

Policy Statement

PS23/11

Guidance on the trading venue perimeter

July 2023

This relates to

Consultation Paper 22/18
which is available on our website at
www.fca.org.uk/publications

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Chapter 1

Summary

- 1.1** In September 2022, as part of the Wholesale Markets Review (WMR), we consulted on providing new guidance on the regulatory perimeter for trading venues ([CP22/18](#)).
- 1.2** We wanted to ensure that firms have greater certainty about the permissions they require to carry out their business. Greater clarity about the perimeter helps maintain a level playing field, which supports competition. It also helps protect the integrity of the United Kingdom's (UK) financial system.
- 1.3** In CP22/18 we proposed to:
- issue new guidance, in the form of Questions and Answers (Q&As), in Chapter 13 of the Perimeter Guidance manual (PERG) of our Handbook on the definition of a multilateral system and how this applies to specific types of arrangements in financial markets;
 - set aside, following the issuance of our final guidance, the European Securities and Markets Authority's (ESMA) market structures Q&As dealing with the trading venue perimeter so that they do not form part of our supervisory expectations; and
 - update the Glossary definition of a service company in our Handbook so that it references current client categorisation terminology.
- 1.4** We also used a separate discussion chapter in CP22/18 to gather views, without proposing changes, on whether regulatory obligations for trading venues can be made more proportionate for smaller firms, while maintaining high standards of market integrity. Responses to this section of CP22/18 may be used to inform future regulatory reforms, but this is separate to the guidance on the trading venue perimeter.
- 1.5** Trading venues operate organised markets where financial instruments are bought and sold. There are three types of trading venue under the UK version of Markets in Financial Instruments Regulation (UK MiFIR): regulated markets (RMs), multilateral trading facilities (MTFs) and organised trading facilities (OTFs).
- 1.6** A firm requires trading venue authorisation if it operates what is defined as a multilateral system – the definition of which is common to all three types of trading venue. A multilateral system has four elements: (i) it has the characteristics of a trading system or facility; (ii) it comprises multiple third-party buying and selling trading interests; (iii) it allows trading interests to interact in the system; and (iv) those trading interests are in MiFID financial instruments.
- 1.7** The evolution of the definition of a multilateral system and technological developments have made it more challenging to distinguish certain types of arrangements and systems from trading venues. This has created some uncertainty about the regulatory perimeter for trading venues.

- 1.8** Correctly identifying a multilateral system is important because authorisation as a trading venue engages significant market integrity and investor protection requirements, such as the application of the market abuse regime and the obligation to maintain orderly markets. Conversely, the costs of meeting those requirements could be a barrier to entry, where a service is not a multilateral system.
- 1.9** Respondents welcomed us publishing perimeter guidance and broadly agreed with our approach. However, there was a difference between firms that are already regulated as trading venues, which were more strongly supportive of clearer guidance and encouraged us to supervise the regulatory perimeter more assertively; and those that are currently unregulated or hold different permissions, which sought greater flexibility in interpreting our guidance.
- 1.10** This Policy Statement summarises the feedback received and sets out our commentary on these responses, as well as the changes we are making to the guidance we consulted on in CP22/18. The final guidance will come into force on 9 October 2023.

Who this affects

- 1.11** The Policy Statement and final guidance will primarily be of interest to:
- trading venues
 - service companies
 - investment-based crowdfunding firms operating in primary and/or secondary markets
 - interdealer brokers
 - broker dealers
 - portfolio managers
 - technology firms offering platforms and systems for trading
 - firms providing communications systems or bulletin board services
 - arranging firms, including appointed representatives, providing or using communications systems or bulletin board services, and their principals

The wider context of this Policy Statement

Our consultation

- 1.12** CP22/18 was part of the WMR, the review of the UK wholesale financial markets we have been conducting with HM Treasury (the Treasury). It was established to improve the UK's regulation of secondary markets, taking advantage of our new freedoms in financial services following the UK's withdrawal from the European Union (EU). It aims to ensure that the UK's regulatory regime for secondary markets is fair, outcomes-based and supports competitiveness, whilst maintaining the highest regulatory standards. The FCA has been working closely with the Treasury to deliver the WMR.

- 1.13** In July 2021, the Treasury's WMR consultation document asked if the trading venue perimeter should be clarified, and whether this was best done through legislation or guidance.
- 1.14** Respondents to the WMR noted that the ambiguity about the definition of a multilateral system has created some uncertainty about the regulatory perimeter and resulted in firms taking different approaches to the permissions they require. Industry raised concerns about the lack of consistency in firms' approach to the perimeter this creates.
- 1.15** Most respondents to the WMR agreed that the definition should be clarified through guidance rather than legislative change, to ensure that the trading venue perimeter remains flexible to accommodate changes in technology and does not unduly limit innovation.
- 1.16** In its WMR consultation response in March 2022, the Treasury recognised that there was a need for greater clarity about the types of firms which need to be authorised as a trading venue and recommended that the FCA consult on guidance in the first instance. CP22/18 addressed that recommendation, building on the responses received to the WMR.
- 1.17** In CP22/18 we consulted on guidance on the different elements of the definition of a multilateral system and on the wording of Q&As relating to the application of this to specific types of arrangements, where our supervisory experience and discussions with firms suggest that further clarity would be beneficial.

How it links to our objectives

- 1.18** The guidance supports the FCA's strategic objective of ensuring that relevant markets function well. In addition, it helps us achieve our 2022/23 and 2023/24 Business Plan commitment of strengthening the UK's position in global wholesale markets. To achieve this, we said that we would take action to deliver a clear, well-understood and proportionate regime which upholds high standards and supports innovation.

Consumer protection

- 1.19** One of our operational objectives is to secure an appropriate degree of protection for consumers. We expect that the guidance will primarily advance our market integrity and competition objectives. It will have an indirect positive impact on investor protection by ensuring that all arrangements which constitute a multilateral system are appropriately regulated to secure an appropriate degree of investor protection.

Market integrity

- 1.20** Our guidance is intended to ensure the consistent application of the trading venue regime. It will also provide greater certainty to some firms about their regulatory status and ensure they can operate in financial markets with confidence. We therefore expect that it will protect and enhance the integrity of the UK financial system.

- 1.21** For example, trading venues must disclose pre- and post-trade transparency data to the public and report transaction data to us. This increases market transparency and liquidity, aids price formation and protects against market abuse. Trading venues are also subject to market surveillance requirements (such as detecting and reporting suspicious transactions and orders to us via STORs) and must ensure that their systems are resilient. Compliance with these requirements enhances market integrity and investor protection.

Competition

- 1.22** We expect that the guidance will help support competition by better ensuring the consistent regulatory treatment of firms. Due to ambiguity about the definition of a multilateral system, some firms may be operating outside the trading venue perimeter, either by relying on incorrect regulatory permissions or by being unauthorised.
- 1.23** Unauthorised firms, or those holding an incorrect permission, may be at a competitive advantage compared with their appropriately authorised competitors. This negatively affects competition and could potentially create inconsistency in the application of the regulatory perimeter. Over time, it could also undermine confidence and trust in the operation of financial markets.
- 1.24** By ensuring the consistent application of regulatory requirements to all firms which fall within the definition of a multilateral system, we expect to improve competition in the market.

International competitiveness and medium to long-term growth

- 1.25** In December 2022 the Treasury issued a new Remit Letter that requires the FCA to have regard, where relevant and practical, to the Government's objectives of medium to long-term economic growth of the UK economy and promoting the international competitiveness of the UK (including, in particular, the financial services sector). As part of this the FCA needs to have regard, for example, to the Government's commitment to ensuring that the UK is attractive to internationally active financial services firms and activity.
- 1.26** We consider that our guidance will help ensure the consistent application of the trading venue perimeter, increasing trust and confidence in UK markets. Greater trust in financial services firms encourages the appropriate take up of financial services products and services, which helps underpin sustainable economic growth. Where firms have greater confidence about the regulatory status of their business, this may facilitate the attractiveness of doing business in the UK. We also consider that the guidance leaves space for new technology and innovation outside the trading venue perimeter, while helping to ensure that market participants internationally can be confident of the high and consistent standards expected of operators of multilateral systems in the UK.

What we are changing

- 1.27** We are not modifying the perimeter, which would require legislative change. Instead, we are issuing some new guidance in PERG 13.3 in the form of Q&As. This covers the different elements of the definition of a multilateral system and how this applies to specific types of arrangements, where our supervisory experience and discussions with firms suggest that further clarity would be beneficial.
- 1.28** To interpret the perimeter, we focused on the substance of the activity in question, rather than how it is labelled or whether the system operator complies with the requirements applicable to trading venues.
- 1.29** We set out below some key areas that the guidance covers:
- **Technology providers:** The guidance distinguishes between general purpose communications systems and multilateral systems. It sets out a range of factors that we would have regard to when considering whether a service has the characteristics of a trading system or facility.
 - **Voice brokers:** The guidance clarifies that arranging or executing client orders over the telephone does not constitute a multilateral system unless the voice trading system has the characteristics of a system or facility.
 - **Portfolio managers operating internal matching systems:** The guidance clarifies that internal matching systems operated by firms engaged in portfolio management, where shares or other financial instruments are transferred from one fund to another, do not constitute a multilateral system.
 - **Systems operated for the sole purpose of executing trades on regulated trading venues:** Trading firms often arrange deals in large blocks of derivatives outside the systems operated by trading venues and then report them to the exchange for execution. The guidance indicates that where a firm operates a system for the sole purpose of executing trades on a trading venue in accordance with the venue's rules, these arrangements do not amount to a multilateral system.
 - **Primary market activity by crowdfunding platforms:** The guidance clarifies that a crowdfunding platform which allows clients to participate in company fundraisings by buying shares or bonds from the issuer does not amount to a multilateral system.
 - **Bulletin boards:** Bulletin boards are generally used for advertising buying and selling interests. The guidance clarifies that for these arrangements to be within the perimeter, trading interests must be able to interact within the system (for example, where users are able to respond to requests to deal).
- 1.30** Where a firm does not operate a multilateral system, it will not require authorisation as a trading venue. However, a firm must consider how its arrangements relate to the activities in Article 25 of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (RAO). Depending on the activity undertaken and the client types, some firms may choose to be authorised as service companies. The Glossary definition of service company as consulted in CP22/18 is updated, so that it correctly references the current client categorisation terminology with respect to client limitation types.

- 1.31** Before the UK's withdrawal from the EU, we said that we would continue to have regard to EU non-legislative material, such as Opinions and Q&As issued by ESMA, where they are relevant and have formed part of our supervisory approach before leaving the EU. We consider that asking firms to continue to have regard to the ESMA Q&As on the trading venue perimeter when we are issuing our own guidance could lead to uncertainty for firms as to how our new guidance and the ESMA Q&As fit together. Therefore, ESMA's Q&As dealing with the trading venue perimeter – Q&As 7, 10, 11 and 12 in section 5 of the ESMA Q&As on MiFID II and MiFIR market structures topics – will not form part of our supervisory expectations following the issuance of the guidance. We will continue to have regard to all other Q&As in section 5 of the ESMA market structures Q&As, in line with our approach to EU non-legislative materials. Firms, market participants and stakeholders should also continue to do so.
- 1.32** We also used CP22/18 to gather views, without proposing changes, on whether regulatory obligations for trading venues can be made more proportionate for smaller firms. We are not making any changes to the regulatory requirements applying to trading venues.

Outcome we are seeking

- 1.33** Our objective in issuing guidance is: (i) to provide greater clarity about the perimeter in relation to certain systems that have become more prevalent since MiFID II was established; (ii) to balance the need to protect a level playing field while allowing firms to innovate and develop new technologies; and (iii) to ensure we can continue to exercise supervisory judgement on a case-by-case basis in a way consistent with the guidance.
- 1.34** Further clarity on the trading venue perimeter will provide greater certainty regarding models where we do not intend trading venue requirements to apply, which should support innovation in our market. It will also promote competition and high standards by ensuring that models possessing the key characteristics of a venue are treated equally, within the framework of the trading venues regime.

Measuring success

- 1.35** As we said in our Strategy for 2022-2025 and the associated Business Plans for 2022/23 and 2023/24, we will use a variety of metrics to assess whether our work is strengthening the UK's position in global wholesale markets. We said that we will monitor how our actions enhance UK markets.
- 1.36** We will consider our guidance successful if it provides sufficient clarity to firms in relation to the boundaries of the trading venue perimeter, enabling them to organise their businesses with greater certainty and confidence. We will measure this through feedback from firms (including those already operating trading venues) and trade associations.

- 1.37** We also wish to continue to promote innovation and competition in the market. This will be assessed by looking at whether innovative firms continue to launch in the UK market and perceptions that our regime is proportionate and promotes new entrants. We will measure this through feedback from firms and the number of new applications for trading venue authorisation.

Summary of feedback and our response

- 1.38** We received 30 responses to CP22/18. We include the list of non-confidential respondents in Annex 1. We also discussed extensively with firms, trade associations and law firms during the consultation period.
- 1.39** Respondents welcomed the FCA publishing perimeter guidance for trading venues and were generally supportive of our proposals. However, they asked us to further clarify certain aspects of the guidance.
- 1.40** Respondents to the consultation largely supported our approach. However, as we expected, there was a difference of perspective between existing trading venues, which were more strongly supportive of clearer guidance and encouraged us to supervise the perimeter more assertively; and those that are currently unregulated or hold different permissions, which sought greater flexibility in interpreting our guidance.

Equality and diversity considerations

- 1.41** We have considered the equality and diversity issues that may arise from the proposals in this Policy Statement.
- 1.42** Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010.

Next steps

- 1.43** Our guidance will come into force on 9 October 2023.
- 1.44** Ahead of this date firms should satisfy themselves that they hold the correct regulatory permissions, and may wish to seek professional advice to inform this assessment.
- 1.45** If, as a consequence of this exercise, a firm decides that it wishes to adjust its regulatory permissions, we encourage that firm to engage with its relevant supervisor at an early stage. We will then work with firms on a case-by-case basis to ensure an orderly transition.

What you need to do next

- 1.46** Firms should assess their arrangements against our guidance to determine whether they operate a multilateral system and hold the appropriate regulatory permissions.
- 1.47** If, following issuance of our guidance on the trading venue perimeter, firms identify a mismatch between the activities they perform and the regulatory permissions they currently hold, they may decide to wind down or modify certain functionalities to ensure that they remain outside the trading venue perimeter. Others may seek authorisation as a trading venue.
- 1.48** Firms which do not operate a multilateral system do not require authorisation as a trading venue. However, a firm involved in activities related to the trading of financial instruments, including the provision of technology designed to support trading, would still need to consider how its arrangements relate to the RAO, in particular, the activities in Article 25 of the RAO.

Chapter 2

The wider context

Legislative context

- 2.1** The UK regulatory framework that governs the buying, selling and organised trading of financial instruments, and which includes the trading venue perimeter, is spread across legislation and rules in our Handbook. They are derived from EU legislation (the Markets in Financial Instruments Directive – MiFID) that took effect in November 2007 and was subsequently amended in January 2018 (MiFID II). As part of the onshoring process, the MiFID II framework was 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** Under the general prohibition in section 19 of the Financial Services and Markets Act 2000 (FSMA), a person may not carry on a regulated activity by way of business in the UK, or purport to do so, unless they are either an authorised person or an exempt person. What is considered as a regulated activity is specified in the RAO. The list of regulated activities includes operating an MTF or an OTF and arranging deals in investments. The definition of a multilateral system is included in UK MiFIR.
- 2.3** PERG gives guidance about where authorisation is required, or exempt person status is available under FSMA. For example, Chapter 2 of PERG focuses on the scope of regulated activities under the RAO, and Chapter 13 provides guidance on the operation of an MTF and an OTF.
- 2.4** The requirements applicable to MTFs and OTFs include those set out in Chapters 5 and 5A in the Market Conduct sourcebook (MAR) of our Handbook. Chapter 5AA of MAR also contains guidance on multilateral systems.

The evolution of the trading venue perimeter

- 2.5** Over the years, the regulatory framework applicable to secondary markets has evolved, largely to reflect technological developments and changes in market structure. It has also changed as a consequence of the G20 commitment to move trading of standardised derivatives from over-the-counter (OTC) markets to transparent exchanges or electronic trading platforms.
- 2.6** MiFID I provided for two types of trading venue: RMs and MTFs. These were characterised as multilateral systems which operate in accordance with non-discretionary rules, bringing together multiple buying and selling interests in financial instruments in a way that results in a contract under the system's rules.

- 2.7** In 2018, the revised MiFID framework came into effect in the UK. One of the aims of the MiFID II regime was to bring more trading to regulated trading venues, regardless of the way trading interests interact, thereby increasing market transparency, investor protection and access to liquidity.
- 2.8** MiFID II achieved this objective by introducing the concept of a multilateral system, which is common to all three types of trading venue. The definition is not restricted by whether transactions are executed through the use of discretion or according to automated systems. In addition, it does not require the conclusion of contracts under the system's rules, but only that trading interests can interact in the system. This means that firms which operate systems or facilities that enable the interaction of multiple third-party trading interests in financial instruments fall within the definition of multilateral system, even where the finalisation of the transactions between the counterparties occurs bilaterally outside the operator's system.
- 2.9** In addition, MiFID II introduced a new category of trading venue, the OTF. An OTF is a multilateral system which is not an RM or an MTF, and in which the operator can use discretion to bring about transactions. Under MiFID I, systems using discretion when matching orders did not fall within the definition of an RM or an MTF. Permitting the use of discretion as a mode of execution extended the trading venue perimeter.

The UK trading venue perimeter

- 2.10** Trading venues are organised markets where transferable securities and other financial contracts, like derivatives, are bought and sold. They differ from OTC trading where contracts are traded bilaterally between firms. They are also distinct from platforms which sit outside the UK MiFIR perimeter because the instruments they trade, such as spot foreign exchange (FX), are not MiFID financial instruments.
- 2.11** However, firms operating platforms which sit outside the UK MiFIR perimeter may still fall within the RAO perimeter if they offer services in relation to non-MiFID instruments that fall within the scope of the RAO perimeter. This may be relevant, for example, in the case of platforms on which certain carbon credit instruments are traded.
- 2.12** Article 2(1)(11) of UK MiFIR defines a multilateral system as *"any system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system"*.
- 2.13** This is complemented by a rule in MAR 5AA.1.1R of our Handbook, which requires that *"where a firm operates a multilateral system from an establishment in the UK, it must operate it as an MTF or an OTF"*.
- 2.14** The combination of the definition of a multilateral system under Article 2(1)(11) of UK MiFIR and the rule in MAR 5AA.1.1R of our Handbook aims to ensure that all organised trading in financial instruments is carried out on regulated trading venues.

- 2.15** There is also a requirement in paragraph 9ZD of Schedule 1 to the Recognition Requirements Regulations (RRRs), which states that *“an exchange must only operate a multilateral system as an RM, an MTF, or an OTF”*.
- 2.16** There are three types of regulated trading venue under UK MiFIR:
- an RM is a multilateral system operated or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments (in the system and in accordance with its non-discretionary rules) in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules or systems;
 - an MTF is a multilateral system, operated by an investment firm or a market operator, which brings together multiple third-party buying and selling interests in financial instruments (in the system and in accordance with non-discretionary rules) in a way which results in a contract;
 - an OTF is a multilateral system which is not an RM or an MTF; and in which multiple third-party buying and selling interests in bonds, structured finance products, emission allowances or derivatives are able to interact in the system in a way that results in a contract.
- 2.17** A UK RM is a recognised body under FSMA (a UK Recognised Investment Exchange). It is an exempt person for the purposes of the general prohibition, meaning it does not require authorisation under FSMA to carry on regulated activities as part of its business as an investment exchange.
- 2.18** MTFs and OTFs are trading venues that are alternatives to traditional exchanges. Unlike an RM, an MTF and an OTF can be operated by an investment firm, which requires authorisation under Part 4A of FSMA. Operators of an MTF or an OTF need to demonstrate that they comply with our rules, including those set out in Chapters 5 and 5A of MAR respectively, both at authorisation and on an ongoing basis.

Existing guidance on the trading venue perimeter

- 2.19** The MAR sourcebook of our Handbook is where current guidance on multilateral systems sits. Guidance in MAR 5AA.1.2G says:
- “In our view, any system that merely receives, pools, aggregates and broadcasts indications of interest, bids and offers or prices should not be considered a multilateral system. This means that a bulletin board should not be considered a multilateral system. The reason is that there is no reaction of one trading interest to another within these types of facilities. However, operating such a facility may amount to performing the activity of making arrangements with a view to transactions in investments.”*
- 2.20** This guidance does not adequately clarify all the essential elements of the definition of a multilateral system. It also does not provide detailed insight on the application of the definition of a multilateral system to some of the most common arrangements or systems used in financial markets.

Activities outside the UK trading venue perimeter

- 2.21** Firms which do not operate a multilateral system do not require authorisation as a trading venue. However, a firm involved in activities related to the trading of financial instruments, including the provision of technology designed to support trading, would still need to consider how its arrangements relate to the RAO, in particular, the activities in Article 25 of the RAO.

Arranging deals in investments

- 2.22** The regulated activity of arranging deals in investments is described in Article 25 of the RAO. Article 25 covers two different activities:

- arranging (bringing about deals in investments): making arrangements for another person (whether as principal or agent) to buy, sell, subscribe for or underwrite a particular investment; and
- making arrangements with a view to transactions in investments: making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments.

- 2.23** As we state in guidance in 8.32.2G of PERG 8.32, *"article 25(1) applies only where the arrangements bring about or would bring about the particular transaction in question. This is because of the exclusion in article 26. In the FCA's view, a person brings about or would bring about a transaction only if his involvement in the chain of events leading to the transaction is of enough importance that without that involvement it would not take place. The second limb (article 25(2)) is potentially much wider as it does not require that the arrangements would bring about particular transactions"*.

- 2.24** Therefore, the regulated activity of "bringing about deals in investments" is aimed at arrangements that have the direct effect of concluding (i.e. bringing about) a particular transaction. Firms arranging transactions for clients without operating a multilateral system or dealing on behalf of their clients typically rely on this permission as a basis for providing investment services.

- 2.25** "Making arrangements with a view to transactions in investments" relates to arrangements of an ongoing nature, which aim to facilitate other parties entering into transactions.

- 2.26** This activity has a broader scope and typically applies in one of two scenarios: where a person provides arrangements of some kind (i) to enable or assist investors to deal with or through a particular firm (such as the arrangements made by introducers), or (ii) to facilitate the entering into of transactions directly by the parties (including persons who provide communication facilities for the routing of orders or the negotiation of transactions).

The service company regime

- 2.27** Making arrangements with a view to transactions in investments is a non-MiFID permission and can fall within the UK service company regime.
- 2.28** Service companies are firms whose regulated activities are restricted to making arrangements with a view to transactions in investments and agreeing to carry on that regulated activity, and whose permission is limited to dealings with professional clients and eligible counterparties.
- 2.29** A number of service companies are technology companies that provide order routing, post-trade processing or other services to market participants, which assist them to deal in investments or arrange (i.e. bring about) deals in investments among themselves. A tailored regulatory regime applies to these firms, as set out in our Handbook Guide for service companies (SERV).

Chapter 3

Summary of responses – Guidance on the trading venue perimeter

- 3.1** We summarise below the responses received to each of the questions in CP22/18 and set out our responses to these points.

Our approach to relevant ESMA level 3 material

- 3.2** Under the European Union (Withdrawal) Act 2018, the broad range of EU non-legislative material (often referred to as level 3 material) produced by EU institutions was not incorporated into UK law. This level 3 material includes Guidelines and Recommendations on the application of EU law, as well as Q&As and Opinions.
- 3.3** In March 2019 we published our approach to EU non-legislative materials, in which we set out our expectation in relation to the application of pre-implementation period completion day (IPCD) level 3 material. We stated that our supervisory expectation in respect of Guidelines and Recommendations remains the same.
- 3.4** In relation to other EU-non legislative material, such as Opinions and Q&As, we noted that:
- "We will continue to have regard to other EU non-legislative material where and if they are relevant, taking account of Brexit and ongoing domestic legislation. Firms, market participants and stakeholders should also continue to do so."*
- 3.5** ESMA published Q&As on MiFID II and MiFIR market structures topics (ESMA market structures Q&As) which include Q&As dealing with the trading venue perimeter. These are Q&As 7, 10, 11 and 12 under sections 5.1 and 5.2, which were last updated between 2017 and 2018. The purpose of these Q&As is to promote common supervisory approaches and practices across the EU. Since then, in February 2023, ESMA published its final Opinion on the trading venue perimeter.
- 3.6** These ESMA Q&As and our new guidance cover similar ground. To avoid duplication and confusion, we suggested that only one set of material should apply.
- 3.7** In CP22/18 we asked:

Q1: *Do you agree with our approach that following issuance of our final guidance, Q&As 7, 10, 11 and 12 in Section 5 of the ESMA market structures Q&As should not form part of our supervisory expectations?*

- 3.8** Most respondents agreed with our approach to disregard the specified ESMA Q&As relating to the trading venue perimeter. However, some respondents argued that Q&As 7, 10 and 12 in section 5 of the ESMA Q&As should be retained and incorporated into our guidance.

- 3.9** Those respondents who asked us to incorporate these Q&As into our guidance noted that it was not always evident what would replace these provisions in PERG 13.3. A number of those respondents said that ESMA's Q&A 7 provided valuable clarification to market participants on whether transactions arranged on a trading venue can be executed and reported on a different venue. One respondent said that separating the concept of a multilateral system – and consequently that of a trading venue – from the act of execution would constitute a significant policy shift.
- 3.10** One respondent said that the current wording in CP22/18, where we state that we will continue to have regard to all other Q&As in the ESMA market structures Q&As, creates uncertainty given the market's current understanding that the FCA does not have regard to Q&A 25 in section 3 of the ESMA market structures Q&As.
- 3.11** Two respondents suggested that it would be beneficial for the FCA to maintain an up-to-date record of the EU non-legislative material that continues to be applicable to UK market participants. This suggestion was made by way of a general comment in relation to all EU non-legislative material rather than those specific to the trading venue perimeter.

Our response

We do not agree with the suggestion made by some respondents that it would be beneficial to incorporate Q&As 7, 10 and 12 in section 5 of the ESMA Q&As into our guidance.

We said in CP22/18 that the concept of interaction between trading interests in the system does not require execution and the settlement of a transaction to be entered into within the system, as long as it is with a view to the counterparties agreeing the contractual terms of the trade. In addition, Q24F in our guidance addresses our policy position on this topic. Retaining ESMA's Q&A 7 could therefore cause confusion given we are issuing our own guidance on what constitutes interaction within the system.

Similarly, given we are issuing our own guidance in relation to systems which formalise transactions on trading venues, we will not incorporate ESMA's Q&A 10 into our guidance.

Our view is that Q&A 12 of the ESMA market structures Q&As does not explain legal provisions or give examples of their practical application, it is merely restating them. Hence, the removal of ESMA's Q&A 12 from our supervisory expectations will not remove any clarity for market participants.

Therefore, we maintain our position that following issuance of our guidance, Q&As 7, 10, 11 and 12 in section 5 of the ESMA market structures Q&As will no longer form part of our supervisory expectations, reflecting the fact that these have now been superseded in domestic guidance.

We will continue to have regard to all other Q&As in section 5 of the ESMA market structures Q&As, in line with our approach to EU non-legislative materials. We also confirm that our approach to the ESMA Q&As in sections 1, 2, 3, 4, 6 and 7 remains unchanged and is outside the scope of this Policy Statement.

In respect of the issue discussed in Q&A 25 of section 3 of the ESMA market structures Q&As, we believe the position in the UK has been clear from our legislation since MiFID implementation. We do not therefore think that there is anything additional for us to say on this topic.

Currently, our website contains a collection of pre-IPCD [level 3 materials](#), accessible from the FCA Handbook page. We welcome the feedback received suggesting we keep our website updated with the status of ESMA level 3 material. Whilst this is outside the scope of this Policy Statement, we will consider this issue as part of the Future Regulatory Framework review.

Guidance on the definition of a multilateral system

- 3.12** In CP22/18 we proposed to issue guidance in Q24C of PERG 13.3 on each of the four elements of the definition of a multilateral system that firms should have regard to when considering whether they require authorisation as a trading venue.
- 3.13** In particular, we clarified our interpretation of each of the following main elements: (i) characteristics of a system or facility; (ii) there a multiple third-party buying and selling trading interests; (iii) trading interests are able to interact in the system; and (iv) financial instruments.
- 3.14** In CP22/18 we asked:

Q2: *Do you agree with our interpretation of the definition of a multilateral system?*

- 3.15** Overall, respondents agreed with our interpretation of the definition of a multilateral system and the four elements set out. However, despite broad agreement with our proposed approach, several respondents requested further clarification of the guidance. We set out below the key themes of feedback received relating to each of the four elements of the definition of a multilateral system.

Multilateral system

- 3.16** Some respondents asked us to confirm whether the four elements of the definition of a multilateral system must all be met simultaneously for an arrangement to be considered a multilateral system.
- 3.17** We were also asked about how the definition of a multilateral system interacts with the rules and requirements applicable to trading venues, and whether there is any hierarchy of application. For example, if a system meets the definition of a multilateral system but does not satisfy requirements for an MTF or an OTF, what this means for its regulatory status.
- 3.18** Finally, respondents asked us to confirm, considering the variety and complexity of business models and features available in the market, that the assessment of each system is done on a case-by-case basis, taking account of its specific circumstances.

Our response

It has always been our position that all four elements of the definition of a multilateral system must be met at the same time for an arrangement to be considered a multilateral system. Where this is the case, the firm operates a trading venue and requires authorisation as an MTF or an OTF, regardless of the changes it needs to make to comply with the requirements associated with the operation of an MTF or OTF.

The requirements applying to trading venues are obligations that arise once a system meets the definition of a multilateral system. As such, compliance with the requirements applicable to trading venues is not relevant to whether a system is a trading venue. If a system meets the definition of a multilateral system, it must then comply with the relevant requirements as a trading venue.

We maintain our view that the scope of the trading venue perimeter reflects the substance of the activity rather than its form or terminology. To interpret the perimeter, we will continue to focus on the substance of the activity in question, rather than how it is labelled or whether the operator complies with requirements, such as surveillance or settlement.

We recognise that the guidance applies to a broad range of arrangements used in financial markets, the features of which vary considerably. The definition of a multilateral system should therefore be applied on a case-by-case basis, in a way which is consistent with our guidance.

Characteristics of a system or facility

- 3.19** A multilateral system must have the characteristics of a system or facility. In CP22/18 we said that our assessment of whether there is a trading system or facility considers both the characteristics of the system and the role of the system operator. We also set out a non-exhaustive range of factors to be taken into consideration in making such an assessment.
- 3.20** Generally, respondents supported our interpretation. However, some respondents asked us to clarify what would constitute a set of rules when considering the characteristics of a system. They sought to distinguish between the rules of a trading venue operator and mere technical rules of a general purpose communications system, which might pertain to, for example, the use of software licenses.
- 3.21** With regards to the role of the system operator, we proposed taking into consideration a range of factors, including whether there was a direct or indirect link between the remuneration of the operator and the interaction of trading interests. Respondents raised a concern that the reference to an indirect link would be too broad and could inadvertently capture almost any system. They therefore requested that we either remove the reference to the indirect link or provide clarity that direct remuneration is more likely to be indicative of a trading system or facility. Some respondents argued that even a flat fee could be indicative of a trading system or facility.

- 3.22** In addition, we said we would consider the role of the operator and its monitoring of the performance of the system. Some respondents argued that the obligation to monitor a system arises because there is a multilateral system, rather than being indicative as to whether a system is multilateral in nature. They proposed that we remove this from the non-exhaustive list of factors included in the guidance.
- 3.23** A few respondents asked us to have regard to additional factors when determining whether a system has the characteristics of a trading system or facility. These included, for example, whether the system operator can reject or reverse a trade, has provisions which govern the execution protocol, or has full control over its rules.
- 3.24** In CP22/18 we distinguished between general purpose communications systems and multilateral systems. Several respondents asked us to draw a distinction in the guidance between the “operator” of a system or facility and the “provider” of a general purpose communications system. The rationale for this is that operator in this context will be taken to mean the operator of a trading venue.
- 3.25** Finally, some of the feedback proposed that the guidance should explicitly exclude any type of digitisation or electronification of already existing general purpose communications systems from the scope of the trading venue perimeter if the purpose of the system remains the same and the digitisation is purely put in place to increase efficiency in the market.

Our response

The UK MiFID/R framework is technology neutral and accommodates a variety of systems regardless of the technology used. Consequently, the focus of the guidance is not on the underpinning technology, but on whether a set of arrangements, usually involving digital systems, amount to the operation of a multilateral system. It is concerned with the way in which technology is used by the operator in terms of bringing buyers and sellers together and how transactions are agreed, rather than concentrating on the properties of technology itself.

We agree that electronic trading is not wholly synonymous with on-venue trading. As such, we are of the view that it is possible to operate an OTC platform outside the trading venue perimeter. To qualify as a system or facility, the set of rules must govern the interaction of multiple trading interests in the system. This is already confirmed in the guidance.

We maintain our position that a system must be understood as a set of rules that governs how multiple third-party trading interests interact. As such, it is not our intention to capture purely technical rules relating to the use of technology. However, ultimately it is the substance of the rules that is relevant to any assessment. If the rules are structured to govern the interaction of trading interests, that is a relevant factor irrespective of the terminology used.

Such rules do not have to be legally enforceable or mandatory, nor do they have to require that trades in the system be contractually binding.

The absence of a rulebook, which every regulated trading venue must have, should not be construed as an absence of rules. We note that Recital 7 of UK MiFIR – to which our guidance refers – states that:

“One of the important requirements concerns the obligation that the interests be brought together in the system by means of non-discretionary rules set by the system operator. The requirement means that they are brought together under the system’s rules or by means of the system’s protocols or internal operating procedures, including procedures embodied in a computer software.”

We agree with suggestions that there is a distinction to be drawn between vendors of technology solutions, providers of technology, and the operators of trading venues. We have therefore made changes to the guidance to reflect this. For example, in the finalised guidance we refer to the “provider” of a general purpose communications system and, likewise, the “provider” of a website. This contrasts with the “operator” of a multilateral system. Elsewhere in the guidance, however, we continue to refer to the “operator” of a bulletin board despite it not being considered a multilateral system. This is consistent with our existing drafting in the guidance set out in 5AA.1.2G of MAR.

We recognise that reference to the determinants of the remuneration of the operator being linked, directly or indirectly, to the interaction of trading interests may be too broad. Whilst we would view transaction-based remuneration as an indicator of the arrangement having the characteristics of a trading system or facility, remuneration through a flat fee does not of itself indicate a system is not a multilateral system. We have therefore recast the guidance so that it refers to a criterion relating to the determinants of the remuneration of the operator and the extent to which these are linked to the interaction of trading interests in financial instruments in the system.

We agree that both providers of general purpose communications systems and operators of trading venues are likely undertaking a range of activities to monitor the performance of their systems. However, rather than the monitoring of the technological performance of the system, what we had in mind was the monitoring of the price formation process and the ways in which participants use the system to trade. We have updated the guidance to reflect this.

We do not agree with the suggestion that where existing arrangements are not considered to be multilateral systems, the guidance should allow for these systems to make further enhancements without potentially bringing these arrangements in scope of the perimeter. Open-ended guidance along these lines would allow for a subjective interpretation of what is meant by general purpose communications systems and how this can be utilised to increase market efficiency without being subject to the appropriate degree of regulation. Therefore, where arrangements are subject to further changes, firms will need to apply the guidance on an ongoing basis.

In line with the guiding principle of technology neutrality underpinning the UK MiFID/R framework, digitisation of arrangements that do not meet the elements of the definition of a multilateral system do not per se bring such arrangements within the scope of the trading venue perimeter. However, we would expect firms to assess their arrangements against our guidance before they introduce new (or amend existing) functionalities in order to determine whether, as a result of these changes, such arrangements are likely to meet the definition of a multilateral system and, consequently, require authorisation as a trading venue.

Based on the feedback received, we have updated this section of the guidance as set out below.

Q24C. What is a multilateral system?

A multilateral system is a system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system (see article 2(1)(11) UK MiFIR).

A multilateral system, for these purposes, comprises **each of** the following main elements:

- it has the characteristics of a trading system or facility;
- it comprises multiple third-party buying and selling trading interests;
- it allows trading interests to interact in the system; and
- those trading interests are in financial instruments.

We provide guidance on each of these elements below.

Characteristics of a system of facility

A multilateral system has the characteristics of a trading system or facility. Recital 7 UK MiFIR clarifies that a trading system or facility includes markets composed of a set of rules and a trading platform, as well as those only functioning on the basis of a set of rules. The rules relate to how multiple third-party trading interests in financial instruments are able to interact in the system (see below). The rules could be reflected in contracts and/or operating procedures. As such, a system is technology neutral for these purposes, as shown by the different types of trading system referred to in Annex I to MiFID RTS 1, and Annex I to MiFID RTS 2. For guidance on voice broking, please refer to Q24D below.

General purpose communications systems would not as such amount to trading systems or facilities. This means that the following services in and of themselves would not amount to operating a multilateral system:

- acting as an internet services provider;

- providing a telephone network;
- **operating providing** a website; or
- providing chatroom facilities.

Even if the **operator provider** of the general-purpose communication system is not operating a multilateral system, a person using that system to operate a trading system or facility will operate a multilateral system if the other elements of the definition of a multilateral system are met.

If a system has features specifically designed to enable the interaction of trading interests in financial instruments, this would indicate that it is a trading system or facility. More generally, we will consider the role of the operator and its monitoring of the **performance use** of the system. Operating the platform requires more than simply providing technology or software. Our assessment of whether there is a trading system or facility will also take into consideration a wider range of factors, including for example:

- its target users and the actual use of a system by its users;
- any relevant restrictions on how the system may be used and their practical effect;
- whether the system is designed to enable trading of any kind amongst users; and
- the determinants of the remuneration of the operator and **whether the extent to which** these are linked, **directly or indirectly**, to the interaction of trading interests in financial instruments in the system.

Accordingly, whilst general communications systems, for example, are used for the purposes of trading financial instruments, they will not amount to a multilateral system unless they were ever operated by a person for these purposes and then subject to these criteria.

It is possible **that for** a firm **to** operates more than one piece of technology which, when taken together, have the characteristics of a trading system or facility.

There are multiple third-party buying and selling trading interests

- 3.26** In CP22/18 we clarified that “third-party” trading interests refer to the interests of users of the system, as opposed to those of the system operator. We also said that the fact that when any two persons negotiate within the system they do so between themselves, does not of itself mean that the system is bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others.

- 3.27** Some respondents asked us to confirm that only “many-to-many” interactions are capable of being multilateral in nature, with bilateral interactions and “one-to-many” interactions falling outside the scope of the perimeter. In support of this argument, they pointed to the rules in MAR 5.3.1AR(1) and MAR 5A.4.2R(1) of our Handbook which require that an MTF or an OTF must have “*at least three materially active members of users who each have the opportunity to interact with all the others in respect to price formation*”.
- 3.28** In a similar vein, some respondents noted that the guidance could capture systems which consist of multiple bilateral interactions that cannot interact with other bilateral interactions.

Our response

A system can be considered multilateral when at the point of entry to the system, an order interacts, or has the potential to interact, with the trading interest of multiple other participants.

We do not agree with the argument put forward that a multilateral system does not have to be authorised as a trading venue if it chooses not to comply with the rules applicable to trading venues. The requirements applicable to MTFs and OTFs in Chapters 5 and 5A of MAR apply only once an arrangement is classified as a multilateral system, as opposed to being an element of the definition of what constitutes a multilateral system.

Our guidance relates to what constitutes a multilateral system. The rules which then follow in Chapters 5 and 5A of MAR, including that an MTF or an OTF must have at least three materially active members or users who interact with each other are separate to, and not relevant for, the purposes of the perimeter guidance.

We consider that multiple bilateral interactions may constitute multilateral trading where one counterparty to a trade has the potential to interact with multiple other counterparties. This is consistent with the definition and purpose of what a multilateral system is. However, we would agree that single dealer platforms, where a single counterparty holds itself out to execute client orders by dealing on own account, are not multilateral systems.

Whilst we have carefully considered the feedback received, we are of the view that the guidance is sufficiently clear in this regard. Therefore, apart from a simplification change, we are not amending this section of the guidance. The updated guidance is set out below.

There are multiple third-party buying and selling trading interests

There need to be multiple third-party buying and selling trading interests for a system to be a multilateral system. Recital 7 UK MiFIR clarifies that the expression 'buying and selling trading interests' is to be understood in a broad sense and includes orders, quotes and indications of interest.

The inclusion of the words 'third-party' in this expression makes it clear that the trading interests in question are not the trading interests of the system operator.

The fact that when any two persons negotiate within the system they do so between themselves does not **mean that make** the system **is** bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others (other than the operator). This is the service a person receives as a user of the system.

Trading interests are able to interact in the system

- 3.29** Multiple third-party trading interests must be able to interact in the system for it to be a multilateral system. In CP22/18 we said that interaction takes the form of an exchange of information relevant to essential terms of a transaction; and that it does not require the execution of a transaction to take place within the system.
- 3.30** Some respondents argued that for a system to constitute a multilateral system, mere interaction should not be sufficient. They proposed that to meet the definition of a multilateral system, such interaction should be subject to legally binding rules governing how multiple third-party trading interests interact in the system, so as to lead to the formation of a contract relating to a transaction.

Our response

We maintain our position that the definition of a multilateral system does not require the conclusion of a legally binding contract as a condition, but simply that trading interests can interact within the system. Therefore, we are not amending this section of the guidance from what we consulted upon, which is set out below.

Trading interests are able to interact in the system

Multiple third-party trading interests must also be able to interact in the system for it to be a multilateral system. A multilateral system involves the bringing together of third-party trading interests (see also recital 7 UK MiFIR).

Interaction takes the form of an exchange of information relevant to essential terms of a transaction in financial instruments (being price, quantity or subject matter).

Accordingly, in our view, a system which enables this information to be inputted and then responded to in the system would allow trading interests to interact in the system.

Interaction between trading interests can arise in a system because the system:

- matches trading interests within its system; or
- allows users to respond within the system to other users' trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction.

Interaction between trading interests in the system does not require a contract to be entered into for the sale/purchase of financial instruments (i.e. execution of a transaction to take place) within the system if it is with a view to the parties agreeing the terms of a trade.

As clarified by recital 8 UK MiFIR, any system that merely receives, pools, aggregates and broadcasts trading interests should not be considered a multilateral system. This means that a bulletin board should not be considered a trading venue because there is no interaction between trading interests within its system. Similarly, a system which simply notifies the parties of general expressions of interest in relation to financial instruments does not amount to an interaction of trading interests in the system. For further guidance on bulletin boards, please refer to Q24H-Q24L below. In addition, neither the service of portfolio compression, which reduces non-market risks in derivative portfolios without changing the market risk, nor post-trade confirmation services, constitute a multilateral system by themselves.

Financial instruments

- 3.31** In CP22/18 we said that the interaction of multiple third-party buying and selling trading interests in the system must be in MiFID financial instruments for the system to be a multilateral system.
- 3.32** The list of MiFID financial instruments was onshored in Part 1 of Schedule 2 to the RAO. There are 11 categories of MiFID financial instruments (known as C1-C11). For further guidance on financial instruments, see PERG 13.4.

- 3.33** One respondent noted that the restriction to transactions in financial instruments is problematic in commodities markets where venues often facilitate transactions in spot commodities and related financial instruments side by side, subject to the same platform-imposed rules. The respondent suggested this raises issues for transparency and market confidence, which would be addressed if the platforms were regulated in their entirety.

Our response

The scope of the regulatory perimeter in the UK is set mainly through the RAO and, therefore, by the Government and Parliament. Whilst, as set out in our [Perimeter Report](#), we speak to the Treasury and others about possible gaps in the regulatory perimeter, we do not directly have the power to change the perimeter.

Both the definitions of “financial instruments” and “specified investments” in the RAO exclude spot commodities. This is to delineate between ordinary commercial activity and financial services activity. Setting the perimeter of financial instruments must take account of a wide range of factors, including the consequences for the full range of participants of bringing new activities within the scope of the perimeter.

Although the trading of spot commodities is outside the trading venue perimeter, it does not lie entirely outside of regulation. There are circumstances, for example, where activities in the spot market are covered by the prohibitions in the UK Market Abuse Regulation (UK MAR). There are also situations in which we can take supervisory or enforcement action against regulated firms conducting unregulated activities. In addition, there is a separate market abuse regime that applies to the trading of spot electricity and gas contracts.

We are not amending this section of the guidance from that we consulted upon, which is set out below.

Financial instruments

The interaction of multiple third-party buying and selling trading interests in the system must be in financial instruments for the system to be a multilateral system. A financial instrument is an instrument specified in Part 1 of Schedule 2 to the Regulated Activities Order. Please refer to PERG 13.4 for further guidance on financial instruments.

Additional factors to be taken into account

- 3.34** In CP22/18, we asked feedback on whether any other relevant characteristics to a multilateral system should be taken into account.

3.35 In CP22/18 we asked:

Q3: *Are there any other relevant characteristics to a multilateral system that should be taken into account?*

- 3.36** Responses to this question broadly fell into one of two overlapping categories. Firstly, a number of respondents used this question to propose additional factors that should be taken into account when considering the four elements of the definition of a multilateral system. For example, some respondents suggested we look at factors such as whether the system provider has visibility over pricing, or the ability to invalidate a trade. Other respondents suggested we look at the broader purpose of the system.
- 3.37** The second category of responses broadly agreed with the characteristics proposed, but highlighted specific types of arrangements that are not covered in the Q&As and where they thought further guidance would be beneficial to the market. For example, many respondents asked for further clarity as regards our position on order management systems (OMS) and execution management systems (EMS).
- 3.38** Within these responses, opinion was split as to whether OMS and EMS are capable of meeting the definition of a multilateral system. Some respondents thought that, depending on their configuration, they may need authorisation as a trading venue. Other respondents were of the view that the guidance should say that OMS and EMS are not in scope of the perimeter. Some respondents proposed we should consider additional factors when assessing a multilateral system to address this point. These included factors such as the ability to monitor trading interests, to suspend or cancel trades, and to record transactions.
- 3.39** Some respondents asked us to provide further clarity with regards to the application of the definition of a multilateral system to securities financing transactions (SFT). For example, whether the provider of a share lending platform is capable of meeting the definition of a multilateral system.
- 3.40** A small number of respondents encouraged us to provide clarity on the regulatory perimeter in relation to certain activity undertaken by systematic internalisers (SIs) which is de-facto riskless or quasi-multilateral. In particular, the respondents noted that unless it can be demonstrated that the trading interest is that of the broker, then such mechanisms should be considered as providing interaction between parties with an interest in the same underlying financial instrument and, hence, should require authorisation as a trading venue.
- 3.41** Some respondents noted that retail service providers (RSPs) may also satisfy the definition of a multilateral system, depending on how they are structured. Other respondents suggested they should be authorised and regulated as service companies at a minimum, given their criticality to the functioning of the retail market.
- 3.42** We were also asked to consider the application of the guidance to price reporting agencies. These agencies primarily facilitate the price assessment process in physically settled commodities markets but may also allow the formation of a contract between counterparties within the system, which is then sent to a regulated trading venue for

processing. Such agencies are typically not authorised as trading venues, meaning they are not subject to the same pre- and post-trade transparency and publication obligations.

- 3.43** Some respondents asked us to explicitly exclude all primary market activity from the scope of the trading venue perimeter. They argued that multiple trading interests cannot interact in the primary market context because financial instruments are being newly created and, therefore, there cannot be any trading interests.

Our response

We considered the additional factors that respondents proposed be included as part of the test for deciding whether a system is multilateral. However, we decided not to include them in our guidance.

In providing this guidance we are subject to the provisions of UK MiFIR, and cannot go beyond the definition set out there. Additionally, we identified concerns that incorporating these additional factors into the guidance could allow firms to effectively opt into, or out of, the perimeter based not on whether they are operating a multilateral system, but on whether they choose to apply the requirements for trading venues.

With regards to those firm types where respondents sought additional clarification in the Q&As, we decided not to amend the guidance. The Q&As in PERG do not purport to be exhaustive. Our view is that the guidance needs to remain sufficiently broad to ensure it can be applied across different types of arrangements in financial markets, considering the specific circumstances of each firm. The regulatory status of any particular firm will require a case-by-case assessment. Firms should therefore apply the guidance to their specific situation and arrangements.

Order management systems and execution management systems

OMS and EMS are arrangements which support the internal management of orders and their execution. It is generally understood that an OMS automates the order submission system and structures the order flow, while an EMS facilitates order execution by offering an overview of liquidity and prices on multiple venues, subsequently sending the orders to the preferred trading venue for execution. OMS and EMS increasingly operate in conjunction and the boundaries between the two types of arrangements are not always clear.

An OMS or EMS need not constitute a multilateral system. Whether an OMS or an EMS constitutes a multilateral system will depend on its specific features, rather than how it is labelled.¹ Operators of OMS and EMS will need to assess the functionality of their systems considering the guidance and our responses in other Q&As. This reflects our view that the perimeter should be driven by substance rather than terminology.

¹ Article 23(2) of UK MiFIR stipulates that an investment firm must be authorised as an MTF if it operates an internal matching system which executes client orders in shares, depositary receipts, ETFs, certificates, and other similar financial instruments on a multilateral basis.

A system would not, however, be outside the perimeter only by virtue of not carrying out certain activities which relate to the regulatory requirements applicable to trading venues. For example, whether the operator of the system monitors trading interests to ensure fair and orderly trading or provides pre- and post-execution disclosure in line with existing regulatory obligations.

FX platforms

In wholesale FX markets there are platforms that offer functionalities allowing buy-side firms and corporate clients to view and interact with the trading interests of liquidity providers, which may not necessarily have a trading venue permission.

The fact that a system does not have rules relating to trading venue requirements cannot be used to demonstrate that the system is not multilateral. Instead, if the operator wants the system to remain outside the trading venue perimeter, the system needs to be adapted so that interaction within the system is not multilateral.

More generally, our guidance does not impact the spot FX perimeter as set out by the MiFID Org Regulation, nor does it affect other aspects of the MiFID Org Regulation FX perimeter, which clarified the perimeter in relation to forward FX transactions, including flexible forwards.

An explanation of that perimeter, including the means of payments exclusion, remains set out in guidance in Q31B – Q31S of PERG 13.4.

Further, our guidance on the trading venue perimeter does not have an effect on our existing guidance in Q40B of PERG 13.4, which recognises the possibility for a non-financial business to access a trading venue for FX purposes – on an unauthorised basis – provided it does so for hedging purposes. This MiFID-based hedging exemption, which appears in paragraph 1(e)(ii) in Part 1 of Schedule 3 to the RAO, resembles the longstanding RAO risk management exclusion for non-financial firms in Article 19 of the RAO.

Finally, the guidance does not impact the FX Global Code and its application to relevant market participants.

Securities financing transactions

SFTs include repurchase transactions, securities lending or borrowing, buy-sell back or sell-buy back transactions and margin lending transactions.

Systems facilitating share lending are not automatically outside the scope of the trading venue perimeter. If the instruments being traded are financial instruments, then the system is capable of being classified as a multilateral system, provided all other elements of the definition of a multilateral system are met.

We also note that ESMA previously clarified in Q&A 9b under section 5.1 of its market structures Q&As that *“an entity operating a system in which multiple third-party buying and selling trading interests in securities financing*

transactions relating to financial instruments are able to interact, should seek authorisation to operate as a trading venue". We continue to have regard to this Q&A in line with our approach to EU non-legislative materials.

Systematic internalisers

An SI is an investment firm which, on an organised, frequent, systematic and substantial basis, deals on own account when executing client orders outside a trading venue without operating a multilateral system. MiFID II expanded the original SI regime (established under MiFID I) to include other equity-like instruments and bonds, derivatives, structured finance products and emission allowances. The SI regime aims to ensure adequate transparency for transactions concluded OTC by broker-dealers for clients.

A key premise of the SI regime is that firms should, by dealing on own account, be undertaking risk facing activity that impacts their profit and loss. Arrangements that do not involve the assumption of trading risk, such as resting orders in SIs until there is a match, would therefore not be compatible with SI activity. Instead, and dependant on the specific circumstances, such SI activity is functionally comparable to a trading venue.

We also note that ESMA has previously clarified in Q&A 26 under section 5.3 of its market structures Q&As that SIs should not put in place arrangements that lead them to de facto executing non risk-facing transactions and bringing together multiple third-party buying and selling interests. We continue to have regard to this ESMA Q&A in line with our approach to EU non-legislative materials.

Retail service providers

In our Consultation Paper on Improving Equity Secondary Markets (CP22/12) we described the UK model for the execution of orders through RSP systems. We said in our Policy Statement (PS23/4) that we will continue discussing with stakeholders to explore more fully the concerns raised to help us decide whether a more formal review is appropriate.

Within the RSP system, brokers or platforms may send request for quotes (RFQ) to market makers via so-called RSP hubs, which are platforms provided by third-party technology firms that collate RSP market makers' quotes and return them to the broker or platform.

Technology firms operating RSP hubs should have regard to the functionalities of their systems and consider whether they are merely providing means by which one party to a transaction (or potential transaction) is able to communicate with other such parties, and can thus rely on the exclusion in Article 27 of the RAO; or their activity is otherwise in scope of Article 25 of the RAO. There is already extensive guidance on this in 2.7.7AG – 2.7.7BFG in PERG 2.7. Firms involved in ongoing arrangements to facilitate the entering into of transactions need

to have regard to that guidance to determine whether they should seek authorisation.

Price reporting agencies

Price reporting agencies report prices transacted in the physical commodity and some derivatives markets. They provide the market with their assessment of the prevailing market price during the relevant pricing period for various benchmarks.

In some cases, the price assessment includes a feature which allows trading companies to submit indicative bids and offers in real time. Where users chose to execute the transactions, these will be sent for formalisation to a regulated trading venue. The trading venues will have rules specifying how these trades are accepted and concluded.

The approach set out in response to Q24F of our guidance may be relevant to the assessment of these agencies' regulatory status. However, this will depend on the circumstances of the activity in question. Even where these firms do not fall within the definition of a multilateral system, they will still need to consider whether they need other regulatory permissions, in particular those relating to the activities in Article 25 of the RAO.

Request for quote systems

Under MiFID II there are different types of trading systems, including continuous auction order book, period auction, quote-driven and RFQ trading systems.

MiFID RTS 1 describes an RFQ system as *"a trading system where a quote or quotes are provided in response to a request for quote submitted by one or more members or participants. The quote is executable exclusively by the requesting member or participant. The requesting member or participant may conclude the transaction by accepting the quote or quotes provided to it on request"*.

Given RFQ systems are considered as trading systems, they are capable of meeting the definition of a multilateral system if the other elements of the definition are also met. In practice, whether or not an RFQ system constitutes a multilateral system depends on whether the system comprises multiple third-party buying and selling trading interests.

The fact that when any two persons negotiate within the system they do so between themselves does not mean that the system is bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others (other than the operator).

Primary market activity

We said in CP22/18 that a crowdfunding platform in which the business funding interests of an issuer of shares, debentures or alternative debentures are matched with those of investors, would not amount to a multilateral system. In the context of crowdfunding firms, we said there

is a distinction between the matching of funding interests (between the issuer and investors) and the interaction of trading interests referred to in the definition of a multilateral system.

There is not an explicit exclusion for all primary market activity in the guidance. However, we recognise that there is a distinction between primary and secondary market activity in the context of the trading venue perimeter. The guidance requires the existence of a trading interest in financial instruments for the definition of a multilateral system to be met. In the case of primary markets operated by persons who do not offer a secondary market, it is not obvious that such a trading interest exists prior to the issuance of the financial instruments.

Guidance on specific cases

- 3.44** In CP22/18, we proposed to issue guidance in Q24D – Q24L of PERG 13.3 relating to specific types of arrangements covering: (i) voice brokers; (ii) portfolio managers operating internal matching systems; (iii) firms providing systems for the sole purpose of “blocking” trades onto regulated trading venues; (iv) investment-based crowdfunding firms operating primary market platforms; and (v) operators of bulletin board services.

PERG Q&As

- 3.45** As a general point, some respondents asked for clarification on the interaction between the Q&As and the four elements of the definition of a multilateral system. In particular, in the bulletin board context, some respondents queried whether the additional information set out in Q24H – Q24L may be better dealt with as part of the guidance relating to the definition of a multilateral system in Q24C. Otherwise, respondents suggested the guidance may become dispersed, particularly where examples in Q&As may have application more broadly than in the specific context in which they are raised.

Our response

The use of Q&As as part of PERG is a longstanding practice and aims to provide greater accessibility to the range of users reading the guidance. Given the complexity of business models and activities covered, we consider the use of specific examples is helpful to firms when considering whether they require authorisation. The examples given, and the Q&As more broadly, are consistent with our interpretation of the four elements of a multilateral system.

Voice broking

3.46 In CP22/18 we said that merely arranging or executing trades over the telephone does not constitute a multilateral system unless the voice trading system has the characteristics of a trading system or facility.

3.47 In CP22/18 we asked:

Q4: *Do you agree with our proposed guidance in relation to voice broking?*

3.48 Many respondents agreed with our proposals. However, some suggested that voice broking – regardless of the degree to which it relies on automation – should not fall within the definition of a multilateral system.

3.49 A few respondents asked us to confirm that a voice broking system needs to have the characteristics of a trading system or facility for it to be considered a multilateral system.

Our response

We maintain our position that voice broking may constitute a multilateral system, if all four elements of the definition of a multilateral system are satisfied. Arranging trades over the telephone may be part of a multilateral system by being the only method for bringing about transactions or when operating in conjunction with other modes of execution.

When assessing whether a voice broking system constitutes a multilateral system, we will consider whether it has the characteristics of a trading system or facility. We have amended the guidance to make clear that we will also consider the role of the operator when assessing if a system has the characteristics of a trading system or facility. This also reflects a suggestion made by one of the respondents to the consultation. We have further updated some cross references, though this does not affect the substance of the guidance.

The updated guidance in Q24D is set out below.

Q24D. Does voice broking involve the operation of a multilateral system?

Voice broking may but need not comprise the operation of a multilateral system.

Merely arranging or executing client orders over the telephone does not constitute a multilateral system, although it may amount to other investment services such as reception and transmission or execution of orders on behalf of clients.

A trading system or facility could, however, take the form of a voice trading system **(as referred to in Annex I MiFID RTS2)** or a hybrid system (as referred to in Annex I MiFID RTS **2 1** and Annex I MiFID RTS **1 2**). For example, a firm that operates a platform where trading interests of clients are broadcast to other users and then engages in voice broking to enable negotiation between these parties would operate a trading system or facility, unless Q24F applies. Voice broking may also be part of a when multilateral system operating in conjunction with other modes of execution such as electronic order books **operated by that broker**.

Internal crossing by firms undertaking portfolio management

- 3.50** In CP22/18 we proposed to clarify that internal matching systems operated by portfolio managers, where shares or other financial instruments are transferred from one fund to another, do not constitute a multilateral system.
- 3.51** In CP22/18 we asked:

Q5: *Do you agree with our proposed guidance relating to internal crossing by portfolio managers?*

- 3.52** There was general agreement with the guidance. However, some respondents said that if the internal crossing is not connected with the firm's portfolio management activity and, instead, represents a sole or standalone service, then this activity is more akin to operating a multilateral system. For example, buy-side entities may outsource or appoint third-party centralised trading desks.

Our response

We agree that for a firm engaged in portfolio management not to be considered as operating a multilateral system, the internal crossing operated by such a firm must be directly connected with the activity of portfolio management. We believe that this is already clear from the guidance in Q24E. However, we have sought to simplify the guidance by removing a superfluous word. This, however, is not a substantive change.

The updated guidance in Q24E is set out below.

Q24E. Does a firm that undertakes portfolio management operate a multilateral system by operating an internal matching system to execute trading interests relating to the portfolio of one of its clients against trading interests relating to the portfolio of another of its clients?

No. A firm engaged in portfolio management, in whatever capacity, must exercise discretion in relation to the financial instruments it manages. We do not consider that **a portfolio manager such a firm** operates a multilateral system when, in the exercise of this discretion, it executes trading interests relating to the portfolio of one of its clients (which may be a fund) against the trading interests relating to the portfolio of another of its clients in an internal matching system. We also do not consider that it is the purpose of COLL 6.9.9R and FUND 1.4.3R to prevent a UCITS management company or an external AIFM that is a full-scope UK AIFM from doing this in these circumstances. This is because in these circumstances the portfolio manager is the only user of the system and hence, there is no interaction of multiple third-party trading interests in the system.

Systems operated for the sole purpose of executing trades on regulated trading venues

3.53 In CP22/18 we said that if a firm operates a system for the sole purpose of “blocking” trades onto a trading venue, these arrangements do not amount to the operation of a multilateral system.

3.54 In CP22/18 we asked:

Q6: *Do you agree with our proposed guidance relating to blocking onto trading venues?*

3.55 Various respondents encouraged us to be more specific regarding the market practices which the guidance on “block trades” intends to cover. Some intended the practice to cover only large-in-scale transactions. Respondents sought clarity on whether this aspect of the guidance would apply to any trade size and for any asset class, irrespective of whether pre-trade transparency requirements are applicable.

3.56 Most respondents agreed that a firm using a system to block trades on behalf of clients onto a regulated trading venue should not require authorisation as a trading venue. Some respondents, however, raised a concern that our guidance may allow the proliferation of systems that would provide all the essential trading services except execution, which would take place on an authorised venue. In turn, trading venues could be reduced to trade reporting systems, leaving the price discovery process and its monitoring outside the trading venue perimeter.

Our response

We have amended the guidance and removed the reference to “block trades” to ensure it provides further clarity on the types of market practices it is intended to capture.

Q24F is intended to cover certain market practices relating to trade execution as recognised in venue rules. In terms of eligibility, trading venues can only accept transactions from their members complying with the rules of their venue. In turn, those rules must meet the obligations owed by the venue in relation to the maintenance of fair and orderly trading and pre-trade transparency, which place boundaries around the types of trade which rules can permit to be brought on-venue. As for members operating systems for executing trades for these purposes, the most relevant investment service is likely to be execution of client orders. We have therefore updated the Q24F with a reference to further guidance on this activity.

More generally, Q24F is relevant to practices in the listed derivatives markets, including commodity derivatives, although it may have application across other asset classes. As such, it captures, for example, systems enabling trades which take the form of negotiated transactions executed outside the central order book, systems enabling large-in-scale trades in respect of equities and derivatives; and systems enabling the registration of commodity derivatives negotiated off-exchange. The scope of Q24F is not limited to trades under a transparency waiver.

The updated guidance in Q24F is set out below.

Q24F. Does a firm using or operating a system to ~~block~~ execute trades on behalf of clients operate a multilateral system?

No, if a firm **uses or** operates a system for the purpose only of **blocking executing these** trades ~~onto~~ a trading venue consistent with the intentions of the parties to the underlying transactions to trade on a trading venue, **for example, in accordance with the venue’s rules. For example,** when arranging a large-in-scale **or negotiated** trade in accordance with the rules of the venue, in our view these arrangements do not amount to the operation of a multilateral system – **in accordance with Q24C** – in the case of UK MiFIR or otherwise. **For guidance on execution of orders on behalf of clients, see PERG 13 Q15.**

Crowdfunding platforms operating in primary markets

- 3.57** In CP22/18 we clarified that a crowdfunding platform which allows clients to participate in company fundraisings by buying shares or bonds from the issuer does not amount to a multilateral system.

3.58 In CP22/18 we asked:

Q7: *Do you agree with our interpretation to regard a crowdfunding platform operating only in primary markets as not involving the operation of a multilateral system?*

3.59 All but one respondent agreed with our proposal. The respondent who disagreed said that crowdfunding platforms which facilitate the interaction of trading interests should fall within the definition of a multilateral system, regardless of whether they operate in primary or secondary markets.

Our response

We agree that where a crowdfunding platform allows multiple trading interests to interact in the system, this would be regarded as a multilateral system. However, we think it is possible to draw a distinction between the matching of funding interests (between the issuer and investors) and the interaction of trading interests referred to in the definition of a multilateral system.

The guidance in Q24G distinguishes between the matching of funding interests and the interaction of trading interests referred to in the definition of a multilateral system. We are therefore not amending, but merely simplifying, the guidance we consulted on.

The updated guidance in Q24G is set out below.

Q24G. Would a crowdfunding platform be regarded as a multilateral system?

~~We would not regard as a multilateral system~~ In our view, a crowdfunding platform **in which does not amount to a multilateral system when** the business funding interests of an issuer of shares, debentures or alternative debentures, as expressed in an offer made by that issuer, on the one hand, are matched with ~~those the~~ **interests** of investors on the other.

A bulletin board provided to assist investors is not itself a multilateral system where the trading interests would not be able to interact within the system. By contrast, a crowdfunding platform in which multiple third-party buying and selling trading interests of investors in financial instruments are able to interact within a system (for example, in a secondary market) would be a multilateral system.

Bulletin boards

- 3.60** A bulletin board allows users to advertise their buying and selling interests on an electronic system. Bulletin boards are not considered to be multilateral systems because they do not allow the interaction of trading interests within the system. However, if an operator of a bulletin board incorporated a system functionality allowing trading interests to interact with each other within the system (for example, by allowing users to execute a trade), then this would be considered a multilateral system.
- 3.61** In CP22/18 we clarified that for bulletin boards to fall within the perimeter, trading interests must be able to interact within the system (for example, where users are able to respond to requests to deal).
- 3.62** In CP22/18 we asked:

Q8: *Do you agree with our interpretation of the characteristics of a bulletin board?*

- 3.63** Most respondents agreed with this aspect of the guidance. However, several respondents said it would be more helpful if the guidance relating to bulletin boards was presented as an assessment against the four elements of the definition of a multilateral system. They asked us to clarify that a bulletin board does not meet the four-element test.
- 3.64** Some respondents asked us to make clear that a provider of a bulletin board could potentially require authorisation relating to the activities in Article 25 of the RAO.
- 3.65** Crowdfunding firms providing bulletin boards services raised concerns about the consequences of the guidance. They argued that the guidance will unnecessarily complicate the customer experience, for example by directing users to leave the platform to agree the transaction, only for them to return for settlement. Some argued that it would be challenging and disproportionate to comply with the regulatory requirements applicable to trading venues. They therefore advocated the position of crowdfunding firms be considered separately, as part of wider regulatory work.

Our response

We confirm that bulletin boards need to be assessed against the four elements of the definition of a multilateral system. Our guidance in relation to board boards is consistent with this. What differentiates a bulletin board from a multilateral system is that a bulletin board does not allow trading interests to interact in the system. Interaction between trading interests can arise because the system operator matches trading interests within the system, or allows users to respond within the system to other users' trading interests.

The issues raised by the operation of crowdfunding platforms reflect a broader public policy objective of supporting primary markets and bridging the gap between private and public markets. Our scope for resolving this issue through this guidance is limited. The bulletin board concept is not specific to crowdfunding firms, and the guidance will need

to be consistently applied across the market. The interaction of trading interests is a core part of the definition of a multilateral system. As such, we are not changing this aspect of the guidance.

However, we intend to explore this issue further as part of our wider consideration of potential regulatory reforms in primary and secondary markets. In the meantime, we expect firms to operate in accordance with the guidance.

We do not consider that a system simply notifying users of general expressions of interest amounts to the interaction of trading interests in the system, provided users then contact each other and agree the trade outside the system. We have added a clarificatory sentence to the guidance in Q24I to this effect.

By way of example, users of a bulletin board will have a list of financial instruments they are potentially interested in buying. The operator of a bulletin board may notify these potential buyers if another user posts a selling interest in relation to any of these financial instruments. This is because the "matching" is at the level of the instrument and is not tailored to price or size. The would-be buyer would then have to decide whether, considering the price posted on the system, they want to ask the operator of the bulletin board for the contact details of the seller in order to initiate a negotiation outside the system.

We have further updated Q24I, to reflect that a system would need to "enable" rather than merely "allow" users to respond within the system to other users' trading interests, for us to consider that the firm is not operating only a bulletin board. Replacing the word "allow" with "enable" provides greater flexibility when applying the guidance on a case-by-case basis.

Finally, we have sought to simplify the wording of the guidance in Q24J – Q24I, although this does not affect the substance of the guidance.

The updated guidance in Q24H – Q24I is set out below.

Q24H. What is a bulletin board?

There is no definition of a bulletin board. Recital 8 UK MiFIR, however, refers to 'facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests' or 'other entities aggregating or pooling potential buying or selling interests' and implies that such bulletin boards or entities should not be considered a multilateral system.

Q24I. Is a bulletin board a multilateral system?

No, the reason is that, whilst trading interests (including information relevant to essential terms of a transaction in financial instruments (being price, quantity or subject matter)) can be posted on a bulletin

board, trading interests are not able to interact in such a system. In light of Q24C (see the section on 'Trading interests are able to interact with each other') above, we would not regard a firm as operating only a bulletin board if:

- it matches trading interests within the system;
- it **allows enables** users to respond within the system to other users' trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction; or
- users can commit to or enter into contracts for the sale/purchase of the financial instruments (i.e. execute transactions) within the system.

By contrast, as a system simply notifying users of general expressions of interest in financial instruments does not give rise to an interaction of trading interests in the system, a bulletin board operator can notify and introduce potential counterparties to each other without operating a multilateral system.

Please see Q24J-L below for further guidance on bulletin boards.

Q24J. Can the operator of a bulletin board as described in Q24H assist users with exchanging contact details?

The operator of a bulletin board could (subject to data protection legislation) **provide for the enable** publication **on the bulletin-board** of contact details of users advertising buying and selling interests on **that its** bulletin board, so that users can use these to contact each other bilaterally outside the system.

However, some users may have reservations about the publication of their contact details. In these circumstances, one possibility might be for them to agree to share**ing** contact details on a case-by-case basis. Any such request should be limited to request**ing** to see another user's contact details and not extend to communicating in relation to, negotiating or accepting essential terms of a transaction (being price, quantity or subject matter).

Q24K. Can an operator of a bulletin board as described in Q24H provide template documentation to assist its users with negotiating and executing transactions?

Yes, an operator of a bulletin board can make available template documentation for download by users of **a the** bulletin board. It can also require users to use this template documentation. This will not mean that the bulletin board is a multilateral system, provided that users use the template documentation to negotiate and execute transactions bilaterally outside the system. The operator should not, however, complete the template documentation in relation to

the essential terms of these transactions (being price, quantity or subject matter).

Q24L. Can an operator of a bulletin board as described in Q24H provide post-trade services?

Yes, it is possible for the operator of a bulletin board to provide post-trade services, including in relation to settlement. This might include, for example, assisting with the transfer of funds or registering the transfer of financial instruments. The operator could be informed by users of the bulletin board that they have entered into a contract for the sale/purchase of a financial instrument, i.e. executed a transaction, bilaterally outside the system and then provide post-trade services in relation to that transaction to them. Providing **simply** these post-trade services **will in these circumstances not by itself does not** require the operator to have permission for operating a multilateral trading facility or operating an organised trading facility. The operator should, however, consider whether the post-trade services provided may include any payment services (see PERG 15.3) or electronic money issuance (see PERG 3A).

Service company regime

3.66 Service companies are firms whose only permitted activities are making arrangements with a view to transactions in investments, and whose client types are limited to professional clients and eligible counterparties. The service company regime is not available to firms operating multilateral systems.

3.67 In CP22/18 we explained that the Glossary definition of a service company refers to client categorisation terminology, which was used in the UK before the implementation of MiFID. We therefore proposed to update this definition in relation to client limitation types, so that it accurately reflects the correct client categorisation terminology.

3.68 In CP22/18 we asked:

Q9: *Do you agree with our approach to updating the Glossary definition of a service company in relation to client limitation types?*

3.69 All respondents agreed with our proposal. However, some respondents noted that the service company regime is not widely understood and that the market would benefit from further awareness and clarification of its scope. Other respondents asked us to proactively engage with firms to ensure that service companies are identified.

Our response

The Glossary definition of a service company as consulted on in CP22/18 is updated.

The regulatory regime applying to service companies is set out in the SERV Handbook Guide. Our view is that the issue highlighted about the regime not being widely understood is less about awareness of the service company regime, and more about awareness of the perimeter. Firms may not understand that if they are involved in activities related to the trading of financial instruments – including the provision of technology designed to support trading – they may require authorisation for activities under Article 25(2) of the RAO. This issue is unlikely to be solved by publishing further information on the service company regime on our website. However, we will continue to monitor the market and consider the scope for any supervisory action required over time.

See updated Glossary definition of a service company below.

A service company is:

a firm whose only permitted activities are making arrangements with a view to transactions in investments, and agreeing to carry on that regulated activity, and whose Part 4A permission:

- a. incorporates a limitation substantially to the effect that the firm carry on regulated activities only with one or more of market counterparties, intermediate customers, eligible counterparties or professional clients; and
- b. includes requirements substantially to the effect that the firm must not:
 - i. guarantee, or otherwise accept responsibility for, the performance, by a participant in arrangements made by the firm in carrying on regulated activities, of obligations undertaken by that participant in connection with those arrangements; or
 - ii. approve any financial promotion on behalf of any other person or any specified class of persons; or
 - iii. in carrying on its regulated activities, provide services otherwise than in accordance with documents (of a kind specified in the requirement) provided by the firm to the FCA.

Chapter 4

Cost benefit analysis

- 4.1** In CP22/18 we presented a cost benefit analysis (CBA) on the proposed guidance. This analysis was based on our own qualitative assessment of the identified costs and benefits of the proposed guidance, as well as quantification of the identified costs where it was reasonably practicable to do so.
- 4.2** We received two responses to our question on the CBA. The first respondent said that the costs associated with obtaining and maintaining an MTF authorisation are likely to be higher than outlined in the CBA given the inflationary environment in the UK. The second respondent said that they did not consider the proposed guidance to be primarily clarificatory and in line with firms' interpretation of the definition of a multilateral system. Consequently, they considered that the costs to firms could be greater than set out in the CBA, including for familiarisation and enacting changes to platform functionalities. Other respondents welcomed the additional clarity brought by the proposed guidance.
- 4.3** We have taken into account the feedback received on the CBA and do not consider that it materially impacts the analysis.
- 4.4** We recognise that the costs we reported may have increased in nominal terms because of the recent high levels of inflation. The increase in inflation will also have a similar impact on the benefits of the guidance. Consequently, we believe that the proportionality of the guidance remains unchanged.
- 4.5** We maintain our position that the guidance is offering points of clarification on the perimeter. In CP22/18 we acknowledged that there were differences of opinion as to whether the definition of a multilateral system should be construed more broadly or more narrowly. Consequently, some firms may incur some costs in aligning with the guidance. We described these potential costs in the CBA. Any costs are dependent on the specific circumstances of individual firms, the detailed elements of their current arrangements, and the strategies those firms choose to pursue.
- 4.6** Furthermore, we are broadly maintaining the approach set out in CP22/18. We have addressed most of the feedback through commentary on the responses in the Policy Statement. Taking into account the feedback received and the clarificatory changes we are making to the guidance, we consider that the CBA consulted upon remains appropriate.

Chapter 5

Summary of responses – Discussion chapter on potential areas for future change

- 5.1** We summarise here the feedback received to the questions we asked in the discussion chapter of CP22/18 on potential future changes to the trading venue regime.
- 5.2** We are not currently making any changes to the rules and requirements applying to trading venues. Instead, we will use the feedback received to inform our thinking on any potential future regulatory reforms.

Overview

- 5.3** In addition to consulting on the proposed guidance on the trading venue perimeter, we also used C22/18 to seek views on, without proposing changes, whether regulatory obligations for trading venues can be made more proportionate for smaller firms, while maintaining market integrity.
- 5.4** We did not consult on any particular changes to the regime. Instead, we invited market participants to share their views on aspects of the MTF and OTF regimes, which are perceived to create the greatest barriers to entry to the market for smaller firms.
- 5.5** In CP22/18 we invited views on the following questions:

Q10: *Which regulatory requirements applicable to MTFs and OTFs are most likely to create barriers to entry to the trading venue market for smaller firms?*

Q11: *Does the existing service company regime already address concerns regarding these barriers to entry?*

Q12: *Based on which criteria should firms be potentially subject to a more scalable set of requirements?*

Summary of responses

- 5.6** In general, fewer respondents provided views on the questions we put forward in the discussion chapter than on the guidance we consulted on, with about two thirds of all respondents providing views on at least one of these questions.

- 5.7** We provide below further detail on each of the topics we invited views on in the discussion chapter.

Barriers to entry to the trading venue market for smaller firms

- 5.8** There was general agreement that the complexity of the regulatory requirements applying to trading venues may act as a barrier to entry to the market for smaller firms. Despite this, a large number of respondents expressed the view that these regulatory requirements are not disproportionate to the market benefit and that they are necessary for investor protection and market integrity. Further, some respondents observed that the existing regulatory framework is already adjusted for smaller firms, for example, with regard to prudential requirements. Therefore, most respondents were of the view that differentiating regulatory requirements based on the size of the firm was not appropriate.
- 5.9** One respondent said that the key barriers for technology providers are (i) the time to market; and (ii) the increased costs of compliance associated with becoming a trading venue. With regard to time to market, the respondent noted that technology firms do not normally have adequate systems and arrangements in place to ensure compliance with requirements, such as transparency of pre- and post-trade disclosures, transaction reporting, rules and procedures for fair and orderly trading and market surveillance. If these companies need to secure sufficient resources and build the necessary infrastructure, as well as reorganise their counterparty relationships prior to making an application for a trading venue authorisation, it would take at least 18 to 24 months before they can commence operation as a trading venue.
- 5.10** In relation to the costs of compliance, the respondent said that technology providers globally are typically not subject to financial regulation. In addition, certain markets in which they operate (such as the market for spot FX contracts) normally sit outside the regulatory perimeter. The respondent said that if the UK deviates from the international standards for the regulation of FX markets, this could result in technology firms having to operate and maintain two (or more) sets of systems – one to comply with the UK regulatory requirements and another for jurisdictions where the activities and services provided by these firms are not regulated and/or in respect of unregulated products. This would potentially multiply the operational and regulatory compliance costs to be incurred and create a higher barrier to entry for smaller operators.
- 5.11** The same respondent highlighted that, for technology providers offering connectivity and aggregation services to convert into a trading venue, they will need to connect to the existing financial ecosystem, including other trading venues. Such a trade flow would require coordination of the rulebooks and operating procedures of the multilateral systems involved and could only be enabled by a regulatory framework that clearly allocates rights and responsibilities to the respective parties. Issues may arise as many of the existing users of such technology are incumbent trading venues (or liquidity providers whose affiliates may operate trading venues) that will view these new entrants as competitors. Hence, it would not be in their interest to support the restructuring and transition efforts of such entities to become trading venues. On the contrary, they may seek to create strategic barriers in order to hinder the entry of these firms to the market and avoid competition.

- 5.12** Another respondent observed that requirements on operators of MTFs and OTFs impose significant initial and ongoing costs, both human and financial, and suggested that the following may be calibrated based on the scale, complexity and interconnectedness of an individual trading venue operator: (i) the implementation and maintenance of systems and controls to monitor the resilience and performance of the trading system; (ii) business continuity arrangements in the event of disruption or severe market stress; and (iii) the regulatory obligations associated with market making regimes, algorithmic trading and direct electronic access.
- 5.13** Another respondent cited costs associated with platform oversight and regulatory compliance as causing high barriers to entry, particularly for smaller firms with relatively nascent businesses and low operating revenues. This respondent specifically mentioned, amongst others, costs for market and trade monitoring, general operational and platform resiliency work and infrastructure, trade reporting mechanisms and maintenance, as well as general legal work associated with some or all the above.
- 5.14** The same respondent observed that the application process for authorisation as an MTF or OTF is time consuming and can take many months. Along the same lines, a different respondent suggested that streamlining the authorisation process, where feasible, to make authorisation for new entrants as quick as possible will be less costly for the relevant entities involved. The respondent added that all regulatory perimeter requirements, for small or large firms, should be principles based, making it easier for all participants to access the market. Authorisation fees were also perceived as a barrier by two other respondents.
- 5.15** Two respondents said that the obligation to report market data to the FCA via the market data processor system and maintaining systems to ensure operational resilience and market surveillance create significant barriers to entry for smaller firms and are not proportionate to the risks posed by them. In addition, the respondents said that the obligation to establish and maintain effective arrangements, systems and procedures aimed at detecting and preventing insider dealing and market manipulation, imposed on firms under Article 16 of the Market Abuse Regulation, would come at a significant cost. In their view, because of the above, businesses may choose not to allow their shares to be transferred to the secondary market, thus impairing liquidity and resulting in a worse outcome for investors.
- 5.16** Another respondent pointed to the requirement for venues to have fixed rate cards (that is, a standardised fee structure) stemming from the obligation under Article 48(12)(d) MiFID II and Article 4 of RTS 10 to ensure that fee structures are fair and non-discriminatory and do not create incentives for disorderly trading conditions or market abuse. In the view of the respondent, this measure is the most punitive when it comes to erecting barriers to access and dissuading qualifying systems as casting themselves within the perimeter. Further, the respondent noted that OTFs are unable to share liquidity with other OTFs, which creates a barrier to the linking of liquidity pools using voice and hybrid trading systems.

- 5.17** In addition to the above, the respondent expressed concerns over the capital requirements relating to the calculation of the margin period of risk for transactions executed on an MTF or an OTF. Finally, the obligation to use an International Securities Identification Number or Unique Product Identifier from a particular source rather than on the basis of an open standard were also mentioned as an example of barriers to entry.
- 5.18** One respondent suggested that the extension of the transaction reporting requirements in Article 26(5) of MiFIR and RTS 22 to operators of trading venues remains disproportionate.
- 5.19** Finally, a respondent noted that, while future guidance should not stifle innovation, consideration should also be given to the impact that the proliferation of MTFs could potentially have on the industry, particularly in terms of fragmentation of liquidity and possible additional costs for the industry.

Effectiveness of the service company regime to address barriers to entry

- 5.20** Nearly half of the respondents who said that the regulatory requirements applicable to MTFs and OTFs create barriers to entry to the trading venue market for smaller firms were also of the opinion that the service company regime may reduce barriers to entry for firms that fall within the scope of this regime.
- 5.21** One respondent expressed the view that the service company regime could be used to bring technology firms servicing the RSP network into the regulatory perimeter, particularly given their criticality to the functioning of the UK retail market, and the barriers to access and innovation that results from their dominant position.
- 5.22** Some respondents noted that the service company regime is not well understood or applied and would benefit from greater awareness amongst firms that may seek to utilise it in future.
- 5.23** Feedback received suggests that the phrasing of the question may have given some respondents the mistaken impression that certain firms operating multilateral systems may be able to rely on the service company regime.
- 5.24** For instance, a respondent stressed that services provided by trading venues and services companies were different and noted that the service company regime should not be used as a substitute for the regulatory framework applicable to MTFs or OTFs.
- 5.25** Another respondent suggested that it would not be appropriate for a participant in the securities financing market to provide services substantially equivalent to those offered by a trading venue operator where transactions referencing financial instruments are matched, and still be allowed to avail of a service company classification. The same respondent discouraged us from establishing a so-called “trading venue lite” regime.

- 5.26** With this regard, we wish to clarify that the service company regime is not available to firms operating an MTF or OTF. Firms which operate arrangements that meet all the elements of the definition of a multilateral system need to seek authorisation as a trading venue. The service company regime is available to firms whose only permitted activities are making arrangements with a view to transactions in investments (i.e. the activity in Article 25(2) of the RAO) and which can only deal with professional clients or eligible counterparties.

Criteria for the application of a more scalable set of requirements to trading venues

- 5.27** Ten respondents were supportive of a more scalable set of requirements provided regulatory standards and market integrity are maintained. One noted that some flexibility based on revenue, balance sheet asset size, trading methods (hybrid or not) and asset class (single-asset class being less risky than multi-assets on a platform) would be helpful to start-up MTFs and OTFs.
- 5.28** Another respondent noted that requirements should be scalable according to their criticality and dominance in the operation of the respective market. One respondent argued there should be more flexibility for new entrants with a limited scope and scale and based on the assessment of harms. One respondent went further and said that this balanced approach should apply to all authorised firms and not just trading venues. The respondent proposed that any criteria should consider not only size but also potential risk to the market, investors and consumers. For example, exposure to retail clients, type of asset that is tradeable through the firm's systems and size of average daily volumes.
- 5.29** Eight respondents disagreed and argued that requirements should apply to all trading venues, irrespective of their size. One respondent noted that a scalable set of requirements would lead to an unmanageable level of complexity for both firms and the FCA; and that we should continue to use our Regulatory Sandbox to promote innovation.
- 5.30** Other respondents highlighted that any regulatory framework should be applied based on the nature, rather than the scale or scope, of the underlying activity. They said that it was not appropriate to take into account a firm's size in relation to matters such as investor protection, transparency or market surveillance. In their view, the trading venue regime is not suitable for modification on a scale basis as it is designed to achieve a market outcome that is important regardless of the size of individual market participants. One respondent said this would create a two-tiered market in the same activity for the same product, which would be counterproductive. Another respondent said scalable requirements or oversight based on a pre-set criteria is not without risk, particularly due to the interconnectedness of UK equity markets.

Conclusions

- 5.31** We thank respondents for their feedback on the aspects of the MTF and OTF regimes which they perceive to create the greatest barriers to entry to the market, and the possible application of a more scalable set of requirements for smaller firms. We are not, at this stage, making any changes to the regulatory regime applicable to trading venues. However, we will consider the feedback received and may use it to inform our thinking on potential future regulatory reforms.
- 5.32** We continue to be committed to maintaining the highest standards of regulation. Therefore, any potential future change to the trading venue regime will be guided by reducing costs and burdens for firms, without lowering regulatory standards and market integrity.
- 5.33** We also wish to reiterate that the service company regime is not available to firms operating a multilateral system. Where firms operate a multilateral system, they will need to seek authorisation as a trading venue.

Annex 1

List of non-confidential respondents

Association for Financial Markets in Europe (AFME)

Cboe Global Markets

Electronic Debt Markets Association (EDMA)

EquiLend Limited

European Principal Traders Association (FIA EPTA)

European Venues and Intermediaries Association (EVIA)

Financial Markets Law Committee (FMLC)

Intercontinental Exchange (ICE)

International Capital Markets Association (ICMA)

Invesco

The Investment Association (IA)

LedgerEdge Limited

London Metal Exchange (LME)

Pillar 4 Consultants

UK Crowdfunding Association

UK Finance

Virtu Financial

Annex 2

Abbreviations used in this paper

Abbreviation	Description
AIFM	Alternative Investment Fund Manager
CBA	Cost Benefit Analysis
COLL	Collective Investment Schemes Sourcebook
CP	Consultation Paper
EMS	Execution Management System
ESMA	European Securities and Markets Authority
EU	European Union
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
FUND	Investment Funds Sourcebook
FX	Foreign Exchange
IPCD	Implementation Period Completion Day
MAR	Market Conduct Sourcebook
MiFID	Markets in Financial Instruments Directive
MiFID Org Regulation	UK version of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing MiFID of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, which is part of UK law by virtue of the European Union (Withdrawal) Act 2018
MiFIR	Markets in Financial Instruments Regulation
MTF	Multilateral Trading Facility
OMS	Order Management System
OTC	Over-the-counter
OTF	Organised Trading Facility

Abbreviation	Description
PERG	Perimeter Guidance Manual
PRA	Price Reporting Agency
PS	Policy Statement
Q&A	Questions and Answers
RAO	Financial Services and Markets Act 2000 (Regulated Activities) Order 2001
RFQ	Request for Quote
RM	Regulated Market
RRR	Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)
RSP	Retail Service Provider
RTS	Regulatory Technical Standards
RTS 1	Onshored Commission Delegated Regulation (EU) 2017/587
RTS 2	Onshored Commission Delegated Regulation (EU) 2017/583
RTS 10	Onshored Commission Delegated Regulation (EU) 2017/573
RTS 22	Onshored Commission Delegated Regulation (EU) 2017/590
SERV	Handbook Guide for Service Companies
SFT	Securities Financing Transactions
SI	Systematic Internaliser
STOR	Suspicious Transaction and Order Report
UCITS	Undertakings for Collective Investments in Transferable Securities
UK	United Kingdom
UK MAR	Onshored Regulation (EU) No 596/2014 on Market Abuse
UK MiFIR	Onshored Regulation (EU) No 600/2014 on Markets in Financial Instruments
WMR	Wholesale Markets Review

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Appendix 1

Made guidance (legal instrument)

PERIMETER GUIDANCE (TRADING VENUES) INSTRUMENT 2023

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 137A (The FCA’s general rules); and
 - (b) section 139A (Power of the FCA to give guidance); and
 - (2) the other rule and guidance making powers listed in Schedule 4 (Powers exercised) to the General Provisions of the FCA’s Handbook.
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 9 October 2023.

Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Perimeter Guidance (Trading Venues) Instrument 2023.

By order of the Board
29 June 2023

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text.

Amend the following definition as shown.

<i>service company</i>	<i>a firm whose only permitted activities are making arrangements with a view to transactions in investments, and agreeing to carry on that regulated activity, and whose Part 4A permission:</i>
------------------------	---

- | | |
|-----|---|
| (a) | incorporates a <i>limitation</i> substantially to the effect that the <i>firm</i> carry on <i>regulated activities</i> only with <u>one or more of market counterparties, intermediate customers, eligible counterparties or professional clients</u> ; and |
|-----|---|

...

Annex B

Amendments to the Perimeter Guidance manual (PERG)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

13 Guidance on the scope of the UK provisions which implemented MiFID

...

13.3 Investment Services and Activities

...

Multilateral system

Q24B. Where can I find more information about what a multilateral system is (article 4.1(19))?

~~There is some guidance on multilateral systems in MAR 5AA.1.2G. [deleted]~~

Q24C. What is a multilateral system?

A multilateral system is a system or facility in which multiple third-party buying and selling trading interests in financial instruments are able to interact in the system (see article 2(1)(11) UK MiFIR).

A multilateral system, for these purposes, comprises each of the following main elements:

- it has the characteristics of a trading system or facility;
- it comprises multiple third-party buying and selling trading interests;
- it allows trading interests to interact in the system; and
- those trading interests are in financial instruments.

We provide guidance on each of these elements below.

Characteristics of a system or facility

A multilateral system has the characteristics of a trading system or facility. Recital 7 UK MiFIR clarifies that a trading system or facility includes markets composed of a set of rules and a trading platform, as well as those only functioning on the basis of a set of rules. The rules relate to how multiple third-party trading interests in financial instruments are able to interact in the system (see below). The rules could be reflected in contracts and/or operating procedures. As such, a system is technology neutral for these purposes, as shown by the different types of trading systems referred to in

Annex I to MiFID RTS 1, and Annex I to MiFID RTS 2. For guidance on voice broking, please refer to Q24D below.

General purpose communications systems would not as such amount to trading systems or facilities. This means that the following services in and of themselves would not amount to operating a *multilateral system*:

- acting as an internet services provider;
- providing a telephone network;
- providing a website; or
- providing chatroom facilities.

Even if the provider of the general purpose communication system is not operating a *multilateral system*, a person using that system to operate a trading system or facility will operate a *multilateral system* if the other elements of the definition of a *multilateral system* are met.

If a system has features specifically designed to enable the interaction of trading interests in *financial instruments*, this would indicate that it is a trading system or facility. More generally, we will consider the role of the operator and its monitoring of the use of the system. Operating the platform requires more than simply providing technology or software. Our assessment of whether there is a trading system or facility will also take into consideration a wider range of factors, including for example:

- its target users and the actual use of a system by its users;
- any relevant restrictions on how the system may be used and their practical effect;
- whether the system is designed to enable trading of any kind amongst users; and
- the determinants of the remuneration of the operator and the extent to which these are linked to the interaction of trading interests in financial instruments in the system.

Accordingly, whilst general communications systems, for example, are used for the purposes of trading *financial instruments*, they will not amount to a *multilateral system* unless they were ever operated by a person for these purposes and then subject to these criteria.

It is possible for a firm to operate more than one piece of technology which, when taken together, have the characteristics of a trading system or facility.

There are multiple third-party buying and selling trading interests

There needs to be multiple third-party buying and selling trading interests for a system to be a *multilateral system*. Recital 7 UK MiFIR clarifies that the expression

‘buying and selling trading interests’ is to be understood in a broad sense and includes orders, quotes and indications of interest.

The inclusion of the words ‘third-party’ in this expression makes it clear that the trading interests in question are not the trading interests of the system operator.

The fact that when any two persons negotiate within the system they do so between themselves does not make the system bilateral rather than multilateral. Instead, what matters is whether the system, at the point of entry, enables one person to interact potentially with multiple others (other than the operator). This is the service a person receives as a user of the system.

Trading interests are able to interact in the system

Multiple third-party trading interests must also be able to interact in the system for it to be a *multilateral system*. A *multilateral system* involves the bringing together of third-party trading interests (see also recital 7 UK MiFIR).

Interaction takes the form of an exchange of information relevant to essential terms of a transaction in *financial instruments* (being price, quantity or subject matter).

Accordingly, in our view, a system which enables this information to be inputted and then responded to in the system would allow trading interests to interact in the system.

Interaction between trading interests can arise in a system because the system:

- matches trading interests within its system; or
- allows users to respond within the system to other users’ trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction.

Interaction between trading interests in the system does not require a contract to be entered into for the sale/purchase of *financial instruments* (i.e. execution of a transaction to take place) within the system if it is with a view to the parties agreeing the terms of a trade.

As clarified by recital 8 UK MiFIR, any system that merely receives, pools, aggregates and broadcasts trading interests should not be considered a *multilateral system*. This means that a bulletin board should not be considered a trading venue because there is no interaction between trading interests within its system. Similarly, a system which simply notifies the parties of general expressions of interest in relation to *financial instruments* does not amount to an interaction of trading interests in the system. For further guidance on bulletin boards, please refer to Q24H to Q24L below. In addition, neither the service of portfolio compression, which reduces non-market risks in derivative portfolios without changing the market risk, nor post-trade confirmation services, constitute a *multilateral system* by themselves.

Financial instruments

The interaction of multiple third-party buying and selling trading interests in the system must be in *financial instruments* for the system to be a *multilateral system*. A *financial instrument* is an instrument specified in Part 1 of Schedule 2 to the *Regulated Activities Order*. Please refer to PERG 13.4 for further guidance on *financial instruments*.

Trading venue perimeter – specific cases

Q24D. Does voice broking involve the operation of a multilateral system?

Voice broking may but need not comprise the operation of a *multilateral system*.

Merely arranging or executing client orders over the telephone does not constitute a *multilateral system*, although it may amount to other investment services such as reception and transmission or execution of orders on behalf of clients.

A trading system or facility could, however, take the form of a voice trading system (as referred to in Annex I *MiFID RTS 2*) or a hybrid system (as referred to in Annex I *MiFID RTS 1* and Annex I *MiFID RTS 2*). For example, a firm that operates a platform where trading interests of clients are broadcast to other users and then engages in voice broking to enable negotiation between these parties would operate a trading system or facility, unless Q24F applies. Voice broking may also be part of a *multilateral system* when operating in conjunction with other modes of execution such as electronic order books operated by that broker.

Q24E. Does a firm that undertakes portfolio management operate a multilateral system by operating an internal matching system to execute trading interests relating to the portfolio of one of its clients against trading interests relating to the portfolio of another of its clients?

No. A firm engaged in *portfolio management*, in whatever capacity, must exercise discretion in relation to the *financial instruments* it manages. We do not consider that such a firm operates a *multilateral system* when, in the exercise of this discretion, it executes trading interests relating to the portfolio of one of its *clients* (which may be a fund) against the trading interests relating to the portfolio of another of its *clients* in an internal matching system. We also do not consider that it is the purpose of COLL 6.9.9R and FUND 1.4.3R to prevent a *UCITS management company* or an *external AIFM* that is a *full-scope UK AIFM* from doing this in these circumstances. This is because in these circumstances the portfolio manager is the only user of the system and hence, there is no interaction of multiple third-party trading interests in the system.

Q24F. Does a firm using or operating a system to execute trades on behalf of clients operate a multilateral system?

No, if a firm uses or operates a system for the purpose only of executing these trades on a trading venue consistent with the intentions of the parties to the underlying transactions to trade on a trading venue, in accordance with the venue's rules. For example, when arranging a large-in-scale or negotiated trade in accordance with the rules of the venue, in our view these arrangements do not amount to the operation of a

multilateral system – in accordance with Q24C – in the case of UK MiFIR or otherwise. For guidance on execution of orders on behalf of clients, see *PERG 13 Q15*.

Q24G. Would a crowdfunding platform be regarded as a multilateral system?

In our view, a crowdfunding platform does not amount to a multilateral system when the business funding interests of an issuer of shares, debentures or alternative debentures, as expressed in an offer made by that issuer, on the one hand, are matched with the interests of investors on the other.

A bulletin board provided to assist investors is not itself a multilateral system where the trading interests would not be able to interact within the system. By contrast, a crowdfunding platform in which multiple third-party buying and selling trading interests of investors in financial instruments are able to interact within a system (for example, in a secondary market) would be a multilateral system.

Bulletin boards

Q24H. What is a bulletin board?

There is no definition of a bulletin board. Recital 8 UK MiFIR, however, refers to ‘facilities where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests’ or ‘other entities aggregating or pooling potential buying or selling interests’ and implies that such bulletin boards or entities should not be considered a multilateral system.

Q24I. Is a bulletin board a multilateral system?

No. The reason is that, whilst trading interests (including information relevant to essential terms of a transaction in financial instruments (being price, quantity or subject matter)) can be posted on a bulletin board, trading interests are not able to interact in such a system. In light of Q24C (see the section on ‘Trading interests are able to interact with each other’) above, we would not regard a firm as operating only a bulletin board if:

- it matches trading interests within the system;
- it enables users to respond within the system to other users’ trading interests, including by communicating in relation to, negotiating or accepting essential terms of a transaction; or
- users can commit to or enter into contracts for the sale/purchase of the financial instruments (i.e. execute transactions) within the system.

By contrast, as a system simply notifying users of general expressions of interest in financial instruments does not give rise to an interaction of trading interests in the system, a bulletin board operator can notify and introduce potential counterparties to each other without operating a multilateral system.

Please see Q24J to Q24L below for further guidance on bulletin boards.

Q24J. Can the operator of a bulletin board as described in Q24H assist users with exchanging contact details?

The operator of a bulletin board could (subject to data protection legislation) enable publication of contact details of users advertising buying and selling interests on its bulletin board, so that users can use these to contact each other bilaterally outside the system.

However, some users may have reservations about the publication of their contact details. In these circumstances, one possibility might be for them to agree to share contact details on a case-by-case basis. Any such request should be limited to requesting to see another user's contact details and not extend to communicating in relation to, negotiating or accepting essential terms of a transaction (being price, quantity or subject matter).

Q24K. Can an operator of a bulletin board as described in Q24H provide template documentation to assist its users with negotiating and executing transactions?

Yes, an operator of a bulletin board can make available template documentation for download by users of the bulletin board. It can also require users to use this template documentation. This will not mean that the bulletin board is a *multilateral system*, provided that users use the template documentation to negotiate and execute transactions bilaterally outside the system. The operator should not, however, complete the template documentation in relation to the essential terms of these transactions (being price, quantity or subject matter).

Q24L. Can an operator of a bulletin board as described in Q24H provide post-trade services?

Yes, it is possible for the operator of a bulletin board to provide post-trade services, including in relation to settlement. This might include, for example, assisting with the transfer of funds or registering the transfer of *financial instruments*. The operator could be informed by users of the bulletin board that they have entered into a contract for the sale/purchase of a *financial instrument*, i.e. executed a transaction, bilaterally outside the system and then provide post-trade services in relation to that transaction to them. Providing simply these post-trade services does not require the operator to have permission for *operating a multilateral trading facility* or *operating an organised trading facility*. The operator should, however, consider whether the post-trade services provided may include any *payment services* (see *PERG 15.3*) or *electronic money issuance* (see *PERG 3A*).

