

ALTERNATIVE TRADING SYSTEMS INSTRUMENT 2003

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 149 (Evidential provisions);
 - (3) section 156 (General and supplementary powers); and
 - (4) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force as follows:
- (1) the amendments in Annex A come into force on 1 April 2004;
 - (2) the remainder of this instrument comes into force on 1 July 2003.

Amendments to the Handbook

- D. (1) COB, MAR, AUTH, CRED, ELM, EMPS, FREN, OMPS and SERV are amended in accordance with Annex A to this instrument;
- (2) The Reader’s Guide, MAR and the Glossary are amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Alternative Trading Systems Instrument 2003.

By order of the Board
19 June 2003

Annex A

Amendments coming into force on 1 April 2004

In this Annex, underlining indicates new text and striking through indicates deleted text. Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

Amendments to COB

4 Table Miscellaneous Transitional Rules

(1)	(2)	(3)	(4)	(5)	(6)
	Material to which the transitional provision applies		Transitional provision	Transitional provision: dates in force	Handbook provision: coming into force
...					
<u>7</u>	<u>COB 4.2.5</u>	<u>R</u>	<p style="text-align: center;"><u>ATS terms of business</u></p> <p><i><u>A service company, or a firm that is undertaking oil market activity or other energy market activity, that operates an ATS as at the day on which COB 4.2.17E comes into force is not required to provide terms of business to a customer who has commenced using the ATS before that day.</u></i></p>	<u>Indefinitely</u>	<u>1 January 2004</u>
<u>8</u>	<u>COB 4.2.5 and COB 4.2.10</u>	<u>R</u>	<p><i><u>A firm need not, by reason of COB 4.2.17E, amend, or give notice of an amendment to, its terms of business to include provision about the additional matters in COB 4.2.17E in respect of a customer to whom it has provided terms of business before</u></i></p>	<u>Indefinitely</u>	<u>1 January 2004</u>

			the day on which <u>COB 4.2.17E</u> comes into force.		
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...

1.2.1 R *COB* applies to every *firm*, except that:

- (1) *COB* 9 (Client assets) does not apply to an *incoming* EEA *firm* with respect to its *passport activities*;
- (2) for a *UCITS* *qualifier* and a *service company* that does not operate an *ATS*, only *COB* 1.9 (Application to electronic commerce activity providers) and *COB* 3 (Financial promotion), and any provision of *COB* incorporated into *COB* 1.9 or *COB* 3 by reference, applies;
- (2A) for a *service company* that operates an *ATS*, only *COB* 1.9 and *COB* 3, any provision of *COB* incorporated into *COB* 1.9 or *COB* 3 by reference and, in relation to the operation of the *ATS*, *COB* 4.2 (Terms of business), apply;

...

...

1.6.12 R Despite *COB* 1.6.6R to *COB* 1.6.11G, if a *firm* that is undertaking *oil market activity* or other *energy market activity* operates an *ATS*, *COB* 4.2 (Terms of business) applies in relation to the operation of the *ATS*.

...

- 4.2.11 E
- (1) A *firm* should, in order to provide adequate detail, include in its *terms of business* provided to a *customer*:
 - (a) a provision about each item set out in *COB* 4.2.15E ~~and~~ *COB* 4.2.16E and *COB* 4.2.17E, except those the *customer* has requested not to be included; and
 - (b) any further or alternative provisions that the *customer* has asked for and on his own initiative agreed with the *firm*;

to the extent that each such provision is relevant in the circumstance and that it is practicable to provide it.

- (1A) In relation to a *service company*, or a *firm* that is undertaking *oil market activity* or other *energy market activity*, that operates an *ATS*, the references in paragraph (1)(a) to *COB*

4.2.15E and COB 4.2.16E do not apply.

...

...

4.2.17 E Table: Content of terms of business provided to a customer:
Operating an *ATS*

Operating an *ATS*

Additional contents in respect of operating an *ATS*

An *ATS operator* should also ensure that the *terms of business* provided to a *customer* contain information about the following:

- (1) how the *ATS* operates, including any order handling and order execution processes;
- (2) the status of other users of the *ATS*, for example whether *market counterparties*, *intermediate customers* or *private customers* and whether based within or outside the *United Kingdom*;
- (3) arrangements for the clearing and settlement of transactions, including the respective obligations and responsibilities (if any) of the *ATS operator* and the *customer* in relation to clearing and settlement;
- (4) if *investments* that are not *listed* are *traded* on the *ATS*:
 - (a) that *unlisted investments* are *traded* on the *ATS*; and
 - (b) that the *ATS operator* will advise the *customer* on request where publicly available information about such *investments* can be obtained;
- (5) whether transactions *executed* using the *ATS* are *reportable transactions*;
- (6) trading procedures (if any) that may be adopted in the event of system malfunction;
- (7) the circumstances in which the *ATS operator* can terminate the *customer's* access to the *ATS*;
- (8) procedures (if any) to be adopted in the case of trading errors or disputes; and

(9) whether investments traded on the ATS are qualifying investments for the purposes of the market abuse regime.

Amendments to MAR

Table of Contents

...

MAR 5 Alternative Trading Systems

- 5.1 Application and purpose
- 5.2 Guidance about what constitutes an ATS
- 5.3 Notification of establishment of an ATS
- 5.4 Requirements to be imposed on the Part IV permission of an ATS operator
- 5.5 Parts of the Handbook applicable to the operation of an ATS

...

- 3.1.1 R This chapter applies to every *firm* except:
- (1) a service company, unless the service company is an ATS operator, in which case, MAR 3.4.10G and MAR 3.4.10AG apply to the service company in relation to the operation of the ATS;
 - (2) a non-directive friendly society;
 - (3) a non-directive insurer;
 - (4) a UCITS qualifier.

...

- 3.4.10A G An ATS operator should take reasonable steps to ensure that the respective roles and responsibilities of the ATS operator and the market counterparty in relation to use of the ATS are clear to the market counterparty.

...

After MAR 5.4, insert the following new section:

5.5 Parts of the Handbook applicable to the operation of an ATS

- 5.5.1 G The purpose of this section is to help prospective and actual *ATS operators* find their way around the *Handbook* by setting out which parts of it apply to them when operating an *ATS*.

5.5.2 G The application of the *Handbook* to the operation of *ATSS* is summarised in *MAR 5.5.3G*. *ATS operators* should read applicable parts of the *Handbook* to find out what the detailed regulatory requirements are for operating *ATSS*.

5.5.3 G

Table Handbook provisions applicable to *ATSS*

	Part of Handbook	Applicability to <i>ATSS</i>
High Level Standards	Principles for Businesses (<i>PRIN</i>)	This applies. However, note that some <i>Principles</i> are (partially) disapplied for <i>clients</i> that are <i>market counterparties</i> as further detailed in <i>PRIN 3.4</i> .
	Senior management arrangements, Systems and Controls (<i>SYSC</i>)	This applies.
	Threshold Conditions (<i>COND</i>)	This applies.
	Statements of Principle and Code of Practice for Approved Persons (<i>APER</i>)	This applies to an <i>approved person</i> who performs a <i>controlled function</i> for an <i>ATS operator</i> .
	The Fit and Proper test for Approved Persons (<i>FIT</i>)	This applies.
	General provisions (<i>GEN</i>)	This applies.

Business standards	Interim Prudential sourcebooks (<i>IPRU</i>)	These apply, as appropriate.
	Conduct of Business sourcebook (<i>COB</i>)	<p>In general, <i>COB</i> applies to <i>ATS operators</i>.</p> <p><i>Service companies</i> that operate an <i>ATS</i> are subject to the provisions of <i>COB</i> mentioned in <i>COB</i> 1.2.1R(2A).</p> <p>There are special <i>terms of business</i> set out in <i>COB</i> 4.2.17E for <i>ATS operators</i> that have <i>customers</i> (as opposed to those whose only <i>clients</i> are <i>market counterparties</i>).</p> <p>Most of <i>COB</i> will not apply to <i>ATS operators</i> if their business is wholly within the scope of <i>MAR</i> 3 (Inter-professional conduct): see <i>COB</i> 1.3.4R.</p>
	Market Conduct sourcebook (<i>MAR</i>)	<p><i>MAR</i> 1 (The Code of Market Conduct) applies. <i>MAR</i> 2 (Price Stabilising Rules) and <i>MAR</i> 4 (Endorsement of the Takeover Code) are likely to be of limited relevance to the business of an <i>ATS operator</i>.</p> <p><i>MAR</i> 3 (Inter-Professional Conduct) will ordinarily be relevant to <i>ATSs</i> whose <i>clients</i> are <i>market counterparties</i>. <i>MAR</i> 3.4.10AG is particularly relevant to the information that these <i>ATS operators</i> should provide to their <i>clients</i>.</p> <p>Ordinarily, <i>service companies</i> are not covered by <i>MAR</i> 3. However, <i>MAR</i> 3.1.1R provides that <i>MAR</i> 3.4.10G and <i>MAR</i> 3.4.10AG apply to a <i>service company</i> that operates an <i>ATS</i>.</p> <p><i>MAR</i> 5 (Alternative trading systems) is directly relevant to the operation of an <i>ATS</i>.</p>
	Training and Competence sourcebook (<i>TC</i>)	This applies.
	Money Laundering sourcebook (<i>ML</i>)	This applies.
Regulatory processes	Authorisation manual (<i>AUTH</i>)	This applies in relation to an application by a prospective <i>ATS operator</i> for <i>authorisation</i> . In particular, <i>AUTH</i> 3.24.1G provides that if an applicant who wishes to operate an <i>ATS</i> intends to assume responsibility for the clearing or settlement of transactions effected using the <i>ATS</i> , the applicant should provide sufficient information with its application to demonstrate that it has adequate arrangements in place to ensure efficient clearing or settlement (as the case may be) of the transactions.
	Supervision manual (<i>SUP</i>)	This applies.
	Enforcement manual (<i>ENF</i>)	This applies.
	Decision making manual (<i>DEC</i>)	This applies.

Redress	Dispute resolution: Complaints sourcebook (<i>DISP</i>)	<i>ATS operators</i> are subject to the <i>compulsory jurisdiction</i> of the <i>Financial Ombudsman Service</i> . However, a <i>firm</i> which notifies the <i>FSA</i> under <i>DISP</i> 1.1.7R that it does not conduct business with <i>eligible complainants</i> (<i>persons</i> eligible to have a complaint considered under the <i>Financial Ombudsman Service</i> , as defined in <i>DISP</i> 2.4) will be exempt from the <i>rules</i> on complaint handling procedures for <i>firms</i> (<i>DISP</i> 1.2 to <i>DISP</i> 1.7) and from the <i>Financial Ombudsman Funding rules</i> (<i>DISP</i> 5.2 to <i>DISP</i> 5.8).
	Compensation sourcebook (<i>COMP</i>)	<i>COMP</i> applies to all <i>firms</i> . However, <i>ATS operators</i> that do not conduct business that could give rise to a <i>protected claim</i> by an <i>eligible claimant</i> as defined and have no reasonable likelihood of doing so can gain exemption under <i>COMP</i> 13.3 from some compensation scheme levies.
Redress	Complaints against the FSA (<i>COAF</i>)	This applies.
	Collective Investment Schemes Sourcebook (<i>CIS</i>)	<i>ECO</i> applies to an <i>ATS operator</i> that is an <i>electronic commerce activity provider</i> .
Specialist sourcebooks	Credit Unions (<i>CRED</i>)	<i>REC</i> does not apply to an <i>ATS operator</i> . The other specialist sourcebooks are likely to be of limited relevance to an <i>ATS operator</i> in respect of its operation of an <i>ATS</i> .
	Electronic money (<i>ELM</i>)	
	E-commerce Directive (<i>ECO</i>)	
	Lloyd's (<i>LLD</i>)	
	Professional firms (<i>PROF</i>)	
	Recognised Investment Exchanges and Recognised Clearing Houses (<i>REC</i>)	
Special guides	Service companies (<i>SERV</i>)	This applies to a <i>service company</i> that operates an <i>ATS</i> .
	Energy market participants (<i>EMPS</i>)	This applies to an <i>energy market participant</i> that operates an <i>ATS</i> .
	Oil market participants (<i>OMPS</i>)	This applies to an <i>oil market participant</i> that operates an <i>ATS</i> .
	Small friendly societies (<i>FREN</i>)	This is likely to be of limited relevance.

Amendments to AUTH

3.24 Specific obligations: applicants wishing to operate an ATS

3.24.1 G If an applicant who wishes to operate an *ATS* intends to assume responsibility for the clearing or settlement of transactions effected using the *ATS*, the applicant should provide sufficient information with its application to demonstrate that it has adequate arrangements in place to ensure efficient clearing or settlement (as the case may be) of the transactions.

...

2 Table

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
<p>1 MAR</p>	<p>...</p> <p>MAR 2 (Price stabilising rules) Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i> or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118(8) of the <i>Act</i> (Market abuse) (MAR 2.1 (Application)).</p> <p>MAR 3 (Inter-professional conduct) Applies (MAR 3.1.4R).</p> <p>MAR 4 (Endorsement of the Take-over Code) Applies to <i>firms</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, except as set out in MAR 4.4.1R.</p> <p><u>MAR 5 (Alternative Trading Systems)</u> Does not apply (MAR 5.1.1G)</p> <p>...</p>	<p>...</p> <p>MAR 2 (Price stabilising rules) Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118(8) of the <i>Act</i> (Market abuse) (MAR 2.1.6R(1)).</p> <p>MAR 3 (Inter-professional conduct) Does not apply (MAR 3.1.4R).</p> <p>MAR 4 (Endorsement of the Take-over Code) Does not apply (MAR 4.4.1R(4)(b)).</p> <p><u>MAR 5 (Alternative Trading Systems)</u> Does not apply (MAR 5.1.1 G)</p> <p>...</p>

Amendments to CRED

Appendix 1

	Sourcebook or manual	Reference code
...
Business Standards	5 interim Prudential sourcebooks Conduct of Business Market conduct, including: Code of Market Conduct Price stabilising rules Inter-professional conduct <u>Alternative Trading Systems</u> Training and Competence Money laundering	IPRU COB MAR TC ML
...

Amendments to ELM

ELM 1.5.2R

Block	Module	Application
...
Block 2 (Business Standards)	Market Conduct (MAR)	<i>MAR 1</i> (The Code of Market Conduct) applies if an <i>ELMI</i> is seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> . <i>MAR 2</i> (Price Stabilising Rules), <i>MAR 3</i> (Inter-Professional Conduct) and <i>MAR 4</i> (Endorsement of the Takeover Code) do not apply to an <i>ELMI</i> when <i>issuing e-money</i> . <u><i>MAR 5</i> (Alternative Trading Systems) will not apply to an <i>ELMI</i>, as there are restrictions on the type of business activities that an <i>ELMI</i> may carry on.</u>
...

Amendments to EMPS

EMPS 1.2.3G

	Part of Handbook	Applicability to energy market participants
...
Business Standards	<p>Conduct of Business sourcebook (COB)</p> <p>Market Conduct sourcebook (MAR)</p>	<p>Only some parts of <i>COB</i> apply to <i>energy market activity</i>: see <i>COB</i> 1.6.6R – <i>COB</i> 1.6.11G <u><i>COB</i> 1.6.12R</u>.</p> <p>This applies; however <i>MAR</i> 2 (Price stabilising rules) is likely to be of only marginal relevance to the business of an <i>energy market participant</i>. <u><i>MAR</i> 5 (Alternative Trading Systems) applies to an <i>energy market participant</i> that operates an <i>ATS</i>.</u></p>
...

Amendment to FREN

FREN 1.2.2G Table

	Part of Handbook	Applicability to small friendly societies
...
	Market conduct sourcebook (<i>MAR</i>)	<p><i>MAR</i> 1 (Code of Market Conduct) – this gives <i>guidance</i> on what does and does not amount to <i>market abuse</i>; this Code is relevant to all persons seeking <i>guidance</i> as to whether or not <i>behaviour</i> amounts to <i>market abuse</i>.</p> <p><i>MAR</i> 2 (Price stabilising rules) – applies to all <i>firms</i> but is likely to have limited relevance to small friendly societies.</p>

		<p><i>MAR 3</i> (Inter-professionals conduct) – does not apply.</p> <p><i>MAR 4</i> (Endorsement of the Takeover Code) - this applies to every <i>firm</i> whose <i>permission</i> includes, or ought to include, any <i>designated investment business</i>, but is likely to have limited relevance to small friendly societies.</p> <p><u><i>MAR 5</i> (Alternative Trading Systems) - this applies to a <i>firm</i> that operates an <i>ATS</i>, but is likely to have limited relevance to small friendly societies.</u></p>
...

Amendments to OMPS

OMPS 1.2.2G

	Part of Handbook	Applicability to oil market participants
... Business Standards	<p>...</p> <p>Conduct of Business sourcebook (COB)</p> <p>Market Conduct sourcebook (<i>MAR</i>)</p>	<p>...</p> <p>Only some parts of <i>COB</i> apply to <i>oil market activity</i>: see <i>COB</i> 1.6.6R – <i>COB</i> 1.6.11G <u><i>COB</i> 1.6.12R</u>.</p> <p>This applies; however <i>MAR 2</i> (Price stabilising rules) is likely to be of only marginal relevance to the business of an <i>oil market participant</i>. <u><i>MAR 5</i> (Alternative Trading Systems) applies to an <i>oil market participant</i> that operates an <i>ATS</i>.</u></p>
...

Amendments to SERV

SERV 1.2.2G Table

	Part of Handbook	Applicability to service companies
...
Business Standards	<p>Conduct of Business sourcebook (<i>COB</i>)</p> <p>Market Conduct sourcebook (<i>MAR</i>)</p>	<p><i>COB</i> 1.9 (Application to electronic commerce activity providers) and <i>COB</i> 3 (Financial promotion rules), and any provision of <i>COB</i> incorporated by reference in <i>COB</i> 1.9 or <i>COB</i> 3, apply. <u><i>COB</i> 4.2 applies to a <i>service company</i> in relation to the operation of an <i>ATS</i>. The rest of <i>COB</i> does not apply: see <i>COB</i> 1.2.1R(2) and (2A).</u></p> <p>...</p> <p><i>MAR</i> 1 (Code of market conduct), <i>MAR</i> 2 (Price stabilising rules) and <i>MAR</i> 4 (Endorsement of the Takeover Code) apply to <i>service companies</i>.</p> <p><i>MAR</i> 3 (Inter-professional conduct) does not apply to <i>service companies</i>: see <i>MAR</i> 3.1.1R.</p> <p><u>If a <i>service company</i> operates an <i>ATS</i>, then <i>MAR</i> 3.4.10G and <i>MAR</i> 3.4.10AG apply to the <i>service company</i> in relation to the operation of the <i>ATS</i>. Otherwise <i>MAR</i> 3 (Inter-Professional Conduct) does not apply to <i>service companies</i>: see <i>MAR</i> 3.1.1R.</u></p> <p><u><i>MAR</i> 5 (Alternative Trading Systems) applies to <i>service companies</i> that operate an <i>ATS</i>.</u></p>
...

Annex B

Amendments coming into force on 1 July 2003

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

Where an entire new section is inserted, the place that it goes is indicated and the text is not underlined.

Amendments to the Reader's Guide

Contents of the Handbook

	Sourcebook or manual	Reference Code
...
Business Standards	Conduct of Business	COB
	Market Conduct: Code of market conduct Price stabilising rules Inter-Professional conduct Endorsement of the Takeover Code <u>Alternative Trading Systems</u>	MAR
...

Amendments to MAR

Table of Contents

MAR 4	Endorsement of the Takeover Code
4.1	Application and Purpose
4.2	Endorsement
4.3	Further support of the Takeover Panel's Functions
4.4	Exceptions
<u>MAR 5</u>	<u>Alternative Trading Systems</u>
<u>5.1</u>	<u>Application and purpose</u>
<u>5.2</u>	<u>Guidance about what constitutes an ATS</u>
<u>5.3</u>	<u>Notification of establishment of an ATS</u>

5.4 Requirements to be imposed on the Part IV permission of an ATS operator

5 Annex 1 MAR 5 Annex 1G

...

After Chapter 4 of *MAR*, insert the following new chapter:

Chapter 5

Alternative Trading Systems

5.1 **Application and purpose**

Application

- 5.1.1 G This chapter is relevant to every *firm* that has, or intends to apply for, a *Part IV permission* and that:
- (a) if it is a *UK domestic firm*, operates or proposes to operate an *ATS* from an establishment in the *United Kingdom* or elsewhere;
 - (b) if it is an *overseas firm*, operates or proposes to operate an *ATS* from an establishment in the *United Kingdom*.

- 5.1.2 G This chapter is subject to the provisions in *ECO*. For example, this chapter is not relevant to an *incoming ECA provider* acting as such.

Purpose

- 5.1.3 G The purpose of this chapter is to provide a framework for implementing several of the *CESR ATS standards*. The *FSA* considers that the implementation of these standards will protect *consumers*, promote market confidence, reduce *financial crime* and promote public understanding of the *financial system*. These standards, and therefore this chapter, do not apply to *bilateral systems*, which are excluded from the definition of an *ATS*.

5.2 **Guidance about what constitutes an ATS**

- 5.2.1 G *MAR 5.2.2G* to *MAR 5.2.8G* set out *guidance* on the meaning of the expressions *ATS* and *bilateral system* (as defined in the *Glossary*). This *guidance* is adapted from the guidance contained in the *CESR ATS standards* on the meaning of “qualifying system” (which is the term equivalent to *ATS* used in those standards).

“System”

- 5.2.2 G For the purposes of the definitions of an *ATS* and a *bilateral system*, a system is intended to include not only the electronic parts (if any) of a system but also any rules, protocols, procedures and agreements that make up the system. It is also intended to cover the various parts of a system whether provided directly by the *ATS operator* or by another *person* under an arrangement with the *ATS operator*.

“Price taking systems”

- 5.2.3 G A system may be an *ATS* although it does not directly involve price formation. For example, a *price taking system* such as certain crossing systems may be an *ATS*.

“Buying and selling interests”

- 5.2.4 G The expression buying and selling interests is intended to include not only orders, but also quotes and indications of interest.

“Brings together”

- 5.2.5 G Buying and selling interests will be regarded as being brought together in the system if they are brought together under the system’s rules or by means of the system’s protocols or internal operating procedures. The concept of bringing together is intended to cover any process under which interests interact; this may be by automatic matching, by way of selection of interests by users themselves or otherwise. It is not necessary that the interests be displayed to users. The fact that, after interests are matched, the users must ratify a proposed transaction does not mean that the interests are not brought together in the system. However, systems such as order routing systems where interests are transmitted but do not interact are not intended to be covered by the definition of an *ATS*.

“Non-discretionary rules”

- 5.2.6 G The reference to non-discretionary rules in the definition of an *ATS* is intended to exclude systems where the operator exercises discretion as to how the interests interact. However, the reference is not intended to exclude a system just because the operator has discretion as to whether or not to enter an interest into the system. It is also not intended to exclude a system just because users have discretion about whether or not to take up or accept any expression of interest.

Bulletin boards etc

- 5.2.7 G A bulletin board or similar system where users contact each other outside the system (that is, not under the system’s rules and not by means of the system’s protocols or internal operating procedures) to

negotiate the material terms of transactions will not be covered by the definition of an *ATS*.

Bilateral system/central counterparty

- 5.2.8 G The definition of an *ATS* excludes *bilateral systems*. The definition of *bilateral system* is intended to capture a system that is like an *ATS* except that a single *person* enters into one side of every transaction effected using the system. It is not however intended to cover central counterparty systems, where in substance participants deal among themselves but where their deals are assumed by the central counterparty as buyer and seller. A central counterparty will have a flat book unless there is a default or mistake, while typically the counterparty in a *bilateral system* will take principal positions in *investments* on a continuous basis. The definition of *bilateral system* is slightly flexible in that occasional crossings of client orders will not of itself make the system an *ATS*. It also includes a system where, rather than a single *person*, one of a number of *persons* in the same *group* enters into one side of every transaction effected using the system.

5.3 Notification of establishment of an ATS

Application for permission

- 5.3.1 G A *person* who applies for a *Part IV permission* and proposes to operate an *ATS* will be required to complete appropriate parts of the application pack relating to the operation of an *ATS* (see *AUTH* 3.9 (Procedures in relation to applications for *Part IV permission*)).

Variation of permission to operate an ATS

- 5.3.2 G If a *firm* that proposes to operate an *ATS* applies for variation of *Part IV permission* to carry on an additional *regulated activity* necessary to operate the *ATS*, the *FSA* considers that, for the purposes of *SUP* 6.3.20 (Applications involving significant changes), the proposal will usually cause a significant change to the *firm's* business or risk profile. The *FSA* may therefore require the *firm* to complete the appropriate parts of the full application pack (see *AUTH* 3.9), as directed by the *FSA*.

Notice by firm that already has permission to operate an ATS

- 5.3.3 G If a *firm* that proposes to operate an *ATS* already has *permission* to carry on the *regulated activity* necessary to operate the *ATS*, the *firm* should give notice of the proposal to the *FSA* before it begins to operate the *ATS*, in accordance with *Principle 11* (Relations with regulators). This is because the *FSA* considers that this is a business expansion that could have a significant impact on the *firm's* risk profile or resources (see *SUP* 15.3.8 G). When the *FSA* receives

notice, it may request further information from the *firm* such as the completion of a systems form.

Notification of significant changes to ATS

- 5.3.4 G The *FSA* would also expect an *ATS operator* to give the *FSA* notice if there is any significant change to the operation of an *ATS* that it operates, in accordance with *Principle 11* (Relations with regulators). Notice should be given as soon as reasonably practicable after the change.
- 5.4 **Requirements to be imposed on the Part IV permission of an ATS operator**
- 5.4.1 G The *FSA* proposes to implement several of the *CESR ATS standards* by imposing *requirements* on the *Part IV permissions* of *ATS operators*.
- 5.4.2 G The *FSA* proposes to impose the *requirements* on the *Part IV permissions* of *ATS operators* in a way that has regard to the principle in the *CESR ATS standards* that the standards should be implemented in a differentiated way, taking into account the particular risk to be addressed and each *ATS's* circumstances.
- 5.4.3 G If a *person* who proposes to operate an *ATS* applies for a *Part IV permission*, the *FSA* will be minded to impose the *requirements* under section 43 of the *Act* (Imposition of requirements).
- 5.4.4 G If a *firm* that proposes to operate an *ATS* applies for a variation of *Part IV permission* to carry on an additional *regulated activity* necessary to operate the *ATS*, the *FSA* will be minded to impose the *requirements* under section 44 (Variation etc. at request of authorised person) or section 45 (Variation etc on the Authority's own initiative) of the *Act*.
- 5.4.5 G In relation to current *ATS operators*, or *firms* proposing to operate an *ATS* that have *permission* to carry on the *regulated activity* necessary to operate the *ATS*, the *FSA* will be minded to impose the *requirements* under section 44 or 45 of the *Act*.
- 5.4.6 G The *FSA* may decide not to impose particular *requirements* in particular cases if it is not appropriate to do so. For example, the *FSA* will be minded not to impose *requirements* for pre-trade information to be provided to users or published on *ATS operators* that operate *price taking systems* or request for quote systems. Also, it will be minded not to impose *requirements* for publication of post-trade information on *ATS operators* that operate *ATSs* that facilitate trading in interest-rate swaps, *contractually based investments* relating to currency, or *debt securities* other than benchmark bonds.

5.4.7 G The *FSA* proposes to impose *requirements* for publication of pre-trade and post-trade information that are no more onerous in relation to an *investment* than the standard that applies under the *Act* or relevant national law of another State (as the case may be) to the exchange operating the underlying market for the *investment*.

5.4.8 G *MAR 5* Ann 1G sets out an illustration of the form of *requirements* that the *FSA* will be minded to impose on the *Part IV* permission of an *ATS operator*. The exact form may vary to take into account the matters referred to in *MAR 5.4.2G*. The *FSA* may also consider setting out more detail in the *requirements* if the *FSA* considers it appropriate to do so (for example, if requested to do so by an *ATS operator*).

...

MAR 5 Annex 1 G

Illustrative form of requirements: Alternative Trading Systems

Fair and orderly trading

1. The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place designed to ensure:
 - (a) efficient pricing and the equitable treatment of users;
 - (b) a trading methodology that enables fair and orderly trading; and
 - (c) that sufficient information about quotes, orders and completed transactions is made available to users.

Publication of pre-trade information

2. (1) This *requirement* only applies in relation to *shares traded on an ATS* and only if those *shares* are also traded on a *UK RIE* or a *regulated market*.
- (2) The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place to make publicly available information about quotes or orders or both relating to *shares traded on the ATS* that the *ATS* displays or advertises to users.

Publication of post-trade information

3. (1) This *requirement* only applies in relation to *investments* traded on an *ATS* if those *investments*, or *investments* that are substantially similar in nature, are traded on a *UK RIE*, a *regulated market* or an *EEA commodities market*.
- (2) The *firm* must, in relation to the operation of an *ATS*, have appropriate arrangements in place to make publicly available information about the price, volume and time of completed transactions for *investments traded on the ATS*. For large transactions in *debt securities*, an indication that volume exceeded a certain figure (not being less than £7 million or its equivalent) instead of the actual volume is sufficient.

Method of publication

4. Information about quotes, orders or transactions shall be treated as being publicly available under *requirements 2* and *3* if it is available on reasonable commercial terms. The *firm* may make information publicly available under those *requirements* by publishing the information itself (for example, by posting data on a web-site) or by arranging with a third party (such as an information vendor, *regulated market* or consolidated quotation system) to publish the information.

Timing of publication

5. (1) For the purposes of *requirements 1, 2* and *3*, information about quotes, orders and transactions should be made available in a timely manner. In particular, information should be made available to users and to subscribers close to the time when the quote or order is given or the transaction is executed. Information may be made available to *persons* other than users or subscribers with a reasonable delay.
- (2) The *firm* may make information about a *large order, quote or transaction* available to users under *requirement 1* or publicly available under *requirement 2* or *3* at a time later than that specified in (1), but only to the extent reasonably necessary to protect the interests of the relevant user who placed the order, gave the quote or executed the transaction.

Monitoring of trading

6. (1) The *firm* must, in relation to the operation of an *ATS*:
 - (a) have appropriate arrangements in place that enable it to monitor transactions undertaken on the *ATS* to identify suspected breaches of any rules relating to fair and orderly trading on the *ATS* and conduct that may constitute *market abuse*;
 - (b) report suspected material breaches of its rules relating to fair and orderly trading on the *ATS* or suspected *market abuse* to the *FSA* and other appropriate organisations; and
 - (c) supply relevant information to the *FSA* as soon as practicable regarding the suspected breaches or suspected *market abuse* and provide full assistance to the *FSA* in investigating the suspected breach or suspected *market abuse*.
- (2) The functions referred to in (1) may be performed by the *firm* itself or by another *person* (such as the operator of a *regulated market* for the particular *investment*) under a formal arrangement with the *firm*.
- (3) In (1), “rules” includes protocols, procedures or terms of, or established under, any agreement between the *firm* and a user.

Meaning of “appropriate arrangements”

7. In *requirements 1, 2, 3* and *6*, “appropriate” means appropriate having regard to the nature of the system, the nature and liquidity of *investments traded* on the system, the experience of users, the extent to which the wider market in the particular *investment* involves *private customers*, and the significance of the system in the overall market for the *investment* and, also in relation to *requirement 6*, the susceptibility of the *investment* traded to *market abuse*.

Access to sufficient publicly available information

8. (1) The *firm* must, in relation to the operation of an *ATS*, provide, or be reasonably satisfied that there is publicly available, sufficient information to enable users who are *customers* to make a reasonably informed judgement about the value of each *investment traded on* the system and the risks associated with that *investment*.
- (2) In (1), “sufficient” means sufficient taking into account the nature and experience of users of the system who are *customers* and the type of *investment traded on* the system.
- (3) For the purposes of (1), if an *investment* is admitted to trading on an *RIE*, a *regulated market* or an *EEA commodities market* (and is not suspended from trading on the *RIE* or market), the *firm* may be reasonably satisfied that there is publicly available sufficient information about that *investment* to enable users who are *customers* to make a reasonably informed judgement about the *investment*.

Amendments to the Glossary

Insert the following new definitions in the appropriate alphabetical position:

<i>alternative trading system</i>	a system that brings together multiple buying and selling interests in <i>designated investments</i> (other than <i>life policies</i> or <i>stakeholder pension schemes</i> or <i>rights to or interests in life policies</i> or <i>stakeholder pension schemes</i>), in the system and according to non-discretionary rules set by the system’s operator in a way that results in a contract, but does not include: (a) a system that is operated by an <i>RIE</i> or that is a <i>regulated market</i> or an <i>EEA commodities market</i> ; or (b) a <i>bilateral system</i> .
<i>ATS</i>	<i>alternative trading system</i> .
<i>ATS operator</i>	a <i>firm</i> that operates an <i>ATS</i> or that has accepted responsibility for the operation of an <i>ATS</i> by an <i>appointed representative</i> .

<i>bilateral system</i>	a system that brings together buying and selling interests in the way described in the definition of an <i>alternative trading system</i> , where a single <i>person</i> enters into one side of every transaction effected using the system, on his own account and not merely as a central counterparty interposed between a buyer and seller, or would enter into every trade in that way but for <i>client</i> orders that are crossed occasionally. This definition includes such a system where, rather than a single <i>person</i> , it is one of a number of <i>persons</i> in the same <i>group</i> that enters into one side of every transaction effected using the system.
<i>CESR ATS standards</i>	the Standards for the Regulation of Alternative Trading Systems published by the Committee of European Securities Regulators.
<i>EEA commodities market</i>	a market that facilitates trading in <i>derivatives</i> relating to <i>commodities</i> (other than a market operated by an <i>RIE</i>) and which is operated by an entity that has its head office situated in the <i>EEA</i> and that is regulated as an exchange.
<i>large order, quote or transaction</i>	(in relation to an <i>ATS</i>) an order, quote or transaction relating to an <i>investment traded on</i> an <i>ATS</i> , the publication of details of which at the time of the order, quote or transaction might significantly affect the price of the relevant investment to the detriment of the <i>person</i> placing the order, providing the quote or entering into the transaction (as the case may be).
<i>price taking system</i>	an <i>ATS</i> that facilitates transactions by reference to prices established on a market or another <i>ATS</i> .
<i>traded on</i>	(in relation to an <i>ATS</i>) traded by means of the system including under the rules of, or by means of the protocols or operating procedures of, the system.