
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) [^{F1}M is established in] the United Kingdom;

[^{F2}(b) M falls within paragraph (1A); and]

(c) M does not have a Part 4A permission [^{F3}to carry on a regulated activity which is any of the investment services and activities].

[^{F4}(1A) M falls within this paragraph if M is—

(a) the society incorporated by Lloyd's Act 1871 known by the name of Lloyd's;

(b) an authorised person with a Part 4A permission to carry on the regulated activity of—

(i) effecting or carrying out contracts of insurance under article 10 of the Regulated Activities Order;

(ii) insurance risk transformation under article 13A of the Regulated Activities Order;

(iii) managing the underwriting capacity of a Lloyd's syndicate under article 57 of the Regulated Activities Order,

when carrying on those activities (and any other activities permitted by rules made by the FCA or the PRA under the Act);

(c) an operator (within the meaning of regulation 3(2) of the Greenhouse Gas Emissions Trading Scheme Regulations 2012), subject to compliance obligations under those Regulations who when dealing in emission allowances does not execute client orders and does not provide any investment services or perform any investment activities other than dealing on own account, provided that the operator does not apply a high-frequency algorithmic trading technique;

(d) a collective investment undertaking, pension fund or a depositary or manager of such an undertaking;

(e) a person (“P”)—

(i) dealing on own account, including a market maker, in commodity derivatives or emission allowances or derivatives thereof, excluding a person who deals on own account when executing client orders; or

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(ii) providing investment services, other than dealing on own account, in commodity derivatives or emission allowances or derivatives thereof to the customers or suppliers of P's main business,

provided that in each case the activity in paragraph (i) or (ii), considered both individually and on an aggregate basis, is an ancillary activity to P's main business, when considered on a group basis, and paragraph (1B) applies.

(1B) This paragraph applies if—

- (a) P's main business is not—
 - (i) the provision of investment services;
 - (ii) banking activities requiring permission under Part 4A of the Act (or banking activities which would require such permission if they were carried on in the United Kingdom); or
 - (iii) acting as a market-maker in relation to commodity derivatives;
- (b) P does not apply a high-frequency algorithmic trading technique; and
- (c) P notifies the FCA under regulation 47 that P is carrying out the activity described in paragraph (1A)(e)(i) and (ii) as an ancillary activity to P's main business and reports to the FCA upon request the basis on which P considers that this activity is ancillary to P's main business.]

(2) M must have in place effective systems and [^{F5}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 [^{F6}or in an EEA state] M must notify the FCA.

^{F7}(7)

(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 ^{F8}... 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—

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- (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 [F9] Article 28 of Regulation (EU) 2017/589;]
- “exceptional circumstances” means circumstances specified in [F10] Article 3 of Regulation (EU) 2017/578;]
- “the specified circumstances” means the circumstances specified in [F11] Article 1 of Regulation (EU) 2017/578; and]
- “the specified content” means the content specified by [F12] Article 2 of Regulation (EU) 2017/578.]

Textual Amendments

- F1** Words in reg. 30(1)(a) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Reg. 30(1)(b) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(2)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in reg. 30(1)(c) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Reg. 30(1A)(1B) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(3)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** 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**

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- F6** Words in reg. 30(6) inserted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(4)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Reg. 30(7) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(5)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in reg. 30(9) omitted (31.12.2020) by virtue of The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(6)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in reg. 30(12) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(7)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in reg. 30(12) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(7)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in reg. 30(12) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(7)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in reg. 30(12) substituted (31.12.2020) by The Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1403), regs. 1(3), **9(7)(d)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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