choose to benefit from the proposed changes. As we expect that the optional changes will require relatively low IT and systems changes, we also expect a fair number of firms to take advantage of the new regime.

4. In estimating the overall costs we assumed that all firms potentially affected by the changes will likely want to understand the proposed rules. IT and systems changes have been estimated using ranges per firm when the changes are optional and industry total estimates are computed when changes are mandatory.

5. We estimate that the total familiarisation and legal costs, that is reading the new rules and seeking legal advice, arising from our proposals in relation to the content of post-trade reports would be around £505,000. Our proposal to introduce a regime for designated reporters can cost firms around £253,000 to familiarise themselves with the new rules and run an appropriate legal analysis.

6. We also expect total IT and system costs to be around £10.5 million for the changes on the content of post-trade information and around £5.3 million for the introduction of the designated reporter regime. Differently to the tick size regime and waivers discussed below, firms will have to comply with the proposed changes. Again, we believe there will not be on-going costs arising from our proposals beyond the baseline scenario costs.

7. Total familiarisation and legal analysis costs are estimated to be around £5,000 for the changes to the reference price waiver; around £4,000 for the OMF waiver changes and £7,000 for the changes to the tick size regime.

8. As firms can decide whether to take advantage of the new rules on the tick size regime and waivers, we estimate IT and systems costs on a per firm basis. This is to say that if a firm decides to implement these changes, we expect its IT and systems costs to be between £9,000 and £36,000 dependent on firm size and systems. We believe that given the nature of the changes there will not be additional on-going costs compared to the baseline scenario costs.

9. Overall, while we were not able to quantitatively estimate benefits, industry engagement and qualitative feedback suggest that these would exceed the expected costs of implementing this package of proposals.

Introduction

10. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

11. We are consulting on proposals intended to improve the operation of equity markets in relation to waivers, post-trade transparency and the tick size regime. The aim is to reduce harm by amending provisions that impose material compliance and operational costs on firms and where there is no evidence that they deliver benefits for users of financial markets. We also aim to improve the content and usability of post-trade transparency.

12. In this section, we present the analysis and estimates of the impacts of our proposals to change our rules. We provide monetary values for the impacts where we consider it reasonably practicable to do so. We have engaged with industry associations and individual firms to seek their views on the potential costs and benefits of the proposals. Generally, we received largely qualitative rather than quantitative information reflecting uncertainty on the likely projected costs. Accordingly, when in our opinion, these are not reasonably practicable to estimate, we provide a statement of our opinion and an explanation of it.

Section 1: Post-trade transparency – content of trade reporting

Problem and rationale for intervention

13. Post-trade transparency is an essential component of the microstructure of financial markets. A properly calibrated transparency regime supports price formation and fair and orderly markets. Post-trade transparency data is an important input for brokers to monitor and deliver best execution and for clients to evaluate the quality of the execution received from their brokers.

14. To contribute to the price discovery process, post-trade transparency needs to be timely and apply to transactions that provide valuable information to understand the fair value of a financial instrument. The existing rules fail to clearly and comprehensively identify, and where appropriate to exempt, certain types of technical and non-price forming transactions from post-trade transparency.

15. We have identified a number of issues with the current post-trade transparency regime. In particular:

- **a.** The current system of flags does not always provide sufficiently precise information to separate price forming transactions from technical trades.
- **b.** There is ambiguity as to which flags should be used leading to different firms adopting different standards which lowers the comparability of trade reports and the ability to consolidate them.

16. These shortcomings negatively impact the quality of the information contained in post-trade reports, increase compliance costs for the reporting entities as well as the costs for firms that use post-trade data to inform their trading decisions.

17. Since the issues above originate from how the rules are set in our Handbook, we propose to amend them as explained in the summary of our proposed intervention and chapter 3 of the CP.

Harm and drivers of harm

18. An inappropriately calibrated post-trade transparency regime causes various harms. It increases firms' operating costs by requiring the reporting of technical transactions that do not contribute to the price formation process. It also makes more challenging for users like trading firms and their clients to use post-trade reports to monitor liquidity. For example, where non-price forming trades are reported and not properly flagged, market participants are not able to have a precise understanding of liquidity in the market and the fair value of financial instruments.

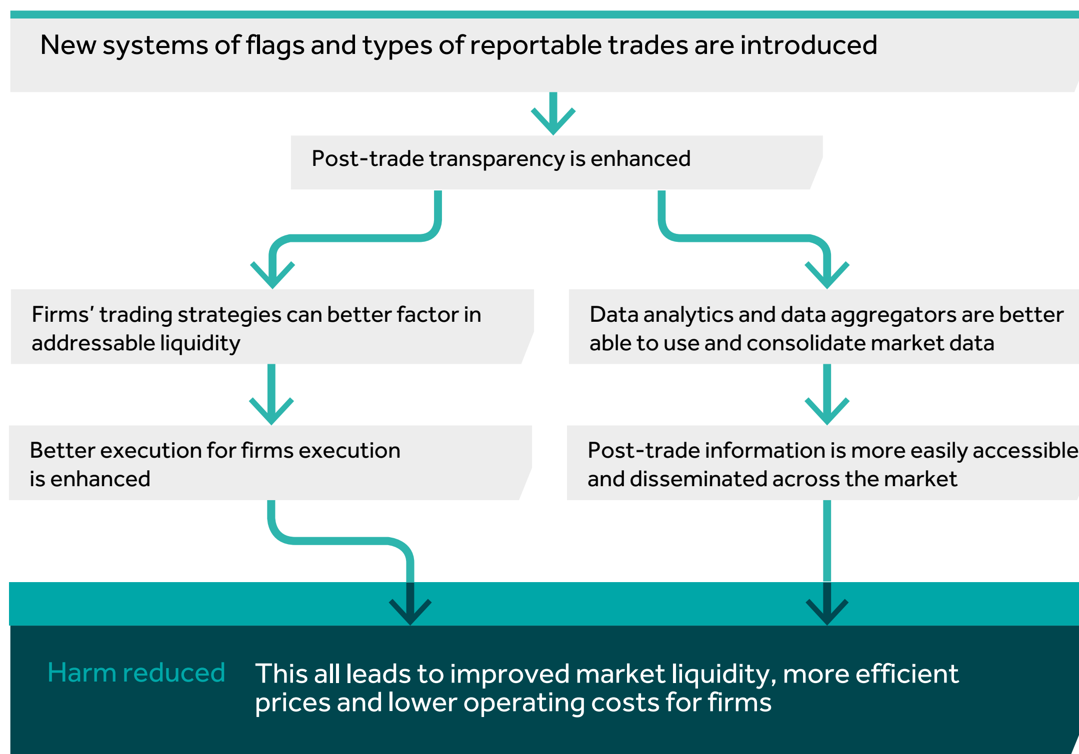
19. One of the consequences is that trading firms and their clients find it more difficult to assess best execution. We have also heard from trade bodies and market participants that non standardised and fragmented trade information is one of the factors that make it hard for a Consolidated Tape Provider (CTP) to emerge. This is because in absence of consistent data from trading venues and APAs, providers struggle to consolidate and compare data. The harm arising from this situation is a less efficient price discovery process.

Summary of our proposed intervention

20. We are proposing to simplify the trade reporting regime. Full details are provided in chapter 3 of this CP. Specifically, we propose to:

a. Expand the list of transactions that are exempt from post-trade transparency when these are undertaken OTC.
b. Add an end of day deferral for the list of exempted transactions under Article 13 of RTS 1 when these are undertaken on venue.
c. Simplify the structure of the Handbook by deleting unnecessary repetitions and overlaps between similar types of technical trades.
d. Simplify the use of identifiers or flags that are attached to trade reports to enhance their information content and facilitate consolidation of data from different sources. We propose to delete some flags and group similar types of transactions under a common flag.

Figure 1: the causal chain – content of trade reporting



Baseline and key assumptions

21. In developing our policy proposals and assessing cost and benefits, our baseline is that firms operating both in the UK and the EU will face divergence costs even where we maintain the current rules unchanged because the EU has already amended RTS 1 and RTS 2. Furthermore, we made the following assumptions:

a. That the number and volume of technical trades will remain unchanged for the foreseeable future. We expect that a sizable part of the OTC market will continue to be made of trades such as inter-affiliate or inter-funds trades and benchmark and portfolio transactions.

b. That firms benefit from a post-trade regime separating price forming trades from technical trades but that there is very limited use of different identifiers within the class of technical trades. When discussing our proposed changes to identifiers, market participants agreed that there are some flags that are unnecessary or redundant. The assumption is relevant for the proposal of aggregating under a single flag the following trade types: benchmark, portfolio and trades contingent on the execution of a derivative.
c. That firms can execute the changes using the systems and arrangements already used for post-trade reporting under current rules. Since we are not introducing new flags, extending the scope of reportable transactions, materially changing the content of the information reported or imposing tighter reporting timelines, we expect that our proposed changes do not require new systems or arrangements.
d. For large financial institutions we made the assumption that entities within the same group would likely share some or all of the implementation costs of the proposed changes. Consequently, we adjusted the population of SIs, trading venues and APAs when these belong to larger groups to avoid the duplication of costs, assuming the largest entity in the group bears the costs.
e. Further assumptions have been made in the CBA on the number of relevant market participants, when classifying firm size and on the methodology used to calculate costs. Details are explained below.
f. We acknowledge that estimates gathered as part of our engagement with firms are based on high-level information disclosed and not on the full details of the proposals as laid out in this CP. To help assess the accuracy of the cost estimates presented in this CBA, we will carefully consider consultation responses that provide relevant feedback on the costs.

Number of relevant market participants

22. There are four classes of firms that will be affected by our proposed changes:

a. Trading venues: 10 equity MTFs and 4 equity RIEs. The key changes affecting trading venues is our proposal to aggregate all types of negotiated trade waivers into a single flag. The new deferral regime for technical trades under Article 13 will also be relevant for them in case they want to benefit from delayed publication.
b. Approved publication arrangements (APAs): 4 in equity instruments. While APAs are not subject to post-trade transparency, they will need to ensure that their systems are capable of accommodating the proposed changes to post-trade flags.
c. Systematic internalisers: 26 in equity instruments. Besides some of the changes affecting trading venues, systematic internalisers will need to accommodate our proposal to delete SI-specific flags, i.e. the price improvement flag, the flag on the execution above the standard market size and the flag on the execution of illiquid equity instruments.
d. Investment firms: circa 1,160 who are subject to reporting obligations to the public through APAs. The main changes affecting investment firms are the expansion of the exemption for inter-affiliate trades and the deletion of certain flags relevant for OTC transactions. We understand that a number of investment firms have implemented arrangements limiting the need for them to report through an APA, such as by dealing only with counterparties that are SIs or by benefitting from delegated reporting. This means that although these firms are technically in scope of trade reporting, many of them will not need to implement system changes to accommodate our proposals in relation to the content of the post-trade information.

23. In total, we expect there are up to 1,200 firms who are potentially impacted by our proposals. This number is derived using information from transaction reports. To estimate the costs of implementing the proposals we relied on the assumptions of the standardised cost model (SCM). The SCM categorises all regulated firms as large, medium, or small using data from annual FCA fee blocks. Manual adjustments based on expert judgement were then applied to the categorisation of firm sizes to improve consistency and accuracy. Based on this approach, 42 firms are classified as large, 151 as medium, and 1,007 as small.

Summary of costs and benefits

24. We have estimated some of the costs and benefits of our proposals. They reflect the incremental changes that firms must make when compared with the baseline of the proposed intervention. However, it was not reasonably practical to quantify all the costs and benefits of our proposals.

25. We present the total estimated costs and benefits, providing a break-down of costs by type. Furthermore, given different types of firms are affected differently by the proposed changes, we estimate costs for each class. The following table sets out the total costs and benefits we describe in this CBA.

Table 1: estimates of costs and benefits – content of trade reporting

Firm type	Total one-off costs for all firms	Total benefits for all firms
Trading venues and Approved Publication Arrangements	Familiarisation costs and legal review cost – £20k one-off. Systems, process and IT costs £191k one-off. We do not expect the changes to create additional ongoing costs compared to the baseline scenario.	Lower running costs
Investment firms excluding SIs	Familiarisation costs and legal review cost – £422k one-off. Systems, process and IT costs £5m one-off. We do not expect the changes to create additional ongoing costs compared to the baseline scenario.	Better trading strategies lead to better execution and lower cost of trading. Lower trade reporting costs.
Systematic internalisers	Familiarisation costs and legal review cost – £63k one-off. Systems, processes and IT costs £5.4 m one-off. We do not expect the changes to create additional ongoing costs compared to the baseline scenario.	Better trading strategies lead to better execution. Lower trade reporting costs.
End users	Not quantified	We expect the changes to reduce the cost of reporting. The savings may be passed on to end users. Better post-trade transparency which is disseminated to the market should support receiving best execution.

Benefits

26. We expect that widening of some of the exemptions from trade reporting (e.g. inter-affiliate trades) should produce benefits in terms of allowing firms to better identify addressable liquidity. Those trades do not contribute to the price formation process and only add noise to the post-trade tape in equity markets. Hence, the change will help investors to make more informed investment decisions and to better monitor best execution. Furthermore, the streamlining of the reporting flags would make it easier to aggregate and manipulate post trade data which could also facilitate the establishment of a CTP.

27. Our proposals are likely to improve the information content of post-trade transparency which could lower transaction costs for investors and improve the way market data is used by investors. This in turn could increase competition in OTC markets and liquidity. Furthermore, we expect that by means of improving the quality of post-trade data, our proposed changes will help enhance equal access to market data for all investors, making our markets fairer.

28. Our changes aim to reduce the costs of reporting for firms by deleting some flags that do not appear to be used and grouping others where the greater granularity in the current RTS 1 does not seem to provide benefits for end users. As a result, trading firms that post-trade report could benefit from lower running costs.

Costs

Familiarisation costs

29. There will be one-off familiarisation and gap analysis costs for all firms subject to the MiFID II reporting obligation. In total we expect that all of the 1,200 firms potentially impacted by our proposed changes will likely seek to understand our proposals. In order to estimate familiarisation costs, we used the classification described above.

30. We expect market participants to read and familiarise themselves with the requirements for the proposals. We also expect market participants to conduct a legal review and gap analysis to check their current practices against expectations.

31. We estimate the familiarisation costs for market participants based on assumptions on the time required to read the approximately 22 relevant consultation pages excluding the legal instruments. We assume 300 words per page and a reading speed of 100 words per minute and estimate that it would take around 1 hour to read the document. It is further assumed that 20 staff at each large firm, 5 at each medium firm, and 2 at each small firm will read the text.

32. We convert this into a monetary value by applying an estimate of the cost of time to market participants, based on the Willis Towers Watson 2016 Financial Services Report, adjusted for subsequent annual wage inflation and including 30% overheads.

33. In addition, we estimate the legal costs for market participants based on assumptions on the time required to read the 12 pages-long legal instruments. Following a similar approach as above, we convert this into a monetary value by applying an estimate of the cost of time to firms.

34. Using the assumptions above we estimate total industry-wide familiarisation and legal review costs being approximately £505 thousand.

Systems, processes and IT costs

35. The proposed policy changes are expected to impose one-off costs on trading venues and investment firms to adapt to the new system of flags and types of transactions underpinning each flag. The costs will include IT development costs, i.e. costs relating to adapting existing IT systems and testing them and also project implementation costs. Depending on the type of firm, only certain firms will need to adapt their systems to be able to capture, identify and exclude certain transactions that are currently reported. Others will have to change their systems to ensure that existing flags are either excluded or combined to form a new identifier.

36. To estimate firm implementation costs, we combine firm intelligence and the standardised costs model (SCM). The estimates from the standardised costs model are calibrated to reflect the feedback received from firms. Different types of firms bear different implementation costs based on the specific changes relevant for them and dependent on the firm size. Table 2 below needs to be read in conjunction with table 1 that provides the cost estimates per type of firm.

Table 2: summary table of the proposed changes and affected firms

Proposed change	Impacted firms in terms of costs
Deletion of the SIs related flags "SIZE", "RPRI", "ILQD"	We expect that only SIs will incur in costs linked to the deletion of the SIs related flags.
Deletion of flags "ACTX", "DUPL" and "ALGO"	All firms with the exception of trading venues which will only need to delete the "ALGO" flag.
Amend the definition of the "TNCP" flag to include benchmark, portfolio and contingent trades	TVs, APAs and all investment firms including SIs.
Aggregate "NLIQ", "OILQ" and "PRIC" flags into the new "NTEW" flag	As the three flags only identify on-venue trades, we believe that only TVs will likely incur in systems and IT costs to implement this change.
Change the definition of give-up (to expand to new types of trades) and include inter-affiliate trades in Art. 13.	All investment firms including SIs.
Addition of a new "Price conditions" field in the trade reports.	All firms. Although the change relates to the publication of the trade reports, our understanding is that investment firms submitting trade data to APAs will also need to update their systems.

37. The nature of the changes is such that some of them will only be relevant to certain firms which will likely need to implement IT and systems changes. This is the case for example of the deletion of SIs-related flags which will only impact the reporting systems of SIs.

38. Therefore, in our estimates we allocated implementation costs according to the type of firm that will likely need to implement any change to their systems. We have allocated firms to the respective policy change following industry discussion and using our expert judgement. Details of the total costs per firm type are provided in Table 1. Based on the cost estimates and the assumption above, we expect total implementation costs for trading venues, APAs and investment firms to be approximately £10.5 million.

39. We do not expect the proposed changes to require any additional ongoing costs compared with the baseline scenario. This is because the proposals will not require new systems to be implemented but only to update existing systems' rules.

40. There might be additional limited IT cost for buy side firms and data analytics to adapt their systems to consume data reports that contain different fields. Firms may have to train staff to use the new trade reports. It is difficult to estimate those costs, but our expectation is for them to be small. We welcome feedback from firms on these costs and also other costs discussed in the section.

> **Q1: Do you have any comments on our cost benefit analysis on the proposal to improve the content of post-trade reporting?**

Section 2: Designated reporter regime

Problem and rationale for intervention

41. Onshored RTS 1 and RTS 2 set out the conditions determining when an investment firm is required to report to the public a trade it has entered into. Publication is done through the reporting to an approved publication arrangement (APA). When an investment firm trades against another investment firm, the obligation to report the trade falls on the seller unless the other counterparty is a systematic internaliser (SI) in the financial instrument being transacted. In that case, the obligation falls on the SI. Where both counterparties are SIs, the counterparty selling the relevant financial instrument is required to report.

42. The regime was introduced by MiFID II and was intended to establish a clear and objective allocation of the responsibility on the investment firms to report to the public depending on their status as SIs. The practical implementation of the current reporting regime has highlighted operational challenges for firms to follow a reporting rule based on the status of a firm as an SI on an instrument-by-instrument basis. Currently firms rely on a privately operated electronic register, where SIs voluntarily provide information about the instruments or classes of instruments they are SIs in. The register covers most but not all the UK SIs and it contains millions of records based on SIs-financial instruments pairs that are updated daily. The information in the register is then offered, bundled with other post-trade services or as a stand-alone basis, to investment firms as a tool to comply with their reporting obligations.

43. In addition to the operational complexity of relying on the SI register (and the consequent compliance risk that such reliance implies), linking the obligation to report to the status of SI could impact competition in the market. Under the current regime, it appears that some sell-side firms register as SIs to a larger number of instruments than they are actually SIs in to be able to offer to buy-side clients the legal certainty that they will comply with the obligation to report trades they enter into with them. In our view, this increases the costs of doing business for firms and has negative consequences for the ability of firms to enter and compete in the market.

Harm and drivers of harm

44. The current regime requires firms to source very granular information as to whether the counterparty is an SI in the relevant instrument. The complexity of gathering that information on a trade-by-trade basis causes harm. This current framework has increased the operating costs for firms dealing in financial instruments as they need to source the information from third parties, who have developed a complex register of systematic internalisers, at a cost. The complexity is also associated with greater compliance risk.

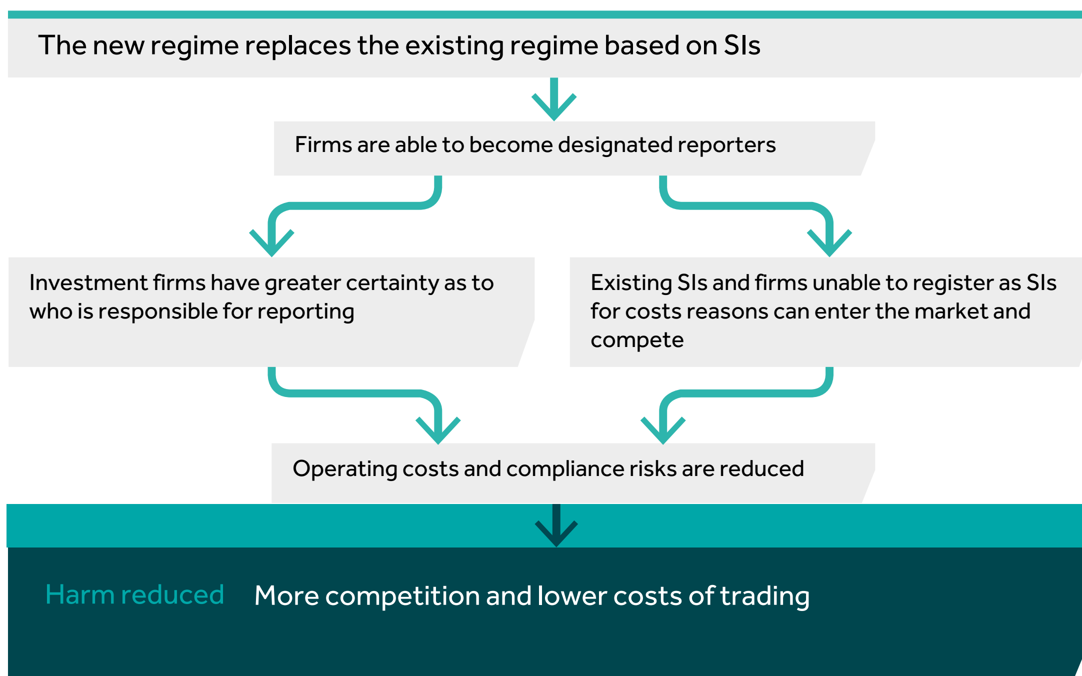
45. Harm however is also caused by linking the status of SI, which is a regime that intends to provide public pre-trade transparency for OTC transactions, to the post-trade reporting regime. Since buy side clients generally have a preference to deal with investment firms who can discharge the post-trade reporting obligation for them, sell-side firms who could meet the expected transparency standards of the SI regime opted in to become SIs. However, those firms who have found the cost of compliance with the SI regime disproportionate are likely to have lost business.

46. By increasing the costs of being an OTC liquidity provider or OTC market maker, the current regime makes entry into the market more difficult, especially for smaller firms. High barriers to entry and high operating costs lead to more concentrated markets which in turn reduce choice for investors.

Summary of our proposed intervention

47. We propose to delete the condition requiring an investment firm to publicly report transactions in instruments for which it is an SI. Instead, we propose to introduce the designated reporter regime where firms voluntarily assume the obligation to trade report when trading with their clients in any instrument they deal with. We propose to maintain a register of designated reporters. Given that the status of designated reporter is at entity level and not on an instrument level, we expect it to be significantly simpler and more stable than the existing SI register.

Figure 2: causal chain – designated reporter regime



Baseline and key assumptions

48. In absence of our intervention firms will continue to rely on the SI register for each trade they enter into. Firms will need to pay the cost of accessing such a database. For existing SIs there is also the cost of supplying such information on a regular basis.

49. We assume that buy-side firms have a preference to delegate the reporting of executed transactions to sell-side firms so they can avoid maintaining the infrastructure required to connect to APAs. Hence, we assume that creating a simpler framework where such delegation can occur at lower on-going costs meets the needs of firms and enhances efficiency.

50. In our estimates of costs and benefits, we assume current SIs will opt in to become designated reporters under the new regime. Therefore, we compute costs related to systems changes for the current population of SIs. We expect other firms would also apply for the regime, but we are not able to reasonably predict their number. We also assume that designated reporters will have a strong preference to maintain their status over time.

51. Further assumptions have been made in the CBA on the number of relevant market participants, when classifying firm size and on the methodology used to calculate costs. Details are explained below.

52. We acknowledge that estimates gathered as part of our engagement with firms are based on high-level information disclosed and not on the full details of the proposals as laid out in this CP. To help assess the accuracy of the cost estimates presented in this CBA, we will carefully consider consultation responses that provide relevant feedback on the costs.

Number of relevant market participants

53. There are 3 classes of affected firms:

- **a.** Investment firms: there are circa 1,900 investment firms who, according to our data from transaction reporting, are subject to reporting obligations under the existing rules.
- **b.** Existing systematic internalisers: there are 61 firms that either individually or at a group level notified us under the systematic internalisers regime. These are active across all asset classes, equity and non-equity. Under our proposal, SIs will no longer be required to report trades they executed with other investment firms who are not SI because of their SI status. If they decide to be designated reporters, they will need to notify us.
- **c.** APAs: there are 5 APAs active both in equity and non-equity instruments. As the APAs are the conduit for the publication of trade reports by firms, especially SIs (now) and designated reporters (following our proposed reform), they will also be affected by our reforms in terms of ensuring that their systems can accommodate the change in the number and types of reporting firms.

Summary of costs and benefits

54. We set out in the table below the summary of the total costs and benefits for class of firm.

Table 3: estimates of costs and benefits for the designated reporter regime

Firm type	Total one-off costs for all firms	Total benefits for all firms
Investment Firms excluding SIs	Familiarisation costs and legal review cost – £205k one-off. IT costs – expected to be low. Not quantifiable due to the heterogeneity of the population.	Greater clarity as to who is subject to the obligation to report trades to the public through an APA. Firms that are currently not SIs may decide to become designated reports to increase their business.
Existing systematic internalisers (SIs)	Familiarisation costs and legal review cost – £44k one-off. Systems, process and IT costs £4.9m one-off. We do not expect the changes to create ongoing costs beyond costs in the baseline scenario.	Some SIs will become designated reports with the corresponding lower running cost.
APAs	Familiarisation costs and legal review cost – £4k one-off. Systems, process and IT costs £395k one-off. Firms authorised as APAs that are also participants of the consortium operating the SI register are likely to see a decline in the value of the register in terms of the fees they charge to their clients for accessing it. We do not expect the changes to create ongoing costs beyond costs in the baseline scenario.	Better quality of data and lower running costs.

Benefits

55. Our proposal aims to establish a simpler and clearer regime for the reporting of OTC transactions. By separating post-trade transparency from the SI status, investment firms will be able to rely on a simpler way of determining when they need to report the transactions they enter into. While the current regime requires firms to check on an instrument-by-instrument basis whether they have a reporting obligation, our proposal significantly simplifies the register of reporters. It is expected that greater simplicity would result in more certainty about reporting obligations, lower ongoing cost of reporting and compliance risk.

56. The other benefit of our proposal is that by separating the SI regime from post-trade transparency, we expect that more liquidity providers will opt in and become designated reporters as they will no longer have to bear the cost of being an SI. With lower barriers to entry, we expect more firms can compete for business, resulting in more choice for buy-side clients and greater competition.

Costs

Familiarisation costs

57. We expect that firms will incur costs from familiarising themselves with the remedies we are proposing. Familiarisation and legal costs are estimated based on assumptions of the standardised cost model. 51 firms are classified as large, 170 as medium, and 1,779 as small. In total, we expect there will be around 2,000 firms that will likely seek to understand our proposal.

58. We anticipate that there will be approximately 9 pages of policy documentation with which firms will need to familiarise themselves. Assuming that there are 300 words per page and a reading speed of 100 words per minute, it would take around 30 minutes to read the policy documentation. It is further assumed that 20 compliance staff at large firms, 5 compliance staff at medium firms and 2 at small firms will need to read the document.

59. We also expect those affected will undertake a legal review of the new requirements against current practices. We, again, use the SCM to estimate these costs. There are around 4 pages of legal instrument to review.

60. In total, we expect total one-off industry-wide costs of familiarisation and legal review costs to be approximately £253 thousand.

Systems, process and IT costs

61. We expect that changing the framework determining when investment firms are required to report the trades they enter into will require firms to update their processes and systems. In practice we expect the complexity of the changes to be limited as the SI status is substituted with the status of designated reporter.

62. We expect that SIs and APAs will incur higher IT costs to implement changes to their existing systems than the rest of the affected investment firms. This relies on the assumption that current SIs will opt in to become designated reporters. While other firms may also opt in, it is not reasonably possible to robustly predict their number and size. Therefore, we do not estimate their implementation costs.

63. We also expect that other investment firms will incur some implementation costs to update their systems to point to a different register than the one they use now. As discussed above, we expect the register of designated reporters to be smaller and simpler to use. We also expect the costs of replacing the existing register within their systems will be limited and we do not attempt to estimate them given the large heterogeneity of firms. There will also be the cost associated with using one register for the purpose of complying with UK MiFIR whilst continuing to using the SI register for the purposes of complying with EU MiFIR.

64. As discussed in the section of relevant market participants, there are 61 SIs and 5 APAs that incur implementation costs. They are split between large, medium and small firms. We estimate costs of approximately £5.3 million across these firms. Firms authorised as APAs that are also participants of the consortium operating the SI register are likely to see a decline in the value of the register and consequently of the fees they charge to their clients for accessing it. However, this reduction of fees would translate in lower costs for those clients still using the register.

65. The costs for the FCA to build the new register of designated reporters are estimated to be in the range of £10 thousand to £50 thousand. We assume that by applying at entity level, the register of designated reporters will not change very often. On this basis we also expect on-going costs to maintain the register to be negligible.

> **Q2: Do you have any comments on our cost benefit analysis on the proposal to establish a designated reporter regime?**

Section 3: Waivers from pre-trade transparency

Problem and rationale for intervention

66. The reference price waiver provides an exemption from pre-trade transparency. The waiver allows a trading venue to cross buy and sell orders in an equity financial instrument at a price derived from another trading venue without disclosing information on the number or size of the available orders. The only permitted price, the reference price, is the mid-price between the best buy and sell quotes from the venue where that instrument was first admitted to trading or the most relevant market in terms of liquidity.

67. Onshored RTS 1 prevents the use of reference prices from any venue that is not a UK trading venue. For example, it is not possible to use the mid-price derived from the limit order book operated by Euronext Paris to cross orders in shares that have their primary market on that Exchange. The exclusion of overseas primary markets restricts access to prices from the most liquid venues for many financial instruments.

68. The order management facility waiver provides an exemption from pre-trade transparency for orders that are contingent on certain conditions such as iceberg and stop orders. An iceberg order is an order for which only part of the size is displayed on an order book while the rest of the order is disclosed upon execution of the visible size. A stop order is also an order that is not visible to the order book until certain conditions, for example when the market price reaches a predetermined level, are met. Currently, RTS 1 imposes a fixed minimum size of €10 thousand for all iceberg orders whilst no minimum size applies to stop orders.

Harm and drivers of harm

69. Primary markets provide transparent and efficient prices that generally lead the price discovery process. Preventing trading venues from using robust and transparent prices from overseas primary markets limits the ability of end investors to access those prices, to the detriment of execution quality. The prohibition also limits the ability of UK trading venues to compete with overseas trading venues that have access to those prices. This means that UK investors have less access to pools of liquidity in overseas shares than it otherwise would be in absence of the restriction. This can translate into less choice, competition and innovation which ultimately translates into higher costs of trading.

70. The application of a minimum size threshold to the order management facility waiver causes two main harms. First, a fixed minimum size does not give venues the flexibility to reduce the threshold depending on the type of share or market conditions. Inappropriately calibrated transparency requirements for limit order books result in lower execution quality for investors. Second, venues and trading firms have to incur operational costs to monitor and enforce a fixed threshold system based in euros which is not the trading currency of UK shares. Higher operating costs for venues and trading firms translate into higher costs for end investors.

Summary of our proposed intervention

71. Our proposal is set out in detail in the CP. Essentially, we intend to:

a. allow dark pool trading venues operating under the reference price waiver to derive the reference price from non-UK primary markets when matching orders in overseas shares, provided those prices are robust and transparent.

b. remove the minimum threshold of €10 thousand for reserve/iceberg orders that trading venues must comply with when using the order held on the order management facility waiver.

Figure 3: causal chain – reference price waiver

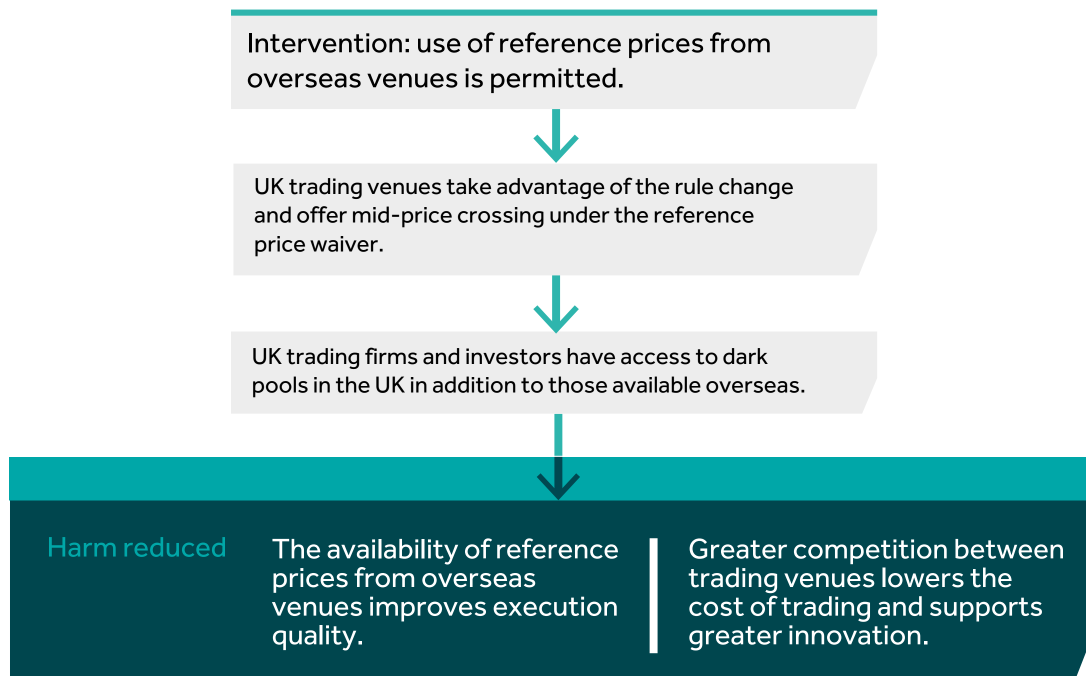
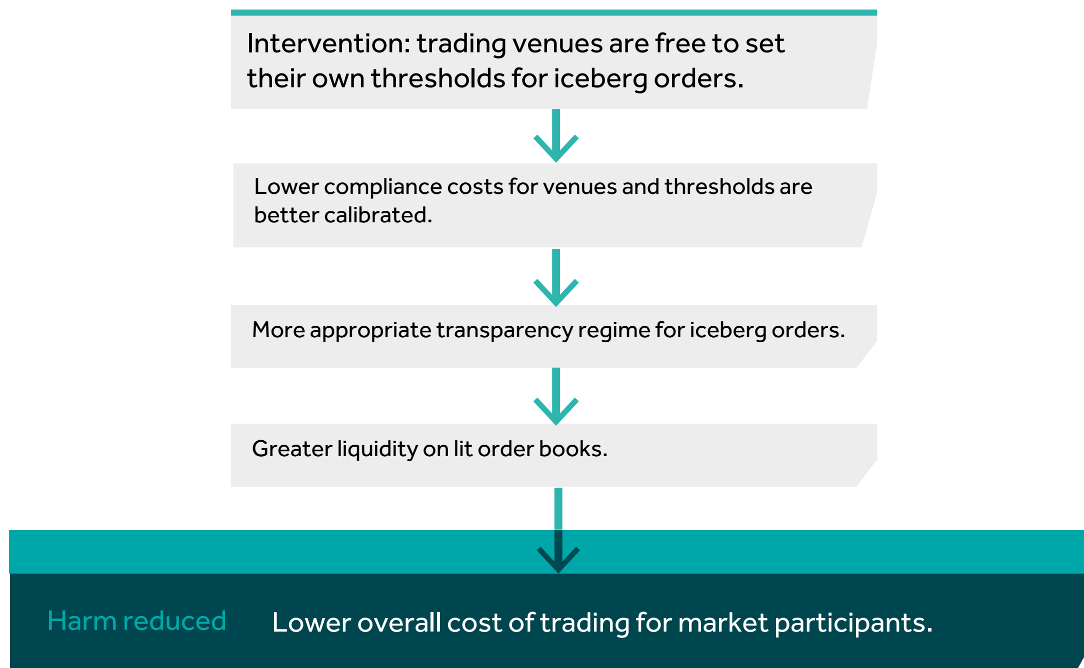


Figure 4: causal chain – order management facility waiver



Baseline and key assumptions

72. Before Brexit, we published a supervisory statement[7] saying that under UK MiFIR the trading venues whose prices can be referenced for the purposes of the reference price waiver are only UK trading venues. However, we also said that the change applies only to any new waiver applications and not to waivers granted before the end of the transition period. These waivers continue to apply in the same way after the end of the transition period as they applied before, which means that trading venues already using a RPW are able to continue to reference prices from a trading venue in the EU where a venue is either the venue where the relevant instrument was first admitted to trading or is the most relevant market in terms of liquidity for the instrument.

73. In absence of our policy intervention, UK trading venues will need to rely on our supervisory approach which only allows them to continue using waivers granted pre-Brexit. However, if current venues change their systems and new venues enter the market, the scope of our supervisory approach will reduce over time, preventing the crossing of orders in EEA shares in the UK under the RPW. For non-EEA shares, in absence of our intervention, UK trading venues will continue to be restricted from offering mid-price crossing under the reference price waiver.

74. Our assumption is that trading venues that currently use the reference price waiver and the order management facility waiver will take advantage of our proposed changes. Even in the case of partial adoption, our proposal would deliver comparable benefits.

75. Further assumptions have been made in the CBA on the number of relevant market participants, when classifying firm size and on the methodology used to calculate costs. Details are explained below.

7 https://www.fca.org.uk/publication/documents/supervisory-statement-mifid-end-transition-period.pdf

76. We acknowledge that estimates gathered as part of our engagement with firms are based on high-level information disclosed and not on the full details of the proposals as laid out in this CP. To help assess the accuracy of the cost estimates presented in this CBA, we will carefully consider consultation responses that provide relevant feedback on the costs.

Number of relevant market participants

77. The classes of firms affected by our proposed intervention, for each waiver type, are as follows:

a. Reference price waiver: there are currently 7 trading venues in the UK using the reference price waiver, on a standalone basis or in combination with other waivers. Those firms will directly benefit from our policy intervention. We have not estimated the total number of firms that will indirectly benefit from our intervention – if UK trading venues decide to exercise the flexibility provided – but they will include trading venues' members and their clients, including asset managers.

b. Order management facility waiver: the OMFW is used by all lit order books operated by UK trading venues. There are 4 trading venues using the OMFW for equity instruments that would benefit from the deletion of the minimum order threshold. Similarly to the reference price waiver, trading venues' members and their clients will also benefit from our proposal if UK trading venues decide to exercise the flexibility provided.

Summary of costs and benefits

78. The tables below contains a summary of total costs and benefits for the changes we are proposing to the reference price waiver and the order management facility waiver.

Table 4: estimates of costs and benefits – reference price waiver

Firm type	Total one-off costs for all firms	Total benefits for all firms
Trading venues using the RPW	Familiarisation costs and legal review cost – £5k. We also estimate per firm implementation costs that could range between £9k and £36k depending on the firm size.	Greater ability to compete with overseas markets. Lower running costs.
Trading venues' members	Negligible	Lower execution costs, including smaller spreads for overseas shares
End investors	Negligible	Lower execution costs, including smaller spreads for overseas shares

Table 5: estimates of costs and benefits – order management facility waiver

Firm type	Total one-off costs for all firm	Total benefits for all firms
Trading venues using the OMFW	Familiarisation costs and legal review cost – £4k. We also estimate per firm implementation costs that could range between £9k and £36k depending on the firm size.	Lower running costs. Increased business.
Trading venues' members	Negligible	Lower execution costs
End investors	Negligible	Lower execution costs

Reference Price Waiver

Benefits

79. We expect that our proposal will result in greater choice on where to execute transactions at a reference price. We also expect that UK trading venues, by being able to use the reference price waiver for a larger set of instruments, will have greater incentives to invest and innovate. Moreover, we anticipate that as a result of greater choice and competition, the costs of using dark pools could go down.

80. Using reference prices is also expected to lead to increases in the quality of trade execution. Investors will have access to more reliable and transparent prices. This in turn should increase the level of confidence investors have in these markets. We expect that the changes to the waiver will enhance the ability of firms to compete with overseas platforms.

Costs

81. Whilst we identify some of the costs trading venues would need to incur if they exercise the greater flexibility provided by our proposed changes, the implementation of our reference price waiver proposal is fully optional for venues. UK trading venues are free to decide to not incur costs should they determine that the benefits do not outweigh their individual costs.

Familiarisation costs

82. We expect that firms will incur costs from familiarising themselves with the remedies we are proposing. Familiarisation and legal costs are estimated based on assumptions of the standardised cost model (SCM).

83. In total we expect that 7 trading venues will likely seek to understand our proposals. Those are the venues who are currently operating trading systems under the reference price waiver. 3 of the venues are classified as large and 4 as medium.

84. We anticipate that there will be approximately 10 pages of policy documentation with which firms will need to familiarise themselves. Assuming that there are 300 words per page and a reading speed of 100 words per minute, it would take around 30 minutes to read the policy documentation. It is further assumed that 20 compliance staff at large firms, 5 compliance staff at medium firms and 2 at small firms will need to read the document.

85. We also expect those affected will undertake a legal review of the new requirements against current practices. We, again, use standard assumptions to estimate these costs for the 3 pages of legal instrument to review.

86. In total, we estimate total one-off industry-wide (i.e. across all the 7 venues operating under the reference price waiver) costs of familiarisation and legal review costs to be of a nominal amount, which we have assessed to be approximately £5 thousand.

Systems, process and IT costs

87. Our proposal does not require firms to implement any systems change unless trading venues voluntarily decide to use overseas reference prices for their reference price waiver. Additionally, trading venues that are already using reference prices for EU shares will not have to make any change to their current systems. Nonetheless, where they want to benefit from the flexibility provided by our proposed change and expand the use of the reference price waiver to other overseas shares, trading venues will have to establish new connections with the primary market they source the reference price from. For new reference prices we expect them to conduct testing with users and with internal functions like market monitoring. They will also have to pay market data fees.

88. Using our assumptions of IT and project changes within our SCM, we estimate that those activities will involve one-off costs that are in the range of £9k to £36k per firm, excluding the cost of sourcing the price data from the primary market. Again, given the permissive nature of the proposal, firms would only incur the costs if the private benefits of doing so exceed the costs.

89. We do not expect on-going costs for trading venues, like monitoring of the imported reference price and operation of the matching platforms, to be different from the baseline scenario where other reference prices are used. We don't expect indirect costs, one-off or ongoing, to be sustained by trading venues. Our cost analysis factors in that UK venues already have arrangements to source the price from overseas venues, at least for EU shares.

90. For users, like members of trading venues, we do not expect the availability of new reference prices to require any material cost other than some adaptation, e.g. testing of the systems in advance of introduction. We expect those costs to be minimal as members will leverage from existing arrangements, systems and controls currently employed to trade on the basis of existing reference prices on those platforms.

> **Q3:** **Do you have any comments on our cost benefit analysis on the reference price waiver proposals?**

Order management Facility Waiver

Benefits

91. There may be an increase in liquidity if the current threshold is larger than what is deemed optimal and trading venues decide to exercise the greater flexibility provided by our proposed changes to set a more optimal threshold. We expect that the changes to the waiver will result in slightly lower costs of doing business stemming from reduced regulatory costs, lower compliance and monitoring costs that arise from enforcing the threshold.

92. We expect that the changes to the waiver will enhance the ability of firms to compete with overseas platforms. We further expect an increase in traded volumes and revenues resulting from the changes.

Costs

93. Whilst we identify some of the costs trading venues would need to incur if they wanted to exercise the greater flexibility provided by our proposed changes, the implementation of our OMF waver proposal is fully optional for venues. UK trading venues are free to decide to not incur costs should they determine that the benefits do not outweigh their individual costs.

Familiarisation costs

94. We expect that firms will incur costs from familiarising themselves with the remedies we are proposing. In total, we expect there will be 4 trading venues, 3 large and 1 medium, who will likely seek to understand our package of the proposals. We are using our standard approach to estimating familiarisation costs.

95. We anticipate that there will be approximately 10 pages of policy documentation with which firms will need to familiarise themselves. Assuming that there are 300 words per page and a reading speed of 100 words per minute, it would take around 30 minutes to read the policy documentation.

96. It is further assumed that 20 compliance staff at large firms, 5 compliance staff at medium firms and 2 at small firms read the document. We also expect those affected will undertake a legal review of the new requirements against current practices. We, again, use the SCM to estimate these costs. There are around 3 pages of legal instrument to review.

97. In total, we expect total one-off industry-wide costs of familiarisation and legal review costs to be of a nominal amount, which we have assessed to be approximately £4 thousand.

Systems, process and IT costs

98. As for the reference price waiver, our proposal does not require or force trading venues to implement change to their systems. If they wish, trading venues could retain the current minimum threshold of €10 thousand for orders held in an order management facility. However, if firms voluntarily decide to change the minimum threshold, we expect that they will incur very limited IT and testing costs. Using our standard assumptions in the SCM of IT and project changes, we estimate these costs to be in the range of £9 thousand to £36 thousand per venue based on size and system set up.

99. We do not consider that the proposal will impose ongoing indirect costs or indirect costs compared to the baseline where trading venues maintain the existing threshold. We also don't expect trading venues' members and their clients to incur any material cost that can be reasonably estimated in the case that venues implement the changes.

Q4: Do you have any comments on our cost benefit analysis on the order management facility waiver proposals?

Section 4: Tick size regime

Problem and rationale for intervention

100. Onshored RTS 11 sets out the tick size requirements that trading venues shall comply with for equity financial instruments, in particular for shares. RTS 11 achieves this by establishing the minimum tick size for each share according to two parameters: the current market price of the share and the liquidity of the share as measured by the instrument's average daily number of transactions on the trading venue with the highest turnover within the UK for that instrument. The liquidity is calculated as an average of the preceding calendar year. The higher the price, the larger the tick size, the more liquid the share, the smaller the tick size.

101. Overseas shares are shares that are listed and have their primary pool of liquidity outside the UK. For those shares, using exclusively the liquidity available in the UK as an input for determining the tick size regime generally results in a larger tick size than the one applicable in the primary markets. Amendments to RTS 11 after the entry into force of MiFID partially addressed the problem by allowing the use of liquidity in the overseas primary market as an input in the methodology for calculating the applicable tick size regime.

102. However, sourcing information on liquidity from overseas markets is costly as overseas venues have no obligation to supply the data to the FCA or to UK trading venues. Data from overseas venues are often not comparable to the specific data that are required for calculating the minimum tick size in accordance with the methodology in RTS 11. The methodology requires a calculation that excludes transactions executed under certain pre-trade transparency waivers which have no analogy outside the UK. Even when comparable input data are available, the methodology in RTS 11 might deliver a different minimum tick size to the one adopted by the primary market overseas potentially creating an uneven playing field between UK and overseas trading venues. That is the case, for example, for US shares.

103. The rationale for intervention arises because deficiencies in the current RTS 11 prevent the proper calibration of the minimum tick size for overseas shares in a way that is appropriate for the actual liquidity of the instrument.

Harm and drivers of harm

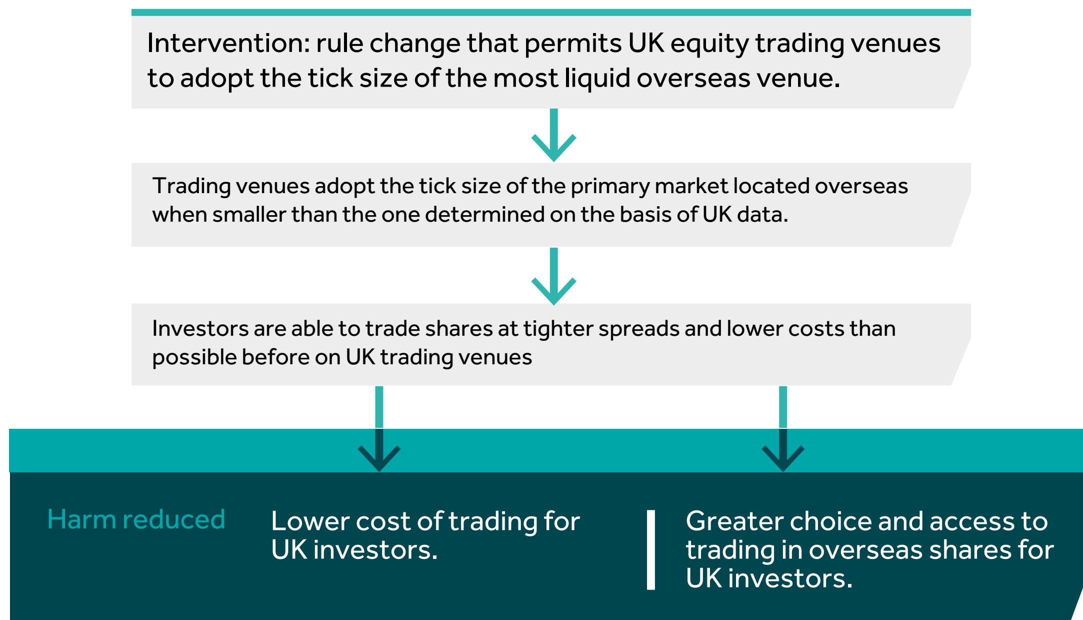
104. The current restrictions cause two types of harms. First, data pertaining to transaction volumes on third country venues requires sourcing from outside the UK. This sourcing of the data is costly as it requires additional systems and oversight resources. When costs are imposed on firms, they are likely to be passed on to trading venues' members and their end clients.

105. The second harm arises from the fact that even when the liquidity from the overseas primary market is factored in, differences between the tick size in the primary market and the one determined according to the methodology set out in RTS 11 may still persist. Consequently, UK trading venues are prevented from competing with overseas venues on a level playing field, to the detriment of trading firms and their clients in terms of costs of trading, innovation and choice. For instruments where there is a material divergence in the tick size, it's unlikely that trading venues will be able to offer a viable market in those shares.

Summary of our proposed intervention

106. We propose, for overseas shares, to allow UK trading venues to adopt the tick size of the primary market located overseas when the tick size in that market is smaller than the one determined on the basis of calculations based on data from UK venues.

Figure 5: the causal chain – tick size regime



Baseline and key assumptions

107. In our Brexit supervisory statement[8], we said that UK trading venues can use the liquidity, as measured by the average daily number of transactions, published by ESMA for shares of EU issuers traded on UK markets. Since onshored RTS 11 employs the same methodology as EU RTS 11, in practice our supervisory approach allows UK trading venues to adopt, if they wish, the same tick size regime as the one used in the primary market provided the primary market is in the EU. The supervisory statement does not cover overseas shares other than those listed in EU, like US shares.

108. We have evidence that in the main – i.e. excluding dual-listed shares – liquidity in overseas primary markets will continue to be larger than that on UK secondary markets. If liquidity on overseas primary markets is less than that on UK trading venues our proposal would not in practice deliver significant benefits. However, we do not expect liquidity in overseas shares on UK trading venues to increase to anywhere near the level of the most liquid overseas venue, as the overseas venue is likely the main centre of activity. Still, we do expect that our policy proposal would increase liquidity on UK venues as it will enable traders to trade overseas shares at more favourable spreads than they otherwise would.

109. We also assume that UK investors will want to trade overseas shares on transparent order books in the UK as opposed to OTC. If that is not the case, our proposal would not deliver the same benefits.

8 https://www.fca.org.uk/publication/documents/supervisory-statement-mifid-end-transition-period.pdf

110. Further assumptions have been made in the CBA on the number of relevant market participants, when classifying firm size and on the methodology used to calculate costs. Details are explained below.

111. We acknowledge that estimates gathered as part of our engagement with firms are based on high-level information disclosed and not on the full details of the proposals as laid out in this CP. To help assess the accuracy of the cost estimates presented in this CBA, we will carefully consider consultation responses that provide relevant feedback on the costs.

Number of relevant market participants

112. The classes of firms affected by our proposed intervention are as follows:

a. UK trading venues: there are 14 equity UK trading venues. This comprises 4 RIEs and 10 MTFs.
b. Systematic internalisers: following the amendment to MiFIR in 2019, SIs are also subject to the tick size regime under RTS 11. There are currently 26 SIs in shares.

113. This is the population of firms that would directly benefit from our proposals as they are already dealing in overseas shares or because they may, following the proposed change to RTS 11, offer trading services in overseas shares. We have not estimated the total number of firms that will indirectly benefit from the proposal but they include trading venue members and their clients and the clients of SIs such as asset managers and retail clients.

Summary of costs and benefits

114. The table below contains a summary of total costs and benefits for the changes we are proposing to the tick size regime.

Table 6: estimates of costs and benefits – tick size regime

Firm type	Total one-off costs for all firms	Total benefits for all firms
Trading venues	Total familiarisation and legal review cost – £7k. We also estimate per firm implementation costs that could range between £9k and £36k depending on the firm size.	Lower operating costs in relation to making markets in overseas shares. Greater ability to compete with overseas markets.
Systematic Internalisers	Total familiarisation and legal review cost – £20k. We also estimate per firm implementation costs that could range between £9k and £36k depending on the firm size.	Greater ability to compete with overseas markets
Trading venues' members	Negligible	Lower execution costs, including smaller spreads
End investors	Negligible	Lower execution costs, including smaller spreads

Benefits

115. By enabling UK trading venues to adopt the tick size of the most liquid overseas trading venue, users of these venues will be able to benefit from greater choice for overseas shares. We expect the greater choice to lower costs of trading, including the cost of accessing markets. This would potentially also be by way of benefitting from narrower spreads on UK trading venues then the ones available before for those shares.

116. We are not able to quantitatively estimate the benefits from our proposal. The materialisation of the benefits will depend on whether greater choice on where to trade translates into lower explicit and implicit trading costs. Lower implicit trading costs will depend on the volume of overseas shares traded on UK venues and in other markets.

117. Additionally, trading firms may also benefit by avoiding the costs associated with onboarding and establishing trading relationships with multiple overseas trading venues (with the associated compliance and IT costs). By having access to domestic trading venues, UK investors might also benefit from lower latency of trading.

Costs

118. Whilst we identify some of the costs trading venues would need to incur if they wanted to exercise the greater flexibility provided by our proposed changes, nothing in our proposal would prevent venues from maintaining the current tick sizes. UK trading venues are free to decide to not incur costs should they determine that the benefits do not outweigh their individual costs.

Familiarisation and legal costs

119. We expect that firms will incur costs from familiarising themselves with the remedies we are proposing. Familiarisation and legal costs are estimated based on assumptions of the standardised cost model (SCM).

120. In total we expect that 14 trading venues and 26 SIs will likely seek to understand our proposals. These are trading venues and firms dealing in equities. We classified 4 of the trading venues as large, 8 as medium, and 2 as small, whilst we classified 16 of the SIs as large, 9 as medium and 1 as small.

121. We anticipate that there will be approximately 9 pages of policy documentation with which firms will need to familiarise themselves. Assuming that there are 300 words per page and a reading speed of 100 words per minute, it would take around 30 minutes to read the policy documentation. It is further assumed that 20 compliance staff at large firms, 5 compliance staff at medium firms and 2 at small firms will need to read the document.

122. We also expect those affected will undertake a legal review of the new requirements against current practices. We, again, use the SCM to estimate these costs. There are around 3 pages of legal instrument to review.

123. In total, we expect total one-off industry-wide costs of familiarisation and legal review costs to be of a nominal amount, which we have assessed to be approximately £27 thousand.

Systems, process and IT costs

124. Our proposal would not require firms to commit spending on systems and IT builds. The decision to incur IT and systems costs would be discretionary on the part of these firms where they want to exercise the flexibility that our proposal provides to them. The overall costs of the changes will therefore depend on the number of firms that take advantage of our proposals.

125. The trading venues and SIs who wish to benefit from the proposed change will need to implement limited IT and systems changes. We expect venues to already have systems able to source and monitor the applicable tick size regime on overseas exchanges (e.g. for shares admitted to trading in the EEA). We understand that the information is generally publicly available from the primary markets or through data vendors.

126. Using our standard assumptions in the SCM of IT and project changes, we estimate potential implementation costs per firm in the range between £9k and £36k, depending on the size of the firm and its systems. Again, given the permissive nature of the proposal, firms would only incur the costs if the private benefits of doing so exceed the costs.

Q5: Do you have any comments on our cost benefit analysis on the tick size regime policy proposals?

Annex 4
Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is:

   a. compatible with its general duty, under s. 1B(1) FSMA, as far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives; and
   b. its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA.

3. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

4. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

5. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

6. This Annex includes our assessment of the equality and diversity implications of these proposals.

7. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

8. The proposals set out in this consultation are intended to advance the FCA's operational objective of securing an appropriate degree of protection for consumers. The rules we are consulting on will enhance post-trade transparency and improve the quality of information available to market participants. This will improve efficiency of price formation, enhancing the information available to market participants and so reduce implicit costs of trading.

9. The proposals are also relevant to the FCA's market integrity objective. The proposed changes to post-transparency rules including changes to flags will improve the quality of information available to market participants on trading taking place. This will in turn help users of data to interpret trends in trading in the marketplace improving confidence in the fairness and orderliness of markets. The work proposed on outages will also enhance resiliency of trading on UK trading venues and markets by removing uncertainty when an outage occurs and ensuring greater predictability of the actions of trading venues during an outage.

10. Lastly, we expect the proposed changes will improve competition by allowing UK trading venues to source reference prices from overseas markets instead of being restricted to only prices derived from UK trading venues. This will widen choice for market participants and so lower costs of trading for final investors. Changes to the rules to permit use of the tick size regime from overseas primary markets should result in increased competition and choice for intermediaries and end investors. Lastly, firms should benefit from costs savings arising from separation of the status of systematic internalisers from the rules setting out when an investment firm is responsible for the public reporting of transactions executed OTC. In doing so, it will remove requirements limiting entry to the market by liquidity providers that lower competition.

11. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well. The proposed rule changes are intended to improve the operation of equity markets. Amendments to the rules on post-trade information will maintain high standards of consumer protection whilst removing aspects that impair the content and clarity of information and limit effective consolidation from multiple sources. As set out above, the changes will also enhance the integrity of and competition of the relevant equity markets. For the purposes of the FCA's strategic objective, "relevant markets" are defined by s. 1F FSMA.

12. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s. 3B FSMA.

The need to use our resources in the most efficient and economic way

13. The proposals set out in this consultation are consistent with an efficient and economic use of our resource. Our supervisory resources will be used efficiently as our approach seeks to ensure improvements to post-trade transparency and resiliency of trading on UK trading venues.

The principle that a burden or restriction should be proportionate to the benefits

14. As set out in the cost benefit analysis in Annex 3 we have estimated the costs and benefits of our proposals. We are satisfied that the net benefits of these proposals outweigh and justify the costs.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

15. The proposals have regard to this principle including the desirability of growth in the medium and long term and the government's aim of seeing more competition and innovation in all sectors of the UK's financial industry. We consider that our proposals including those allowing UK trading venues to source reference prices from overseas markets and permitting use of the tick size regime from overseas primary markets support this principle.

The general principle that consumers should take responsibility for their decisions

16. The proposals do not depart from the general principle that consumers take responsibility for their decisions.

The responsibilities of senior management

17. Our proposals do not specifically relate to the responsibilities of senior management. Nevertheless, we have had regard to this principle and do not consider that our proposals undermine it.

The principle that we should exercise of our functions as transparently as possible

18. Our consultation processes are intended to ensure that we are transparent about the thinking behind our proposals and clearly explain what we expect to achieve. We believe that this CP meets these objectives. We have also spoken to a wide range of firms and other stakeholders in developing these proposals for rules changes.

19. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA).

Expected effect on mutual societies

20. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies compared with other authorised firms. The relevant rules we propose to amend will apply according to the powers exercised and to whom they are addressed, equally regardless of whether it is a mutual society or another authorised body.

Equality and diversity

21. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, to and foster good relations between people who share a protected characteristic and those who do not.

22. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.19-2.20 of the Consultation Paper.

Legislative and Regulatory Reform Act 2006 (LRRA)

23. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that they are proportionate and consistent with the need for increased transparency.

24. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance and consider that the proposals are proportionate to the potential market failures identified.

Annex 5
Abbreviations used in this paper

Abbreviation	Description
ADNT	Average Daily Number of Transactions
APA	Approved Publication Arrangement
CBA	Cost Benefit Analysis
CCP	Central Counterparty
CP	Consultation Paper
ESMA	European Securities and Markets Authority
ETF	Exchange Traded Fund
EU	European Union
FCA	Financial Conduct Authority
FITRS	Financial Instruments Transparency System
FRF	Future Regulatory Framework
FSMA	Financial Services and Markets Act 2000
IOSCO	International Organisation of Securities Commissions
MiFID	Markets in Financial Instruments Directive
MRMTL	Most relevant market in terms of liquidity
MTF	Multilateral Trading Facility
OMFW	Order Management Facility Waiver
OTC	Over-the-counter
OTF	Organised Trading Facility
RFMD	Request for Market Data
RPW	Reference Price Waiver

Abbreviation	Description
RSP	Retail Service Provider
RTS	Regulatory Technical Standard
SI	Systematic Internaliser
SMAC	Secondary Markets Advisory Committee
STO	Share Trading Obligation
SYSC	Senior Management Arrangements, Systems and Controls Sourcebook
UK MiFIR	Onshored Regulation (EU) No 600/2014 on Markets in Financial Instruments
UK RTS 1	Onshored Commission Delegated Regulation (EU) 2017/583
UK RTS 11	Onshored Commission Delegated Regulation (EU) 2017/588
UK RTS 22	Onshored Commission Delegated Regulation (EU) 2017/590
WMR	Wholesale Market Review

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

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Appendix 1
Draft Handbook text

TECHNICAL STANDARDS (MARKETS IN FINANCIAL INSTRUMENTS TRANSPARENCY) INSTRUMENT 2022

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers and related provisions in or under:

(1) articles 4, 7, 20, 21 and 23 of and paragraph 24 of Schedule 3 to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012; and

(2) the following sections of the Financial Services and Markets Act 2000 ("the Act"):

(a) section 138P (Technical standards);
(b) section 138Q (Standards instruments);
(c) section 138S (Application of Chapters 1 and 2); and
(d) section 137T (General supplementary powers).

B. The rule-making powers listed above are specified for the purposes of section 138Q(2) (Standards instruments) of the Act.

Pre-conditions to making

C. The FCA has consulted the Prudential Regulation Authority and the Bank of England as appropriate in accordance with section 138P of the Act.

D. A draft of this instrument has been approved by the Treasury in accordance with section 138R of the Act.

Interpretation

E. In this instrument, any reference to any provision of direct EU legislation is a reference to it as it forms part of retained EU law.

Modifications

F. The following technical standards are amended in accordance with Annexes A, B and C of this instrument.

(1)	(2)
Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments	Annex A

and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser	
Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives	Annex B
Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds	Annex C

Commencement

G. This instrument comes into force on [*date*].

Citation

H. This instrument may be cited as the Technical Standards (Markets in Financial Instruments Transparency) Instrument 2022.

By order of the Board
[*date*]

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

Annex A

Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser

…

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) "portfolio trade" means transactions in five or more different financial instruments where those transactions are traded at the same time by the same client and as a single lot against a specific reference price;

(2) "give-up transaction" or "give-in transaction" means:

(a) a transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or

(b) where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging a derivative position that it has committed to enter into with a client.

(3) "securities financing transaction" means a securities financing transaction as defined in Article 3(6) of Delegated Regulation (EU) 2017/577;

(5) "the Recognition Requirements Regulations" means the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges, Clearing Houses and Central Securities Depositories) Regulations 2001 (SI 2001/995);

(5A) "benchmark trade" means the transaction is executed by reference to a price that is:

(a) calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price, or

(b) at the market closing price;

(5B) "designated reporter" means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients.

(5C) "Inter-affiliate transaction" means a transaction between entities within the same group carried out exclusively as part of centralised booking for intra-group risk management purposes.

~~(6) "the AIFM Regulations" means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).~~

Article 2

Transactions not contributing to the price discovery process (Article 23(1) of Regulation (EU) No 600/2014)

A transaction in shares does not contribute to the price discovery process where any of the following circumstances apply:

(a) the transaction is ~~executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time weighted average price~~ a benchmark trade;

(b) the transaction is part of a portfolio trade;

(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are to be executed only as a single lot;

(ca) the transaction is of a type listed in article 13.

~~(d) the transaction is executed by a management company as defined in section 237(2) of FSMA, or a UK AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~

~~(e) the transaction is a give-up transaction or a give-in transaction;~~

~~(f) the purpose of the transaction is to transfer shares as collateral in bilateral transactions or in the context of central counterparty (CCP) margin or collateral requirements or as part of the default management process of a CCP;~~

~~(g) the transaction results in the delivery of shares in the context of the exercise of convertible bonds, options, covered warrants or other similar derivatives;~~

~~(h) the transaction is a securities financing transaction;~~

~~(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect a buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or a similar third country law for the same type of transactions, where applicable).~~

…

Article 4

Most relevant market in terms of liquidity (Article 4(1)(a) of Regulation (EU) No 600/2014)

(-1) For the purposes of this Article, Article 2(1)(62) of Regulation 600/2014/EU shall not apply.

(1) For the purposes of Article 4(1)(a) of Regulation (EU) No 600/2014, the most relevant market in terms of liquidity for a share, depositary receipt, ETF, certificate or other similar financial instrument shall be considered to be the trading venue with the highest turnover within the relevant area for that financial instrument except where Article 4(1A) of this Regulation applies.

(1A) Where a share, depositary receipt, ETF, certificate and other similar financial instrument is admitted to trading in a third country, the most relevant market in terms of liquidity may be considered the third-country trading venue where that financial instrument was first admitted to trading.

…

…

Article 6

Negotiated transactions subject to conditions other than the current market price (Article 4(1)(b) of Regulation (EU) No 600/2014)

A negotiated transaction in shares, depositary receipts, ETFs, certificates and other similar financial instruments shall be subject to conditions other than the current market price of the financial instrument where any of the following circumstances applies:

(a) the transaction is ~~executed by reference to a price that is calculated over multiple time instances according to a given benchmark, including transactions executed by reference to a volume-weighted average price or a time-weighted average price~~ a benchmark trade;

(b) the transaction is part of a portfolio trade;

(c) the transaction is contingent on the purchase, sale, creation or redemption of a derivative contract or other financial instrument where all the components of the trade are meant to be executed as a single lot;

(ca) the transaction is of a type listed in article 13;

~~(d)~~ ~~the transaction is executed by a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers the beneficial ownership of shares from one collective investment undertaking to another and where no investment firm is a party to the transaction;~~

~~(e) the transaction is a give-up transaction or a give-in transaction;~~

~~(f) the transaction has as its purpose the transferring of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP;~~

~~(g) the transaction results in the delivery of financial instruments in the context of the exercise of convertible bonds, options, covered warrants or other similar financial derivative;~~

~~(h) the transaction is a securities financing transaction;~~

~~(i) the transaction is carried out under the rules or procedures of a trading venue, a CCP or a central securities depository to effect buy-in of unsettled transactions in accordance with Regulation (EU) No 909/2014 (or similar third country law for the same type of transactions, where applicable);~~

(j) any other transaction equivalent to one of those described in points (a) to ~~(i)~~ (c) in that it is contingent on technical characteristics which are unrelated to the current market valuation of the financial instrument traded.

…

Article 8

Type ~~and minimum size~~ of orders held in an order management facility (Article 4(1)(d) of Regulation (EU) No 600/2014)

(1) The type of order held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived is an order which:

(a) is intended to be disclosed to the order book operated by the trading venue and is contingent on objective conditions that are pre-defined by the system's protocol;

(b) cannot interact with other trading interests prior to disclosure to the order book operated by the trading venue;

(c) once disclosed to the order book, interacts with other orders in accordance with the rules applicable to orders of that kind at the time of disclosure.

(1A) By way of derogation from paragraph 1(b), where a portion of a quantity of an aggressive order has executed against the disclosed quantity of a reserve order and other disclosed orders in the order book of a trading venue, the non-disclosed quantity of the reserve order held in the trading venue's order management facility is a type of order for which pre-trade disclosure may be waived and which can be executed against the remainder of the quantity of the aggressive order.

(1B) A reserve order as referred to in paragraph 1A shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity in the order book of a trading venue and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is held in the order management facility of a trading venue.

(1C) An aggressive order as referred to in paragraph 1A shall be considered a limit order that has been disclosed in the order book of a trading venue and which initiates trades.

~~(2) Orders held in an order management facility of a trading venue pending disclosure for which pre-trade transparency obligations may be waived shall, at the point of entry and following any amendment, have one of the following sizes:~~

~~(a) in the case of a reserve order, a size that is greater than or equal to EUR 10000;~~

~~(b) for all other orders, a size that is greater than or equal to the minimum tradable quantity set in advance by the system operator under its rules and protocols.~~

~~(3) A reserve order as referred to in paragraph 2(a) shall be considered a limit order consisting of a disclosed order relating to a portion of a quantity and a non-disclosed order relating to the remainder of the quantity where the non-disclosed quantity is capable of execution only after its release to the order book as a new disclosed order~~.

…

Article 12

Post-trade transparency obligations (Article 6(1) and Article 20(1) and (2) of Regulation (EU) No 600/2014)

…

(4) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that ~~sells the financial instrument concerned~~ is registered as a designated reporter shall make the transaction public through an APA.

(5) ~~By way of derogation from paragraph 4, where only one of the investment firms~~ Where neither or each investment firm party to the transaction ~~is a systematic internaliser in the given financial instrument and it is acting as the buying firm~~ is a designated reporter, only ~~that~~ the firm acting as the selling firm shall make the transaction public through an APA, informing the ~~seller~~ buying firm of the action taken.

…

(7) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.

(8) The notification under paragraph (6) may be addressed to the investment firm's usual supervisory contact at the FCA.

(9) The FCA shall publish and maintain on its website a register of reporters. The register shall be publicly accessible on the FCA's website and updated on a regular basis.

Article 13

Application of post-trade transparency to certain types of transactions executed outside a trading venue (Article 20(1) of Regulation (EU) No 600/2014)

The obligation in Article 20(1) of Regulation (EU) No 600/2014 shall not apply to the following:

(a) excluded transactions listed under Article 2(5) of Commission Delegated Regulation (EU) 2017/590 where applicable;

(b) transactions executed by ~~a management company as defined in section 237(2) of FSMA, a UK AIFM as defined in the AIFM Regulations, or a third country AIFM as defined in the AIFM Regulations, which transfers~~ an investment firm when providing the investment service of portfolio management, which transfers the beneficial ownership of financial instruments from one collective investment undertaking to another and where no other investment firm is a party to the transaction;

(c) give-up transactions and give-in transactions;

(ca) inter-affiliate transactions.

~~(d)~~ ~~transfers of financial instruments as collateral in bilateral transactions or in the context of a CCP margin or collateral requirements or as part of the default management process of a CCP.~~

…

Article 15

Deferred publication of transactions (Article 7(1) and 20(1) and (2) of Regulation (EU) No 600/2014)

(1) Where the FCA authorises the deferred publication of the details of transactions pursuant to Article 7(1) of Regulation (EU) No 600/2014, market operators and investment firms operating a trading venue and investment firms trading outside a trading venue shall make public each transaction no later than at the end of the relevant period set out in Tables 4, 5 and 6 of Annex II provided that the following criteria are satisfied:

(a) the transaction is between an investment firm dealing on own account other than through matched principal trading and another counterparty;

(b) the size of the transaction is equal to or exceeds the relevant minimum qualifying size specified in Tables 4, 5 or 6 of Annex II, as appropriate.

(2) The relevant minimum qualifying size for the purposes of point (b) in paragraph 1 shall be determined in accordance with the average daily turnover calculated as set out in Article 7.

(2A) Further or alternatively to paragraph (1), trading venues can defer the publication of any trade of any size that falls under the types of transaction listed in Article 13 until the end of the trading day.

…

…

ANNEX I Information to be made public

…

Table 3 List of details for the purpose of post-trade transparency

Field identifier	Description and details to be published	Type of execution or publication venue	Format to be populated as defined in Table 2
…			
Price	Traded price of the transaction excluding, where applicable, commission and accrued interest. Where price is reported in monetary terms, it shall be provided in the major currency unit. ~~Where price is currently not available but pending, the value should be "PNDG". Where price is not applicable the field shall not be populated.~~ The information reported in this field shall be consistent with the values provided in field Quantity.	RM, MTF APA CTP	{DECIMAL-18/13} in case the price is expressed as monetary value {DECIMAL-11/10} in case the price is expressed as percentage or yield ~~"PNDG" in case the price is not available~~
Price conditions	Where price is currently not available but pending, the value should be "PNDG".	RM, MTF, APA, CTP	"PNDG" in cases where the price is not available
Price major currency	Currency in which the price is expressed	RM, MTF APA	{CURRENCYCODE_3}

	(applicable if the price is expressed as monetary value). Note: This field should use an ISO 4217 currency code for a major currency.	CTP	
…			

Table 4 List of flags for the purpose of post-trade transparency

Flag	Name	Type of execution or publication venue	Description
~~“BENC”~~	~~Benchmark transactions flag~~	~~RM, MTF~~ ~~APA~~ ~~CTP~~	~~Transactions executed in reference to a price that is calculated over multiple time instances according to a given benchmark, such as volume-weighted average price or time-weighted average price.~~
~~“ACTX”~~	~~Agency cross transactions flag~~	~~APA~~ ~~CTP~~	~~Transactions where an investment firm has brought together clients' orders with the purchase and the sale conducted as one transaction and involving the same volume and price.~~
“NPFT”	Non-price forming transactions flag	RM, MTF CTP	Transactions where the exchange of financial instruments is determined by factors other than the current market valuation of the financial instrument as listed under Article 13.
“TNCP”	Transactions not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 flag and negotiated transactions subject to conditions other than the current market	RM, MTF APA CTP	Transaction not contributing to the price discovery process for the purposes of Article 23 of Regulation (EU) No 600/2014 ~~and~~ as set out in ~~Article 2~~ Article 2(a) to (c), and negotiated transactions subject to conditions other than the current market price

	price under Article 4(1)(b) of Regulation (EU) No 600/2014		under Article 4(1)(b) of Regulation (EU) No 600/2014 as set out in Article 6(a) to (c) and (j).
"SDIV"	Special dividend transaction flag	RM, MTF APA CTP	Transactions that are either: (a) executed during the ex-dividend period where the dividend or other form of distribution accrues to the buyer instead of the seller; or (b) executed during the cum-dividend period where the dividend or other form of distribution accrues to the seller instead of the buyer.
"LRGS"	Post-trade large in scale transaction flag	RM, MTF APA CTP	Transactions that are large in scale compared with normal market size for which deferred publication is permitted under Article 15.
"RFPT"	Reference price transaction flag	RM, MTF CTP	Transactions which are executed under systems operating in accordance with Article 4(1)(a) of Regulation (EU) No 600/2014.
~~"NLIQ"~~	~~Negotiated transaction in liquid financial instruments flag~~	~~RM, MTF~~ ~~CTP~~	~~Transactions executed in accordance with Article 4(1)(b)(i) of Regulation (EU) No 600/2014.~~
~~"OILQ"~~	~~Negotiated transaction in illiquid financial instruments flag~~	~~RM, MTF~~ ~~CTP~~	~~Transactions executed in accordance with Article 4(1)(b)(ii) of Regulation (EU) No 600/2014.~~
~~"PRIC"~~	~~Negotiated transaction subject to conditions other than the current market price flag~~	~~RM, MTF~~ ~~CTP~~	~~Transactions executed in accordance with Article 4(1)(b)(iii) of Regulation (EU) No 600/2014 and as set out in Article 6.~~
NETW	Negotiated transaction	RM, MTF, CTP	Transactions executed in accordance with Article 4(1)(b) of Regulation (EU) No 600/2014 and

			article 6 of this regulation.
~~“ALGO”~~	~~Algorithmic transaction flag~~	~~RM, MTF~~ ~~CTP~~	~~Transactions executed as a result of an investment firm engaging in algorithmic trading as defined in Regulation 2(1) of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701).~~
~~“SIZE”~~	~~Transaction above the standard market size flag~~	~~APA~~ ~~CTP~~	~~Transactions executed on a systematic internaliser where the size of the incoming order was above the standard market size as determined in accordance with Article 11.~~
~~“ILQD”~~	~~Illiquid instrument transaction flag~~	~~APA~~ ~~CTP~~	~~Transactions in illiquid instruments as determined in accordance with Articles 1 to 9 of Commission Delegated Regulation (EU) 2017/567 executed on a systematic internaliser.~~
~~“RPRI”~~	~~Transactions which have received price improvement flag~~	~~APA~~ ~~CTP~~	~~Transactions executed on a systematic internaliser with a price improvement in accordance with Article 15(2) of Regulation (EU) No 600/2014.~~
“CANC”	Cancellation flag	RM, MTF APA CTP	When a previously published transaction is cancelled.
“AMND”	Amendment flag	RM, MTF APA CTP	When a previously published transaction is amended.
~~“DUPL”~~	~~Duplicative trade reports flag~~	~~APA~~	~~When a transaction is reported to more than one APA in accordance with~~

			~~Article 17(1) of Delegated Regulation (EU) 2017/571.~~

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

Annex B

Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives

…

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

…

~~(4)~~ ~~“the AIFM Regulations" means the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773).~~

(5) “designated reporter” means an investment firm that accepts responsibility for making public through an APA the trades it concludes with another investment firm outside the rules of a trading venue, where it is the buyer of a financial instrument either on own account or on behalf of clients.

…

Article 7

Post-trade transparency obligations (Article 10(1) and Article 21(1) and (5) of Regulation (EU) No 600/2014)

…

(5) Where a transaction between two investment firms is concluded outside the rules of a trading venue, either on own account or on behalf of clients, only the investment firm that ~~sells the financial instrument concerned~~ is registered as a designated reporter shall make the transaction public through an APA.

(6) ~~By way of derogation from paragraph 5, where only one of the investment firms~~ Where neither or each investment firm party to the transaction ~~is a systematic internaliser in the given financial instrument and it is acting as the buying firm,~~ is a designated reporter, only ~~that~~ the firm acting as the selling firm shall make the transaction public through an APA, informing the ~~seller~~ buying firm of the action taken.

…

(9) An investment firm must notify the FCA in writing before carrying on or ceasing the activity of a designated reporter.

(10) The notification under paragraph (9) may be addressed to the investment firm's usual supervisory contact at the FCA.

…

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

Annex C

Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds

…

Article 1

Most relevant market in terms of liquidity

For the purposes of this Regulation, the most relevant market in terms of liquidity for a share or a depositary receipt shall be considered to be ~~the most relevant market in terms of liquidity as referred to in Article 4(1)(a) of Regulation (EU) No 600/2014 and specified in Article 4 or in accordance with Article 17A of Commission Delegated Regulation (EU) 2017/587~~ <u>the trading venue with the highest turnover for that financial instrument within the UK</u>.

Article 2

Tick size for shares, depositary receipts and exchange-traded funds (Article 49(1) and (2) of Directive 2014/65/EU)

(1) Trading venues shall apply to orders in shares or depositary receipts a tick size which is equal to or greater than the one corresponding to:

(a) the liquidity band in the table in the Annex corresponding to average daily number of transactions in the most relevant market in terms of liquidity for that instrument; and

(b) the price range in that liquidity band corresponding to the price of the order.

(2) By way of derogation from paragraph 1(a), where the most relevant market in terms of liquidity for a share or depositary receipt operates only a trading system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention, trading venues shall apply the liquidity band corresponding to the lowest average daily number of transactions in the table in the Annex.

<u>(2A)</u> <u>By way of derogation from paragraph 1, where a share or a depositary receipt is admitted to trading on a third country trading venue, trading venues may apply to orders in these instruments a tick size that is applied by a third country trading venue where that financial instrument was first admitted to trading.</u>

…

Article 3

Average daily number of transactions for shares and depositary receipts (Article 49(1) and (2) of Directive 2014/65/EU)

(1) By 1 March of the year following the date of application of Regulation (EU) No 600/2014 and by 1 March of each year thereafter, for the purposes of this regulation, the FCA shall, when determining the most relevant market in terms of liquidity for each share or depositary receipt that is traded on a trading venue, calculate the average daily number of transactions for that financial instrument in that market and ensure the publication of that information.

…

~~8. The competent authority for a specific share may adjust the average daily number of transactions calculated or estimated by that competent authority for that share in accordance with the procedure set out in paragraphs 1 to 7 where all of the following conditions are met:~~

~~(a) the trading venue with the highest turnover for that share is located in a third country;~~

~~(b) where that average daily number of transactions has been calculated and published in accordance with the procedure set out in paragraphs 1 to 4, it is equal to or greater than one.~~

~~When adjusting the average daily number of transactions for a share, the competent authority shall take into account the transactions executed on the third-country trading venue with the highest turnover for trading of that share.~~

~~9. The competent authority that adjusted the average daily number of transactions for a share in accordance with paragraph 8 shall ensure the publication of that adjusted average daily number of transactions.~~

~~10. Trading venues shall apply the tick sizes of the liquidity band corresponding to the adjusted average daily number of transactions from the second calendar day after its publication.~~

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