

ENERGY AND COMMODITY TRADING: A COMPARISON OF MARKET CONDUCT AND COMPLIANCE OBLIGATIONS ACROSS THE U.S., EU, AND UK

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Following Russia's aggression against Ukraine and the consequent, far-reaching bans on Russian oil and gas, the European Union ("EU") and the United Kingdom ("UK") have come to rely increasingly on imports of energy products from other jurisdictions, including the United States ("U.S.").² That shift in trade flows carries a compliance consequence that U.S. commodity traders operating in the EU and UK cannot afford to overlook: the conduct and compliance standards imposed on energy market participants ("MPs") in the EU and UK are materially more prescriptive, and in certain respects more demanding, than those that U.S. traders are accustomed to at home.

This article examines the U.S., EU, and UK frameworks for market abuse and market conduct obligations, compares the compliance standards imposed on MPs in each jurisdiction, and identifies the most important practical implications for U.S. firms active or looking to

become active in European energy markets. The central takeaway is that U.S. regulation provides the floor, not the ceiling: U.S. MPs operating in the EU and UK must be prepared to meet a higher standard of formalized registration, reporting, and senior management accountability than their domestic frameworks require.

I. Overview of Market Integrity Rules and Regulatory Authorities

a. The U.S.

The integrity of trading in energy and energy-related commodities in the U.S. is safeguarded through a layered, principles-based framework. At its core is the Commodity Exchange Act ("CEA"), governing futures, options, and swaps on energy commodities, supplemented by implementing regulations of the Commodity Futures Trading Commission ("CFTC") and venue-specific conduct rules enforced by exchanges such as the Chicago Mercantile Exchange ("CME") and the Inter Continental Exchange ("ICE"). For physical wholesale transactions, such as the sale of electricity and the interstate transportation and sale of natural gas, the Federal Energy Regulatory Commission ("FERC") exercises jurisdiction under the Federal Power Act ("FPA") and Natural Gas Act ("NGA"). These statutes do not define "wholesale energy products" as a single category; rather, they regulate wholesale sales of electricity and natural gas in interstate commerce and associated transmission

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services. This creates the familiar “seam” between physical energy markets and derivatives markets, with the focus of the U.S. regulatory framework on achieving outcomes that ensure markets are fair, orderly, and free from manipulation, relying on flexible, facts-and-circumstances analysis in its enforcement rather than rigid, prescriptive checklists.

b. The EU

Market integrity rules in the EU energy space are primarily governed by Regulation 1227/2011 on wholesale Energy Market Integrity and Transparency (“REMIT”), as amended by Regulation 2024/1106 (“REMIT II”) (together referred to as the “REMIT Regulations”). The purpose of the REMIT Regulations is to set out harmonized and centralized rules on open and fair competition within wholesale energy markets and trading in “wholesale energy products,” the definition of which sets out three categories—(1) supply; (2) transport and (3) storage of electricity or natural gas, including Liquefied Natural Gas (“LNG”) though only in the contracts for supply where delivery is in the EU (“Wholesale Energy Products”).³ In addition to the REMIT Regulations, the EU has in place Regulation (EU) No 596/2014 on market abuse setting out harmonized regulations on combating market abuse in EU financial markets (the “EU MAR”). It is applicable to commodity derivatives and related spot commodity contracts.⁴ Both the REMIT Regulations and EU MAR are enforced alongside Directive 2014/65/EU on markets in financial instruments (“MiFID II”) and Regulation (EU) 648/2012 on OTC derivatives, central counterparties and trade repositories (“EMIR”).

The REMIT Regulations are enforced by the Agency for the Cooperation of Energy Regulators (“ACER”). The purpose of ACER is to integrate the national energy markets, assist Europe in transitioning to clean energy to decarbonize its wider economy, facilitate the roll-out of more renewables, coordinate energy regulatory action across the EU (where necessary) and importantly, deter market manipulation and abuse.⁵

Along with a harmonized EU standard, each Member State will also have national measures setting out certain obligations. MPs operating in specific Member States will therefore need to ensure compliance not just under the harmonized EU standard, but also obligations set by applicable Member States.

For U.S. firms trading in the EU, the practical implication is significant: compliance obligations are not simply a matter of EU-level rules. Firms must map their activities across the Member States in which they operate and assess whether additional national requirements apply.

c. The UK

In the UK, the REMIT Regulations were retained pursuant to the UK withdrawal agreement following Brexit through Regulation (EU) No 1227/2011 of the European Parliament and of the Council of October 25, 2011 on wholesale energy market integrity and transparency (Retained EU Legislation) (“UK REMIT”). It is largely a continuation of the REMIT Regulations, which also incorporates Commission Implementing Regulation (EU) No 1348/2014 (the REMIT Implementation Regulation) and Regulation (EU) No 543/2013 on submission and publication of data in electricity markets. In addition to UK REMIT, the UK retained EU MAR following Brexit, which is also applicable to commodity traders operating within the UK (the “UK MAR”). Therefore, the extent of divergence between the UK and EU law is minimal given UK REMIT and UK MAR are both retained EU legislation and MPs operating in both the UK and EU markets would have similar compliance obligations and standards under these regulations.

Whilst the relevant laws are similar across the UK and EU, regulatory oversight in the UK is much more similar to that in the U.S., as opposed to the EU. Regulation of the UK energy market is split between the Office of Gas and Electricity Markets (“Ofgem”) and the Financial Conduct Authority (“FCA”)—a division that closely mirrors the U.S. split between CFTC

and FERC. Ofgem regulates the physical gas and electricity of markets, including domestic supply and the energy price cap whereas the FCA supervises financial services firms regulated by the Financial Services and Markets Act 2000 (“FSMA 2000”) including Recognized Investment Exchanges such as ICE Futures Europe and the London Metal Exchange (“LME”), commodity derivatives traders, Oil Market Participants (“OMPs”),⁶ Energy Market Participants (“EMPs”) and ESG Ratings Providers.⁸ The FCA’s supervisory rules and regulations can be found in the Market Abuse section of the FCA’s Handbook, the EMP Handbook Guide and OMP Handbook Guide. Similar to the U.S., the rules and regulations of ICE Futures Europe and LME are also applicable to MPs trading on those venues, with the exchanges, in turn, subject to the FCA’s regulatory oversight.

Regulation of wholesale energy trading in the UK, particularly the FCA’s regime, is built on a foundation of more prescriptive rules and regulations, differing from the U.S. and EU outcomes-focused approach. MPs operating beyond the U.S., in either one or both jurisdictions should be aware that their market practices and systems and controls may be subject to greater scrutiny and more extensive compliance requirements.

II. Prohibitions on Market Abuse

a. CFTC Anti-Fraud and Anti-Manipulation

At the core of U.S. market abuse law is CEA § 6(c)(1), implemented by CFTC Rule 180.1, making it unlawful to intentionally or recklessly employ manipulative or deceptive devices, make material misstatements or omissions, or transmit false market information in connection with swaps, cash-commodity transactions in interstate commerce, and futures on registered entities.⁹ Rule 180.1(b) provides that there is no general obligation to disclose non-public information in futures or swap transactions, except as necessary to ensure that statements made are not

misleading. This rule operates as a broad anti-fraud and anti-manipulation standard, capturing conduct that sends false or misleading signals to the market, whether in derivatives or related physical commodities, when such behavior undermines market integrity. This rule also captures insider trading prohibitions falling under the Misappropriation Theory, whereby the use of confidential information for trading, when the trader breached a duty owed to the information’s source, is considered fraudulent.

In the derivatives market, insider trading is separately addressed by 17 C.F.R. § 1.59(d). The term “insider trading” is defined as the use of Material Non-Public Information (“MNPI”) by individuals who have a fiduciary or similar duty to keep such information confidential. The prohibition under 17 C.F.R. § 1.59(d) has two aspects:

- (1) individuals with special access to MNPI (*e.g.*, employees or board members) are prohibited from using MNPI gained through their official duties to trade commodity interests for themselves or anyone else; and
- (2) other individuals, such as third parties, are prohibited from trading on confidential information if they know it was obtained improperly from an individual who had special access to it.

Contrastingly, Rule 180.2 preserves the traditional artificial price manipulation theory, allowing the Commission to plead both fraud-based and price-based theories where there are supporting facts.¹⁰ These rules allow the CFTC to pursue both traditional price manipulation and more nuanced fraud schemes that distort market signals. This flexible approach is particularly important in energy markets, where trading in derivatives can influence the benchmark prices that shape physical markets and commercial arrangements.

b. The EU

In the EU, the prohibitions in the REMIT Regulations relate to insider trading¹¹ and market manipulation.¹² These provisions are supplemented by EU MAR, which prohibits insider dealing, including

attempted insider dealing and recommending or inducing another to engage in insider dealing, unlawful disclosure of insider information, market manipulation and attempted market manipulation.¹³

The prohibition on insider trading relates to the use of inside information to influence transactions involving wholesale energy products, the amendment or cancellation of trade orders where the order was placed before the information was known, and disclosure to another unless the disclosure is made in the normal course of employment or the carrying out of duties. The prohibition has a broad application, extending to management, persons with capital holdings, persons with access to the information through their employment, persons who have acquired such information through criminal activity, and persons who knew or ought to have known that it constituted inside information.

The prohibition on market manipulation covers any engagement in, or attempt to engage in, market manipulation. This extends to algorithmic trading,¹⁴ given the rapid transformation of commodity trading methods through technology. The REMIT Regulations define market manipulation to include behavior resulting in, or likely to result in, the giving of false or misleading signals as to supply, demand or price; securing, or being likely to secure, a price, either individually or in collaboration; or employing a fictitious device or any other form of deception that gives or is likely to give false or misleading signals regarding the supply, demand, or price of wholesale energy products. The definition also includes disseminating information through media or the internet that gives or is likely to give false or misleading signals as to the supply or demand for wholesale energy products, including where such false or misleading information is disseminated knowingly or where the person ought to have known it was false or misleading. There is an exception where such information is protected by the freedom of the press or freedom of expression, but the exception does not apply where a profit or advantage

was gained from the dissemination or where dissemination was intentionally done to mislead the market as to supply, demand or price of wholesale energy products.¹⁵

c. The UK and comparisons to the U.S.

As the UK has retained the REMIT Regulations, the substance of the prohibitions is the same as those for the EU, save for the UK-centric changes (i.e. the geographical scope is the United Kingdom rather than “Member State”). A notable difference from the U.S. CFTC’s anti-fraud and anti-manipulation framework is that the prohibitions and definitions in the REMIT Regulations and EU MAR (and therefore UK REMIT and UK MAR) are more prescriptive and detailed, rather than principles based. While CFTC Rule 180.1 provides a broad and flexible standard that relies on intent and facts and-circumstances analysis, REMIT and EU MAR set out specific categories of prohibited conduct, including explicit examples of insider dealing, unlawful disclosure, and market manipulation, and they impose structured transparency obligations such as registration, transaction reporting, and inside-information publication. These measures align closely with financial market standards under EU and UK law and go beyond the text of CFTC Rule 180.1 by requiring formalized compliance processes.

The practical implication for U.S. firms is straightforward: a compliance program that is adequate for U.S. regulatory purposes may not satisfy the more explicit and categorical requirements of REMIT and EU MAR. U.S. MPs operating in the EU and UK should audit their existing compliance frameworks against the specific categories of prohibited conduct and the formalized process requirements in both regimes.

III. Obligations of Market Participants

Both the UK and EU REMIT Regulations set out centralized obligations on MPs that emphasize transparency and promote market integrity, covering regis-

tration requirements with ACER, transaction reporting requirements, disclosure of inside information and systems and controls required for MPs utilizing algorithmic trading. In the U.S., however, obligations are split between the CEA/CFTC for derivatives and FERC for physical wholesale markets, reinforced by exchange rulebooks and self regulatory oversight. There is also no REMIT style centralized transaction reporting that covers all energy products across physical and financial markets.

a. The U.S.

The U.S. implements participant obligations across energy and derivatives markets through multiple regimes rather than a single, unitary energy trader register, with specific obligations divided by market: derivatives activity falling under the CEA/CFTC (with enforcement bolstered by exchange rulebooks), while physical wholesale activity is governed by FERC (wholesale electric sales and transmission, and interstate natural-gas transportation/sales). In wholesale electricity, FERC authorizes sellers (*e.g.*, through market-based rate authority) and requires Electric Quarterly Report (“EQR”) reporting of jurisdictional sales. Irrespective of the market, the baseline duty is to avoid fraud and manipulation.

Registration and General Market Conduct

CFTC Rule 180.1 broadly prohibits intentional, reckless, manipulative or deceptive conduct in connection with swaps, cash-commodity transactions in interstate commerce, or futures on a registered entity, without requiring proof of a specific price effect. This standard captures conduct that sends false or misleading market signals across the financial/physical seam. FERC’s Part 1c (Order 670), issued under FPA § 222 for power and NGA § 4A for natural gas, similarly bars manipulative or deceptive devices “in connection with” jurisdictional transactions and services in the physical markets. Where trading activity falls within both the CFTC and FERC remit, as it often does, the

2014 CFTC—FERC MOUs¹⁶ provide for information-sharing and coordinated oversight, so firms can assume their trading data may be reviewed by both agencies in parallel.¹⁷

In the U.S., registration requirements vary depending on the MP’s category within the market. Proprietary traders trading only for their own account generally have no registration duty but remain subject to CFTC anti-fraud/manipulation and venue conduct rules. Traders with positions that meet or exceed CFTC reporting levels as set out in 17 C.F.R. § 15.03 are subject to special information calls and must file Form 40 (Statement of Reporting Trader) under Part 18, with updates as directed. “Special accounts” that exceed the CFTC reporting levels are identified and shall be reported daily by Futures Commission Merchants (“FCMs”), clearing members, and foreign brokers under Part 17. The purpose of this is to enable effective market surveillance and detect and prevent price manipulation. The Commission modernized the submission standard and data elements as of August 2024 (with a compliance deadline of June 3, 2026, for new standards) but did not change the special-account trigger (*i.e.*, exceeding reporting levels).

CFTC-registered intermediaries carry customer accounts or solicit orders and, as a result, have defined registration and customer-protection obligations. Introducing Brokers (“IBs”), defined as persons who solicit or accept orders but do not accept money, securities, or property to margin, guarantee, or secure trades, must also register under 17 C.F.R. § 3.10.¹⁸ FCMs must segregate customer funds, maintain sufficient assets to cover total obligations, perform due diligence on depositories, and obtain written acknowledgments from banks, derivatives clearing organizations (“DCOs”), and FCMs before opening accounts.¹⁹

Swap entities are also subject to registration and business-conduct standards. Swap dealers (“SDs”) and major swap participants (“MSPs”) must register under 17 C.F.R. § 23.21 and Part 3, and comply with subpart

H on “external” business conduct rules when dealing with counterparties, including Special Entities (*e.g.*, ERISA plans and governmental entities). Those rules require, among other things, anti-fraud and fair-dealing standards, verification of counterparty eligibility, material risk/conflict disclosures and daily marks, clearing disclosures, and institutional suitability for recommendations, with heightened duties when acting as advisor or counterparty to Special Entities and a pay-to-play restriction. Beyond conduct, SDs/MSPs face capital, margin, recordkeeping, and reporting requirements under Part 23 Subparts E/F (*e.g.*, minimum financial requirements, variation/initial margin, custodial arrangements, and documentation) and must maintain a supervisory system reasonably designed for compliance under § 23.602.

Commodity pool operators and commodity trading advisors must prepare and deliver disclosure documents to prospective pool participants or clients and file them with the National Futures Association (“NFA”), keep books and records and retain them per § 1.31, and submit periodic reports²⁰ under § 4.27. Targeted relief is available where criteria are met. § 4.13 and § 4.14 provide exemptions from registration in defined circumstances, and § 4.7 offers QEP based exemptive relief from certain Part 4 requirements, which was amended in 2024 to raise portfolio thresholds and codify monthly account statement options for certain funds of funds. Core antifraud and recordkeeping duties continue to apply regardless of exemptions.

Financial utilities, including designated contract markets (“DCMs”), swap execution facilities (“SEFs”), and derivatives clearing organizations (“DCOs”), organize, execute, and clear trading and impose venue/clearing rules that participants must satisfy in daily operations. DCMs operate under CEA § 5 and Part 38, with core principle requirements and rulebooks that prohibit abusive and disruptive practices and require automated trade surveillance and investigations.²¹ SEFs register under Part 37 and must

comply with core principles covering access, monitoring, audit trails, timely publication, recordkeeping, financial integrity, and CCO designation. DCOs register under CEA § 7a-1 and Part 39, meeting core principles on financial resources, risk management, settlement, treatment of funds, default procedures, reporting, governance, and system safeguards. Complementing CFTC oversight, the NFA enforces membership and conduct rules across registrants, while exchange market regulation departments surveil trading and coordinate referrals to the CFTC where warranted.

Obligations of CFTC Market Participants

Supervisory mechanisms depend on the role of the participant and the product they are using. Electronic trading risk is addressed through exchange-level principles and venue rules. After withdrawing the proposed Regulation Automated Trading, the CFTC adopted electronic trading risk principles for designated contract markets.²² These principles require exchanges to maintain rules and pre-trade controls designed to prevent, detect, and mitigate disruptions and to notify the CFTC of significant electronic trading events. Exchanges then translate the principles into binding venue rules and advisories that participants must operationalize in governance, procedures, and front-office controls.

Venue conduct standards are concrete and enforceable. CME Rule 575 prohibits spoofing, quote-stuffing, and intentional or reckless conduct that disrupts orderly trading, and codifies expectations that firms maintain reasonable controls to prevent, detect and mitigate errors and be capable of meeting the financial obligations of fully executed orders. ICE Rule 4.02 sets parallel standards and lists surveillance factors used to assess intent.²³ ICE’s pre-execution communications/crossing protocols currently require two seconds of market exposure for crossing functionality, which was reduced from five seconds in 2025. Participants should document algorithm design and testing, calibrate throttles and validations, maintain

written kill switch procedures, and keep clear error handling runbooks that withstand venue review and CFTC scrutiny.

Mandatory reporting systems support market transparency and surveillance. For swaps, Part 43 requires real time public reporting of transaction and pricing data, and Part 45 requires lifecycle reporting and the use of global identifiers.²⁴ The CFTC's final rule issued on November 25, 2020, streamlined and harmonized data elements, while the December 28, 2023 proposal added data fields and permit continued geographic masking for other commodity unique product identifiers.²⁵ For futures and options, the CFTC modernized large trader reporting under Part 17 on June 3, 2024, replacing the legacy 80-character submission format and adding data elements through a guidebook, with compliance due June 3, 2026. Traders who hold reportable positions must respond to special calls under Part 18, including submission of Form 40.

Supervision obligations are explicit for registrants. 17 C.F.R. § 166.3 requires CFTC registrants to diligently supervise the handling of commodity interest accounts and all activities relating to their business as registrants. 17 C.F.R. § 23.602 requires swap dealers and major swap participants to establish and maintain a supervisory system reasonably designed to achieve compliance, to designate qualified supervisors, and to maintain written policies and procedures. The CFTC Division of Enforcement's advisory issued on October 17, 2023, announced recalibrated civil monetary penalties and described when monitors, consultants, and admissions may be required, underscoring that registrants must demonstrate effective implementation and escalation rather than maintain policies that are not followed in practice.²⁶

FERC Jurisdictional Participants

For wholesale power sellers, FERC's Market Behavior Rules impose concrete, documentation-heavy duties. 18 C.F.R. § 35.41 requires market-based rate sellers to (i) operate and bid consistent with organized-

market tariffs; (ii) maintain a duty of candor in communications to FERC, (iii) maintain market monitors; (iv) follow the Commission's Price Index Policy if they voluntarily report to index publishers; and (v) retain records supporting prices charged and any index reporting for five years.²⁷ The 2003 Policy Statement on Natural Gas and Electric Price Indices articulates the safe-harbor expectations for good-faith reporting to index developers, and FERC's 2022 Revised Policy Statement tightened the framework by encouraging broader reporting, requiring seven-year re-approvals of index developers referenced in tariffs, and applying a 180-day liquidity screen to indices.²⁸

Transparency duties extend to transactions. Public utilities must file EQRs to report standardized contract terms and transaction data for wholesale power sales, with purely financial contracts that lack delivery terms excluded from reporting. These requirements originated in Order No. 2001 and have been refined repeatedly; they are administered and enforced by FERC's Office of Enforcement and Audits.

Natural gas desks have a parallel transparency obligation. Form No. 552 must be filed annually by May 1 where reportable purchases or sales of physical gas meet or exceed 2.2 million MMBtu. The form quantifies index-priced transactions and the fixed-price trades that form those indices and is a core input for FERC's surveillance of price formation. Importantly, the Fifth Circuit's decision in *BP America v. FERC* clarifies that FERC's NGA § 4A manipulation authority reaches interstate transactions only, even if intra-state conduct affects index prices, so firms must map the jurisdictional character of their gas activity when assessing FERC risk.²⁹

In organized power markets, Market Monitoring Units ("MMUs") are the front-line overseers. Under Order No. 719 (and 719-A/B), MMUs review market performance, recommend tariff changes, and refer suspected violations or manipulations to FERC's Office of Enforcement. Participant obligations include

bidding and scheduling consistent with tariff rules, timely and accurate responses to MMU data requests, and readiness for referral-driven inquiries.

Overall Summary of U.S. Obligations

U.S. energy market participants must ensure compliance programs cover both CFTC and FERC requirements. It is key to confirm registration or eligibility by role, adhere to customer asset protections and business conduct standards, implement venue conduct rules and electronic trading safeguards, meet reporting timelines and data standards, and maintain demonstrable supervision.

b. The EU

Market and conduct obligations

In the EU, market obligations in respect of traders in the energy space are largely centralized under the REMIT Regulations (alongside parallel regimes under MiFID II and EMIR where financial instruments are involved) and one main agency—ACER. This largely contrasts with the U.S. where regulatory responsibility is split between two agencies and the obligations determined by the MP's role in the market. With regard to conduct standards, the prohibitions of insider trading and market manipulation under the REMIT Regulations closely align with those under EU MAR and substantively correspond to the broad U.S. anti-fraud and anti-manipulation frameworks. However, unlike the U.S., the EU has specific categories of prohibited conduct, including attempted insider dealing and recommending or inducing another to engage in insider dealing, unlawful disclosure of insider information, market manipulation and attempted market manipulation as set out under EU MAR.³⁰

Reporting and registration

The EU takes a more centralized approach to reporting irrespective of an MP's specific market role, unlike the position in the U.S. In the EU, MPs carrying out transactions in relation to Wholesale Energy Products

must be reported irrespective of whether the MP is a principal to the transaction or whether the MP's parent or subsidiary is registered (“**Reportable Transaction**”) and must register with their applicable National Regulatory Authority (“**NRA**”).³¹ Registration is a condition precedent to transaction reporting. Registration is only required to be done with one NRA, following which the NRA will communicate the information on their national registers regarding market participants to ACER.

The REMIT Regulations require that transaction reports be made through Registered Reporting Mechanisms (“RRMs”)—organizations authorized under the REMIT Regulations to report or provide reporting services to ACER on behalf of market participants.³² Having streamlined and simplified reporting mechanisms in place ensures that market information is submitted accurately and efficiently. Reporting through centralized mechanisms also enhances the ability to monitor the market effectively and detect potential instances of market manipulation or insider trading. In addition to registration, where trading involves financial instruments, for example power or gas derivatives admitted to trading on an MTF or OTF, the MP may also require authorization as an investment firm under MiFID II, with the associated licensing, governance and conduct requirements.

Disclosure of Inside Information

In addition to registration and reporting, there are obligations to disclose inside information in a timely manner through an Inside Information Platform (“IIP”), the operation of which is very similar to that of RRM. Inside information is defined as precise, non-public information related to wholesale energy products that, if disclosed, would significantly affect prices, covering details about facility availability, capacity, usage and other information a reasonable trader would use.³³ The role of the IIP is to efficiently and consistently disseminate inside information received so that it can be accessed promptly, on a non-discriminatory

basis, and also serves as a means to consolidate the information with similar data from other sources.³⁴

Algorithmic Trading

The enactment of REMIT II brought changes specifically addressing algorithmic trading, aligning it with the more rigorous requirements of MiFID II to promote a fair, transparent and stable market environment. Algorithmic trading and the links to manipulative behavior have gained increased focus in recent years, and were a top agenda item at the Energy Trading Enforcement Forum in Paris in November 2025.³⁵ The increased importance of algorithmic trading across the continent is also evident in reports published by NRAs, such as the exploratory study published by the Dutch Competition and Markets Authority and Dutch Financial Markets Regulator in July 2024 and ACER's open letter on notification requirements in relation to algorithmic trading published July 30, 2024. REMIT II sets out more prescriptive requirements on systems and controls in relation to algorithmic trading, requiring effective systems and risk controls to be in place, ensuring that trading systems are sufficiently resilient to safeguard business continuity in the event systems fail, and are subject to appropriate trading thresholds and limits to prevent erroneous orders to trade or otherwise function in a way that creates or contributes to a disorderly market.³⁶ Market participants engaged in algorithmic trading also have an obligation to notify their relevant NRA. The substance of the notification may include the provision of, on a regular or ad hoc basis, (i) a description of the nature of its algorithmic trading strategies, (ii) details of the trading parameters or limits to which the trading system is subject, (iii) key compliance and risk controls in place to ensure that the algorithmic trading systems and controls are effective and meeting the requirements as set out and (iv) details of the testing of its trading systems.

Finally, MPs are obliged to keep their records for five years, and to ensure that the records are sufficient for compliance monitoring by the applicable NRAs.

Such records include those of transactions, orders, inside information disclosures, algorithmic trading documentation and relevant communications.

c. The UK

Registration

In the UK, organizations that buy or sell wholesale energy for delivery in the UK must register with Ofgem, unless they are registered with an NRA in Northern Ireland or the European Union.³⁷ The purpose of transaction monitoring is to assist Ofgem in fulfilling its obligations to effectively monitor trading activity, and to detect and prevent suspected market abuse.³⁸ Unlike the requirements in the EU, where registration is mandatory and comes with associated reporting obligations, Ofgem has confirmed that market participants are not currently required to report data that was previously required under the REMIT Regulations to Ofgem until further notice.

Authorization

Where trading involves financial instruments, the MP may also require authorization as an investment firm under the UK onshored MiFID II framework, with associated licensing, governance, systems and controls, and conduct of business requirements overseen and regulated by the FCA.

Disclosure of inside information

The definition of inside information and the publication requirements are similar to those under the REMIT Regulations in the EU in that inside information in the UK must also be publicly disclosed using an IIP. In relation to algorithmic trading, the position in the UK is similar to that under the REMIT Regulations, save for the fact that algorithmic trading is a certified function regulated by the FCA and therefore notifications are provided to the FCA.³⁹ In the U.S., however, there is no uniform duty to notify an energy regulator of algorithmic trading. Controls for automated trading are enforced at the exchange level (and, for securities, by the SEC and FINRA).

EU vs UK vs U.S.

In sum, the UK and EU fundamentally impose the same compliance requirements. While the U.S. position is a principles-based, exchange-implemented regime, MP obligations in the UK and EU are centered around maintaining market integrity with explicit registration and reporting obligations. U.S. compliance often “lags” on formality, rather than substance, but that formality gap matters when operating in European markets.

IV. Senior Management

A key point of divergence between the three jurisdictions is the regulation of senior management. In the U.S. (and currently in the EU) there are no specific requirements on senior management, whereas in the UK there are specific standards of conduct that traders and MPs are held to. The conduct standard does depend on the trader or MP’s specific role and regulatory permissions, i.e. if they are holding a specified senior management position or are authorized to carry out specific functions such as algorithmic trading or client dealing, a breach of which may have serious consequences for the individual. Senior management is crucial in maintaining compliance and surveillance of market manipulation. This is because not only are they ultimate decision-makers, but they also set the “tone from the top,” allocate resource and ensure effective governance.

a. The U.S.

In the U.S., there are no specific compliance requirements on senior management. However, there is role-based accountability through the CFTC’s requirement of all registrants to:

- (i) diligently supervise all activities (17 C.F.R. § 166.3);
- (ii) appoint a named Chief Compliance Officer and certain responsible supervisors within Swap Dealers and Major Swap Participants; and
- (iii) file an annual report that must be signed by the Chief Compliance Officer certifying compliance and identifying any material non-compliance.

In addition, fitness and competency are assessed at the time of registration through proficiency requirements and continuing education. Conduct rules exist, but these are entity-focused rather than employee-wide. The CEA contains anti-fraud and anti-manipulation rules; the CFTC has business conduct standards for SDs and MSPs; and relevant exchange rulebooks, such as those of ICE and CME, impose further obligations.

b. The EU

Much like the U.S., the EU does not have set standards applicable to senior management and is instead mostly reliant on firm-level accountability rather than an individual responsibility regime. At present, the standards set out in EU MAR in relation to Persons Discharging Managerial Responsibilities (“**PDMR**”) are most applicable to commodity trading. PDMRs are defined as including members of management, the supervisory or administrative functions or other senior-level executives with the authority to make decisions that directly or indirectly affect the prospects of securities and who have access to inside information.⁴⁰ PDMRs have obligations to notify the relevant authorities of all individuals who qualify as their closely associated persons where they intend to execute personal transactions.⁴¹

In addition to the notification obligations of PDMRs, the EU is in the process of incorporating the Capital Requirements Directive (“**CRD6**”), which imposes a governance framework aimed at strengthening accountability within the most senior levels of a bank’s management.⁴² CRD6 is primarily applicable to non-EU financial institutions providing core banking services in the EU, and from January 11, 2027, most non-EU financial institutions will be required to establish an authorized local branch or subsidiary within the EU. In addition to CRD6, MiFIR/D II are proposing new technical standards imposing enhanced requirements for MPs’ order execution policies, requiring sign-off by senior management on specific pro-

cesses, which will further increase high-level accountability.⁴³

c. The UK

Senior Managers and Certification Regime

Unlike the EU and U.S., the UK has more prescriptive senior management supervisory mechanisms, primarily through the Senior Managers and Certification Regime (“SMCR”) which applies where a commercial organization is categorized as an SMCR firm.⁴⁴ There are three components to the SMCR:

- (1) The Senior Managers Regime. This prescribes certain functions (senior management functions, “SMF”) for which senior managers must be approved to carry out.⁴⁵ All senior managers are responsible for performing SMFs, among which there are also prescribed responsibilities that must be allocated to senior managers. There are certain mandatory functions that include the chair of the risk committee, compliance oversight and money laundering reporting.
- (2) The Certification Regime. This applies to employees of firms that pose a risk of harm to the firm or its customers.⁴⁶ Individuals under the certification regime are not pre-approved but are instead assessed on their fitness and propriety both at the outset and throughout their role, requiring formalized attestations to be made to the FCA by the commercial organization and the individual.⁴⁷
- (3) Conduct Rules. This applies to individuals in the UK.⁴⁸

Economic Crime and Corporate Transparency Act 2023 (“ECCTA 2023”)

This creates a new attribution test for commercial organizations in relation to certain offences, as listed in Schedule 12 of ECCTA 2023, committed by Senior Managers.⁴⁹ These offences include those under the

- Theft Act 1968;
- Fraud Act 2006;
- Financial Services and Markets Act 2000, such as misleading the FCA; and
- Financial Services Act 2012 for misleading statements or impressions made by senior managers.

Crime and Policing Bill

In April 2026, Crime and Policing Act 2026 was enacted, which extends the senior manager test to all crimes, not just economic crimes. This is a significant expansion to corporate risk, which brings more scrutiny of senior management to ensure compliance with their responsibilities and conduct obligations.

The Conclusion

In assessing supervisory expectations across all three jurisdictions, the conclusion is clear: those in the UK are more specific to the individual, with named and far-reaching senior accountability and formalized attestation mechanisms. U.S. firms should therefore plan to present their U.S. duty to supervise trading and market conduct in EU-grade governance form when operating in Europe.

V. Recent Organizational Updates and Enforcement Priorities

a. The U.S.

Since late 2023, the CFTC has hardened resolution terms (penalty recalibration, potential monitors/consultants, and required admissions), especially for recidivists. In parallel, the Division of Enforcement announced task forces for Cybersecurity & Emerging Technologies and Environmental Fraud (June 29, 2023) and the Whistleblower Office issued a Carbon Markets Alert (June 20, 2023) targeting ghost credits, double counting, and tokenized carbon conduct. These moves signal deeper specialization and higher remediation expectations in the areas most relevant to energy desks.

At the same time, the Commission modernized reporting. The Part 17 final rule (published June 3, 2024)⁵⁰ replaced the 80-character format with a modern standard and adds a number of new data elements (compliance by June 3, 2026), while Parts 43/45 NPRM (published Dec. 28, 2023; comment period reopened to Apr. 11, 2024)⁵¹ would add fields and allow continued geographic masking for “Other Commodity” unique product identifiers.

In practice, this U.S. regulation should be treated as a floor, with desks ready to present EU-grade evidence in Europe (*e.g.*, algorithmic trading notifications and order-book reporting under REMIT II), rather than providing a repeat of U.S. definitions.

b. The EU

In April 2026, the Commission adopted two sets of rules directed at increased transparency in the energy markets under Regulation 1227/2011. The first is aimed at IIPs and RRMIs, enhancing the supervision of such entities, and ensuring that the process for authorizing and overseeing them is straightforward and fair. The second set brings in improvements on how energy market data is reported to ACER by improving reporting systems and controls, ensuring that reporting data is accurate and valid, and therefore enabling ACER to better monitor wholesale energy markets and detect potential market abuses.

In recent years, ACER’s role has been enhanced in cross-border investigations given the increasingly multijurisdictional nature of market abuse offences. With the implementation of REMIT II, ACER was granted increased powers to carry out all the necessary on-site inspections, including the authorization to

- (i) enter the relevant premises;
- (ii) examine records and other evidence regardless of format;
- (iii) take or obtain copies or extracts of such records;

- (iv) seal commercial premises and records as necessary for inspection for no more than 72 hours; and
- (v) request explanations from representatives or staff and record their responses.⁵²

c. The UK

Although the UK has left the EU, a key organizational development is that Ofgem has established working ties with ACER through an Administrative Arrangement to maintain cooperation and facilitate the exchange of information on a general level, but also specifically where there is a suspicion of market abuse.⁵³ With regard to enforcement priorities, the FCA has pursued, and will continue to pursue, sustained UK economic growth through increasing competitiveness, protecting market integrity and improving the quality of intelligence so that the FCA can identify and act on harm more efficiently. This can be seen through its recent policy statement on reform to the commodity derivatives regulatory framework and its consultation on transaction reporting rules as discussed further below.

In February 2025, the FCA published its policy statement on reform to the commodity derivatives regulatory framework, PS25/1.⁵⁴ The aim of PS25/1 is to enhance trading venue surveillance requirements to ensure commodity derivative markets are resilient during times of market stress, that there is effective market oversight and that there is adequate management of financial systems to deter market abuse and disorderly trading. The policy changes include the implementation of accountability thresholds in the spot month, where the risk of abusive practices is highest, as well as a framework that gives trading venues a clearer picture of market risks from relevant OTC positions.⁵⁵

In August 2026, the FCA published its policy statement on transaction reporting rules under the UK’s Markets in Financial Instruments Regulation. This fol-

lowed the Treasury's commitment to repealing and replacing these rules with a more proportionate and streamlined framework in the FCA Handbook, the aim of which is to support sustained economic growth in the UK, enhance the UK's ability to fight financial crime and, protect market integrity. Specific changes include the removal of reporting obligations for seven million financial instruments that are only tradeable on EU trading venues, removing foreign exchange derivatives from the scope of reporting requirements and reducing the detailed back reporting from five to three years with the overall aim of replacing such standards with a Market Conduct Sourcebook. Further details of all the proposed changes to which consultation responses are sought are in the FCA's consultation paper, PS 26/15.⁵⁶ The scope of the consultation applies to organizations regulated by MiFID II, UK branches of third-country investment firms with transaction reporting obligations, Recognized Investment Exchanges, MTFs or OTFs and individuals within investment firms who are responsible for making investment or execution decisions, among others.

VI. Conclusion

With increased sanctions and regulatory action taken against Russia, there is increased reliance on non-EU sources of Wholesale Energy Products (or the equivalent as defined in each jurisdiction) to include reliance on the U.S.. As such, it is crucial that U.S. MPs (and also MPs generally, irrespective of jurisdiction) operating in the EU and UK Energy markets meet and maintain trading compliance standards that meet those set by the EU and UK authorities and associated laws and regulations.

The U.S. takes a roles-based and outcomes-focused approach in its regulations and obligations, thus setting the floor with regard to regulatory standards. The UK and EU energy markets and associated laws and regulations are more centralized, setting standards and obligations that are more prescriptive, with emphasis on formal and rigid registration, reporting, and monitoring systems and controls. In particular, the FCA's

focus on senior management accountability is a significant difference between the UK on the one hand and the EU and U.S. on the other.

The FCA has, in recent years, shifted its approach to be more outcomes-focused, with the aim of supporting the UK's growth and competitiveness and assisting markets in remaining efficient, while ensuring consumer safety.⁵⁷ Though this has initially been seen in the FCA's publication of the Customer Duty, it remains to be seen whether this will translate across to the energy sector.

Notwithstanding these evolving approaches, the compliance obligation for U.S. MPs is clear: operating from a U.S. desk does not reduce or substitute the market conduct obligations and levels of accountability expected in the EU and UK. U.S. firms entering or expanding in European energy markets must therefore approach compliance not as an exercise in translating their domestic framework into a European context, but as an exercise in meeting a higher, and in places fundamentally different, standard of formalized market conduct.

ENDNOTES:

²See EU-U.S. trade statistics, *EU Trade with the United States—Latest Developments*, Eurostat (available at https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_trade_with_the_United_States_-_latest_developments).

³See Article 1(4) of REMIT and Article 1(3)(c) of REMIT II.

⁴Defined in Article 3(1)(15) and 3(1)(16) of EU MAR.

⁵See the EU's website on ACER.

⁶OMPs, as defined in the FCA Handbook Glossary, include dealings in mineral oil of any description and petroleum gas, whether in liquid or vapor form, including products and derivatives of oil.

⁷EMPs, as defined in the FCA Handbook Glossary, include those dealing in coal, electricity, natural gas, oil or biofuel.

⁸From June 29, 2028, firms providing certain types

of ESG ratings related to energy and other sectors will also require FCA authorization.

⁹⁷ U.S.C.A. § 9(c)(1) (2012); *see* Dodd Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111 203, § 753 (2010) (adding § 6(c)(1) to the CEA), reprinted in 76 Fed. Reg. 41,398, 41,399–01 (July 14, 2011); 17 C.F.R. § 180.1 (2025).

¹⁰ 17 C.F.R. § 180.2 (2025).

¹¹ *See* Article 3 of REMIT.

¹² *See* Article 5 of REMIT.

¹³ *See* Article 14 and 15 of EU MAR.

¹⁴ Amended by Article 1(7) of REMIT II. Algorithmic trading is defined in Article 1(3)(g)(18) of REMIT II.

¹⁵ *See* Article 2(2) of REMIT as replaced by Article 1(3)(b) of REMIT II.

¹⁶ Memorandum of Understanding Between the Federal Energy Regulatory Commission and the Commodity Futures Trading Commission (Jurisdiction) (Jan. 2, 2014), <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/cftcfercjmou2014.pdf>; Memorandum of Understanding Between the Commodity Futures Trading Commission and the Federal Energy Regulatory Commission Regarding Information Sharing and Treatment of Proprietary Trading and Other Information (Jan. 2, 2014), <https://www.cftc.gov/sites/default/files/idc/groups/public/@newsroom/documents/file/cftcfercismou2014.pdf>.

¹⁷ Subject to CEA § 8 confidentiality.

¹⁸ The definition of an IB in CEA § 1a(31) applies across futures and swaps.

¹⁹ Requirements codified in 17 C.F.R. § 1.20.

²⁰ *E.g.*, Form CPO PQR/CTA PR.

²¹ *E.g.*, § 38.152, § 38.156.

²² Regulation Automated Trading; Withdrawal, 85 Fed. Reg. 42,755 (July 15, 2020).

Short form: Regulation AT; Withdrawal, 85 Fed. Reg. at 42,755; Electronic Trading Risk Principles, 86 Fed. Reg. 2,048 (Jan. 11, 2021) (final rule) (codified at 17 C.F.R. pt. 38).

²³ *E.g.*, order exposure time, queue position, message frequency, relative size/capacity, and ability to manage risk if orders fully execute.

²⁴ Real Time Public Reporting Requirements, 85 Fed. Reg. 75,422 (Nov. 25, 2020) (codified at 17 C.F.R. pt. 43); Swap Data Recordkeeping and Reporting Requirements, 85 Fed. Reg. 75,503 (Nov. 25, 2020)

(codified at 17 C.F.R. pts. 45, 46 & 49).

²⁵ Real Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, 88 Fed. Reg. 90,046 (Dec. 28, 2023) (proposed rule) (to amend 17 C.F.R. pts. 43 & 45).

²⁶ Press Release, Commodity Futures Trading Commission, Division of Enforcement, *Advisory Regarding Penalties, Monitors and Consultants, and Admissions in CFTC Enforcement Actions* (Oct. 17, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8808-23>.

²⁷ 18 C.F.R. § 35.41.

²⁸ Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs, 87 Fed. Reg. 25,237 (Apr. 28, 2022).

²⁹ *BP Am., Inc. v. Fed. Energy Regulatory Comm'n*, 52 F.4th 204 (5th Cir. 2022).

³⁰ *See* Article 5 of REMIT.

³¹ *See* Article 9 of REMIT as amended by Article 1(12) of REMIT II.

³² *See* Article 8 of REMIT, which was amended by Article 1(13) of REMIT II.

³³ Article 2(1) of REMIT, as amended by Article 1(3) of REMIT II.

³⁴ Article 4 of REMIT, as amended by Article 1(5) and (6) of REMIT II.

³⁵ This was a forum between ACER and the European Securities and Markets Authority—see here.

³⁶ Article 1(7) of REMIT II, amending Article 5 of REMIT.

³⁷ *See* Article 9, UK REMIT.

³⁸ *See* Article 7(1) UK REMIT.

³⁹ *See* SYSC 27.8.23—SYSC 27.8.32 of the FCA Handbook on the rules regarding algorithmic trading.

⁴⁰ *See* Article 3(1)(25) of EU MAR.

⁴¹ As defined in Article 3(1)(26) EU MAR.

⁴² *See* Directive (EU) 2024/1619 of the European Parliament and of the Council of May 31, 2024 amending Directive 2013/36/EU as regards supervisory powers, sanctions, third-country branches, and environmental, social and governance risks (Text with EEA relevance).

⁴³ *See* MiFIR / MIFID II reforms in the EU and UK by the Association for Financial Markets in Europe dated December 2, 2025.

⁴⁴See SYSC 23 Annex 1 Definition of SMCR firm and different types of SMCR firm.

⁴⁵The rules on SMF functions are set out in SUP 10C of the FCA Handbook. Approval of senior managers is carried out in accordance with the criteria set out in the FIT Sourcebook of the FCA Handbook.

⁴⁶See SYSC 27.7 on specification of functions.

⁴⁷Assessments of fitness and propriety are carried out in accordance with the FIT Sourcebook of the FCA Handbook.

⁴⁸The applicable conduct rules are set out in the COCON Sourcebook of the FCA Handbook, specifically COCON 2.2.

⁴⁹See section 199, Economic Crime and Corporate Transparency Act 2023.

⁵⁰Large Trader Reporting Requirements, 89 Fed. Reg. 37,042 (June 3, 2024).

⁵¹Real-Time Public Reporting Requirements and

Swap Data Recordkeeping and Reporting Requirements, 88 Fed. Reg. 90,016 (Dec. 28, 2023) (proposed rule); Real-Time Public Reporting Requirements and Swap Data Recordkeeping and Reporting Requirements, 89 Fed. Reg. 14,116 (Feb. 29, 2024) (proposed rule).

⁵²See Article 1(17) of REMIT II, which amends Article 13 of REMIT.

⁵³See Article 8 in particular of the Administrative Arrangement.

⁵⁴See the FCA's PS 25/1.

⁵⁵*Ibid.*

⁵⁶See PS 26/15 at <https://www.fca.org.uk/publication/policy/ps26-15.pdf>.

⁵⁷Speech by Sarah Pritchard, Executive Director, Markets and Executive Director, International City & Financial Global's City Week 2024 published on May 20, 2024.

