
DRAFT STATUTORY INSTRUMENTS

2023 No.

The Data Reporting Services Regulations 2023

PART 2

Authorisation of Data Reporting Services

Prohibition on the provision of a data reporting service

3.—(1) A person must not provide a data reporting service in the United Kingdom as a regular occupation or business unless the person is—

- (a) acting in accordance with an authorisation to provide that data reporting service granted under these Regulations;
- (b) an investment firm which is operating a UK multilateral trading facility or a UK organised trading facility where the FCA has verified under these Regulations that the firm complies with these Regulations in respect of the data reporting service concerned;
- (c) a credit institution which is operating a UK multilateral trading facility or a UK organised trading facility where the FCA has verified under these Regulations that the institution complies with these Regulations in respect of the data reporting service concerned; or
- (d) a recognised investment exchange operating a trading venue where the FCA has verified under these Regulations that the exchange complies with these Regulations in respect of the data reporting service concerned.

(2) A person who breaches a prohibition imposed by paragraph (1) is to be taken to have contravened a requirement imposed on it under these Regulations.

(3) In this regulation, “trading venue” has the meaning given in Article 2(1)(16) of the markets in financial instruments regulation.

Register of data reporting service providers

4.—(1) The FCA must maintain a register of all persons—

- (a) it has authorised to provide a data reporting service under these Regulations, or
- (b) whose compliance with these Regulations it has verified in accordance with regulation 7.

(2) The FCA must—

- (a) publish the register online; and
- (b) ensure that the register contains information on the services which persons on the register are authorised to provide including, where a tender contract to provide a CTP service is awarded, details of—
 - (i) the service to which the tender contract applies, and
 - (ii) the term of the tender contract and, where applicable, any extension to that term.

Application for authorisation to provide a data reporting service

5.—(1) An application for authorisation to provide a data reporting service must be made to the FCA.

(2) An application made under paragraph (1) must be—

- (a) made in such manner as the FCA may direct; and
- (b) contain, or be accompanied by, all the information required to demonstrate, in respect of the data reporting service the applicant wishes to provide, that the applicant meets the conditions for authorisation to provide a data reporting service under regulation 8.

(3) At any time after receiving an application and before determining it the FCA may require the applicant to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) The FCA may give different directions, and may impose different requirements, in relation to different applications or categories of application.

Direction to tender

6.—(1) The FCA may give a direction that a tender is to take place in order to select a person to provide a CTP service (a “direction to tender”).

(2) A direction to tender must specify—

- (a) the steps to be taken by prospective bidders wishing to participate in the tender, and
- (b) the nature of the CTP service to which the tender applies, by reference to the description of financial instrument for which trade reports are to be collected and, where applicable, the relevant class of assets within that financial instrument.

(3) The FCA must make a determination as to whether—

- (a) a bidder is to be awarded a contract to provide the CTP service to which the tender applies (a “tender contract”), or
- (b) where a bidder is not authorised or verified to provide the CTP service concerned, the bidder is a person to whom the FCA proposes to award a tender contract subject to that person being authorised or verified (a “preferred bidder”).

(4) The maximum term for which the tender contract may be awarded by the FCA following a direction to tender (“the initial tender term”) is a period of five years beginning on such day as the FCA may determine.

(5) The initial tender term may be extended by a period of no more than two years where—

- (a) the FCA intends to give a direction to tender in respect of the CTP service concerned and—
 - (i) significant changes to the arrangements for the selection of a person to provide the service, or to the obligations associated with the provision of the service, are anticipated by the FCA which would not otherwise be in effect before the commencement of the tender, or
 - (ii) following consultation with prospective bidders, the FCA cannot identify any likely participants in the tender other than the incumbent to whom the tender contract was awarded; or
- (b) following a direction to tender, a preferred bidder is not authorised or verified to provide the CTP service concerned.

(6) For the duration of the period during which a tender contract is in effect (including any period during which the tender contract is extended) no person other than a person who has been awarded a contract to provide the CTP service concerned may provide that service.

(7) A person who breaches a prohibition imposed by paragraph (6) is to be taken to have contravened a requirement imposed on it under these Regulations.

(8) In this regulation, reference to a person “authorised or verified” means a person who is authorised under regulation 9 to provide the CTP service to which the tender applies or a person whose compliance with these Regulations in connection with the provision of that service has been verified by the FCA under regulation 7.

Verification of compliance

7.—(1) Regulations 5, 8 and 9(1) to (5) apply to an application to the FCA for verification of compliance with these Regulations, as those regulations apply to an application for authorisation to provide a data reporting service.

(2) If the FCA verifies that an investment firm, credit institution or recognised investment exchange complies with these Regulations, it must give the applicant notice of its decision specifying—

- (a) the data reporting services to which the verification relates; and
- (b) any restrictions imposed under regulation 9(5) (as applied by this regulation).

(3) The notice must state the date on which the verification takes effect.

(4) The FCA must give the applicant a warning notice if it proposes to—

- (a) impose a restriction on the applicant; or
- (b) refuse an application.

(5) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it grants the verification without imposing restrictions, give the applicant notice of its decision complying with paragraphs (2) and (3);
- (b) if it grants the verification subject to the imposition of restrictions on the applicant, give the applicant a decision notice; or
- (c) if it refuses the application, give the applicant a decision notice.

(6) The applicant may refer the matter to the Tribunal if the FCA—

- (a) grants the application subject to the imposition of restrictions on the applicant; or
- (b) refuses the application.

(7) Regulations 10, 11(1) to (6) and 13 apply to a verification under paragraph (2) as they apply to an authorisation to provide a data reporting service.

Conditions for authorisation to provide a data reporting service

8.—(1) The FCA may only grant an application for authorisation to provide a data reporting service if—

- (a) the applicant has complied with all the directions and requirements under regulation 5;
- (b) where a direction to tender applies in respect of the data reporting service concerned, the applicant is a preferred bidder;
- (c) the applicant—

- (i) is established in the United Kingdom, or
- (ii) is a person not established in the United Kingdom who—

- (aa) is applying to provide a service described in the definition of an APA or an ARM, and

- (bb) has a branch in the United Kingdom;
 - (d) the FCA is satisfied that the applicant complies with all the requirements imposed by or under—
 - (i) these Regulations,
 - (ii) data reporting service rules,
 - (iii) the markets in financial instruments regulation,
 - (iv) the assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation; and
 - (e) the FCA is satisfied that the persons who effectively direct the business of the applicant are of good repute.
- (2) In this regulation, “branch” means a place of business other than the head office or registered office which—
- (a) is part of the applicant,
 - (b) has no legal personality, and
 - (c) provides a data reporting service.

Determination of an application for authorisation to provide a data reporting service

9.—(1) The FCA must determine an application for an authorisation to provide a data reporting service before the end of the period of six months beginning with the date on which it received the completed application.

(2) The FCA may determine an incomplete application if it considers it is appropriate to do so.

(3) An applicant may withdraw its application, by giving the FCA notice, at any time before the FCA determines it.

(4) The FCA may grant authorisation to carry out the data reporting services to which the application relates or such of them as may be specified in the authorisation.

(5) The FCA may grant authorisation subject to the imposition of such restrictions on the applicant as it considers appropriate.

(6) If the FCA grants an application for authorisation, it must give the applicant notice of its decision specifying—

- (a) which data reporting services the applicant has been granted authorisation to provide; and
- (b) any restrictions imposed under paragraph (5).

(7) The notice must state the date on which the authorisation takes effect.

(8) The FCA must give the applicant a warning notice if it proposes to—

- (a) impose a restriction on the applicant, or
- (b) refuse an application.

(9) The FCA must, having considered any representations made in response to the warning notice—

- (a) if it grants authorisation without imposing restrictions, give the applicant notice of its decision complying with paragraphs (6) and (7),
- (b) if it grants authorisation subject to the imposition of restrictions on the applicant, give the applicant a decision notice, or
- (c) if it refuses the application, give the applicant a decision notice.

(10) The applicant may refer the matter to the Tribunal if the FCA—

- (a) grants authorisation subject to the imposition of restrictions on the applicant; or
- (b) refuses the application.

Cancellation of an authorisation to provide a data reporting service

10.—(1) The FCA may cancel a person’s authorisation to provide a data reporting service where—

- (a) the person requests, or consents to, the cancellation of the authorisation;
 - (b) in the case of an authorisation to provide a CTP service in respect of which a direction to tender is given, the person is not awarded the tender contract;
 - (c) the person has not provided the data reporting service which the person is authorised to provide for the preceding six months;
 - (d) the person has obtained the authorisation through false statements or other irregular means;
 - (e) the person no longer meets the conditions under which the authorisation was granted;
 - (f) the FCA is not satisfied the persons who effectively direct the business of the person are of good repute;
 - (g) the person has seriously and systematically infringed requirements imposed by or under—
 - (i) these Regulations,
 - (ii) data reporting service rules,
 - (iii) the markets in financial instruments regulation, or
 - (iv) any assimilated law made under the markets in financial instruments directive or the markets in financial instruments regulation.
- (2) A request made under paragraph (1)(a) must be made in such manner as the FCA may direct.
- (3) The FCA may refuse a request under paragraph (1)(a).
- (4) The FCA must give a person a warning notice where it proposes to—
- (a) cancel a person’s authorisation, other than at the person’s request; or
 - (b) refuse a request under paragraph (1)(a).
- (5) The FCA must, having considered any representations made in response to the warning notice—
- (a) give the person notice of its decision if it decides—
 - (i) not to cancel the authorisation, or
 - (ii) to approve the request under paragraph (1)(a); or
 - (b) give the person a decision notice if it decides—
 - (i) to cancel the authorisation, or
 - (ii) to refuse the request under paragraph (1)(a).
- (6) The person may refer the matter to the Tribunal if the FCA decides—
- (a) to cancel the authorisation, other than at the person’s request, or
 - (b) to refuse the request under paragraph (1)(a).
- (7) Where the period for a reference to the Tribunal has expired without such reference being made, the FCA must as soon as practicable update the register accordingly.

Variation of an authorisation to provide data reporting services

11.—(1) A data reporting service provider may apply to the FCA to—

- (a) vary its authorisation to enable it to provide one or more additional data reporting services,
 - (b) remove one or more data reporting services, or
 - (c) remove a restriction imposed on an applicant under regulation 9.
- (2) An application under paragraph (1) (“an application for a variation”) must be made in such manner as the FCA may direct.
- (3) If the FCA proposes to refuse a person’s application for a variation it must give the person a warning notice.
- (4) The FCA must, having considered any representations made in response to the warning notice—
- (a) if it grants the person’s application for a variation, give the person notice of its decision; or
 - (b) if it refuses the person’s application for a variation, give the person a decision notice.
- (5) If the FCA refuses a person’s application for a variation the person may refer the matter to the Tribunal.
- (6) Where the period for a reference to the Tribunal has expired without a reference being made, the FCA must as soon as practicable update the register accordingly.
- (7) In this regulation, “authorisation” means an authorisation under regulation 9.