

Primary Market Bulletin

Newsletter from the FCA for primary market participants

About this edition

Welcome to this 21st edition of the Primary Market Bulletin (PMB).

In this edition, we advise market makers and issuers of new regulatory obligations that they will need to implement for the Short Selling Regulation (SSR) and Market Abuse Regulation (MAR), if the UK leaves the EU on 29 March 2019 without an implementation period (a no-deal scenario). This is particularly important for firms using the market maker exemption under the SSR, as they may need to take action before exit day.

HM Treasury has laid Statutory Instruments (SIs) for SSR and MAR. These create new obligations for market makers and issuers as a result of changes to convert EU law into UK law, following the European Union (Withdrawal) Act 2018. All the new obligations would immediately apply from exit day in the event of a no deal scenario. Accordingly, we expect firms and other regulated entities to undertake reasonable steps to comply with these changes by exit day.

We continue to prepare for a range of scenarios. If there is agreement between the EU and UK and so a transitional period, then these new obligations will not arise. If this happens, we will provide an update on the position.

Firms should look out for further communications. In particular, at the end of this month, we will issue a Policy Statement on changes we are making to our Handbook, the Binding Technical Standards associated with MAR and SRR and other markets-related SIs. We will also issue near-final rules with this Policy Statement.

Short Selling Regulation

Considerations for firms from exit day

Exemption for market making activities:

- Any notifications that UK and non-EU market makers give to us for instruments traded in the UK before exit will remain valid.
- In all other cases, market makers that want to use the exemption for instruments traded in the UK will be required to join a UK trading venue and either:
 - provide us with a copy of any notification made to another competent authority at least 30 days before exit day, or
 - submit a notification to us at least 30 days before they intend to use the exemption
 - the information should be submitted to the SSR Market Maker inbox SSRMarketMaker@fca.org.uk

In December 2018, the Treasury laid Statutory Instrument (SI) 2018 No. 1321 that made the Short Selling (Amendment) (EU Exit) Regulations 2018 ('UK SSR'). Under UK SSR, the notification and disclosure requirements and the restrictions on uncovered short selling will remain the same for firms trading UK instruments. However, the SI makes some changes that firms should be aware of. These include:

- exemptions for market making and primary market operations
- the scope of instruments captured
- exemption for shares principally traded in a third country
- the use of sovereign credit default swaps (CDS)

We summarise these key changes in the following paragraphs.

Exemptions for market makers and authorised primary dealers

Under UK SSR, any notifications UK and non-EU market makers make to us for instruments traded in the UK ahead of exit will remain valid. Notifications made to us for instruments traded in the EU will no longer be valid.

Under EU SSR, UK and non-EU market makers will be required to join an EU trading venue and submit a notification to the relevant competent authority in the EU 30 days before they intend to use the exemption.

To benefit from the exemption under UK SSR in the future, any UK, EU or third country market maker will be required to join a UK trading venue and submit a notification to us at least 30 days before they intend to use it. To ensure a smooth transition, EU market makers can join a UK trading venue and provide us with a copy of any notification made to another competent authority, at least 30 days before exit day.

Scope of instruments

UK SSR will only capture instruments admitted to trading on a UK trading venue and UK sovereign debt.

Exemption where the principal trading venue is in a third country

Under UK SSR we will take on responsibility for collating and publishing the list of shares traded in the UK, where the principal trading venue is in a third country. We will publish this list on our website. When drawing up this list, we will consider whether the principal trading venue for a share is located outside the UK. We will treat trading venues in the EU as third country trading venues. We will undertake the assessment to determine which shares should be exempted at least every 2 years.

To ensure continuity for firms, UK SSR allows us to recognise ESMA's list of exempted shares for 2 years after exit day. So shares on this list will remain exempt from some of the requirements in UK SSR during this time, including the reporting requirements under Articles 5 and 6 of UK SRR. We will give an update on our work to produce our list in early March 2019.

Sovereign Credit Default Swaps (CDS) for hedging purposes

Currently, sovereign CDS can only be hedged against correlated assets or liabilities issued by public or private sector entities in the EU. UK SSR will allow market participants to use UK sovereign CDS to hedge correlated assets or liabilities located anywhere in the world, not just in the EU. This will ensure UK firms can continue to use UK sovereign CDS to hedge correlated assets or liabilities issued by issuers located outside the UK.

Market Abuse Regulation

Considerations for firms from exit day

Issuers with financial instruments admitted to trading or traded on a UK trading venue which are based in an EU Member State will now be required to do the following:

- send us notifications of delayed disclosure of inside information
- get our consent when delaying disclosure under Article 17(5) of UK MAR
- persons discharging managerial responsibilities (PDMRs) of such issuers will now need to send their PDMR transaction reports to us

In February 2018, the Treasury laid Statutory Instrument 2019 No. 310 (SI) that made the Market Abuse (Amendment) (EU Exit) Regulations (UK MAR).

UK MAR retains the same scope of financial instruments admitted to trading or traded on UK and EU trading venues. Requirements on market soundings, insider lists, and the prohibitions on the unlawful disclosure of inside information, insider dealing, and market manipulation remain the same. The main changes are:

Article 17: Public Disclosure of Inside Information

UK MAR retains broadly the same disclosure and notification requirements for inside information and delaying disclosure for issuers with financial instruments on UK trading venues. However, for reporting purposes, issuers with financial instruments on a UK trading venue will be required to send us the notification on delayed disclosure of inside information. This is regardless of any additional obligation under EU MAR to notify an EU competent authority due to, for example, the issuer being registered in an EU Member State and/or having instruments admitted to trading on an EU trading venue. The content and format of the notifications remain the same.

Issuers with financial instruments on a UK trading venue will also be required to get our consent when delaying disclosure under Article 17(5) of UK MAR. This is in addition to any existing requirements to seek the consent of an EU competent authority under EU MAR.

Article 19: Managers' (PDMR) transactions

UK MAR retains broadly the same requirements for PDMRs of issuers with financial instruments on UK trading venues for managers' transactions. However, there is a change: PDMRs of issuers with instruments on a UK trading venue will now need to send us their PDMR transaction reports. This is regardless of whether they are also required to report to an EU competent authority under EU MAR, due to the issuer being registered in an EU Member State. The content and format of the reports remain the same.

Article 5: Exemption for buy-back programmes and stabilisation

UK MAR will retain the same exemptions for issuers undertaking buy-backs and stabilisations on UK and EU trading venues.

For reporting to benefit from the exemption for buy-backs and stabilisations under UK MAR for shares and securities on EU trading venues, issuers should continue to report to the EU competent authority of the EU trading venue in accordance with EU MAR (note that this is different to the reporting changes for Articles 17 and 19 above).

To benefit from the exemption for buy-backs and stabilisations under UK MAR for shares and securities on UK trading venues, issuers will continue to report to us.

Further reading

Market participants might also wish to consider the following publications, which give more detail on the changes arising from Brexit.

- Statements made by the Treasury, specifically:
 - Explanatory memorandum to the MAR Statutory Instrument, published on 30 November 2018
 - Explanatory memorandum to the SSR Statutory Instrument, published on 9 August 2018
- Our consultation papers relating to Brexit:
 - CP18/28 Brexit: proposed changes to the Handbook and Binding Technical Standards- first consultation published on 10 October 2018. This contains information on changes we have proposed to make to Binding Technical Standards (BTS) associated with SSR.
 - CP18/36 Brexit: proposed changes to the Handbook and Binding Technical Standards- second consultation published on 23 November 2018. This contains information on changes we have proposed to make to BTS associated with MAR.
- An outline we published on 1 February 2019, explaining how we would use the 'temporary transitional power' if the UK leaves the EU without an agreement. In this statement, we state that there are some areas where our statutory objectives mean that we expect firms and other regulated entities to take reasonable steps to comply with the changes to their regulatory obligations by exit day. This applies to the requirements set out above.