Response to FCA CP26/30

Supporting equity market transparency and considering market structure developments

SHARE BUYBACKS

Disclosure, liquidity, governance and structured buybacks

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Executive summary

The public trading market executes almost none of the equity capital UK companies raise, but almost every pound they return through an open-market buyback. If that capital-return flow is transmitted less efficiently than in competing markets, the cost falls directly on shareholders and ultimately on UK competitiveness.

The FCA's CP26/30 recognises that UK MAR, disclosure requirements and execution restrictions may weaken the efficiency of issuer share buybacks. This response asks the resulting market-structure question: does the framework through which open-market buybacks are executed transmit issuer capital efficiently and competitively? [1]

The evidence points to four connected questions requiring prompt re-evaluation. They concern distinct regulatory objectives that should be assessed separately: market-abuse protection, FCA surveillance, public accountability, execution quality and the characterisation of structured buybacks.

Theme	Question requiring re-evaluation	Why it matters now
1. Disclosure	Given the safeguards already surrounding issuer buybacks, does execution-stage public reporting strike the right balance between informing the market and avoiding unnecessary exposure of an unfinished order that an equivalent institutional investor would not disclose?	Too little disclosure may impair fairness and price formation; too much, too soon can reveal residual demand and increase the price paid by the issuer and continuing shareholders.
2. Liquidity	Do safe-harbour venue and volume conditions unintentionally prevent issuers from accessing liquidity mechanisms available to comparable institutional orders?	Market structure directly determines the execution cost of the capital-return flow it transmits.
3. Governance	Do boards and regulated intermediaries have a sufficiently clear framework for setting the objective, distinguishing signalling from capital-return efficiency, testing alternatives and measuring the all-in result independently?	Execution quality depends on clear objectives, comparable evidence, conflict management and independent measurement against outcomes for continuing shareholders.
4. Structured buybacks	Does the present legal and regulatory characterisation reflect the option-like economics, bank discretion, principal risk and benchmark-linked settlements identified in structured buybacks?	The answer may affect capacity, conduct duties, company-law payment rules, disclosure and the scope of the MAR safe harbour.

> **The competitiveness question**
> If the UK market transmits capital returns less efficiently than competing markets, why should investors value its issuers equally or allocate capital on the same terms? Can the framework preserve market integrity while allowing buybacks to access competitive liquidity, be measured on an all-in basis and be governed against clear shareholder outcomes?

CP26/30 asks no specific question on buybacks. We offer these observations on paragraphs 5.14-5.19 and respond to Question 1 only. Scale makes these questions material; the direction of risk makes them urgent. Further evidence may reduce uncertainty, but continued reliance on unresolved assumptions increases the potential cost and disruption of any later correction. Prompt clarification would support competitiveness and market confidence for issuers, investors and intermediaries alike. We do not respond to Questions 2-24.

1. Scope and context

1.1 Why this is a competitiveness issue

Why is the competitiveness debate focused on the flow the public market does not execute?

Almost all the equity capital companies raise is issued through off-market ECM processes such as IPOs, follow-ons and rights issues. Almost all the capital repurchased through open-market buybacks is transmitted through the public trading market. Market structure has limited direct effect on the execution of the former and is critical to the efficiency of the latter.

This is important because the market is already signalling a competitiveness problem. When UK companies trade persistently below comparable international peers, the discount is a warning that investors expect to receive less value, perceive greater risk or see better opportunities elsewhere. The appropriate policy response should include examining whether the UK market converts corporate capital into shareholder value as efficiently as competing markets. Capital ultimately follows risk-adjusted returns.

Buyback execution provides a direct link between market structure and that investor outcome. For a fixed capital allocation, unnecessary execution costs reduce the number of shares retired and therefore the value delivered to continuing shareholders. They can also weaken the effect of the company's purchasing demand on its relative valuation. Repeated across a market, lower capital-return efficiency can contribute to weaker shareholder returns, a persistent valuation discount and a higher cost of equity.

The scale makes this urgent. Schroders reported that, in 2025, more than half of the companies in the MSCI UK Index repurchased at least 1% of their shares. Capital Group estimates that UK companies within its global large-company universe repurchased approximately £47 billion of shares in 2025, more than seven times the value recorded in 2015. [19][20][23] For many FTSE 100 companies, a programme approaching £1 billion is an institutional order measured in many days of total market volume. Its access to liquidity, execution costs and information footprint can materially affect the value delivered to shareholders.

Measures that encourage UK pension funds to invest more in UK companies can strengthen domestic participation and support the capital market. The best way to protect long-term savers, including any new pension assets allocated to UK equities, is to ensure that the system into which they are invested converts corporate cash into shareholder value efficiently. Investment incentives and market reform can reinforce each other: incentives can encourage capital to enter the market, while improved returns give it a reason to remain and attract further domestic and international investment.

The underlying capital flows are straightforward. Primary equity capital moves between companies and investors in two directions: companies raise capital and they return it. Secondary-market transactions transfer ownership between investors.

Capital raising is generally organised outside the public trading market. IPOs and primary follow-ons are arranged through ECM bookbuilding, allocation and settlement processes. For capital raised via rights-issue, the rights may subsequently trade between investors, but the company's issuance of those rights remains a primary transaction outside the market.

Most forms of capital return also bypass the trading market. Dividends are cash payments, while takeovers and delistings generally use offers, schemes or other direct settlement mechanisms. Open-market share buybacks are different: they are the only material capital-return mechanism through which an issuer routinely uses the public market to source shares and return capital.

This response focuses on buybacks where shares are purchased through the public market. It includes conventional agency programmes and market purchases supporting what the FCA's August 2025 multi-firm review, *Share buybacks in UK listed equities*, calls a "structured buyback". Tender offers, directed purchases and other mechanisms that source shares directly from identified holders raise different execution questions and sit outside what is addressed in this response. [2]

The competitiveness question is therefore simple: if the UK market transmits capital returns less efficiently than competing markets, why should investors value its companies equally or allocate capital on the same terms? Answering it requires examination not only of market structure, but also of whether the institutional and governance framework equips issuers to select, oversee and evaluate these unusually large transactions effectively.

1.2 The institutional and governance question

This response focuses principally on larger UK-listed companies and the substantial open-market buyback programmes they conduct. At the larger-capitalisation end of the market, a buyback can represent an institutional order worth hundreds of millions or billions of pounds, executed over several months, sometimes years. The consequences of decisions about liquidity, structure, benchmarks, risk and oversight are therefore particularly material.

The governance challenge arises from the design of the framework, the economic features of the mandates, the distribution of expertise between the parties and potential differences between executive-management signalling incentives and the outcome for continuing shareholders. Banks are repeat participants providing execution services and products for issuers via specialist execution and structuring capabilities; issuers undertake these unusually large transactions comparatively infrequently. Each party can act rationally within the existing arrangements while the resulting outcome still falls short of what an efficient capital market should deliver.

The FCA's August 2025 multi-firm review, *Share buybacks in UK listed equities* (the review), provides important reassurance: it found no material concerns or unmanaged conflicts in its sample. [2] It also left material questions open because it did not undertake a detailed assessment of banks' best-execution frameworks for share buybacks or test the performance of the conflict controls described by banks. The review identified scenarios in which product terms could allow decisions about timing and size to increase outperformance and fees while worsening the issuer's net outcome.

These findings make the institutional framework central to the competitiveness question. Effective governance should align the transaction with the board's capital-allocation objective, distinguish any signalling objective from capital-return efficiency, equip the issuer to evaluate the alternative execution methods, products and economic risks, and allow banks (and brokers) to compete on a transparent and comparable basis. The following principles provide the basis for evaluating whether the present arrangements achieve those outcomes.

> **Core distinction**
> A safe harbour supplies legal protection if its conditions are met. Execution quality, benchmark appropriateness, all-in price and structured-buyback characterisation require separate assessment.

1.3 Principles for evaluation

Treat safe-harbour compliance as legal protection, not evidence of execution quality.

- Preserve the FCA's ability to monitor market abuse from prompt, granular, non-public data.
- Calibrate public information to support market fairness and accountability, taking account of existing safeguards, without unnecessarily advertising a live institutional-sized order.
- Judge market structure by price formation, execution quality and access to liquidity, not by CLOB market share in isolation.

- Place responsibility for the capital-allocation and execution objective with the board, including assessment of any signalling objective and its cost to continuing shareholders, while applying the appropriate conduct obligations to the bank's service or product.
- Use economic substance, not contractual labels, when assessing structured buybacks.

2. Disclosure

2.1 The problem is timing, not regulatory visibility

Public disclosure of a buyback serves legitimate market-integrity and price-formation purposes. Advance disclosure alerts the market that the issuer has commenced a material programme, while existing authorisation, market-abuse, safe-harbour and regulatory-reporting arrangements provide further protection. The remaining policy question is how much execution-stage information should be public while the order remains unfinished.

An open-market buyback is a persistent purchase order. Granular updates allow other market participants to infer direction, approximate remaining size, participation rate, trading behaviour, venue usage and likely duration. A comparable institutional investor purchasing for its own account and bearing the market risk would generate similar information about future demand but would not normally be required to publish any of these details either in advance, during or post execution, unless ownership thresholds were crossed. Public accountability remains important, and the FCA receives complete transaction-level information promptly. The balance is between timely, equal market information and avoiding an execution cost borne by continuing shareholders through higher implementation shortfall or fewer shares retired for the same capital.

2.2 A disclosure model for evaluation

The relevant comparison is with equivalent institutional orders and with issuers competing for capital in other major markets. Once the market has been alerted to authorisation and the existing safeguards are applied, the question is whether the incremental benefit of relatively granular public updates justifies exposing residual demand that an equivalent institutional investor would not disclose. Any avoidable execution cost is borne by the issuers shareholders and becomes a relative competitiveness cost.

The model for evaluation balances timely market information, regulatory surveillance and shareholder accountability with competitive execution. The FCA would continue to receive prompt, complete transaction-level information; public disclosure would be delayed only until the market-sensitive value of the unexecuted order had materially decayed. This would move UK issuers from behind to ahead or their European peers, and towards the footing enjoyed in the United States and other major markets, without reducing the FCA's visibility or meaningful ex post shareholder information.

UK rules combine advance programme disclosure with relatively granular public trade reporting, making their execution amongst the most live public footprints in the world. Before trading, the safe-harbour announcement identifies purpose, maximum nominal value, maximum shares and duration. UKLR 9.6.6R and UK MAR then require public trade information by the seventh daily market session. EU issuers disclose the same programme details in advance, but public trade data are aggregated by day and venue while the regulator receives full transactions. US Item 703 generally reports monthly totals in quarterly and annual filings, with no general federal pre-trading announcement requirement. [3][4][17][21] The comparison therefore turns on prompt FCA surveillance, protection of the unexecuted order and ex post shareholder accountability.

An illustrative UK disclosure model

The five elements below identify the functions that a UK model would need to reconcile:

1. FCA supervision: prompt, complete transaction-level reporting, with identifiers sufficient to reconstruct the issuer order, bank capacity, venue, time, price, quantity and any related principal transfer or hedge relevant to surveillance.

2. Pre-trading public disclosure: timely disclosure of shareholder authority, board authorisation.
3. Deferred public outcome data: daily aggregate shares and volume-weighted average price by venue, released after the market-sensitive value of information about the unexecuted order has materially decayed. Quarterly disclosure provides one relevant comparator.
4. Completion reconciliation: an all-in record after settlement of shares acquired, market consideration, explicit commissions, variable fees or rebates, balancing amounts, incidental costs, total consideration and effective average acquisition price.
5. Structured buybacks: disclosure of the contractual benchmark and final economic adjustment, reconciling market purchases with the issuer's ultimate cost.

The table places these elements alongside the relevant UK, EU and US reporting baselines. All regimes require Board Authorisation to be disclosed immediately.

Regime	Pre-trading public disclosure	Public trade disclosure	Timing and competitive effect
Current UK	Purpose; maximum consideration; maximum shares; programme duration.	Detailed trade data and daily aggregates; UKLR date, shares, high/low price and cancellation or treasury status.	Before start; trades by the seventh daily market session. Relatively granular live footprint. [17][21]
EU after Regulation (EU) 2024/2809	Purpose; maximum consideration amount; maximum shares; programme duration.	Daily aggregate volume and VWAP by venue; full transaction data to the regulator.	Before start; aggregate public disclosure after transaction reporting. Less granular than the UK. [3]
United States Item 703	No general federal pre-trading requirement. Later filings identify announced programmes, authorised amount and expiry.	Monthly total shares and average price.	Quarterly Form 10-Q or annual Form 10-K. Least live public footprint. [4]
Model for UK evaluation	**Shareholder authority, other commencement and live-order detail to be delayed.**	**Daily volume and VWAP by venue; all-in completion reconciliation.**	**Quarterly in arrears; completion after settlement; prompt FCA data retained.**

2.3 Why daily aggregates remain important

The proposed model is deliberately more granular than the US public regime. Daily aggregates allow investors and researchers to assess participation, concentration, venue use, pace and broad indicators of possible inefficiency or abuse after the trading value of the information has decayed. They also allow comparison with daily market volume. The FCA would retain the granular record needed for transaction-level surveillance.

The balance sought is prompt regulatory visibility with delayed public accountability. Daily venue-level data released after the quarter preserves a meaningful record without supplying a live map of the order.

These differences are sufficiently material to warrant prompt re-evaluation of whether the UK disclosure framework provides an appropriate balance between fair price formation, regulatory visibility, shareholder accountability and competitive execution.

3. Liquidity and the safe harbour

3.1 Separate the safe harbour from execution quality

The FCA has clearly and rightfully pointed out that UK MAR safe harbour is optional. In practice, a clear legal route can become the operating default for boards, banks and counsel. Safe harbours can therefore become practical bright-line rules through repeat intermediaries even when alternatives remain legally available. [22] The absence of a routine way to quantify the execution cost of using the safe harbour strengthens that effect. The relevant economic question extends to the performance of legally available alternatives and the board's ability to evaluate them.

The current safe harbour conditions can make the issuer a de facto captive buyer in the lit continuous phase. They restrict the order's ability to use liquidity mechanisms routinely available to institutional investors, including auctions and venues with lower pre-trade transparency. For a large, repeated and directionally predictable order, that can increase information leakage, market impact and the market risk created by extending execution due to the lack of access to available liquidity. When these considerations are taken into account, issuers under safe harbour are effectively limited to less than 25% of total liquidity.

3.2 The FCA’s own evidence supports wider access

FCA Occasional Paper No. 60 found that routing institutional orders to venues with lower pre-trade transparency was associated with lower implementation shortfall, and that periodic auctions also reduced transaction costs when dark trading was constrained. [5] The paper establishes two relevant propositions: venue choice affects execution costs, and restrictions can create unintended effects for large orders. It provides a basis for issuer-specific enablement across mechanisms.

The FCA's 2025 buyback review and CP26/30 both record feedback that current disclosure, venue and volume conditions can reduce the liquidity and pricing available to buybacks. [1][2] Together with Occasional Paper No. 60, that evidence supports re-evaluation of access and measurement of outcome. Safe-harbour compliance and execution quality remain separate questions.

3.3 Questions for safe-harbour re-evaluation

The current framework warrants prompt re-evaluation of whether an issuer can purchase shares on terms comparable to those available to an institutional investor while retaining appropriate safeguards against market abuse. The principal questions are:

- whether closing auctions, periodic auctions and mechanisms with lower pre-trade transparency could improve execution while preserving surveillance and market integrity;
- whether block or bilateral mechanisms could provide useful liquidity under robust price, capacity, reporting and surveillance safeguards;
- whether an outcomes-based framework, calibrated to the issuer, the liquidity of its shares, market conditions and abuse risk, would protect market integrity more proportionately than mechanism-specific price and volume restrictions; and
- what audit trail, reporting and governance evidence would allow issuers to compare compliant mechanisms and the FCA to supervise them.

3.4 Price discovery and CLOB market share

We recognise the FCA's concern that transparent multilateral markets remain important to price formation. Broader access to liquidity may reduce the proportion of buyback flow executed through lit continuous trading, but that change would not itself demonstrate harm. The relevant question, consistent with CP26/30, is whether broader access impairs price formation, resilience or accessible liquidity, or allows issuers and their existing and selling shareholders to reduce costs without compromising those outcomes.

4. Governance

4.1 A capital-allocation decision is only sound at a price

A board decides whether capital is surplus and whether repurchasing shares is the best use of it. Execution determines the price at which that decision is implemented. Any executive-management objective to signal confidence should be distinguished from the capital-return objective: for a fixed allocation, continuing long-term shareholders generally benefit from more shares retired after all costs and risks. The board remains responsible for the objective, risk limits, conflicts and outcome, including when trading is delegated to a broker.

Process quality requires more than the final share price. A favourable market move can flatter a weak process, and an adverse move can penalise a sound one. Governance should assess the decisions and risks knowable at the time and reconcile the all-in result against objective benchmarks fixed in advance. Applied across the market, the interaction between regulatory design and board discipline helps protect long-term shareholders and supports competitiveness.

4.2 A relevant FCA precedent

The FCA's 2014 transition-management review addressed a structurally similar asymmetry. Asset owners, including pension funds, were often occasional clients unfamiliar with a complex execution process, while providers were repeat intermediaries with superior information and multiple revenue channels. The FCA found variation in controls, governance, transparency and communication and responded with stronger conflict management, senior oversight and clear client communication. [6] Contemporaneous enforcement also illustrated the value of transparent execution economics where occasional clients depend on repeat intermediaries. [7]

The relevant parallel is the distribution of expertise when an occasional client delegates a complex and material market execution to a repeat intermediary. An independent measurement and governance layer allows providers to compete on clear and comparable terms and gives clients a sound basis for assessing outcome. Better oversight and transparency protect relationships and support confidence in the service.

Proportionate independence does not require an in-house trading desk. An assessor independent of the benchmark economics can reconstruct the transaction from source data, with the depth of review scaled to programme size and complexity. This is consistent with the FRC's 2024 Code, under which boards use monitoring evidence to assess material controls and decide when external assurance is needed. [8] The Code's emphasis on monitoring evidence and proportionate assurance is directly relevant to capital-return execution.

4.3 Elements relevant to a proportionate governance assessment

Stage	Matter for evaluation	Evidence relevant to the board
Before appointment	Clarity of capital-return and any signalling objectives, price, value or time conditions, risk tolerance, permitted mechanisms and decision rights.	Board paper distinguishing intended shareholder outcomes from any signalling objective and linking method and design to the reason for the buyback.
Broker selection	Comparison of agency and structured buybacks on common assumptions, including capacity, conflicts, fees, option economics and break costs.	Comparable proposals and documented rationale, not benchmark discount alone.
Pre-trade analysis	Expected implementation shortfall, public information footprint, participation, duration risk, safe-harbour cost and outcomes across price and volatility scenarios.	Independent analysis covering plausible adverse cases and alternatives.
During execution	Pace, venue use, market impact, deviations, price limits, remaining risk and, within closed-period constraints, escalation or suspension triggers.	Regular dashboard independent of the executing desk's incentive-linked performance report.
At completion	Reconciliation of shares, market consideration, commissions, fees, rebates, balancing amounts, dividends and incidental costs.	All-in effective acquisition price, shares retired and total capital deployed.
Post-trade review	Implementation shortfall, market impact and reversion against ex ante objectives; lessons relevant to the next programme.	Independent transaction-cost analysis reviewed by the board or an appropriate committee.

5. Structured buybacks

> **Scope of the legal discussion**
> Candor Partners is not a law firm and this response does not provide legal advice. Section 5 offers a practitioner's reading of public product descriptions, legislation, regulatory material and published academic and legal analysis. It identifies questions for authoritative clarification, not legal conclusions about any particular transaction.

5.1 Economic characterisation

Throughout this response, “structured buyback” has the meaning used in the FCA’s August 2025 multi-firm review, *Share buybacks in UK listed equities*. In those arrangements, the bank has discretion over daily trading and the final duration within an agreed range. The benchmark is the arithmetic average of daily VWAPs over the period the bank helps determine, and the resulting payment may take the form of a variable fee or rebate, sometimes subject to a guaranteed outcome. [2]

The option-based characterisation is not confined to external academic or legal analysis. The FCA’s own description uses concepts central to option pricing and hedging. It states that the bank generates outperformance by “monetising volatility in the issuer’s share price” through its control of daily purchasing and duration. When describing guaranteed-discount products with outperformance sharing, the review says that the issuer is “effectively taking a view” on the difference between “volatility implied in the pricing and that which is ultimately realised”. [2] The review also records the relationship between the variable settlement and the bank’s hedging activities.

The FCA’s description is reinforced by the academic and legal authorities below. They examine contracts with closely corresponding features and explain why discretion over the execution path and duration, volatility-dependent returns, benchmark-linked settlement and hedging are analysed in expressly option-based terms. The table shows the close correspondence between those contracts and the structured buybacks described in the FCA’s review.

Authority	Economically relevant description	Connection to FCA structured buybacks
Guéant, Manziuk and Pu (2020)	Models VWAP-minus profit-sharing contracts as buyback contracts with option components. Once the spend is reached, the bank is modelled as holding a Bermudan option; execution and hedging are intertwined. [9]	Daily purchase control, optimal stopping, a VWAP-based payoff, variable sharing and bank hedging closely match core economic features.
Baldacci, Bergault and Guéant (2024)	Describes the mandate format as prevalent in Europe, with bank compensation linked to VWAP over a period selected dynamically by the bank; prices and hedges a path-dependent option. [10]	Supports the view that European mandate economics can be analysed as option pricing and hedging, even when shares are delivered progressively.
Cravath memorandum (2025)	Describes an enhanced open-market repurchase, or eOMR, in which the bank controls daily spend and timing and a final payment or rebate compares actual acquisition VWAP with an average daily VWAP. It says the issuer economically sells a VWAP put option and timing option. [11]	The daily discretion, bank-selected end date, benchmark and two-way settlement correspond closely to the FCA’s structured-buyback description.

Taken together, the FCA's findings and the external analysis raise a specific perimeter question. The market purchases concern Article 76 shares. The unresolved issue is whether the additional benchmark-linked rights and settlement are solely terms of the cash-equity execution service or create a derivative specified investment under Article 83, Article 85 or another provision of the Regulated Activities Order. The economic evidence is sufficiently close to the statutory concepts to warrant an authoritative answer. [12]

> **Why the classification matters**
> The FCA, academic and legal sources describe option-based economics. Whether the additional contractual rights amount to a derivative specified investment remains an unresolved regulatory question with company-law and safe-harbour implications.

5.2 The regulatory-perimeter question

The Regulated Activities Order separately specifies shares in Article 76, options in Article 83, and contracts for differences and other price-dependent contracts in Article 85. Whether contractual rights fall within any category depends on their terms, purpose and the applicable exclusions. [12] The cash purchases plainly concern Article 76 shares. The separate question is whether the benchmark-linked rights and settlement are solely terms of that execution service or require derivative treatment.

The FCA describes a benchmark-linked, potentially two-way payment, bank control of timing and pace, principal risk and hedging of a volatility-dependent payoff. Those features appear sufficiently close to the concepts in Articles 83 and 85 to merit authoritative analysis. Derivative treatment, if applicable, could affect permissions, product governance, conduct, documentation, accounting, collateral, disclosure and best-execution obligations. The key classification question is therefore whether the arrangement is solely an execution service for Article 76 share purchases or includes additional rights requiring derivative treatment.

5.3 Section 691(2) and later balancing amounts

Section 691(2) of the Companies Act 2006 states that, where a limited company purchases its own shares, the shares must be paid for on purchase. Section 658 sets out consequences for an acquisition contrary to Part 18. [13] Dickinson v NAL Realisations concerned a private-company buyback involving a later loan arrangement. The Court of Appeal treated non-compliance with the paid-on-purchase requirement as fatal in that setting; it did not consider a listed structured buyback or a later benchmark-linked payment. [14]

This leaves a question rather than a conclusion. Where a later benchmark-linked amount changes the issuer's effective cost of the shares, does it form part of the purchase consideration for section 691(2), or is it payment for a separate service or right? The labels fee, commission, rebate or balancing payment, and any cap on the amount, are relevant facts but may not by themselves determine the legal character. The occurrence of a negative commission makes authoritative analysis particularly important.

Public German disclosure illustrates the economic mechanism, not the UK legal answer. Siemens reported that its 2018-2021 programme acquired shares in the market at an average €86.47 per share and subsequently paid a €410 million balancing amount. One of the core reasons we highlight a German share buyback in a UK focused regulatory response is that Siemens said that the payment acted as a purchase-price adjustment. Explaining it increasing the effective average acquisition price to €100.42 and total consideration to €2.951 billion, or by about 16%.[15] Later Siemens disclosures describe balancing amounts paid to or received by the commissioned bank during a programme, each treated as a subsequent purchase-price adjustment. [24] The direction and magnitude therefore vary between programmes. Together, the disclosures demonstrate a continuing contractual mechanism capable of changing the issuer's effective acquisition price beyond the consideration paid on the exchange.

German and UK company law differ. Read alongside section 691(2), the Siemens disclosure raises the labelling asked above, and questions whether a benchmark-linked amount forms part of consideration for the repurchase and, if so, how it is reconciled with payment on purchase. It should not be read as determining that question for a UK transaction.

5.4 Safe-harbour protection

The recitals to the technical standards supporting the MAR safe harbour state that the exemption for buyback programmes is limited to actual trading in the issuer's own shares and does not apply to transactions in financial derivatives. [17] On that reading, qualifying share purchases and any separate benchmark-linked rights require distinct consideration.

This raises a focused question about scope. An issuer may announce that a programme is conducted within the safe harbour while the structured buyback includes principal risk, hedging and a later two-way settlement. Protection may attach to qualifying share trades without necessarily extending to every contractual right or payment in the wider arrangement. Clarification is urgent because safe-harbour language can otherwise be understood more broadly than the legal protection it supplies.

A related question is what the reported daily trades represent. Where a bank buys as principal, hedges and later delivers or allocates shares, are the disclosed volumes and prices market purchases for the issuer, same-day riskless-principal transactions or allocations between bank and issuer? Do they reconcile with the final effective price after the variable amount? These questions affect safe-harbour scope, transaction reporting and market integrity.

5.5 Why authoritative clarification is important, and soon

These questions sit where market-abuse rules, conduct obligations, company law, accounting, board oversight and product economics meet. Fragmentation makes it easy for each issue to be viewed separately, although the issuer and its shareholders experience a single economic arrangement.

Concerns about the economic and regulatory treatment of these products has been known by the FCA, SEC and ESMA for several years at a minimum. Over that time, the evidence base has broadened. The FCA's multi-firm review described the product economics, bank discretion, hedging and potential incentive conflicts [2]; further public issuer disclosures have documented benchmark-linked purchase-price adjustments [15][24]; and academic and legal analysis has explained the closely corresponding option-based economics [9][10][11]. The FCA's work is particularly important because it has access to transaction and firm-level evidence that is not publicly available.

This creates a regulatory timing asymmetry. Further evidence may increase certainty, but further transactions entered into under unresolved assumptions increase cumulative reliance on the existing framework and make any later clarification potentially more consequential. A question left unresolved until it emerges through enforcement, litigation or another adversarial challenge is likely to be harder and more disruptive for issuers, investors and intermediaries.

Prompt authoritative clarification therefore supports growth and competitiveness. It would give market participants a more stable basis on which to transact and adapt, while reducing the risk that unresolved uncertainty develops into a larger market-wide problem. The relevant threshold is whether the evidence is now sufficient for the FCA to reach a clear view within its responsibilities, rather than whether the public record can provide certainty available only from contractual and firm-level information.

> **Why timing matters**
> Further evidence may make the eventual answer more certain. Continued reliance on unresolved assumptions makes that answer more consequential.

5.6 Questions requiring FCA clarification

1. **How should the guaranteed-discount, guaranteed-discount-with-outperformance-sharing and outperformance-sharing structures identified in the FCA's review be characterised within the regulatory perimeter?**
2. **Which contractual features determine whether the benchmark-linked rights and settlement are solely terms of an execution service or create a derivative specified investment under Article 83, Article 85 or another provision of the Regulated Activities Order?**
3. **In what capacity does the bank act in relation to the Article 76 share purchases and the benchmark-linked rights and settlement, and how do the relevant COBS, SYSC, best-execution and transaction-reporting requirements apply?**
4. **Does the UK MAR safe harbour protect only qualifying purchases of Article 76 shares, or does any protection extend to the benchmark-linked contractual rights and final settlement? How should the scope of that protection be described to issuers and shareholders?**
5. **What consequences, if any, would derivative characterisation have for section 691(2) of the Companies Act 2006, board governance, accounting and public disclosure?**

6. Responses to consultation questions

Question 1

> **Do you agree with our assessment that current evidence does not justify prescriptive intervention to steer trading towards particular execution mechanisms, but that continued monitoring is warranted? If not, why not?**

Yes, with an important qualification. We agree that the current evidence does not support prescriptive intervention to steer trading towards CLOBs or any single execution mechanism. That conclusion should apply equally to existing rules that can steer buyback flow towards lit continuous trading in practice. Price formation, execution quality, access to liquidity and resilience are the relevant outcomes; CLOB market share is one indicator, not the objective.

Current buyback safe-harbour conditions influence venue and mechanism choice and can confine issuer flow to lit continuous trading in practice. Their effect is therefore directly relevant to the FCA's assessment in Question 1.

For buybacks, the material question is whether those restrictions cause avoidable shareholder cost without a corresponding benefit to price formation, resilience or accessible liquidity. A change in CLOB share alone would be insufficient evidence of harm.

7. Conclusion

The immediate question is whether current arrangements expose UK issuers and their shareholders to avoidable costs on a capital-return flow that is large, recurring and uniquely dependent on the public trading market.

The FCA's own work already identifies the central concerns: disclosure must balance fair price formation and market integrity against the cost of revealing an unfinished order; safe-harbour conditions can restrict liquidity; governance and independent measurement affect an issuer's ability to distinguish signalling from capital-return efficiency and judge the all-in result; and structured buybacks raise unresolved questions of economic and regulatory characterisation. Together, these issues warrant urgent re-evaluation.

The priority is a clear and prompt FCA conclusion on whether the present framework remains appropriate. Prompt clarification supports market confidence and competitiveness by allowing issuers and intermediaries to transact and adapt on a more stable basis. Delay may narrow evidential uncertainty, but it also allows reliance on unresolved assumptions to deepen and increases the disruption of any later correction. Detailed design follows that threshold question. Until it is answered, UK issuers and long-term investors may continue to bear a competitiveness cost transmitted through the public market itself.

Sources

Primary and supporting sources cited in this response. Accessed 13 and 14 August 2026.

[1] FCA, CP26/30: Supporting equity market transparency and considering market structure developments (July 2026)

[2] FCA, Share buybacks in UK listed equities: Multi-firm review (August 2025)

[3] Regulation (EU) 2024/2809, amendments to Article 5 of the Market Abuse Regulation

[4] US SEC, Item 703 of Regulation S-K and quarterly issuer repurchase reporting

[5] FCA Occasional Paper No. 60, Banning Dark Pools: Venue Selection and Investor Trading Costs

[6] FCA, TR14/1: Transition Management Review

[7] FCA, State Street UK fined £22.9m for transition-management failings

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