
STATUTORY INSTRUMENTS

2017 No. 701

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017

PART 4

Algorithmic trading etc by members of trading venues covered by certain exemptions from the markets in financial instruments directive

Algorithmic trading

30.—(1) A member of, or participant in, a regulated market or multilateral trading facility (“M”) that engages in algorithmic trading must comply with the requirements of this regulation if—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and [^{F1}risk] controls, suitable to the business it operates, to ensure that M's trading systems—

- (a) are resilient and have sufficient capacity;
- (b) are subject to appropriate trading thresholds and limits; and
- (c) prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

(3) M must have in place effective systems and risk controls to ensure that M's trading systems cannot be used for any purpose that is contrary to—

- (a) the market abuse regulation; or
- (b) the rules of a trading venue to which it is connected.

(4) M must have in place effective business continuity arrangements to deal with any failure of its trading systems.

(5) M must ensure M's systems are fully tested and properly monitored to ensure that they meet the requirements set out in paragraph (2) to (4).

(6) If M engages in algorithmic trading in the United Kingdom M must notify the FCA.

(7) If M engages in algorithmic trading in an EEA State other than the United Kingdom M must notify—

- (a) the FCA; and
- (b) the competent authority of a trading venue on which M engages in algorithmic trading as a member or participant.

Status: Point in time view as at 02/01/2018.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(8) M must arrange for records to be kept in relation to the matters referred to in this regulation and ensure that those records are sufficient to enable the FCA to monitor M's compliance with the requirements imposed on M by this regulation.

(9) If M engages in a high-frequency algorithmic trading technique (as defined by Article 4.1.40 (definitions) of the markets in financial instruments directive) M must store accurate and time sequenced records of all its placed orders, cancelled orders, executed orders, and quotations on trading venues, in an approved form.

(10) If M engages in algorithmic trading to pursue a market making strategy M must, taking into account the liquidity, scale, and nature of the specific market and the characteristics of any financial instrument traded—

- (a) carry out market making continuously during a specified proportion of the market or facility's trading hours, except under exceptional circumstances, with the result that liquidity is provided on a regular and predictable basis to that market or facility;
- (b) if the specified circumstances arise, enter into a binding written agreement with the market or facility which—
 - (i) specifies the obligations of M under the agreement;
 - (ii) imposes obligations on M that are in accordance with sub-paragraph (a); and
 - (iii) includes the specified content; and
- (c) have in place effective systems and controls to ensure that M meets the obligations under the agreement mentioned in sub-paragraph (b).

(11) In paragraph (10) M pursues a market making strategy if—

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

(12) In this regulation—

“approved form” means a form specified as an approved form by regulatory technical standards referred to in sub-paragraph (d) of Article 17.7 of the markets in financial instruments directive and adopted under the last sub-paragraph of that Article;

“exceptional circumstances” means circumstances specified in regulatory technical standards referred to in sub-paragraph (c) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of that Article;

“the specified circumstances” means the circumstances specified in regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive; and

“the specified content” means the content specified by regulatory technical standards referred to in sub-paragraph (b) of Article 17.7 of the markets in financial instruments directive and adopted by the Commission under the last sub-paragraph of Article 17.7 of the directive.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

- F1** Word in reg. 30(2) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **26**

Provision of information to the FCA concerning algorithmic trading

31.—^{F2}(1) If a member of, or participant in, a regulated market or multilateral trading facility (“M”) is subject to the requirements set out in regulation 30 the FCA may require M to provide the information specified in paragraph (2) on a regular or ad hoc basis.]

(2) The specified information for the purposes of paragraph (1) is—

- (a) a description of the nature of M's algorithmic trading strategies;
- (b) details of the trading parameters or limits to which M's trading systems are subject;
- (c) information concerning the ^{F3}compliance and risk controls] M has in place to ensure M meets any requirements imposed on M by regulation 30(2) to (4) (“M's ^{F3}compliance and risk controls]”);
- (d) details of M's testing of M's systems ^{F4}... for the purposes of regulation 30(5);
- (e) any records M keeps for the purposes of regulation 30(8) and (9); and
- (f) any further information about M's algorithmic trading and systems used for that trading.

(3) If M is engaged in algorithmic trading on a trading venue in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that trading venue with any information it receives from M under paragraph (1).

Textual Amendments

- F2** Reg. 31(1) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(a)**
- F3** Words in reg. 31(2)(c) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(b)(i)**
- F4** Words in reg. 31(2)(d) omitted (2.1.2018) by virtue of The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **27(b)(ii)**

Direct electronic access

32.—(1) A member of, or participant in, a regulated market or multilateral trading facility that provides direct electronic access to the market or facility (“M”) must comply with the requirements set out in paragraphs (4) to (9) if condition A or B is met.

(2) Condition A is that—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(3) Condition B is that M provides direct electronic access in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1(transitional provisions) of the markets in financial instruments regulation.

(4) M must have in place effective systems and controls which ensure—

Status: Point in time view as at 02/01/2018.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) M conducts an assessment and review of the suitability of clients using the service;
 - (b) clients using the service are prevented from exceeding appropriate pre-set trading and credit thresholds;
 - (c) trading by clients using the service is properly monitored; and
 - (d) risk controls prevent trading by clients which—
 - (i) may create risks to M itself;
 - (ii) could create, or contribute to, a disorderly market;
 - (iii) could be contrary to the market abuse regulation; or
 - (iv) could be contrary to the rules of the regulated market or multilateral facility to which M provides direct electronic access.
- (5) M must monitor the transactions made by clients to which it provides direct electronic access to a regulated market or multilateral trading facility to identify—
- (a) infringements of the rules of the regulated market or multilateral trading facility;
 - (b) disorderly trading conditions; or
 - (c) conduct which may involve market abuse.
- (6) If M's monitoring under paragraph (5) identifies an infringement of the rules of a regulated market or multilateral trading facility, disorderly trading conditions, or conduct which may involve market abuse M must notify the FCA.
- (7) M must have a binding written agreement with each client which—
- (a) details the rights and obligations of both parties arising from the provision of the service; and
 - (b) states that M is responsible for ensuring the client complies with the requirements of the markets in financial instruments directive and the rules of the regulated market or a multilateral trading facility; and
- (8) M must notify—
- (a) the FCA that M is providing direct electronic access services; and
 - (b) the competent authority of any regulated market or a multilateral trading facility in the EEA to which M provides direct electronic access services that M is doing so.
- (9) M must arrange for—
- (a) records to be kept on the matters referred to in [^{F5}paragraphs (4), (5), and (7)]; and
 - (b) records to be kept to enable M to meet any requirement imposed on them under regulation [^{F6}33].
- (10) In this regulation the provision of direct electronic access is in accordance with the relevant United Kingdom national regime for the purposes of Article 54.1 (transitional provisions) of the markets in financial instruments regulation if it is an activity subject to the exclusion in Article 72 (overseas persons) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2000 ^{M1}.

Textual Amendments

- F5** Words in reg. 32(9)(a) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **28(a)**
- F6** Word in reg. 32(9)(b) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **28(b)**

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M1 S.I. 2001/544; article 72 was amended by S.I. 2003/1476, 2006/2383 and 3384, 2009/1342, 2013/504 and 2015/910.

Provision of information to the FCA concerning direct electronic access

33.—(1) The FCA may require a member of, or participant in, a regulated market or multilateral trading facility subject to the requirements set out in regulation 32 (“M”) to provide on a regular or ad hoc basis—

- (a) a description of the systems [^{F7}and controls] mentioned in regulation [^{F8}32(4)];
- (b) evidence that those systems [^{F9}and controls] have been applied; and
- (c) the information stored in accordance with regulation 32(9) .

(2) If Condition A in regulation 32(2) applies to M and M provides direct electronic access to a regulated market or multilateral trading facility in an EEA State other than the United Kingdom the FCA must, on request, provide the competent authority for that market or facility any information it receives from M under paragraph (1).

Textual Amendments

- F7** Words in reg. 33(1)(a) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(a)(i)**
- F8** Word in reg. 33(1)(a) substituted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(a)(ii)**
- F9** Words in reg. 33(1)(b) inserted (2.1.2018) by The Financial Services and Markets Act 2000 (Markets in Financial Instruments) (No.2) Regulations 2017 (S.I. 2017/1255), regs. 2(a), **30(b)**

Acting as a general clearing member

34.—(1) A member of, or participant in, a regulated market or multilateral trading facility that acts as a general clearing member for other persons (“M”) must comply with the requirements set out in paragraph (2) if—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must have in place effective systems and controls to ensure—

- (a) M's clearing services are only provided to persons who —
 - (i) are suitable recipients of those services; and
 - (ii) meet clear criteria applied by those systems and controls regarding which persons are suitable to receive clearing services; and
- (b) requirements are imposed on the persons to whom clearing services are being provided to reduce risks to M and to the market.

(3) M must have a binding written agreement with any person to whom they are providing clearing services detailing the rights and obligations of both parties arising from the provision of the service.

(4) In this regulation “clearing services” means the services provided by M in the course of acting as a general clearing member for other persons.

Status: Point in time view as at 02/01/2018.

Changes to legislation: The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Synchronisation of business clocks

35.—(1) A member of, or participant in, a trading venue (“M”) must comply with the requirement set out in paragraph (2) if—

- (a) M's home Member State is the United Kingdom;
- (b) the markets in financial instruments directive does not apply to M as a result of Article 2.1(a), (e), (i), or (j) of the directive; and
- (c) M does not have a Part 4A permission for the purposes of the directive.

(2) M must synchronise the business clock M uses to record the date and time of any reportable event with the business clock the trading venue uses for that purpose to the level of accuracy specified in regulatory technical standards adopted by the Commission under Article 50.2 (synchronisation of business clocks) of the markets in financial instruments directive.

FCA power to impose requirements

36.—(1) The FCA may impose a requirement mentioned in paragraph (2) on a person to whom any of regulations 30 to 35 applies if it appears to the FCA that—

- (a) the person has contravened, or is likely to contravene, a requirement imposed on it by or under these Regulations or the markets in financial instruments regulation;
- (b) the person has, in purported compliance with any requirement imposed on it by or under these Regulations or the markets in financial instruments regulation, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or
- (c) it is desirable to exercise the power in order to advance one or more of the FCA's operational objectives (as defined by section 1B(3) ^{M2} (the FCA's general duties)) of the Act.

(2) For the purposes of paragraph (2) the FCA may impose a requirement that the person—

- (a) take specified action; or
- (b) refrain from taking specified action.

(3) A requirement imposed under paragraph (2) may—

- (a) be imposed by reference to the person's relationship with another person;
- (b) be expressed to expire at the end of such period as the FCA may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the FCA's power to impose a new requirement in accordance with paragraph (2); and
- (c) refer to the past conduct of the person (for example, by requiring the person to review or take remedial action in respect of past conduct).

(4) If the FCA imposes a requirement under this regulation it must issue a notice to the person.

(5) A person on whom a requirement has been imposed under this regulation may refer that matter to the Tribunal.

Marginal Citations

M2 Section 1B(3) was inserted by section 6(1) of the Financial Services Act 2012.

Interpretation of Part 4

37.—(1) In this Part a person has a Part 4A permission for the purposes of the markets in financial instruments directive if;

- (a) the directive applies to the person; and
- (b) the permission relates to the provision of investment services or the performance of investment activities.

(2) In this Part “home Member State” has the meaning given by Article 4.1.55 (definitions) of the markets in financial instruments directive.

Status:

Point in time view as at 02/01/2018.

Changes to legislation:

The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017, PART 4 is up to date with all changes known to be in force on or before 26 June 2024.

There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.