



# MARKET REGULATION BULLETIN #1

February 2022

## Background

The Exchange Rules are established consistent with its recognition as a Recognised Investment Exchange under the Financial Services and Markets Act 2000 in the UK to, inter alia, promote and maintain the good reputation of the Exchange and its Members; an orderly market, free of undesirable situations or practices; high standards of integrity and fair dealing; and proper protection for all persons interested in the performance of transactions entered into under the auspices of the Exchange.

In this Bulletin, the Exchange highlights key areas where it would encourage market participants to review and consider enhancements, where necessary, to their controls and processes to ensure compliance with Exchange Rules in relation to Block Trades and Asset Allocations (hereinafter collectively referred to as “Block Trades”) and client order handling Rules. Recent [disciplinary cases](#), in relation to Block Trades, have highlighted instances of: i) reporting time failures; ii) poor record-keeping; iii) firms disclosing details of a transaction to market participants not party to the deal itself prior to the transaction being published by the Exchange; iv) firms disclosing the identity of a party to a Block Trade order to potential counterparties without permission; v) inadequate systems and controls; and vi) failure to train and supervise. The largest Block Trade related fine issued to date by the Exchange concerned ineffective systems and controls which resulted in repeated instances of Exchange Rule breaches.

The Exchange has recently observed good practices at some Members who have enhanced their controls relating to the recording and reporting of Block Trades and detecting breaches where they occur. The Exchange has also noticed an improvement in Block Trade reporting times across its membership. The Exchange encourages all its Members to do so (where appropriate) and take appropriate action where breaches are identified, including notifying the Exchange.

## Block Trades - what are they?

A Block Trade is a privately negotiated transaction, executed at a fair and reasonable price and for a volume at or above a defined minimum threshold, away from the central limit order book (“CLOB”). All Block Trades must adhere to applicable Exchange Rules<sup>1</sup>.

---

<sup>1</sup> See below [Relevant Exchange Rules](#).



## Areas of focus

### ***Getting the basics right***

Through its routine monitoring and surveillance of Block Trades, the Exchange continues to observe breaches of certain Exchange Rules and therefore reminds market participants of the importance of understanding and adhering to the Exchange Rules that distinguish Block Trades from transactions matched on the CLOB, including:

*i) Pre-trade arrangements*

Before arranging and registering Block Trades, Members must ensure they have appropriate permissions in place to transact on behalf of the market participants involved in the transaction. Market participants must also ensure that they have an account with necessary permissions and limits available for the business they intend to transact.

*ii) Block Trade reporting times*

Once terms of the transaction have been agreed between the parties, this Contingent Agreement to Trade must be reported to the Exchange within the time limit specified in the [Block Trade Policy](#).

Where technical or other issues are identified preventing the timely reporting of Block Trades, the Exchange would expect an expeditious resolution of such issues. Where a Block Trade fails to be registered within the required time, market participants may elect to restart negotiations, by reagreeing the terms of the Block Trade with their counterparties once the issue has been resolved.

Where repeated issues occur, the Exchange expects market participants to investigate the root cause and implement improvements to their processes and arrangements as necessary.

*iii) Minimum volume thresholds*

Transactions must be of a volume that equals or exceeds the minimum threshold as specified in the [Block Trade Policy](#).

*iv) Price*

The price must represent fair market value for that trade per the [Block Trade Policy](#) and it must be made clear to the other party that the price is a Block trade price, i.e. it does not represent the prevailing market price.

*v) Record-keeping*

Good record-keeping is key to monitoring and demonstrating compliance with relevant Exchange Rules.

The prevalence of messaging applications available, some of which may encrypt communications, requires strong discipline from market participants to ensure that their staff are aware of which communication channels allow for recording and that only such approved methods of communication are utilised for the arrangement of trades.



The Exchange also notes the FCA's comments around potentially elevated risks when employees work in unsupervised environments such as working from home.<sup>2</sup>

The Exchange strongly encourages market participants to keep under review methods of communication that can be appropriately recorded to ensure relevant communications are being captured; market participants should ensure that relevant staff are aware of the methods of communication they are permitted to use.

The Exchange has identified instances of record-keeping failures and has taken disciplinary action where appropriate. The Exchange has observed instances of poor practices where market participants require staff to assist with maintaining and providing records when requested by the Exchange; certain records have been lost or been at risk of being edited/amended by staff with sole access to such records.

vi) *Disclosing names*

Market participants are not permitted to disclose the names of or make inferences used to identify parties to a Block Trade without consent, and such consent must be evidenced to the Exchange upon request.

The Exchange is aware of the challenges this poses to market participants, in particular to intermediaries, such as brokers, that are in receipt of this information and are asked to share it with counterparties but reminds such market participants about the importance of having and retaining evidence of consent in all instances that it shares the name of a counterparty with the other side. Market participants that request the name of a counterparty to be provided to them (i.e., a broker's client) should consider the rationale in making such a request and whether it increases the risk of inappropriate use or the perception of inappropriate use of confidential or inside information.

The Exchange further reminds market participants that there is no right under Exchange Rules to insist on disclosure of names of counterparties as a condition of completing the trade and that it is not permissible to indicate that a trade has been agreed only to request such disclosure as a further condition of completing the trade.

### ***Systems and controls, training and surveillance***

The Exchange requires market participants to have in place adequate arrangements, systems and controls. To achieve effective compliance, the Exchange expects market participants to understand the risks posed by their business models and the systems they use, to design clear policies and processes, to have appropriate surveillance and provide relevant training to members of staff.

### ***Market abuse***

Per the [Block Trade Policy](#), market participants are reminded that “*any behaviour amounting to market abuse as set out in relevant market abuse legislation will constitute a breach of Exchange Rules. This includes front-running or pre-positioning.*”

---

<sup>2</sup> See [here](#), the FCA's Market Watch 66 on 'recording telephone conversations and electronic communications' and [here](#) for expectations for firms in relation to remote or hybrid working.



Market participants should seek their own legal advice as to what constitutes market abuse, including whether information received from or provided to other market participants could be deemed to be inside information.

### ***Increased use of Technology***

The Exchange is aware of the evolving nature of markets and notes the increased use of technology in this space. The increased use of technology raises specific and new risks when negotiating and registering Block Trades; strong judgment is required to ensure compliance with the Exchange Rules and applicable law. Complying with Exchange Rules is more than adhering to a set of prescriptive requirements. While acknowledging market conventions may differ across asset classes, the Exchange outlines below some of the considerations market participants should be mindful of when transacting Block Trades.

#### Matching of Block Trades

As the Exchange notes in its [Block Trade Policy](#): *“It is not permitted to facilitate the execution of block trades in Exchange-traded products on a system or facility accessible to multiple parties that allows for the electronic matching of or the electronic acceptance of anonymous bids and offers.”*

The Exchange reminds market participants to be vigilant of the requirement to be able to evidence that Block Trades (arranged via an electronic platform that is accessible to multiple parties and facilitates price discovery) have been agreed through direct bilateral communications involving an intermediary, or otherwise risk breaching Exchange Rules regarding the requirement for such transactions to be privately negotiated and associated record keeping obligations.

#### Multi-party chats and platforms

The Exchange states in its [Block Trade Policy](#) that: *“It is permissible to use communication platforms or technologies to bilaterally request block trade markets from one or more market participants and to conduct privately negotiated block trades”*.

Market participants are advised to carefully review and consider their conduct when engaging in multi-party chats (instant messaging) and/or on platforms facilitating interaction with more than one party. In particular, the approach market participants adopt should not lead to inappropriately sharing confidential information or inside information. This may entail market participants being circumspect in relation to: the number of market participants that are contacted when garnering interest; the level of detail that is shared with other market participants in relation to the interest they have received from one market participant; and the appropriate point in time that the bilateral communications should commence to negotiate the details of a Block Trade.

The Exchange also states in its [Block Trade Policy](#) that: *“Members must not share specific, material and non-public information with other Market participants, except in the normal course of business”* and that *“Members may disclose the terms of Block Trade or Asset Allocation orders in furtherance of bilateral negotiations... Details of a Block Trade or Asset Allocation order shall not be disclosed to any person who is not a party to the bilateral negotiations”*.



These provisions are intended to highlight to market participants the sensitive nature of the information they possess, and the Exchange encourages market participants to consider how, to whom and how much information is disseminated.

Members involved in the solicitation or negotiation of a Block Trade may only disclose relevant details such as price, direction and or volume to potential counterparties where this is necessary to facilitate its negotiation or execution.

Likewise, clients in receipt of information should be mindful of when they have information that may be confidential or inside information, as the misuse of such information may put them at risk of breaching Exchange Rules and other legislation. Examples of misuse would be trading ahead of or disseminating details of a Contingent Agreement to Trade that has not yet been registered on the Exchange and published to the market. The Exchange also notes other forms of misconduct in this space, which may intentionally mislead market participants, such as 'flying' or 'printing'.<sup>3</sup>

The specific use of the words '*except in the normal course of business*' and '*in furtherance of bilateral negotiations*' should be interpreted to mean that details of an order should only be disclosed where necessary to facilitate the negotiation of a Block Trade. Once a Contingent Agreement to Trade has been reached, the details should not be disclosed to anyone except those party to the agreement. As a reminder, intermediaries are permitted to indicate that the negotiations have ended. This underscores again the importance of being mindful of the sensitive nature of the information possessed, in particular by intermediaries when garnering market interest for a Block Trade.

The Exchange would encourage market participants to internally define appropriate policies and engage in dialogue with the Exchange, their regulators, counterparties and industry associations where differing approaches and expectations may be putting market participants at risk of non-compliance.

## Next steps

Market participants should consider the points raised in this document and the processes and controls their organisations have in place. The Exchange recommends that market participants circulate this document within their organisations to individuals involved with Block Trades - this may include Sales and Trading, Operations, Compliance and Trade Surveillance individuals and teams. Market participants may also wish to distribute this document to their clients for their awareness and attention.

The Exchange encourages periodic training and reminders for market participants and their staff and notes that market participants may choose to highlight this document as part of such training and reminders.

If you have any questions regarding the topics covered in this Bulletin, please contact [compliance-europe@ice.com](mailto:compliance-europe@ice.com).

---

<sup>3</sup> <https://www.fca.org.uk/publication/newsletters/market-watch-57.pdf>.



## **Future Market Regulation Bulletin - Market Surveillance and Data Feeds**

A future edition of the Market Regulation Bulletin is likely to focus on market surveillance and the importance of firms having appropriate systems and controls. A pre-requisite to being able to conduct surveillance is consuming all required information via the relevant data feeds. The Exchange strongly encourages Members to review the data they capture to ensure completeness and accuracy.

### **Relevant Exchange Rules**

[Rule A.11](#) - Systems and Controls

[Section F](#) - in particular:

F.5.D (Asset Allocations)

F.7 (Block Trades)

[Rule G.6A.2](#) - Matching orders and pre-arrangements

[Trading Procedures](#) - in particular:

3.1 (Order Slips and Records of Trades)

16C (Asset Allocations)

17 (Block Trades)

[Block Trade and Asset Allocations Policy](#)

[Circular 20/142](#) on Counterparty Name Disclosure in Block Trade Negotiations

[Circular on 13/065](#) Guidance on Members obligations for the arranging and reporting of EFP, EFS and Block Trades



## LEGAL DISCLAIMER

This Market Regulation Bulletin does not form part of the Exchange Rules or fall under the definition of “Regulations” in the Exchange Rules in any other way. It is merely an informative document which sets out how the Exchange Rules may be interpreted by the Exchange as part of the Exchange’s approach to market regulation.

This document and the information contained herein is presented as of the date of this document. Any reference to a statute is to be read as a reference to the statute in full force and effect as at the date of this document. References to the Exchange Rules and related Guidance are to be read as references to the versions of the Exchange Rules and Guidance published on the date of this document. The Exchange does not accept any responsibility or liability to amend or update this document or the information contained herein, or to notify market participants of any such amendments or updates if made. The Exchange does not accept any responsibility or liability to advise market participants of any development or circumstance of any kind (including, without limitation, any change of law or to the Exchange Rules) that may occur after the date of this document that may affect this document or the information contained herein.

This document and the information contained herein does not constitute legal or any other form of advice and must not be relied as such. It does not contain all of the Exchange’s guidance and policies on how the Exchange will operate and exercise its powers in relation to the topics covered herein; nor does it provide or purport to provide all the information that may be needed to ensure full compliance with the Exchange Rules or any element thereof. Compliance with the guidance set out in this document does not guarantee full compliance with the Exchange Rules cited herein.