

C L I F F O R D
C H A N C E

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW
PROGRESS REPORT
SEPTEMBER 2022

CONTENTS

Implementation of the UK Wholesale Markets Review: Progress Report	3
Implementation of the UK Wholesale Markets Review	
1. Regulators to use existing rule-making powers under FSMA	4
2. Delivered by the Bill	5
3. Regulators to use new rule-making powers under the Bill	6
4. UK regulators and HMT to use powers to revoke and replace retained EU law under the Bill	9
5. Delivery on hold	10
Sources	11
Glossary	12
Contacts	13

IMPLEMENTATION OF THE UK WHOLESALe MARKETS REVIEW: PROGRESS REPORT

This briefing sets out how the UK is delivering the Wholesale Markets Review, including via the Financial Services and Markets Bill, and how these reforms are diverging from EU wholesale markets regulation

What was the Wholesale Markets Review?

- Most of the rules governing the secondary trading of financial instruments in the UK are set out in retained EU law.
- The WMR was established to improve the UK's regulation of secondary markets following Brexit by making these rules better calibrated for UK markets.
- The WMR identified various areas for reform, including some high priority proposals requiring immediate action through legislative amendments or regulator rules.
- Less urgent reforms will be implemented as part of the general process of revoking and replacing retained EU law.

What role will the new Financial Services and Markets Bill play?

- The Bill would play a key role in delivering the outcomes of the WMR:
 - The Bill would make some immediate changes to retained EU law to deliver the WMR proposals identified by the government as high priority (where these require legislative amendments). These changes would apply for a transitional period until the relevant piece of retained EU law is revoked.
 - The Bill would set out the framework for the revocation and replacement of retained EU law. The WMR proposals identified by the government as less urgent would be delivered, at a slower pace, through this process.
- Some of the WMR proposals can be delivered without the Bill, using the regulators' existing rule-making powers.

Wholesale Markets Review

What was the Future Regulatory Framework Review?

- The process of onshoring EU legislation created a complex patchwork of retained EU law, much of which cannot be changed without the authority of a new Act of Parliament.
- This constrains how UK regulators can pursue their statutory objectives through their rules and restricts the ability of the government and regulators to adapt the UK regulatory regime quickly.
- The FRF Review identified various proposals to simplify the UK regulatory regime and make it more flexible, including through revoking retained EU law and replacing it with UK legislation and regulator rules.
- Under the new framework, direct regulatory requirements would generally be imposed by regulator rules (making them easier to change, suspend or waive).

What are the EU proposals?

- The EU is also making changes to its rules for the secondary trading of financial instruments.
- The Commission's MiFID3/MiFIR2 legislative proposal is working its way through the EU legislative process (and is very likely to be amended by the Parliament and the Council).
- This follows the Quick Fix changes to MiFID2 that were made to support the EU's economic recovery from the Covid-19 pandemic.
- ESMA has also proposed some targeted amendments to certain technical standards under MiFID2/MiFIR.

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes to be made by regulators using existing rule-making powers under FSMA

The following changes proposed in the WMR can be made by UK regulators under existing rule-making powers, meaning that no further legislation is required and they can be made as soon as the relevant consultation and rule-making process is complete

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Trading venues – perimeter	Clarify the regulatory perimeter for trading venues.	The FCA is expected to consult in September 2022 on regulatory guidance.	ESMA consulted on an opinion on the trading venue perimeter in January 2022. A final report is expected by the end of Q3 2022.
Trading venues – outages	Develop a playbook for market operators and participants to follow in a market outage, and alternative mechanisms to a closing auction during market outages.	The FCA will discuss with market participants how to clarify what should happen when there is a market outage and will consult on proposals later in 2022.	ESMA has indicated that it will provide guidance to trading venues on what is expected from them in terms of communication in case of market outages.
Systematic internalisers – reporting	Amend the reporting regime for SIs.	The FCA is consulting on the introduction of a 'designated reporter regime' (for both equities and non-equities).	No current proposals.
Equity markets – reference prices	Permit reference prices to be derived from non-UK trading venues.	The FCA is consulting on enabling reference prices to be derived from non-UK trading venues, subject to the prices being reliable, transparent and consistent with best execution.	No current proposals.
Equity markets – tick sizes	Allow trading venues to follow the tick size applicable to the primary market of a share, even when that market is overseas.	The FCA is consulting on allowing trading venues to set the minimum tick size at the level of the primary market located overseas when that tick size is smaller than the one determined based on calculations using data from UK venues.	No current proposals.

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes made by provisions of the Bill

The following changes proposed in the WMR need to be implemented through primary legislation. If enacted in its current form, the Bill would deliver these changes as soon as HMT makes commencement regulations bringing the relevant provisions of the Bill into force

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Systematic internalisers – midpoint crossing	Allow midpoint crossing for all orders, not just orders large in scale.	The Bill would allow SIs to execute client orders at the midpoint within the best bid and offer for all trades.	MiFIR2 would only allow SIs to match at midpoint for LIS orders and, subject to compliance with tick sizes, between twice the standard market size and LIS.
Equity markets – double volume cap	Remove the DVC.	The Bill would remove the DVC.	MiFIR2 would replace the DVC with a single volume cap set at 7% of trades executed under the reference price waiver or the negotiated trade waiver.
Equity markets – share trading obligation	Remove the STO.	The Bill would remove the STO.	MiFIR2 would apply the STO to any shares with an EEA ISIN and ESMA would be required to establish an official list of the shares covered by the STO. MiFIR2 would also remove the exception for non-systematic trades and create a new exception for trades executed on a non-EU venue in the local currency.
Fixed income and derivatives – scope of derivatives clearing and trading obligations	Realign the scope of the derivatives trading obligation and clearing obligation.	The Bill would realign the counterparty scope of the DTO with the CO.	MiFIR2 would realign the counterparty scope of the DTO with the CO.

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes to be made by regulators using new rule-making powers under the Bill

The following changes proposed in the WMR cannot be made by UK regulators using their existing rule-making powers. The Bill would give them new powers to make these changes, which can be made once the relevant provisions of the Bill are brought into force and the relevant consultation and rule-making process is complete

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Systematic internalisers – definition	Amend the definition of an SI.	The Bill would amend the SI definition by removing the need for firms to undertake complex calculations to determine if they are operating on an organised, frequent, systematic and substantial basis. Instead, the FCA would have powers to determine the meaning of these terms.	No current proposals.
Equity markets – pre-trade transparency	Delegate the pre-trade transparency waivers regime to the FCA.	The Bill would give the FCA powers to waive pre-trade transparency requirements for equities.	<p>MiFIR2 would make some targeted changes to the pre-trade transparency regime for equities, including:</p> <ul style="list-style-type: none"> Restricting trading venues from executing trades under the reference price waiver where the size of the trade is less than twice SMS but allowing execution under the waiver at the consolidated tape midpoint. Allowing the reference price to be derived from the consolidated tape. <p>In addition, ESMA has proposed some targeted changes to RTS 1. A second, broader, review will be carried out once MiFIR2 has been agreed.</p>
Fixed income and derivatives – post-trade risk reduction services	Exempt post-trade risk reduction services from the DTO and the CO.	The Bill would give the FCA and the BoE powers to disapply certain obligations (including the DTO and the CO) in relation to transactions carried out as part of a PTRR service or persons meeting certain criteria who participate in such services. These powers would allow the FCA to expand the scope of the existing DTO exemption for portfolio compression and introduce a new CO exemption.	No current proposals (although ESMA has recommended a limited and qualified exemption from the CO).

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes to be made by regulators using new rule-making powers under the Bill (continued)

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Fixed income and derivatives – power to suspend the derivatives trading obligation	Give the FCA a power to suspend or amend the scope of the DTO in certain circumstances.	The Bill would give the FCA powers to suspend or modify the DTO if the FCA considers it necessary to prevent or mitigate disruption to financial markets and advances one or more of the FCA's operational objectives. The FCA is expected to use this power to maintain the effect of the FCA's current modification of the DTO under its temporary transitional power.	<p>MiFIR2 would give the Commission a power to suspend the DTO when the CO is suspended under EMIR.</p> <p>MiFIR2 would also give the Commission a standalone power, at the request of a competent authority, to suspend the DTO in relation to investment firms that regularly act as market makers in derivatives subject to the DTO and that regularly receive requests for quotes for those derivatives from non-EU counterparties which do not have an active membership on an EU trading venue that trades those derivatives.</p>
Fixed income and derivatives – transparency	Delegate the pre- and post-trade transparency regime for fixed income and derivatives markets to the FCA.	The Bill would remove the current regime and give the FCA powers to impose pre- and post-trade transparency requirements for fixed income and derivatives markets and to provide for waivers and deferrals.	<p>MiFIR2 would make some targeted changes to the transparency requirements for non-equities, including:</p> <ul style="list-style-type: none"> • Removing the ability of venues to obtain a waiver for actionable indications of interest above the SSTI. The removal of this waiver would also extend the pre-trade transparency obligations of SIs when they deal in sizes above SSTI. • Shortening and harmonising deferrals (deferral of price of transactions to end of the trading day and volume of transactions for a maximum of two weeks). Competent authorities would continue to have wider discretion on deferrals for sovereign debt. • Removing the SSTI deferral. <p>In addition, ESMA has proposed some targeted changes to RTS 2. A second, broader, review will be carried out once MiFIR2 has been agreed.</p>

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes to be made by regulators using new rule-making powers under the Bill (continued)

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Commodity derivatives – position limits	Revoke the requirement that position limits be applied to all exchange-traded contracts, transfer the setting of position limits from the FCA to trading venues and remove economically equivalent OTC contracts from the scope of the regime.	<p>The Bill would revoke the requirement for the FCA to apply position limits to all commodity derivative contracts that are traded on a trading venue and EEOTC contracts and would give the FCA powers to require trading venues to establish and apply position limits in respect of specified commodity derivatives that are traded on a trading venue and position management controls in relation to the trading of commodity derivatives. The FCA would not have powers to require position limits to be set for EEOTC contracts.</p> <p>The FCA would also have powers to require trading venues to set position limits on contracts which pose a clear threat to market integrity and powers to intervene directly.</p> <p>While the scope of the position limits regime is being considered, the FCA has stated that it will not take supervisory or enforcement action in relation to commodity derivative positions that exceed position limits on cash-settled commodity derivative contracts, unless the underlying is an agricultural commodity.</p>	<p>The Quick Fix limited the position limits regime to agricultural commodity derivatives and critical or significant commodity derivatives that are traded on EU trading venues and to their EEOTC contracts.</p> <p>National competent authorities remain responsible for setting position limits for these types of commodity derivatives.</p>
Market data – consolidated tape	Empower the FCA to make requirements for consolidated tape providers with the aim of facilitating the emergence of one or more consolidated tapes.	The Bill would give the FCA powers in relation to data reporting service providers, which include consolidated tape providers. These powers would ensure that the FCA has the necessary tools to facilitate the development of a consolidated tape.	MiFIR2 would make extensive changes to MiFIR to facilitate the development of a consolidated tape.

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Changes to be made by regulators and HMT using powers to revoke and replace retained EU law under the Bill

The following changes proposed in the WMR will be made by either the UK regulators or HMT after the relevant provisions of the Bill are brought into force. Changes to regulator rulebooks will be made once the relevant consultation and rule-making process is complete and changes by HMT will be made through secondary legislation

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Trading venues – MTFs	Remove restrictions on matched principal trading for investment firms operating an MTF.	The FCA will deliver this change in its rules through the process of revoking retained EU law and replacing direct regulatory requirements on firms with FCA rules.	No current proposals.
Trading venues – OTFs	Enable OTFs to execute transactions in equities when dealing in large packages.	As above.	No current proposals.
Systematic internalisers – quoting	Allow a more proportionate approach to setting the minimum quote size in respect to SMS.	As above.	MiFIR2 will extend the SI obligations for equities to trades of up to twice SMS (and the minimum quote size would also be twice SMS).
Equity markets – market making	Remove the requirement for algorithmic trading firms to enter into market making agreements with trading venues.	As above.	ESMA has indicated that it will propose changes to the market making requirements in RTS 8.
Commodity derivatives – ancillary activities test	Amend the ancillary activities test to remove the quantitative elements.	HMT will implement this change through secondary legislation.	The Quick Fix amended the ancillary activities exemption but did not remove all quantitative tests.

IMPLEMENTATION OF THE UK WHOLESALE MARKETS REVIEW



Delivery on hold

Topic area	WMR proposal	Status of UK implementation	EU changes/proposals
Trading venues – OTFs	Enable an investment firm to operate an SI and OTF within the same legal entity.	UK authorities to undertake further analysis.	No current proposals.
Trading venues – new venues	Develop a new venue/segment for micro, small and medium sized enterprises.	UK authorities to undertake further analysis.	Separate legislative proposal on simplification of listing rules expected H2 2022.
Equity markets – new shares	Allow trading venues to establish tick sizes for new shares until sufficiently robust data is available.	UK authorities to undertake further analysis.	No current proposals.
Equity markets – delegate tick sizes	Delegate the tick size regime to trading venues.	UK authorities to undertake further analysis.	No current proposals.
Commodity derivatives – definition	Amend the definition of a commodity derivative.	UK authorities to undertake further analysis.	No current proposals.
Reporting – investor protection	Amendments to investor protection reports.	UK authorities to undertake further analysis. The requirements to prepare RTS 27 and RTS 28 execution quality reports were removed from 1 December 2021.	MiFID3 would remove the requirement to publish RTS 27 execution quality reports (the Quick Fix suspended this requirement until 28 February 2023). However, MiFID3 would not remove the requirement to publish annual RTS 28 execution quality reports.
Reporting – product identifiers	Amendments to product identifiers.	No current proposals.	No current proposals.
Commodity derivatives – position reporting	Amend the position reporting regime.	No current proposals.	The Quick Fix excluded securitised derivatives from the scope of position reporting requirements.

SOURCES

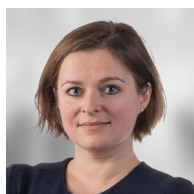
UK Wholesale Markets Review	<ul style="list-style-type: none">• Wholesale Markets Review: Consultation (1 July 2021)• Wholesale Markets Review: Consultation Response (1 March 2022)• FCA CP22/12: Improving Equity Secondary Markets (5 July 2022)
UK Future Regulatory Framework	<ul style="list-style-type: none">• FRF Review: Call for Evidence: Regulatory Coordination (19 July 2019)• FRF Review: Phase II Consultation (19 October 2020)• FRF Review: Proposals for Reform: Consultation (9 November 2021)• FRF Review: Central Counterparties and Central Securities Depositories: Consultation (17 January 2022)• FRF Review: Proposals for Reform: Response to the Consultation (20 July 2022)• FRF Review: Central Counterparties and Central Securities Depositories: Response to the Consultation (20 July 2022)
The new UK Financial Services and Markets Bill	<ul style="list-style-type: none">• Financial Services and Markets Bill (20 July 2022)• Financial Services and Markets Bill: Explanatory Notes (20 July 2022)
EU changes/proposals	<ul style="list-style-type: none">• ESMA Final Report: Algorithmic trading (29 September 2021)• Commission's legislative proposal for MiFID3/MiFIR2 (25 November 2021)• ESMA Consultation Paper: Opinion on trading venue perimeter (28 January 2022)• MiFID2 Quick Fix (applicable from 28 February 2022)• ESMA Final Reports: Reviews of RTS 1 (equity transparency) and RTS 2 (non-equity transparency) (28 March 2022)
Clifford Chance briefings	<ul style="list-style-type: none">• UK Financial Services and Markets Bill: Enacting the future regulatory framework• EU MiFID Review: The MiFIR2/MiFID3 legislative proposal• MiFID Quick Fix and what's next for the MiFID2 review• UK Financial Services and Markets Bill Topic Guide

GLOSSARY

- Bill: Financial Services and Markets Bill
- BoE: Bank of England
- Commission: European Commission
- CO: Clearing obligation
- Council: Council of the EU
- DTO: Derivatives trading obligation
- DVC: Double volume cap
- EEOTC contract: Economically equivalent OTC contract
- EMIR: Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories
- ESMA: European Securities and Markets Authority
- FCA: Financial Conduct Authority
- FRF Review: Future Regulatory Framework Review
- FSMA: Financial Services and Markets Act 2000
- HMT: HM Treasury
- ISIN: International Securities Identification Number
- LIS: Large in scale
- MiFID2: Directive 2014/65/EU on markets in financial instruments
- MiFID3: Commission's legislative proposal to amend MiFID2
- MiFIR: Regulation (EU) 600/2014 on markets in financial instruments
- MiFIR2: Commission's legislative proposal to amend MiFIR
- MTF: Multilateral trading facility
- OTC: Over-the-counter
- OTF: Organised trading facility
- Parliament: European Parliament
- PTRR service: Post-trade risk reduction service
- Quick Fix: Directive 2021/338 amending MiFID2 to support the EU's economic recovery from the covid-19 pandemic
- Retained EU law: See section 6(7) of the European Union (Withdrawal) Act 2018
- RTS 1: Commission Delegated Regulation (EU) 2017/587
- RTS 2: Commission Delegated Regulation (EU) No 2017/583
- RTS 8: Commission Delegated Regulation (EU) 2017/578
- RTS 27: Commission Delegated Regulation (EU) 2017/575
- RTS 28: Commission Delegated Regulation (EU) 2017/576
- SI: Systematic internaliser
- SMS: Standard market size
- STO: Share trading obligation
- SSTI: Size specific to the instrument
- WMR: Wholesale Markets Review

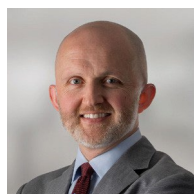
This document is not intended to be comprehensive or to provide legal advice. For more information, speak to your usual Clifford Chance contact or one of the lawyers named below.

CONTACTS



CAROLINE DAWSON
PARTNER
LONDON

T +44 20 7006 4355
E caroline.dawson
@cliffordchance.com



SIMON CROWN
PARTNER
LONDON

T +44 20 7006 2944
E simon.crown
@cliffordchance.com



PAUL ELLISON
PARTNER
LONDON

T +44 20 7006 3207
E paul.ellison
@cliffordchance.com



SIMON GLEESON
PARTNER
LONDON

T +44 20 7006 4979
E simon.gleeson
@cliffordchance.com



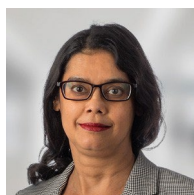
CAROLINE MEINERTZ
PARTNER
LONDON

T +44 20 7006 4253
E caroline.meinertz
@cliffordchance.com



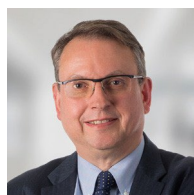
ASHLEY PREBBLE
PARTNER
LONDON

T +44 20 7006 3058
E ashley.prebble
@cliffordchance.com



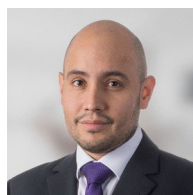
MONICA SAH
PARTNER
LONDON

T +44 20 7006 1041
E monica.sah
@cliffordchance.com



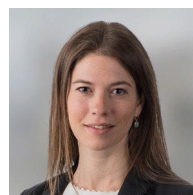
CHRISTOPHER BATES
SPECIAL COUNSEL
LONDON

T +44 20 7006 1041
E chris.bates
@cliffordchance.com



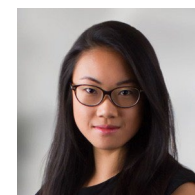
DIEGO BALLON OSSIO
SENIOR ASSOCIATE
LONDON

T +44 20 7006 3425
E diego.ballonossio
@cliffordchance.com



LAURA DOUGLAS
SENIOR ASSOCIATE
LONDON

T +44 20 7006 1113
E laura.douglas
@cliffordchance.com



NANCY LI
SENIOR ASSOCIATE
LONDON

T +44 20 7006 6047
E nancy.li
@cliffordchance.com



STEPHANIE PEACOCK
SENIOR ASSOCIATE
LONDON

T +44 20 7006 4387
E stephanie.peacock
@cliffordchance.com

C L I F F O R D
C H A N C E

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2022

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

WWW.CLIFFORDCHANCE.COM