



Transparency regime under UK MiFIR: FCA provides further detail (PS24/14)

28 November 2024

The FCA has published a policy statement ([PS24/14](#)) in relation to transparency requirements for bonds admitted to trading on a trading venue and certain derivatives subject to the clearing obligation. This follows its November 2023 [consultation paper](#) (see our briefing [here](#)). PS24/14 contains a number of changes that will need to be considered carefully.

Key takeaways

The FCA is proceeding with the majority of the proposals set out in the consultation, which will consist of a two category division for the scope of the transparency regime (Category 1 and Category 2). The FCA has, however, made some changes:

- there will be 3 deferral frameworks for bonds instead of 2;
- the length of and threshold size for an order to qualify for deferrals has been amended;
- the FCA has made adjustments to the grouping criteria for bonds;
- longer deferrals for swaps with non-benchmark tenors and lower threshold sizes for SONIA swaps;
- the removal of systems relying on negotiation from the scope of pre-trade transparency (instead of a requirement for a waiver for pre-trade transparency in respect of these systems); and
- the removal of pre-trade transparency for any system other than a continuous auction order book, quote-driven trading systems and periodic auction trading systems.

What do firms need to do?

The majority of the rules are expected to come into force in December 2025. Firms will need to prepare for changes to systems to ensure adequate compliance with the new framework in time for the implementation date.

- For trading venues, this means amendments to pre-trade transparency requirements, waivers and post-trade workflows.
- APAs will need to prepare changes to their systems to accommodate amendments to reporting (e.g. changed post trade flags and indicators).
- Reduced scope of post-trade obligation in relation to certain derivatives will need to be noted in systems and relationships with APAs.
- SIs/potential SIs to note further guidance from the FCA on the qualitative determination of SI under FSMA 2023.

- For trading venues with EU operations, divergence between EU and UK workflows will need to be factored in.

Background

CP 23/32 was published in November 2023 and aims to make changes to the regulatory framework concerning the bonds and derivative markets to better reflect diversity in these markets, as well as promote meaningful transparency. It forms part of the Wholesale Markets Review, the regime that the FCA is carrying out in partnership with HMT. It followed FSMA 2023 (see our briefing [here](#)), which implements many aspects of the WMR (see our briefing [here](#)).

CP23/32 focused on: the scope of the instruments for which orders and transactions are subject to transparency; the trading protocols for pre-trade transparency; and the thresholds above which the publication of the details of large in scale transactions can be deferred and the length of the deferrals; the types of transactions that are exempted from post-trade transparency; the content of post-trade reports; and the tests for a systematic internaliser.

The changes to the UK framework are in parallel to that occurring in the EU via the EU MiFIR Review (see our briefing [here](#)). This has introduced a number of changes, including the removal of pre-trade transparency requirements for RFQ and voice systems, as well as for SIs dealing in bonds and derivatives; the removal of the SSTI waiver; and changes to deferral regimes concerning bonds and OTC derivatives. The scope of transparency for derivatives is also being updated. ESMA has published consultations setting out further details in this regard (see our briefing [here](#)).

The FCA is also introducing a bond consolidated tape, which forms part of a wider regime in MAR 9 and MAR 9A in relation to trade data requirements.

Scope

As proposed, there will be two category division for instruments with varying levels of transparency obligations.

- **Category 1 instruments:** Instruments in this category (bonds that are traded on a trading venue certain and derivatives (e.g. those subject to clearing obligation and tenors)) are those in respect of which mandatory transparency applies to trading venues (pre and post trade) and, in relation to post-trade transparency, investment firms dealing OTC. Pre-trade transparency waivers are available for LIS orders and Order Management Systems for trading venues (minimum size of LIS orders is set in FCA Handbook). For post-trade reporting, real-time reporting applies unless the trade is above the relevant LIS threshold (size of LIS thresholds and the maximum length of the deferral in FCA Handbook).
- **Category 2 instruments:** For instruments in Category 2 (instruments not falling within scope of Category 1 e.g. emission allowances, structured finance products, other debt securities such as exchange traded commodities and exchange traded notes and derivatives that are not in Category 1), trading venues must provide adequate pre and post trade transparency in relation to all transactions executed under their systems. They can set the sizes at which this transparency is waived themselves. Investment firms will not need to post trade report for Category 2 instruments.

In the consultation, the FCA proposed that Category 1 derivatives would include: fixed-to-float EURIBOR (28 days to 50 years); OIS SONIA (7 days to 50 years); OIS SOFR (7 days to 50 years); OIS €STR (7 days to 3 years); OIS FedFunds (7 days to 3 months); and iTraxx Europe Main and iTraxx Europe Crossover. The FCA proposed to exclude FRAs, basis swaps and OIS and Fixed-to-Float swaps with reference index other than EURIBOR, SONIA, SOFR, €STR, and FedFunds.

Following feedback, the FCA has made some adjustments:

- In response to feedback that the FCA should differentiate between different EURIBOR reference indices, the FCA will only include EURIBOR IRS based on 3 months and 6 months in Category 1 (the FCA agrees with feedback that the majority of liquidity is here).
- The FCA will maintain the group for SONIA OIS but has adjusted the large in scale threshold.
- The FCA will be maintaining forward starting swaps in the same tenor group as spot starting swaps and will require trading venues and investment firms to provide the information about the effective and termination dates (to allow users of post-trade information to separate the 2 types of swaps).
- The FCA will include iTraxx Europe Main and iTraxx Europe Crossover with a tenor of 5 years as Category 1 instruments (UK investment firms transacting on venues outside the UK do not need to publish details of those transactions through a UK APA).

Pre-trade transparency and waivers

The FCA proposed: removing the existing detailed pre-trade requirements for voice and RFQ systems; and deleting the waivers for RFQ and voice systems operating above certain transactions sizes (the size specific to the instrument or SSTI waiver) and the waiver for instruments for which there is not a liquid market. It also proposed a new waiver for negotiated orders which includes: orders for the execution of packages and for transactions subject to conditions other than the current market valuation; and orders that are negotiated between counterparties, including RFQs (subject to some conditions).

The FCA proposed maintaining the waivers for LIS orders, which would be subject to a threshold set for Category 1 instruments and be the same as the one applicable to post-trade deferrals. The waiver for LIS orders would continue to allow the reporting of off-book on-exchange transactions and the execution of large orders on order books.

Following feedback, the FCA has made amendments including:

- removing pre-trade transparency for any system other than a continuous auction order book, quote-driven trading systems and periodic auction trading systems;
- as a result of the removal of RFQ systems from scope of pre-trade transparency, there will be no SI-specific pre-trade transparency requirements for bonds and derivatives once the new regime is in place; and
- removal of the proposed negotiated trade waiver (FCA considers it is now redundant given removal of the default presumption of pre-trade transparency from systems based on negotiation).

In [CP24/14](#), the FCA discussed disapplying the transparency requirements to transactions arising from risk reduction services (see our briefing here). These will be set out in a policy statement for CP24/14.

Post-trade transparency regime

In respect of Category 1 instruments, the FCA proposed a deferral framework applicable to bonds and derivatives with differing deferral lengths for the two markets, but with the threshold sizes required to qualify for these deferrals set for sub-groups of instrument.

Model 1: in this model, there would be two LIS thresholds. Therefore, a transaction:

- a) below both LIS thresholds is reported in real time i.e. price and size information (small trades);
- b) above the first LIS threshold but below the second LIS threshold is reported within 15 minutes for price information but not size information (medium size trades). The size information is reported, **in the case of bonds** by the end of the third day (T+3) and, **in the case of derivatives** by the end of the day;
- c) that is above both LIS thresholds can rely upon an extended deferral for both price and size (large trades). **In the case of bonds**, this would be a four week deferral for both price and size information, **in the case of derivatives** until the end of the third day after execution.

Model 2: in this model, there is a single LIS threshold but an additional "cap". Therefore, a transaction:

- a) below the LIS threshold is reported in real time;
- b) above the LIS but below the cap, is reported with the price and size after deferral period;
- c) above the cap will only report that the execution size is above the cap and not provide specific size/volume information for **derivatives or bonds**.

Bonds

For bonds, the FCA proposed introducing new criteria to assess the liquidity of bonds: type of issuer (sovereign or corporate); country of the issuer; issuance size; time to maturity; currency of issuance; and credit rating. The FCA set out various illustrations on proposed size thresholds and deferrals.

Changes FCA has made following feedback include:

- Moving inflation linked sovereign bonds and "Other public bonds" into the "All Other Bonds" group instead of being included with sovereign bonds.
- Instead of publishing the price after 15 minutes and the size after 3 days, both will be published at the same time (the end of the trading day following the day of execution).
- Reducing the threshold from 2 million to 1 million for real time publication in respect of "All other instruments" group for Sovereign and Other Public Bonds. For the second threshold, the FCA will increase it to £5 million for the more liquid group with above £2 billion in issuance, and reduce it to £2.5 million for the group of instruments with issuance below £2 billion.
- There will be three thresholds set at levels resulting in four size groups.
- A deferral of 2 weeks for both price and size in respect of the third size group.
- The fourth size group will have a three-month deferral length (both price and size can be deferred for 3 months).
- The FCA changed its rules to extend the 15-minute maximum delay to portfolio trades. The maximum delay remains unchanged at 5 minutes in respect of trades not qualifying as either a package or a portfolio trade. The FCA states that booking and reporting systems of trading venues

and investment firms must make sure that executed transactions which do not qualify for a deferral are reported as soon as possible (and no later than 5 minutes from execution).

FCA's revised table

Issuer	Issue Size	Maturity	Real Time	Deferral		
				1 day	2 weeks	3 months
Sovereigns from UK, France, Germany, Italy, USA, Spain	≥£2bn	<5yr	≤£15m	£15m <•≤£50m	£50m <•≤£500m	>£500m
		5-15yr	≤£10m	£10m <•≤£25m	£25m <•≤£250m	>£250m
		>15yr	≤£5m	£5m <•≤£10m	£10m <•≤£100m	>£100m
All other instruments	≥£2bn	All	≤£1m	£1m <•≤£5m	£5m <•≤£25m	>£25m
	<£2bn		≤£1m	£1m <•≤£2.5m	£2.5m <•≤£10m	>£10m

Currency	Issue Size	IG/HY	Real Time	Deferral		
				1 day	2 weeks	3 months
GBP, EUR & USD	≥£500m	IG	≤£1m	£1m<•≤£5m	£5m <•≤ £25m	>£25m
		HY	≤£1m	£1m<•≤£2.5m	£2.5m<•≤£10m	>£10m
All other instruments			≤£0.5m	£0.5m<•≤£2.5m	£2.5m<•≤£10m	>£10m

In the EU, ESMA has been consulting in respect of transparency (see our briefing [here](#))

OTC derivatives

The FCA outlined three factors when setting LIS thresholds and deferral lengths for OTC derivatives: the grouping of tenors; the levels of the thresholds; and the types and lengths of deferrals.

The FCA proposed: setting and applying the same LIS threshold to any swaps within the maturity groups it used for determining the liquidity of each tenor; applying the same LIS thresholds and deferrals to benchmark or broken-dated tenors (in line with RTS 2); and setting a maximum of 9 groups, with the number of groups for each product depending on the range of tenors set out in the clearing obligation.

The FCA is making some adjustments following feedback:

- Grouping of tenors: the FCA is removing any swap in the 30Y to 50Y group for EURIBOR and SOFR from the scope of Category 1.
- The FCA is to proceed with Model 2 but with some adjustments, namely changing the deferral model by requiring all trades concluded during a quarter to disclose the full size of the transaction by the end of the following quarter.
- The FCA is to allow transactions in broken-dated swaps (but not swaps with a tenor shorter than 12 months) that are above the large in scale threshold to have a longer deferral until T+1 (compared to

end of day for any benchmark trade).

- The FCA has kept the same lengths of deferrals, with transactions reported with a cap for the largest trades. It has added a requirement for all trades concluded in a quarter that benefitted from a cap "to be reported with full volume disclosure by the end of the following quarter".
- For CDS, the FCA is proceeding with Model 2 (Tables 22 and 23 in CP23/32) but is amending Model 2 to require that all trades executed in a quarter are reported in full (i.e. with full disclosure of the traded volume for those that benefitted from a cap) by the end of the following quarter.

Exemptions from post-trade reporting

The FCA is proceeding with the following proposals:

- introducing the proposed exemption in relation to inter-affiliate trades and maintaining the definition as consulted;
- amending, as proposed, the definition of give-ups and give-ins that will be exempt from post-trade reporting; and
- maintaining the exemption in article 12 in respect of inter-funds transfers.

Content of post-trade information: fields and flags

The FCA will not require firms to report both the UPI and ISIN because it is moving straight to requiring the reporting of UPI alone where one exists (that is, for OTC derivatives) and an ISIN otherwise.

The FCA will proceed with the following changes:

- changes to the "price" and related reporting field;
- proposed introduction of a "price conditions" field;
- working with industry to develop guidance on the reporting of prices under post-trade transparency;
- proposed amendments of Table 4 of Annex II of RTS 2;
- introduction of a portfolio trade transactions flag "PORT";
- deleting a number of flags: the agency cross "ACTX"; non-price forming transaction flag "NPFT"; illiquid instrument transaction "ILQD"; and post-trade SSTI transaction "SIZE" flags; and
- deleting all of the supplementary deferral flags for post-trade transparency, with the exception of the volume omission "VOLO" and full details "FULV" flags.

Annex IV of RTS 2, under which trading venues are required to provide information is to be entirely deleted, owing to changes the FCA is making to the transparency regime and the discontinuing of FITRS.

SI

The FCA is largely proceeding with its proposals to introduce PERG guidance on the definition of an SI set out in FSMA 2023. The guidance contained helpful notes, such as confirmation that "degree of automation" in the execution of orders does not necessarily lead to SI status.

FCA also sets out following in relation to the SI regime:

- The FCA agrees with feedback that the definition of SI is not limited to electronic systems and that other arrangements can be used. The FCA's use of the term automated technical systems is to be

taken to mean arrangements that are sufficiently stable to support activity that is systematic.

- A firm withdrawing from the SI register does not mean authorisation as a trading venue need to be sought - withdrawal should be based on an assessment of whether the bilateral OTC principal trading of the firm satisfies the new SI definition. The key elements of the distinction between bilateral and multilateral trading remain unchanged.

The transitional regime in Article 16ZA of the MiFID Org Regulation concerning SI calculations will expire at the end of 2024 and firms are not expected to carry out calculations to determine SI status between that period and the coming into force of the regime. Firms can continue to opt into the SI regime. The requirements relating to the data publication obligations of trading venues and SIs will also be moved into the FCA Handbook

Discussion paper on the SI regime

This is looking at the future of the SI regime, in particular for bonds and derivatives in light of recent changes under FSMA 2023 and FCA Policy Statement PS23/4. These include changes to the trade reporting rules which have resulted in SI status not playing a role in determining who reports OTC trades in respect of instruments that are traded on a trading venue. In the EU, there is no SI regime for bonds and derivatives via changes introduced by the MiFIR review.

Areas under consideration

- The effectiveness of the current transparency regime for SIs and whether any changes need to be made to the threshold under which the pre-trade transparency regime applies to SIs and the minimum quote size for SIs. This is in light of feedback from respondents (respondents wanted minimum quote size to be set at SMS to make advertised quotes closer to the level of trades being carried out on SIs), as well as changes occurring in the EU. The threshold at which the regime applies is to be set at least double SMS and the threshold at which the quoting obligation applies is to be set at least at SMS (see our briefing [here](#) for ESMA's proposals in this regard).
- Consequences of the restrictions in MAR 5.3.1A (3) no longer applying. These rules relating to OTFs that reference SIs and would be redundant if firms no longer need to identify themselves as SIs in bonds and derivatives.
- Whether the SI flag on post-trade transparency reports "SINT" provide useful information.
- The case for adding any new trade flags to post-trade reports to help identify addressable liquidity if firms trading bonds and derivatives OTC no longer have to identify themselves as SIs.
- Implications for best execution if firms are no longer identified as SIs in respect of bonds and derivatives.

What next?

- The closing date for comments on the discussion paper on the SI regime is 10 January 2025. The FCA expects to publish a consultation paper on the future of the SI regime in Q2 2025 and expects changes to the SI regime to take effect alongside the new approach to determining SIs on 1 December 2025.
- The transparency regime comes into force in December 2025. Implementation has regard for the Financial Services and Markets Act 2023 (Commencement No.8) Regulations 2024 and the

Financial Services and Markets Act 2023 (Consequential Amendments No.8) Regulations 2024. These start provisions in FSMA 2023 that replace current provisions in UK MiFIR and bring in new versions found in paragraph 7 and 11 of Part 1 of Schedule 2 of FSMA 2023. They also commence the revoking of RTS 2 on 1 December 2024 (but note that the transparency regime will not come into force until 1 December 2025). The FCA has a transitional provision preserving the effect of the current transparency regime for bonds and derivatives until December 2025, with FCA liquidity determinations continuing during this period and FCA updating transparency thresholds for bonds and derivatives as it has been doing since Brexit. A transitional provision will allow trading venues not to apply pre-trade transparency to voice and RFQ trading from 31 March 2025. There is a transitional provision that will also enable SIs in bonds and derivatives not to have to provide public quotes from the same date.

- The FCA is expected to start the tender for appointing a UK bond consolidated tape provider in December 2024 and will go live after the transparency regime takes effect.
- The Glossary Definition and PERG material associated with revision of the definition of an SI will come into force on 1 December 2025, when the legislative change to the SI definition also comes into force.
- The FCA Handbook will be updated to incorporate the finalised transparency regime for bond and derivatives markets by 1 December 2025.

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The information provided is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to.

Readers should take legal advice before applying it to specific issues or transactions.