

# CP22/18: Guidance on the trading venue perimeter

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## Executive summary

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Executive Summary If you would like to provide an executive summary to your response. Please provide it here.

On behalf of the International Capital Market Association (ICMA), we are pleased to provide our response to the FCA “Guidance on the trading venue perimeter” consultation paper.

ICMA's response solely relates to trading of bonds in secondary markets.

ICMA would also like to note, the full secondary bond market member ecosystem, buy-side, sell-side, trading venues, data providers, EMS/OMS providers and bulletin boards took part in this consultation response. This ICMA member agreed response takes into account those views.

In summary, ICMA considers all regulatory perimeter requirements, for large or small firms, should be flexible and principles based, in order to continue supporting innovation in the UK. This will make it easier for all trading participants to access UK bond markets. Resulting in the removal of potential barriers to entry.

Furthermore, streamlining authorisation, where feasible, to make authorisation for new entrants as quick as possible, will be less costly for relevant entities involved. This logic extends to new ventures in existing trading venues, thus levelling the playing field. This ‘streamlined authorisation’ will facilitate overall UK competitiveness and innovation.

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## Chapter3: Our proposals

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Q1: Do you agree with our approach that following issuance of our final guidance, Q&As 7, 10, 11 and 12 in Section 5 of the ESMA market structures Q&As should not form part of our supervisory expectations?

**Agree**

**ICMA agrees the FCA should have its own guidance in regard to questions 7,10, 11, 12 in section 5 of ESMA market structures Q&As. ICMA also considers that the FCA guidance on trading venue perimeter should be flexible and principles based.**

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Please explain your answer.

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Q2: Do you agree with our interpretation of the definition of a multilateral system?

**Agree**

**However, ICMA considers additional details are required. Please note ICMA's understanding of the definition of multi-lateral system.**

**ICMA considers in order for an entity, whether automated or non-automated [a recognised established routine], to qualify as 'multilateral', requiring authorisation as a trading venue, all four of the following framework points below must apply, cumulatively:**

**1. System or facility – A system [or facility] is understood to be a set of rules using the following framework to govern how third-party trading interests interact:**

- a. A third-party entity (e.g., the final arbiter), which 'governs' the terms that results in a contract under which operates rules/terms of business (determines whether an execution has occurred or not).**
- b. A third-party entity which provides an execution timestamp. Such rules could be contractual agreements or standard procedures that shape and facilitate interaction between participating trading interests.**

- i. Regarding 'timestamp', if a separate entity governs the terms that results in a contract, then that entity overrides the third-party entity provider of the timestamp, and in this instance the entity provider of the timestamp is only functioning as an expeditor.**

**2. There are multiple third party buying and selling interests.**

**3. Those trading interests need to be able to interact within the system,**

#### 4. Trading interests need to be in financial instruments

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Please explain your answer.

Regarding system or facility, ICMA considers that in order to qualify as a system or facility, the main criterion is whether there are specific rules concerning the interaction of multiple market participants to which participants shall adhere to.

Furthermore, ICMA believes that “non- automated [a recognised established routine] systems or repeatable arrangements that achieve a similar outcome to a computerised system, including for instance where a firm would reach out to other clients [allowing interaction] to find a potential match when receiving an initial buying or selling interest would also be characterised as a system” and should be considered for authorisation as a trading venue.

A good example of when an authorisation as a trading venue is not required, is an OMS or EMS which provides an alert to execute. The OMS or EMS is not governing the interests that would result in a contract, nor does an OMS or EMS pass the 4-point criteria described above.

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Q3: Are there any other relevant characteristics to a multilateral system that should be taken into account?

Yes

ICMA believes FCA should take into consideration the existence of a ‘third party system operator’ who is the ‘controller’ of the terms that result in a contract, as a key characteristic of ‘multilateral’, when assessing trading venue authorisation. For a system to be multilateral, it must have a third-party system operator, who facilitates the matching of interests. This is particularly important when taking into account the organising of protocols. Often terms of business are involved with protocols. An example of an ‘organiser’ of protocols is an MTF or OTF.

An EMS, OMS, does not set the rules which governs the interaction of multiple trading interests. Instead, for example, they are used to organise interests involving a single user (such as a broker or portfolio manager) and, while multiple bilateral communications can be sent, the interests involving separate users do not interact. In other words, these management systems do facilitate bilateral communications (in a more efficient way than communicating over the phone or by e-mail) but they are not ‘platforms’ in which multiple buyers and multiple sellers interact. Therefore, it is ICMA’s

considered view that an EMS or OMS does not qualify for authorisation as a trading venue.

Furthermore, the same logic described applies to software providers and communications networks. In addition, an entity that solely aggregates or consolidates is also not sufficient to qualify for authorisation as a trading venue. As the aggregating entity does not qualify as a 'system' or 'facility' as defined below: 'System' or 'facility': In the context of Article 4 (19) a system [or facility] must be understood as using the following framework to govern how third-party trading interests interact:

a. A third-party entity (e.g., the final arbiter), which 'governs' the terms that results in a contract under which operates rules/terms of business (determines whether an execution has occurred or not).

b. A third-party entity which provides an execution timestamp. Such rules could be contractual agreements or standard procedures that shape and facilitate interaction between participating trading interests.

i. Regarding 'timestamp', if a separate entity governs the terms that results in a contract, then that entity overrides the third-party entity provider of the timestamp, and in this instance the entity provider of the timestamp is only functioning as an expeditor.

It is important to note that ICMA members believe a 'timestamp substitute' does not disqualify a firm from being authorised as a trading venue, just because a different method of confirmation has taken place. Any method that confirms terms resulting in a contract have taken place will meet point 'a' criterion above.

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Please explain your answer.

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Q4: Do you agree with our proposed guidance in relation to voice broking?  
**Agree**

For instruments classified under RTS 2, if an entity is authorised as an SI, the voice broking element of any routine system will not be classified as multi-lateral business.

ICMA considers the FCA's guidance should be technology neutral. ICMA further points out that voice broking would have to meet the 'System/Facility' definition in order to be classified as an OTF or MTF. See below.

**System or facility – A system [or facility] is understood to be a set of rules using the following framework to govern how third-party trading interests interact:**

- a. A third-party entity (e.g., the final arbiter), which ‘governs’ the terms that results in a contract under which operates rules/terms of business (determines whether an execution has occurred or not).**
- b. A third-party entity which provides an execution timestamp. Such rules could be contractual agreements or standard procedures that shape and facilitate interaction between participating trading interests.**
  - i. Regarding ‘timestamp’, if a separate entity governs the terms that results in a contract, then that entity overrides the third-party entity provider of the timestamp, and in this instance the entity provider of the timestamp is only functioning as an expeditor.**

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Please explain your answer.

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Q5: Do you agree with our proposed guidance relating to internal crossing by portfolio managers?

**Strongly agree**

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Please explain your answer.

Q6: Do you agree with our proposed guidance relating to blocking onto trading venues?

**Strongly agree**

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Please explain your answer.

Q7: Do you agree with our interpretation to regard a crowdfunding platform operating only in primary markets as not involving the operation of a multilateral system?

**ICMA considers primary markets are distinguished from secondary. Furthermore, ICMA's understanding is that crowdfunding is not a feature of bond markets.**

**Neutral**

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Please explain your answer.

**ICMA would also like to note that primary markets should be distinguished from secondary markets, as buying and selling interests are not “matched” in a primary market context. This is because the securities are newly created (not pre-owned), hence there is no selling interest to match. The primary market is where securities are created and sold to investors for the first time. Securities are purchased directly from the issuer, typically through an underwriting syndicate.**

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Q8: Do you agree with our interpretation of the characteristics of a bulletin board?

**Agree**

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Please explain your answer.

**Particularly, as the 4 points in question 2 above are cumulative.**

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Q9: Do you agree with our approach to updating the Glossary definition of a service company in relation to client limitation types?

Neutral

Please explain your answer.

N/A

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#### Chapter 4: For discussion - potential areas for future change

Q10: Which regulatory requirements applicable to MTFs and OTFs are most likely to create barriers to entry to the trading venue market for smaller firms?

ICMA cannot comment on cost barriers to entry. However, ICMA considers all regulatory perimeter requirements, for small or large firms, should be 'principles based', making it easier for all participants to access the markets.

Streamlining authorisation, where feasible, to make authorisation for new entrants as quick as possible will be less costly for the relevant entities involved. This logic extends to new ventures in existing trading venues as well, thus levelling the playing field. This will facilitate overall UK competitiveness and innovation.

However, it is important to remember that in order to meet the definition of multilateral, requiring authorisation as an MTF or OTF, a new entrant must meet all 4 points cumulatively in Question 2.

Q11: Does the existing service company regime already address concerns regarding these barriers to entry?

N/A

Q12: Based on which criteria should firms be potentially subject to a more scalable set of requirements?

**ICMA believes that when the FCA is considering trading venue criteria, it should take into account the answer to question 10. Keeping in mind a level playing field.**

**ICMA further believes that mentioning any other criterion would lead to an unmanageable level of complexity for both market participant firms and the FCA.**

**ICMA supports the FCA's use of sandbox to promote innovation.**

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Handbook text Please provide any comments on our draft Handbook text

**N/A**

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CBA Please provide any comments on our cost benefit analysis

**N/A**

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Any other feedback Please provide any other feedback you wish to provide on this Consultation Paper

**N/A**

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