



4.2A Publication of information by UK RIEs

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4.2A.1

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Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE*, whether directly or indirectly, as the *FSA* may reasonably require.

4.2A.2

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Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE* which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE*, whether directly or indirectly, publish such particulars of any such transfer as the *FSA* may reasonably require.

4.2A.3

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Under subsection 292A(5) of the *Act*, a *UK RIE* must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it as the *FSA* may reasonably require.

 4.2B Exercise of passport rights by a UK RIE

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- 4.2B.1  Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market* or *multilateral trading facility* operated by it, it must give the *FSA* written notice of its intention to do so. The notice must:
- (1) describe the arrangements; and
 - (2) identify the *EEA State* in which the *UK RIE* intends to make them.
- 4.2B.2  The *FSA* must, within one month of receiving the *UK RIE's* notice, send a copy of it to the *Host State regulator*.
- 4.2B.3  The *UK RIE* may not make the arrangements until the *FSA* has sent a copy of the notice to the *Host State regulator*.
- 4.2B.4  The requirements that a *UK RIE* must give the *FSA* written notice and the *UK RIE* may not make the arrangements until the *FSA* has sent a copy of it to the *Host State regulator* do not apply to arrangements made by a *UK RIE* on or before 31 October 2007.



4.2C Control over a UK RIE

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- 4.2C.1** **G** Section 301A(1) of chapter 1A of Part XVIII of the *Act* places an obligation on a *person* who decides to acquire or increase control (see sections 301D and 301E of the *Act*) over a *UK RIE* to notify the *FSA* , before making the acquisition. Furthermore, those *persons* are required to obtain the *FSA*'s approval before acquiring control or increasing the level of control held.
- 4.2C.2** **G** The *FSA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*).
- 4.2C.3** **G** If a proposed acquirer has complied with the obligation to notify, the procedure the *FSA* will follow if it approves or does not approve of that *person* acquiring or increasing control is set out in sections 301F and 301G of the *Act*.
- 4.2C.4** **G** [deleted]
- 4.2C.5** **G** [deleted]
- 4.2C.6** **G** The *FSA*'s internal arrangements provide for any decisions to refuse to approve an acquisition or object to an existing control to be taken at an appropriately senior level.
- 4.2C.7** **G** If the *FSA* refuses to approve an acquisition or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see ■ EG 2.39).
- 4.2C.8** **G** The powers the *FSA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FSA*'s refusal to approve the acquisition of control or the *FSA*'s objection to the exercise of control are set out in sections 301J and 301K of the *Act*.
- 4.2C.9** **G** The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section 301L of the *Act*.

4.2D Suspension and removal of financial instruments from trading

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- 4.2D.1 **G** (1) Under section 313A of the *Act*, the *FSA* may for the purpose of protecting:
- (a) the interests of investors; or
 - (b) the orderly functioning of the financial markets;
- require a *UK RIE* to suspend or remove a *financial instrument* from trading.
- (2) If the *FSA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.
- 4.2D.2 **G** The procedure the *FSA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in sections 313B to 313BE of the *Act*. The *FSA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FSA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal* (see ■ EG 2.39) .
- 4.2D.3 **G** Under section 313C(1) of the *Act*, if the *FSA* exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading, it must as soon as reasonably practicable:
- (1) publish its decision in such manner as it considers appropriate, unless the decision has already been published under section 313B(2)(b) of the *Act*; and
 - (2) inform the competent authorities of all other *EEA States* of its decision.
- 4.2D.4 **G** Under section 313C(2) of the *Act*, if the *FSA* receives notice from a *UK RIE* that the *UK RIE* has suspended or removed a *financial instrument* from trading on a *regulated market* operated by it, the *FSA* must inform the competent authorities of all other *EEA States* of the action taken by the *UK RIE*.
- 4.2D.5 **G** Under sections 313C(3) and (4) of the *Act*, if the *FSA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the suspension of a *financial instrument* from trading, the *FSA* must require each *UK RIE* to suspend the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.

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Under sections 313C(3) and (5) of the *Act*, if the *FSA* receives notice from the competent authority of another *EEA State* that that authority, pursuant to Article 41.2 of *MiFID* has required the removal of a *financial instrument* from trading, the *FSA* must require each *UK RIE* to remove the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.

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4.2E Information: compliance of UK RIEs with the MiFID Regulation

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4.2E.1

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Under section 293A of the *Act*, the *FSA* may require a *UK RIE* to give such information as it reasonably requires in order to satisfy itself that the *UK RIE* is complying with the *MiFID Regulation*.



4.3 Risk assessments for UK recognised bodies

- 4.3.1** **G** Information is needed to support the *FSA's* risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the *regulatory objectives* and the *FSA's* general duties under the *Act*. The central element of the process of risk based supervision is a systematic assessment by the *FSA* (a risk assessment) of the main supervisory risks and concerns for each regulated entity.
- 4.3.2** **G** For each *UK recognised body*, the *FSA* will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of *recognised bodies* under the *Act*, the nature of the *UK recognised body's members*, the position of other users of its *facilities* and the business environment more generally.
- 4.3.3** **G** The risk assessment will guide the *FSA's* supervisory focus. It is important, therefore, that there is good dialogue between the *FSA* and the *recognised body*. The *FSA* expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with *key individuals* of the *UK recognised body*. If appropriate, the *FSA* may send a detailed letter to the body's *chief executive*, chairman or both with proposals for further action or work to address particular concerns or issues and seek their comments on the risk assessment.

4.4 Complaints

Recognised body's arrangements

- 4.4.1 **G** *Recognised bodies* may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see ■ REC 2.15 and ■ REC 2.16).

The FSA's arrangements

- 4.4.2 **G** The *Act* does not provide a mechanism for appeals to the *FSA* from decisions by *recognised bodies* in relation to complaints. However, the *FSA* is required by section 299 of the *Act* (Complaints about recognised bodies) to have arrangements to investigate complaints (called *relevant complaints* in the *Act*) which it considers relevant to the question of whether a *recognised body* should remain recognised as such. This section describes aspects of the *FSA's* arrangements for investigating *relevant complaints*.
- 4.4.3 **G** Where the *FSA* receives a complaint about a *recognised body*, it will, in the first instance, seek to establish whether the complainant has approached the *recognised body*. Where this is not the case, the *FSA* will ask the complainant to complain to the *recognised body*. Where the complainant is dissatisfied with the handling of the complaint, but has not exhausted the *recognised body's* own internal complaints procedures (in the case of a complaint against a *UK recognised body*, including by applying to that body's *complaints investigator*), the *FSA* will encourage the complainant to do so.
- 4.4.4 **G** The *FSA* will not usually consider a complaint which has not, in the first instance, been made to the *recognised body* concerned, unless there is good reason for believing that it is a *relevant complaint* which merits early consideration by the *FSA*.
- 4.4.5 **G** When it is considering a *relevant complaint*, the *FSA* will make its own enquiries as appropriate with the *recognised body*, the complainant and other *persons*. It will usually ask the *recognised body* and the complainant to comment upon any preliminary or draft conclusions of its review and to confirm any matters of fact at that stage.
- 4.4.6 **G** The *FSA* will communicate the outcome of its review of a *relevant complaint* to the complainant and the *recognised body*, but will normally only discuss any action which it considers the *recognised body* should take with the *recognised body* itself.

4.5 FSA supervision of action by UK recognised bodies under their default rules

- 4.5.1** **G** *UK recognised bodies* which, under their *rules*, have *market contracts* are required to have *default rules* enabling them (among other things) to take action in relation to a *member* who appears to be unable to meet his obligations in respect of one or more unsettled *market contracts*. The detailed *recognition requirements* relating to the *default rules* are set out in ■ REC 2.17.
- 4.5.2** **G** The *default rules* are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled *market contract* are discharged, and for there to be paid between the defaulter and each counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.
- 4.5.3** **G** The Companies Act 1989 also gives the *FSA* powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the *FSA* to give directions) (see ■ REC 4.5.4 G), the *FSA* may direct a *UK recognised body* to take, or not to take, action under its *default rules*. Before exercising these powers the *FSA* must consult the *recognised body* concerned. The *FSA* may also exercise these powers if a *relevant office-holder* applies to it under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken) (see ■ REC 4.5.9 G).
- 4.5.4** **G** Table The Companies Act 1989: section 166

The *FSA* may issue a "positive" direction (to take action) under section 166(2)(a) of the Companies Act 1989:

Where in any case a [UK RIE] or [UK RCH] has not taken action under its default rules- if it appears to [the FSA] that it could take action, [the FSA] may direct it to do so,

but under section 166(3)(a) of the Companies Act 1989:

Before giving such a direction the [FSA] shall consult the [UK RIE] or [UK RCH] in question; and [the FSA] shall not give a direction unless [the FSA] is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market,

The *FSA* may issue a "negative" direction (not to take action) under section 166(2)(b) of the Companies Act 1989:

Where in any case a [UK RIE] or [UK RCH] has not taken action under its default rules - if it appears to the [FSA] that it is proposing to take or may take action, [the FSA] may direct it not to do so.

but under section 166(3)(b) of the Companies Act 1989:

Before giving such a direction the [FSA] shall consult the [UK RIE] or [UK RCH] in question; and the [FSA] shall not give a direction unless [the FSA] is satisfied, in the light of that consultation that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market.

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The FSA's view is that the exercise of these powers will only be justified in exceptional circumstances. The most likely case in which the FSA would consider exercising them is if there were a need to coordinate action by different *UK recognised bodies* because, for example:

- (1) the likelihood of a default may not be apparent to all *UK recognised bodies*; or
- (2) there was a need to avoid premature default action by one *UK recognised body*; or
- (3) significantly different settlement prices had been fixed by different *UK recognised bodies*.

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Under section 166(6) of the Companies Act 1989, a negative direction cannot be given if, in relation to the defaulter, either:

- (1) a bankruptcy order or an award of sequestration of the defaulter's estate has been made, or an interim receiver or interim trustee has been appointed; or
- (2) a winding-up order has been made, a resolution for voluntary winding-up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

and any previous negative direction will cease to have effect on the making or passing of any such order, award or appointment.

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Under section 166(5) of the Companies Act 1989, a negative direction may be expressed to have effect until a further direction is given, which may either be a positive direction or a revocation of the earlier negative direction.

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Under section 166(7) of the Companies Act 1989, where a *UK recognised body* has taken action either of its own accord or in response to a direction, the FSA may direct it to do or not to do specific things subject to these being within the powers of the *UK recognised body* concerned under its *default rules*. However, the FSA cannot give such a direction unless it is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings.

Section 167 of the Companies Act 1989

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Where, in relation to a *member* (or *designated non-member*) of a UK RIE or a *member* of a UK RCH:

- (1) a bankruptcy order; or
- (2) an award of sequestration of his estate; or
- (3) an order appointing an interim receiver of his property; or
- (4) an administration or winding-up order; or
- (5) a resolution for a voluntary winding-up; or
- (6) an order appointing a provisional liquidator;

has been made or passed and the *UK recognised body* has not taken action under its *default rules* as a result of this event or of the matters giving rise to it, a *relevant office-holder* appointed in connection with the order, award or resolution may make an application to the *FSA* under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

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The effect of an application under section 167 of the Companies Act 1989 is to require the *UK recognised body* concerned to take action under its *default rules* or to require the *FSA* to take action under section 166 of the Companies Act 1989 (see REC 4.5.4G).

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The procedure is that the *FSA* must notify the *UK recognised body* of the application and, unless within three *business days* after receipt of that notice, the *UK recognised body*:

- (1) takes action under its *default rules*; or
- (2) notifies the *FSA* that it proposes to take action forthwith; or
- (3) is directed to take action by the *FSA* under section 166(2)(a) of the Companies Act 1989;

the provisions of sections 158 to 165 of the Companies Act 1989 do not apply in relation to *market contracts* to which the *member* or *designated non-member* is a party or to anything done by the *UK recognised body* for the purpose of, or in connection with, the settlement of any *market contracts*.

4.6 The section 296 power to give directions

- 4.6.1** **G** Under section 296 of the *Act* (FSA's power to give directions), the *FSA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements*. In the case of a *UK RIE* those steps may include granting the *FSA* access to the *UK RIE*'s premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction .
- 4.6.2** **G** The *FSA* must also give a direction to a *recognised body* if it is directed to do so by the Treasury under section 308 of the *Act* (Directions by the Treasury).
- 4.6.3** **G** The *FSA* is likely to exercise its power under section 296 of the *Act* if it considers that:
- (1) there has been, or was likely to be, a failure to satisfy the *recognition requirements* or there has been a failure to comply with any other obligation in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements* which has serious consequences;
 - (2) compliance with the direction would ensure that the *recognition requirements*, or other obligation in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements*, were satisfied; and
 - (3) the *recognised body* is capable of complying with the direction.
- 4.6.4** **G** Under section 298(7) of the *Act* (Directions and revocation: procedure), the *FSA* need not follow the consultation procedure set out in the rest of section 298 (see **REC 4.8**), or may cut short that procedure, if it considers it essential to do so. The *FSA* is likely to consider it essential to cut short the procedure if, in the absence of immediate action, there would be:
- (1) a serious risk of substantial losses to investors, particularly *retail clients* ; or
 - (2) a serious threat to market confidence or to the stability of the *UK financial system*; or
 - (3) a serious risk of *money laundering* or other serious *financial crime*.

4.7 The section 297 power to revoke recognition

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4.7.1 **G** Under section 297 of the *Act* (Revoking recognition), the *FSA* has the power to revoke a *recognition order* relating to a *recognised body*.

4.7.2 **G** The *FSA* will revoke a *recognition order* if:

- (1) it is directed to do so by the Treasury under section 308 of the *Act* (Directions by the Treasury); or
- (2) the *recognised body* has asked the *FSA* to revoke the order.

4.7.3 **G** The *FSA* will usually consider revoking a *recognition order* if:

- (1) the *recognised body* is failing or has failed to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements* and that failure has or will have serious consequences; or
- (2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FSA's* power to give directions); or
- (3) for some other reason, it would not be appropriate for the *FSA* to give a direction under section 296 or;
- (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange during the 12 *months* beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six *months* ending with the day the *recognition order* is revoked.

4.7.4 **G** The *FSA* would be likely to consider the conditions in **■** REC 4.7.3 G (2) or **■** REC 4.7.3 G (3) to be triggered in the following circumstances:

- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements* ; or

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In addition to the relevant factors set out in ■ REC 4.7.4 G, the FSA will usually consider that it would not be able to secure an *overseas recognised body's* compliance with the *recognition requirements* or other obligations in or under the *Act* by means of a direction under section 296 of the *Act*, if it appears to the FSA that the *overseas recognised body* is prevented by any change in the legal framework or supervisory arrangements to which it is subject in its *home territory* from complying with the *recognition requirements* or other obligations in or under the *Act*.

- (2) the *recognised body* does not appear to be willing to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a UK RIE, the *MiFID implementing requirements* ; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act*; or
- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies the *recognition requirements* or, in the case of a UK RIE, the *MiFID implementing requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

4.8 The section 298 procedure

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A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition); or
- (2) make a direction under section 296 (*FSA's* powers to give directions); or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision);

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) sets out a procedure (see ■ REC 4.8.9 G) which the *FSA* will follow unless, in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1)) or, in a case where the *FSA* proposes to make a direction under section 296, it considers it is essential not to follow, or to cut short, the procedure (see ■ REC 4.6.4 G and ■ REC 4.8.7 G).

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The *FSA's* internal arrangements provide for any of these decisions to be taken at an appropriately senior level.

4.8.3

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In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act*, the *FSA* will have regard to all relevant information and factors including:

- (1) its *guidance to recognised bodies*;
- (2) the results of its routine supervision of the body concerned;
- (3) the extent to which the failure or likely failure to satisfy the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements* may affect the *regulatory objectives*.

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In considering whether or not to make a *recognition order*, the *FSA* will have regard to all relevant information and factors, including its *guidance to recognised bodies* and applicants and the information provided by applicants. Details of the application processes and other *guidance* for applicants are set out in ■ REC 5 and (for overseas applications) ■ REC 6.

- 4.8.5 G The procedures laid down in section 298 of the *Act* are summarised, with the *FSA's guidance* about the actions it proposes to take in following these procedures, in the table at ■ REC 4.8.9 G.
- 4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act*, the *FSA* will usually discuss its intention, and the basis for this, with the *key individuals* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.
- 4.8.7 G Under section 298(7) of the *Act*, the *FSA* need not follow the procedure in section 298 in relation to giving a direction under section 296, when it considers it essential not to do so. *Guidance* on the circumstances in which the *FSA* will usually act in this way is given in ■ REC 4.6.4 G.
- 4.8.8 G Under section 290(6) of the *Act*, the *FSA* need not follow the procedure in section 298 in relation to a refusal to make a *recognition order* if (under section 307) the Treasury has not given its approval for the *recognition order* to be made. Further *guidance* is given in ■ REC 5 and ■ REC 6 (for overseas applications).

4.8.9 G Table Key steps in the section 298 procedure

The <i>FSA</i> will:	<i>Guidance</i>
(1) give written notice to the <i>recognised body</i> (or applicant);	The notice will state why the <i>FSA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made.
(2) take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>recognised body</i> or of the applicant, as the case may be;	The <i>FSA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other <i>persons</i> of the same class.
(3) publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;	
(4) receive representations from the <i>recognised body</i> or applicant concerned, any <i>member</i> of the <i>recognised body</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FSA</i> proposes to take;	The <i>FSA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>recognised body</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.
(5) write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FSA</i> will indicate why it will not hear oral representations and the <i>FSA</i> will allow the

The FSA will:	Guidance
	<i>person</i> concerned further time to respond.
(6) have regard to representations made;	
(7) (when it has reached its decision) notify the <i>recognised body</i> (or applicant) concerned in writing;	
(8) (if it has decided to give a direction, or revoke or refuse to make a <i>recognition order</i>) take such steps as it considers reasonably practicable to bring its decision to the attention of <i>members</i> of the <i>recognised body</i> or applicant and to other <i>persons</i> likely to be affected.	The <i>FSA</i> will usually give notice of its decision to the same <i>persons</i> and in the same manner as it gave notice of its intention to act.

Chapter 5

Applications for Recognition (UK recognised bodies)

5.1 Introduction and legal background

5.1.1 **G** A *body corporate* or an unincorporated association may apply to the FSA for recognition as a *UK recognised body* under sections 287 (Application by an investment exchange) or 288 (Application by a clearing house) of the *Act*.

5.1.2 **G** This chapter sets out *guidance* for UK applicants and for UK entities which are considering making an application. *Guidance* for applicants and prospective applicants for *overseas recognised body* status is given in ■ REC 6.

5.1.3 **G** The Director General of Fair Trading, the Competition Commission and the Treasury also have specific roles in relation to competition issues raised by applications to become a *recognised body*.

5.1.4 **G**

- (1) Under section 303 of the *Act* (Initial report by the Director), the Director General of Fair Trading must issue a report on whether any of the applicant's *regulatory provisions* have a significantly adverse effect on competition. He must send copies of his report to the Treasury, the Competition Commission and the FSA.
- (2) If the Director General of Fair Trading concludes that any of the applicant's *regulatory provisions* have a significantly adverse effect on competition, or if the Director General of Fair Trading concludes that none of the applicant's *regulatory provisions* has a significantly adverse effect on competition, but he nonetheless asks the Competition Commission to consider his report, the Competition Commission must normally make its own report under section 306 of the *Act* (Consideration by Competition Commission) on whether any of the applicant's *regulatory provisions* would have a significantly adverse effect on competition, whether any such effect is justified and, if it is not justified, what action, if any, the Treasury should direct the FSA to take.
- (3) The Treasury's approval is required under section 307 of the *Act* (Recognition orders: role of the Treasury) before a *recognition order* can be made. (See also ■ REC 5.2.11 G.)

5.1.5 **G** The FSA must therefore send the Director General of Fair Trading copies of any *regulatory provisions* provided with the application. The FSA must also send to the Director General of Fair Trading such information in its possession as a result of the application, including supplementary information received after the application is made, but before it is determined by the FSA, as the FSA considers will assist the

Director General of Fair Trading in discharging his functions in connection with the application.

5.1.6 **G** The Office of Fair Trading may also make informal requests for further information from an applicant. The Director General of Fair Trading also has powers under section 305 of the *Act* (Investigations by Director) to obtain compulsorily *documents* or information from the applicant or other *persons*.

5.1.7 **G** Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules, guidance or clearing arrangements which they consider they may need to discuss with them.

5.2 Application process

5.2.1 **G** An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the *recognition requirements* and in the case of a *UK RIE*, the *MiFID implementing requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognition requirements* and in the case of a *UK RIE*, the *MiFID implementing requirements* at all times. (*Guidance on the recognition requirements* applicable to *UK recognised bodies* (and applicants) is given in ■ REC 2).

5.2.1A **G** In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the *FSA* must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* or *UK RCH* if it appears to the *FSA* that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of clearing services imposes, or will impose, an excessive requirement (as defined in section 300A of the *Act*) on *persons* directly or indirectly affected by it.

5.2.2 **G**

- (1) There is no standard application form. A prospective applicant should contact the Markets Division at the *FSA* at an early stage for advice on the preparation, scheduling and practical aspects of its application.
- (2) It is very important, if an application is to be processed smoothly and in a reasonable time, that it is comprehensively prepared and based on a well-developed and clear proposal.

5.2.3 **G** An application should:

- (1) be made in accordance with any directions the *FSA* may make under section 287 (Application by an investment exchange) or section 288 (Application by a clearing house) of the *Act*;
- (2) be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see ■ REC 5.2.3A G) (the material specifically prescribed in section 287 or section 288);
- (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the *recognition requirements* and in the case of a *UK RIE*, the *MiFID implementing requirements* will be met; and

(4) be accompanied by the appropriate fee (see ■ REC 7).

- 5.2.3A** **G** The information required pursuant to sub-sections 287(c), (d) and (e) of the *Act* is:
- (1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;
 - (2) particulars of the persons who effectively direct the business and operations of the exchange; and
 - (3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.
- 5.2.4** **G** Other information and documentation which should normally accompany an application is listed in more detail in ■ REC 5.2.14 G.
- 5.2.5** **G** A prospective applicant who is an *authorised person* may wish to consult the *FSA* about the extent to which information which it has already supplied in connection with its status as an *authorised person* can be used to support an application to become a *UK recognised body*.
- 5.2.6** **G** Under section 289 of the *Act* (Applications: supplementary), the *FSA* may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the *FSA* will normally wish to arrange for its own inspection of an applicant's information technology systems.
- 5.2.6A** **G** In the case of an application to become a *UK RIE*, under subsection 290(1B) of the *Act*, the application must be determined by the *FSA* before the end of the period of six *months* beginning with the date on which it receives the completed application.
- 5.2.7** **G** At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the *FSA*. Any amendments or additional information are likely to be forwarded by the *FSA* to the Director General of Fair Trading and the Treasury under section 303 of the *Act* (Initial report by Director) (see ■ REC 5.1.5 G).
- 5.2.8** **G**
- (1) The *FSA* will keep the applicant informed of the progress of the application.
 - (2) It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The *FSA* may wish to discuss various aspects of the application and may invite the applicant to attend one or more meetings for that purpose. When requested to do so, the *FSA* will explain the nature of the information which it has asked an applicant to supply in connection with its application.
- 5.2.9** **G**
- (1) While the *FSA* is considering the application, the Office of Fair Trading will be reviewing the *regulatory provisions* so that the Director General of Fair Trading is able to make the report required by section 303 of the *Act*.

(2) When the Director General of Fair Trading has issued his report, if the circumstances described in ■ REC 5.1.4 G apply, the Competition Commission must normally make its own report under section 306 of the *Act*.

5.2.10 **G** Where the *FSA* considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a *UK RIE*, the *MiFID implementing requirements* , and that the Treasury has had an opportunity to consider any reports from the Director General of Fair Trading and the Competition Commission, the *FSA* will then seek the Treasury's approval, under section 307 of the *Act* (Recognition orders: role of the Treasury), to the making of a *recognition order*.

5.2.11 **G** Under section 307 of the *Act*, the Treasury will have to follow the advice of the Director General of Fair Trading or the Competition Commission as appropriate unless it considers that there are exceptional circumstances for not doing so. The Treasury will therefore ordinarily give its approval to the making of a *recognition order* if the applicant's *regulatory provisions* are not considered to have a significantly adverse effect on competition or, if they are considered to have that effect, the effect is justified. It will ordinarily refuse its approval if the applicant's *regulatory provisions* are considered to have any significantly adverse effect on competition and that effect is not considered to be justified.

5.2.12 **G** Where the *FSA* considers that it is unlikely to make a *recognition order*, or to seek the Treasury's approval, it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see ■ REC 5.2.7 G). If the *FSA* decides that it will not make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) and described in more detail in ■ REC 4.8.

5.2.13 **G** The *FSA* will notify the applicant if the Treasury does not give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290 (Recognition orders), the *FSA* does not have to follow the section 298 procedure (see ■ REC 4.8) in this case and will not normally do so. The Treasury is required in those circumstances to follow a similar procedure under section 310 of the *Act* (Procedure on the exercise of certain powers by the Treasury).

5.2.14 **G** Table Information and supporting documentation (see ■ REC 5.2.4 G).

- (1) Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous *documents*) and any agreements between the applicant, its owners or other *persons* relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G).
- (2) Details of all business to be conducted by the applicant, whether or not a *regulated activity* (if not contained in the information listed in REC 5.2.3A G) .
- (3) Details of the *facilities* which the applicant plans to operate, including details of the trading platform, settlement arrangements, clearing services and *custody* services which it plans to supply.
- (4) Copies of the last three annual reports and accounts and, for the current financial year, quarterly *management accounts*.
- (5) Details of its business plan for the first three years of operation as a *UK recognised body* (if not contained in the information listed in REC 5.2.3A G) .

- (6) A full organisation chart and a list of the posts to be held by *key individuals* (with details of the duties and responsibilities) and the names of the *persons* proposed for these appointments when these names are available (if not contained in the information listed in REC 5.2.3A G).
- (7) Details of its auditors, bankers, solicitors and any *persons* providing corporate finance advice or similar services (such as reporting accountants) to the applicant.
- (8) Details of any *relevant functions* to be outsourced or delegated, with copies of relevant agreements.
- (9) Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.
- (10) Details of all plans to minimise disruption to operation of its *facilities* in the event of the failure of its information technology systems.
- (11) Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.
- (12) Details of its arrangements for managing any counterparty risks, including details of margining systems, guarantee funds and insurance arrangements.
- (13) Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.
- (14) Details of arrangements for complying with the *notification rules* and other requirements to supply information to the *FSA*.
- (15) Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.
- (16) A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including *default rules*) and arrangements for margin against any of its *members* based outside the *United Kingdom*, and the results and conclusions reached.
- (17) Details of the procedures to be followed for declaring a *member* in default, and for taking action after that event to close out positions, protect the interests of other *members* and enforce its *default rules*.
- (18) Details of membership selection criteria, rules and procedures.
- (19) Details of arrangements for recording transactions effected by, or cleared through, its *facilities*.
- (20) Details of arrangements for detecting *financial crime* and *market abuse*, including arrangements for complying with *money laundering* law.
- (21) Details of criteria, rules and arrangements for selecting *specified investments* to be admitted to trading on (or cleared by) an *RIE*, or to be cleared by an *RCH* and, where relevant, details of how information regarding *specified investments* will be disseminated to users of its *facilities*.
- (22) Details of arrangements for cooperating with the *FSA* and other appropriate authorities, including draft memoranda of understanding or letters.
- (23) Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes.
- (24) Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.

Chapter 6

Overseas Investment Exchanges and Overseas Clearing Houses

6.1 Introduction and legal background

6.1.1

G

The Act prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the *United Kingdom* unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* or *overseas clearing house* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

- (1) obtain a *Part IV permission* from the *FSA*;
- (2) (in the case of an *EEA firm* or a *Treaty firm*) qualify for *authorisation* under Schedule 3 (EEA Passport Rights) or Schedule 4 (Treaty rights) to the *Act*, respectively; or
- (3) (in the case of an *EEA market operator*) obtain *exempt person* status by exercising its passport rights under Articles 31(5) and 31(6) of *MiFID* (in the case of arrangements relating to a *multilateral trading facility*) or Article 42(6) of *MiFID* (in the case of arrangements relating to a *regulated market*); or
- (4) obtain *exempt person* status by being declared by the *FSA* to be (in the case of an *overseas investment exchange*) an *ROIE* or (in the case of an *overseas clearing house*) an *ROCH*.

6.1.2

G

Having the status of an *overseas recognised body* facilitates the participation of *overseas investment exchanges* and *overseas clearing houses* in *UK markets*. In comparison with *authorisation*, it reduces the involvement which *UK* authorities need to have in the day-to-day affairs of an *overseas recognised body* because they are able to rely substantially on the supervisory and regulatory arrangements in the country where the applicant's head office is situated.



6.2 Applications

- 6.2.1** **G** (1) *Overseas investment exchanges* and *overseas clearing houses* which are considering whether to seek *authorisation* or recognition should first consider whether they will be carrying on *regulated activities* in the *United Kingdom*. *Overseas investment exchanges* and *overseas clearing houses* which do not carry on *regulated activities* in the *United Kingdom* need take no action.
- (2) Prospective applicants should discuss *authorisation* and recognition with the *FSA* before deciding whether to seek *authorisation* or recognition.
- 6.2.2** **G** A prospective applicant may wish to contact the Markets Division at the *FSA* at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an *overseas recognised body*.
- 6.2.3** **G** Applicants for *authorised person* status should refer to the *FSA* website "How do I get authorised": <http://www.fsa.gov.uk/Pages/Doing/how/index.shtml>. Applications for recognition as an *overseas recognised body* should be addressed to:
- The Financial Services Authority (Markets Division)
- 25 The North Colonnade
- Canary Wharf
- London E14 5HS
- 6.2.4** **G** There is no standard application form for application for recognition as an *overseas recognised body*. An application should be made in accordance with any direction the *FSA* may make under section 287 (Application by an investment exchange) or section 288 (Application by a clearing house) of the *Act* and should include:
- (1) the information, evidence and explanatory material necessary to demonstrate to the *FSA* that the *recognition requirements* (set out in ■ REC 6.3) will be met;
 - (2) the application fee (see ■ REC 7);
 - (3) the address of the applicant's head office in its *home territory*;

- (4) the address of a place in the *United Kingdom* for the service on the applicant of notices or other *documents* required or authorised to be served on it under the *Act* (see section 292(1));
- (5) the applicant's *regulatory provisions*;
- (6) one copy of each of the following *documents*:
 - (a) its most recent *annual report and accounts*; and
 - (b) the applicant's memorandum and articles of association or any similar or analogous *documents*; and
- (7) information identifying the following (if not contained in the *documents* listed in (5) or (6) or the material referred to in (1)):
 - (a) any type of *regulated activity* which the applicant envisages carrying on in the *United Kingdom*;
 - (b) any type of *specified investment dealt in*, or cleared by, the applicant;
 - (c) the date by which the applicant wishes the *recognition order* to take effect; and
 - (d) any body or authority which supervises the applicant under the law of the *home territory*, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

6.2.5

G

The *FSA* may require further information from the applicant and may need to have discussions with the appropriate authorities in the applicant's *home territory*. To allow sufficient time for applications to be processed and for the necessary contacts to be made with the appropriate *home territory* authorities, applications should be made not later than six months before the applicant wishes the *recognition order* to take effect. No guarantee can be given that a decision will be reached within this time, although the *FSA* will endeavour to meet the applicant's reasonable timing requirements.

6.2.6

G

All material should be supplied in English, or accompanied, if appropriate, by an accurate English translation. An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.



6.3 Recognition requirements

6.3.1



Before making a *recognition order*, the FSA will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (Overseas investment exchanges and clearing houses) have been met. These requirements are the only *recognition requirements* applicable to *overseas recognised bodies*.

6.3.2



Sections 292(3) and 292(4) state:

Section 292(3)

The requirements are that-

- (a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with *recognition requirements*;
- (b) there are adequate procedures for dealing with a *person* who is unable, or likely to become unable, to meet his obligations in respect of one or more *market contracts* connected with the [ROIE] or [ROCH];
- (c) the applicant is able and willing to co-operate with the [FSA] by the sharing of information and in other ways; and
- (d) adequate arrangements exist for co-operation between the [FSA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.

Section 292(4)

In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [FSA] is to have regard to-

- (a) the relevant law and practice of the country or territory in which the applicant's head office is situated;
- (b) the rules and practices of the applicant.

6.3.3



The reference to *recognition requirements* in section 292(3)(a) of the *Act* is a reference to the requirements applicable to UK RIEs or UK RCHs in the *Recognition Requirements Regulations*. These requirements are set out, together with *guidance*, in ■ REC 2.

6.4 Competition scrutiny

- 6.4.1 **G** Applications from *overseas investment exchanges* and *overseas clearing houses* are subject to the same competition scrutiny as applications from prospective *UK recognised bodies* (see ■ REC 5). The *FSA* will therefore follow the relevant steps set out in ■ REC 5.2 and may not make a *recognition order* without the approval of the Treasury.
- 6.4.2 **G** Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules or guidance which they consider they may need to discuss with the Office of Fair Trading.



6.5 FSA decision on recognition

- 6.5.1** **G** If the *FSA* considers that the requirements of the *Act* are satisfied, it may make a *recognition order*, which will state the date on which it takes effect.
- 6.5.2** **G** Where the *FSA* considers that it is unlikely to make a *recognition order*, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the *FSA* decides to refuse to make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the *Act* (Recognition orders)) which is described in more detail in ■ REC 4.8.
- 6.5.3** **G** The *FSA* will notify the applicant if the Treasury fails to give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290, the *FSA* is not required to follow the procedure under section 298 in this case and will not normally do so.

6.6 Supervision

6.6.1

G

An *overseas recognised body* is required to notify the FSA of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) requires each *overseas recognised body* to provide the FSA, the Treasury and the Director General of Fair Trading with a report (at least once a year) which contains:

- (1) a statement as to whether any events have occurred which are likely:
 - (a) to affect the FSA's assessment of whether it is satisfied that the *overseas recognised body* continues to satisfy the *recognition requirements* set out in section 292(3) of the *Act* (Overseas investment exchanges and overseas clearing houses)(see ■ REC 6.3); and
 - (b) to have any effect on competition;
- (2) the information specified in the FSA's *notification rules* for *overseas recognised bodies* (see ■ REC 6.7).

6.6.2

G

The following events are examples of events likely to affect an assessment of whether an *overseas recognised body* is continuing to satisfy the *recognition requirements*, or to have an effect on competition:

- (1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:
 - (a) governing exchanges or *clearing houses*;
 - (b) designed to prevent insider dealing, market manipulation or other forms of market abuse or misconduct;
 - (c) designed to protect the interests of *clients* of *members* of the *overseas recognised body*, or of a class of bodies which includes the *overseas recognised body*;
 - (d) which affect:
 - (i) the ability of the *overseas recognised body* to seek information (whether compulsorily or voluntarily) from its *members*, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;
 - (ii) which affect the ability of the *overseas recognised body* to pass such information, on request, to UK authorities;

- (2) significant changes to its internal organisation or structure;
- (3) significant changes to the practices of the *overseas recognised body* applying to any *regulated activities* carried on by it in the *United Kingdom*;
- (4) any other event or series of events in relation to the body which:
 - (a) affects or may significantly affect cooperation between the *overseas recognised body*, or its supervisor in its *home territory*, and the *FSA*; or
 - (b) has or may have a substantial effect on the structure of the markets in which the body operates; or
 - (c) brings about or may bring about a substantial change in the nature and composition of its *membership* in the *United Kingdom*; or
 - (d) brings about or may bring about a substantial change in the *regulated activities* undertaken by it in the *United Kingdom*.

6.6.3 **G** The period covered by a report submitted under section 295(1) of the *Act* starts on the day after the period covered by its last report or, if there is no such report, after the making of the *recognition order* recognising the *overseas recognised body* as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.

6.6.4 **G** If an *overseas recognised body* changes the period covered by its report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.

6.6.5 **G** The period covered by a report submitted under section 295(1) of the *Act* would most conveniently be one year.

6.6.6 **G** Copies of the report should be sent to the *FSA*, the Treasury and the Director General of Fair Trading within two months after the end of the period to which it relates.

6.7 Notification rules for overseas recognised bodies

Application

6.7.1 **R** The *notification rules* in this chapter, which are made under sections 293 (Notification requirements) and 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses), apply to all *overseas recognised bodies*.

Purpose

6.7.2 **G** The *notification rules* in this chapter are made by the *FSA* in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the *Act*.

Reports under section 295

6.7.3 **R** Where an *overseas recognised body* includes in its report made under section 295(1) of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) a statement in compliance with section 295(2)(a) of the *Act* that an event has occurred in the period covered by that report which is likely to affect the *FSA*'s assessment of whether it is satisfied as to the requirements set out in section 292(3) (Overseas investment exchanges and overseas clearing houses), it must include particulars of that event.

6.7.4 **R** An *overseas recognised body* must include in its report submitted in compliance with section 295(1) of the *Act*:

- (1) particulars of any changes to:
 - (a) its memorandum and articles of association or any similar or analogous *documents*;
 - (b) its *regulatory provisions*;
 - (c) its chairman or president, or *chief executive* (or equivalent);
- (2) particulars of any disciplinary action (or any similar or analogous action) taken against it by any supervisory authority in its *home territory*, whether or not that action has been made public in that territory; and

(3) a copy of its *annual report and accounts*;

where those events occurred, or the period covered by that *annual report and accounts* ended, in the period covered by that report.

First report

6.7.5

R

An *overseas recognised body* must include in the first report submitted under section 295(1) of the *Act* after the *recognition order* in relation to that *overseas recognised body* is made:

(1) particulars of any events of the kind described in section 295(2) of the *Act* which occurred;

(2) particulars of any change specified in ■ REC 6.7.4 R (1) or disciplinary action specified in ■ REC 6.7.4 R (2) which occurred; and

(3) any *annual report and accounts* which covered a period ending; after the application for recognition was submitted to the *FSA* but which were not included in the application or in any supplementary information submitted to the *FSA* before the *recognition order* was made.

6.7.6

G

Guidance on the period covered by an *overseas recognised body's* report submitted in compliance with section 295(1) of the *Act* is given in ■ REC 6.6.3.

Changes of address

6.7.7

R

Where an *overseas recognised body* proposes to change:

(1) its address in the *United Kingdom* for the service of notices or other *documents* required or authorised to be served on it under the *Act*; or

(2) the address of its head office;

it must give notice to the *FSA* and inform it of the new address at least 14 days before the change is effected.

Revocation or modification of home territory licence, permission or authorisation

6.7.8

R

Where an *overseas recognised body* has notice that any licence, permission or authorisation which it requires to conduct any *regulated activity* in its *home territory* has been or is about to be:

(1) revoked; or

(2) modified in any way which would materially restrict the *overseas recognised body* in performing any *regulated activity* in its *home territory* or in the *United Kingdom*;

it must immediately notify the *FSA* of that fact and must give the *FSA* the information specified for the purposes of this *rule* in ■ REC 6.7.9 R, as soon as that information is known to it.

6.7.9 **R** The following information is specified for the purposes of ■ REC 6.7.8 R:

- (1) particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the *overseas recognised body's regulated activities* to which it relates;
- (2) an explanation of how the revocation or modification restricts or will restrict the *overseas recognised body* in carrying on any *regulated activity* in its *home territory* or in the *United Kingdom*;
- (3) the date on which the revocation or modification took, or will take, effect and, if it is a temporary measure, any date on which, or any conditions that must be met before which, it will cease to have effect; and
- (4) any reasons given for the revocation or modification.

Language of notice

6.7.10 **R** Any notice to be given or information to be supplied under these *notification rules* must be supplied in English, and any *document* to be provided must be accompanied, if not in English, by an accurate English translation.

6.7.11 **G** An English glossary of technical or statistical terms may be sufficient to accompany tables of statistical or financial information.

Form and method of notification

6.7.12 **R** The *rules* relating to the form and method of notification in ■ REC 3.2 also apply to *overseas recognised bodies*.

Waivers

6.7.13 **G** *Overseas recognised bodies* may apply to the *FSA* for a *waiver* of any of the *notification rules*. The procedure is the same as that for applications from *UK recognised bodies*. *Guidance* on the procedure is given in ■ REC 3.3.



6.8 Powers of direction and revocation of recognition orders

6.8.1

G

The *FSA* has similar powers to supervise *overseas recognised bodies* to those it has to supervise *UK recognised bodies*. It may (in addition to any other powers it might exercise):

- (1) give directions to an *overseas recognised body* under section 296 of the *Act* (Authority's power to give directions) if it has failed, or is likely to fail, to satisfy the *recognition requirements* or if it has failed to comply with any other obligation imposed by or under the *Act*; or
- (2) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) if an *overseas recognised body* is failing, or has failed, to comply with the *recognition requirements* or any other obligation in or under the *Act*.

6.8.2

G

The *FSA* will follow the approach in ■ REC 4.6, ■ REC 4.7 and ■ REC 4.8 if it is considering exercising these powers in relation to an *overseas recognised body*.

Chapter 6A

EEA market operators in the United Kingdom

6A.1 Exercise of passport rights by EEA market operator

- 6A.1.1** **G** Under section 312A of the *Act*, an *EEA market operator* may make arrangements in the *United Kingdom* to facilitate access to, or use of, a *regulated market* or *multilateral trading facility* operated by it if:
- (1) the operator has given its *Home State regulator* notice of its intention to make such arrangements; and
 - (2) the *Home State regulator* has given the *FSA* notice of the operator's intention.
- 6A.1.2** **G** In making these arrangements, the operator has *exempt person* status as respects any *regulated activity*, which is carried on as a part of its business of operating the market or facility in question, or in connection with, or for the purposes of that business.
- 6A.1.3** **G** An *EEA market operator* has *exempt person* status as respects any *regulated activity* which is carried on as a part of its business of operating a *regulated market* or *multilateral trading facility* if the operator made arrangements in the *United Kingdom* on or before 31 October 2007 to facilitate access to, or use of, that *regulated market* or *multilateral trading facility*.



6A.2 Removal of passport rights from EEA market operator

- 6A.2.1** **G** Under section 312B of the *Act*, the *FSA* may prohibit an *EEA market operator* from making or, as the case may be, continuing arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, or *multilateral trading facility*, operated by the operator if:
- (1) the *FSA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
 - (2) the *FSA* has first complied with sections 312B(3) to (9) of the *Act*.
- 6A.2.2** **G** A requirement is relevant if it is imposed:
- (1) by the operator's *Home State regulator* in the implementation of *MiFID* or any *EU* legislation made under *MiFID*;
 - (2) by provision implementing *MiFID*, or any *EU* legislation made under it, in the operator's *Home State*; or
 - (3) by any directly applicable *EU* regulation made under *MiFID*.
- 6A.2.3** **G** The procedure the *FSA* will follow if it is to exercise this prohibition power is set out in sections 313B(3) to (9) of the *Act*.
- 6A.2.4** **G** If the *FSA* exercises this prohibition power it must at the earliest opportunity notify the Commission of the action taken in relation to the operator.
- 6A.2.5** **G** The operator's *exempt person* status ceases to apply if the *FSA* exercises this prohibition power.
- 6A.2.6** **G** The operator's right to make arrangements in the *United Kingdom*, to facilitate access to, or use of, a *regulated market*, or *multilateral trading facility*, operated by the operator may be reinstated (together with its *exempt person* status) if the *FSA* is satisfied that the contravention which led the *FSA* to exercise its prohibition power has been remedied.

6A

Chapter 7

Fees



7.1

**[deleted: the provisions in relation to
Recognised Investment Exchanges and
Recognised Clearing Houses are set out
in FEES 1,2, 3 and 4]**

- 7.1.1 [Deleted]
- 7.1.2 [Deleted]
- 7.1.3 [Deleted]
- 7.1.4 [Deleted]
- 7.1.5 [Deleted]
- 7.1.6 [Deleted]
- 7.1.7 [Deleted]
- 7.1.8 [Deleted]



7.2

[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1,2, 3 and 4]

7.2.1

[Deleted]



7.3

[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 1,2, 3 and 4]

- 7.3.1
- 7.3.2
- 7.3.3
- 7.3.4

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[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]

[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES?3 Annex 3R]

Recognised Investment Exchanges and Recognised Clearing Houses

REC TP 1 Transitional provisions

Introduction

- 1 This schedule sets out the transitional provisions in *REC*.
- 2 The *Recognition Requirements Regulations* also contain transitional provisions applying to *recognised bodies*.
- 3 *GEN* also contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and notification requirements

2 (overleaf)

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1	REC 3 and REC 6	R	Expired		
2	REC 3	R	Expired		
3	REC 3	R	Expired		
4	REC 6.6.3	G	Expired		
5	REC 6.7.5	R	Expired		

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 1 Record keeping requirements

There are no record keeping requirements as such in *REC*.

UK recognised bodies have obligations under the Recognition Requirements Regulations to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their *facilities*. See REC 2.9 for *guidance*.

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 2 Notification requirements

The following table summarises the notification requirements applicable to all *recognised bodies*. The *notification rules* are set out in detail in *Notification rules for UK recognised bodies* and REC 6.7 and, to avoid unnecessary repetition, are not set out in detail here.

For completeness, summary details of the main notification requirements in the *Act* itself and the *Companies Act 1989* are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the *FSA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *overseas recognised bodies* is given in REC 6.6.

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>UK recognised bodies</i>				
The <i>Acts</i> 293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay
The <i>Act</i> s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
<i>UK recognised investment exchanges</i>				
The <i>Act</i> s293(6)(a)	Changes to arrangements for clearing <i>on-exchange</i> transactions	Details of change	Change to arrangements	Without delay
The <i>Acts</i> 293(6)(b)	Changes to criteria determining to whom it will provide clearing services	Details of change	Change to criteria	Without delay
<i>UK recognised clearing houses</i>				
The <i>Act</i> s293(7)(a)	Changes to <i>RIEs</i> for whom clearing services provided	Details of change	Change to <i>RIE</i>	Without delay
The <i>Act</i> s293(7)(b)	Changes to criteria determining to whom (other	Details of change	Change to criteria	Without delay

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
	than <i>RIEs</i>) it will provide clearing services			
	<i>Notification rules for UK recognised bodies</i> (see Notification rules for UK recognised bodies)			
REC 3.4	<i>Key individuals</i> and internal organisation	Details of change	See REC 3.4	See REC 3.4
REC 3.5	Disciplinary action and events relating to <i>key individuals</i>	Details of disciplinary action or event	Disciplinary action or awareness of event	Immediately
REC 3.6	Constitution and governance	Details of proposals to amend constitution, amendments to constitution and agreements relating to constitution	Communication of proposal to amend constitution, making amendment to constitution or awareness of agreement relating to constitution	Immediately
REC 3.7	Auditors	Details of removal or appointment of auditors	Removal or appointment of auditors	Immediately
REC 3.8	Financial and other information	See REC 3.8	See REC 3.8	See REC 3.8
REC 3.9	Fees and incentive schemes	Summary of proposals to change fees and charges and changes to fees and charges	Communication to <i>members</i>	Immediately
REC 3.10	Complaints	Copy of adverse report and details of recommendations from <i>complaints investigator</i>	Availability of report or recommendations	Immediately
REC 3.11	Insolvency events	Notice of insolvency event	Insolvency event	Immediately
REC 3.12	Legal proceedings	Details of legal proceedings commenced against <i>UK recognised body</i>	Institution of proceedings	Immediately
REC 3.13	Delegation of <i>relevant functions</i>	Details of offers or agreements to delegate <i>relevant functions</i> and offers or agreements to undertake relevant functions on behalf of another <i>recognised body</i>	Making offer or agreement to delegate	Immediately
REC 3.14	Products, services and normal hours of operation	See REC 3.14	See REC 3.14	Immediately
REC 3.14A	Operation of a <i>regulated market</i> or <i>MTF</i>	Details of proposal to operate a new <i>regulated market</i> or <i>MTF</i> or close an existing <i>regulated market</i> or <i>MTF</i>	Communication of proposal to <i>members</i> or shareholders	Immediately
REC 3.15	Suspension of services and inability to operate <i>facilities</i>	Details of suspension of services, inability to operate facilities and exten-	Event concerned	Immediately

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
REC 3.16	Information technology systems	Details of business continuity plans and details of failure of reserve information technology system	Changes to business continuity plans and failure of reserve information technology system	Immediately
REC 3.17	Inability to discharge <i>regulatory functions</i>	Details of inability to discharge a <i>regulatory functions</i>	Event concerned	Immediately
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering <i>recognition requirements</i> can still be met	Admission of new type of <i>non-authorized person</i> or <i>person</i> from new non-UK jurisdiction to membership	Immediately
REC 3.19	Investigations	Notice of appointment of person to investigate use of <i>facilities</i> or provision of services	Awareness of appointment	Immediately
REC 3.20	Disciplinary action	Details of person against whom disciplinary action taken	Taking disciplinary action	Immediately
REC 3.21	Criminal offences and civil prohibitions	Evidence tending to suggest contraventions of the <i>general prohibition</i> , certain criminal offences or <i>market abuse</i>	Having evidence concerned	Immediately
REC 3.22	Restriction or instruction to close out, open positions	Details of decision to restrict member's open position or instruction to close out position	Decision to take action	Immediately
REC 3.23	Default	Notice of decision to put <i>member</i> into default	Communicating decision to <i>member</i> concerned or any other member	Immediately
REC 3.24	Transfers of ownership	Details of transfer of ownership	When the <i>UK RIE</i> becomes aware of the transfer of ownership	Immediately
REC 3.25	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Significant breaches of rules and disorderly trading conditions	Immediately
REC 3.26	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
<i>Overseas recognised bodies</i>				
The Act s295	Report to <i>FSA</i>	Statement as to whether events have occurred which would affect the <i>FSA's</i> assessment of whether the <i>recognition requirements</i> are met or	Not applicable	Once a year

Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		which might have an effect on competition		
	<i>Notification rules for overseas recognised bodies (see REC 6.7)</i>			
REC 6.7.3 R	Events which might affect the FSA's assessment of whether the <i>recognition requirements</i> are met	Particulars of event	Not applicable	Include in report under s295
REC 6.7.4 R	Inclusion of certain matters in report	See REC 6.7.4 R	Not applicable	Include in report under s295
REC 6.7.5 R	First report	See REC 6.7.5 R	Not applicable	Include in report under s295
REC 6.7.7 R	Changes of address	Details of new addresses	Decision to change address	14 <i>days</i> in advance of change of address
REC 6.7.8 R and REC 6.7.9 R	Revocation or modification of home territory licence etc	Details of revocation or modification	Awareness of revocation or modification	Immediately

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 3 Fees and other required payments

The aim of the *guidance* in the following table is to give the reader a quick over-all view of the relevant requirements for paying fees.

It is not a complete statement of those requirements and should not be relied on as if it were.

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
Periodic fee	See REC 7 Annex 1 R Part 1	See REC 7 Annex 1 R Part 1	See REC 7 Annex 1 R, Parts 1 and 2	REC 7.2
Application fee	See REC 7 Annex 1 R, Part 2	On or before making the relevant application	See REC 7 Annex 1 R, Parts 3 and 4	REC 7.3

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 4 Powers exercised

The following powers and related provisions in the *Act* have been exercised by the *FSA* to make the *rules* in *REC*:

- Section 138 (General rule-making power)
- Section 156 (General supplementary powers)
- Section 178 (Obligation to notify the Authority: acquisitions of control)
- Section 191D (Obligation to notify the Authority: dispositions of control)
- Section 293 (Notification requirements)
- Section 295 (Notification: overseas investment exchanges and overseas clearing houses)
- Section 300B (Duty to notify proposal to make regulatory provision).
- Paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority)

The following powers in the *Act* have been exercised by the *FSA* to give the *guidance* in *REC*:

- Section 157 (1) (Guidance)

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 5 Rights of action for damages

There are no rights of action under section 150 of the *Act* in respect of any contravention by a *recognised body* of any *rule* made under the *Act*.

Recognised Investment Exchanges and Recognised Clearing Houses

Schedule 6 Rules that can be waived

The *notification rules* in REC 3 and REC 6 can be *waived* by the FSA under section 294 of the Act (Modification or waiver of rules). (The statutory notification requirements, also summarised in Schedule 2 to REC, cannot be *waived* by the FSA.)

The *fees rules* in REC 7 cannot be *waived* by the FSA.



Client Assets

Client Assets

CASS 1	Application and general provisions
1.1	Application and purpose
1.2	General application: who? what?
1.3	General application: where?
1.4	Application: particular activities
1.5	Application: electronic media and E-Commerce
CASS 1A	CASS firm classification and operational oversight
1A.1	Application
1A.2	CASS firm classification
1A.3	Responsibility for CASS operational oversight
CASS 2	[Deleted]
2.1	[Deleted]
2.2	[Deleted]
2.3	[Deleted]
2.4	[Deleted]
2.5	[Deleted]
2.6	[Deleted]
CASS 3	Collateral
3.1	Application and Purpose
3.2	Requirements
CASS 4	[Deleted]
4.1	[Deleted]
4.2	[Deleted]
4.3	[Deleted]
4.4	[Deleted]
4.5	[Deleted]
CASS 5	Client money: insurance mediation activity
5.1	Application

5.2	Holding money as agent of insurance undertaking
5.3	Statutory trust
5.4	Non-statutory client money trust
5.5	Segregation and the operation of client money accounts
5.6	Client money distribution
5.7	Mandates
5.8	Safe keeping of client's documents and other assets
5 Annex 1	Segregation of designated investments: permitted investments, general principles and conditions (This Annex belongs to CASS 5.5.14 R)
CASS 6	Custody rules
6.1	Application
6.2	Holding of client assets
6.3	Depositing assets and arranging for assets to be deposited with third parties
6.4	Use of safe custody assets
6.5	Records, accounts and reconciliations
CASS 7	Client money rules
7.1	Application and Purpose
7.2	Definition of client money
7.3	Organisational requirements: client money
7.4	Segregation of client money
7.5	Transfer of client money to a third party
7.6	Records, accounts and reconciliations
7.7	Statutory trust
7.8	Notification and acknowledgement of trust
7.9	[Deleted]
7 Annex 1	Annex 1
CASS 7A	Client money distribution
7A.1	Application and purpose
7A.2	Primary pooling events
7A.3	Secondary pooling events
CASS 8	Mandates
8.1	Application
CASS 9	Prime brokerage
9.1	Application

- 9.2 Prime broker's daily report to clients
- 9.3 Prime brokerage agreement disclosure annex

CASS 10 [Not yet in force]

- 10.1 [Not yet in force]
- 10.2 [Not yet in force]
- 10.3 [Not yet in force]

Transitional Provisions and Schedules

- TP 1 Transitional Provisions
- Sch 1 Record keeping requirements
- Sch 2 Notification requirements
- Sch 3 Fees and other required payments
- Sch 4 Powers exercised
- Sch 5 Rights of actions for damages
- Sch 6 Rules that can be waived

Chapter 1

Application and general provisions



1.1 Application and purpose

Application

1.1.1



CASS applies to a *firm* as specified in the remainder of this chapter.

Purpose

1.1.2



The purpose of this chapter is to set out to whom, for what activities, and within what territorial limits the *rules*, *evidential provisions* and *guidance* in CASS apply.



1.2 General application: who? what?

General application: who?

- 1.2.1** **G** The *rules* in ■ CASS 1.2 set out the maximum scope of this sourcebook. The application of CASS is modified for certain activities by ■ CASS 1.4. Also particular chapters or sections of CASS may have provisions which limit their application.
- 1.2.2** **R** CASS applies to every *firm*, except as provided for in ■ CASS 1.2.3 R, with respect to the carrying on of:
- (1) all *regulated activities* except to the extent that a provision of CASS provides for a narrower application; and
 - (2) *unregulated activities* to the extent specified in any provision of CASS.
- 1.2.3** **R** CASS does not apply to:
- (1) an *ICVC*; or
 - (2) an *incoming EEA firm* other than an *insurer*, with respect to its *passport activities*; or
 - (3) a *UCITS qualifier*.
- 1.2.4** **R** With the exception of this chapter and the *insurance client money chapter*, CASS does not apply to:
- (1) an *authorised professional firm* with respect to its *non-mainstream regulated activities*; or
 - (2) the *Society*.

1.2.5 **R** The *insurance client money chapter* does not apply to an *authorised professional firm* with respect to its *non-mainstream regulated activities*, which are *insurance mediation activities*, if:

- (1) the *firm's designated professional body* has made rules which implement article 4 of the *Insurance Mediation Directive*;
- (2) those rules have been approved by the FSA under section 332(5) of the *Act*; and
- (3) the *firm* is subject to the rules in the form in which they were approved.

1.2.6 **G** [deleted]

General application: what?

- 1.2.7 **G**
- (1) The approach in CASS is to ensure that the *rules* in a chapter are applied to *firms* in respect of particular *regulated activities* or *unregulated activities*.
 - (2) The scope of the *regulated activities* to which CASS applies is determined by the description of the activity as it is set out in the *Regulated Activities Order*. Accordingly, a *firm* will not generally be subject to CASS in relation to any aspect of its business activities which fall within an exclusion found in the *Regulated Activities Order*. The definition of *designated investment business* includes, however, activities within the exclusion from *dealing in investments as principal* in article 15 of the *Regulated Activities Order* (Absence of holding out etc).
 - (3) The *custody chapter* and the *client money chapter* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *MiFID business* and/or *designated investment business*.
 - (3A) The *collateral rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*).
 - (4) The *insurance client money chapter* applies in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *insurance mediation activities*.
 - (5) [deleted]
 - (6) The *mandate rules* apply in relation to *regulated activities*, conducted by *firms*, which fall within the definition of *designated investment business* (including *MiFID business*) and *insurance mediation activity*, except where it relates to a *reinsurance contract*.

Application for retail clients, professional clients and eligible counterparties

- 1.2.8 **G**
- (1) CASS applies directly in respect of activities conducted with or for all categories of clients.

- (2) [deleted]
- (3) The *insurance client money chapter* does not generally distinguish between different categories of *client*. However, the term *consumer* is used for those to whom additional obligations are owed, rather than the term *retail client*. This is to be consistent with the *client* categories used in the Insurance: New Conduct of Business sourcebook.
- (4) Each provision in the *custody chapter* and the *client money chapter* makes it clear whether it applies to activities carried on for *retail clients*, *professional clients* or both. There is no further modification of the *rules* in these chapters in relation to activities carried on for *eligible counterparties*. Such *clients* are treated in the same way as other *professional clients* for the purposes of these *rules*.

1.2.9 G [deleted]

Investments and money held under different regimes

1.2.10 R [deleted]

1.2.11 R Where a *firm* is subject to the *client money chapter* and the *insurance client money chapter* , it must ensure segregation between *money held under each chapter*, including that *money held under different chapters* is held, in different, separately designated, *client bank accounts* or *client transaction accounts*.

1.2.12 G The purpose of the *rules* regarding the segregation of investments and *money held under different regimes* is to reduce the risk of confusion between assets held under different regimes either on an on-going basis or on the *failure* of a *firm* or a third party holding those assets.

1.2.13 G A *firm* may opt to hold under a single chapter *money* that would otherwise be held under different chapters (see ■ CASS 5.1.1 R (3) and ■ CASS 7.1.3 R).



1.3 General application: where?

1.3.1 **G** The *rules* in **■** CASS 1.3 set out the maximum territorial scope of this sourcebook. Particular rules may have express territorial limitations.

UK establishments: general

1.3.2 **R** Except as provided for in **■** CASS 1.2.3 R (2), CASS applies to every *firm*, in relation to *regulated activities* carried on by it from an *establishment* in the *United Kingdom*.

UK firms: passported activities from EEA branches

1.3.3 **R** CASS applies to every *UK firm*, other than an *insurer*, in relation to *passported activities* carried on by it from a *branch* in another *EEA State*.

1.3.4 **R** CASS does not apply to an *incoming ECA provider* acting as such.

1.4 Application: particular activities

Occupational pension scheme firms (OPS firms)

1.4.1

R

In the case of *OPS activity* undertaken by an *OPS firm*, CASS applies with the following general modifications:

- (1) references to *customer* are to the *OPS* or *welfare trust*, whichever fits the case, in respect of which the *OPS firm* is acting or intends to act, and with or for the benefit of which the relevant activity is to be carried on; and
- (2) if an *OPS firm* is required by any *rule* in CASS to provide information to, or obtain consent from, a *customer*, that *firm* must ensure that the information is provided to, or consent obtained from, each of the trustees of the *OPS* or *welfare trust* in respect of which that *firm* is acting, unless the context requires otherwise.

Stock lending activity with or for clients

1.4.2

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of any *stock lending activity* that is undertaken with or for a *client* by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *stock lending activity*.

Corporate finance business

1.4.3

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of *corporate finance business* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *corporate finance business*.

Oil market activity and energy market activity

1.4.4

G

- (1) The *custody chapter* and the *client money chapter* apply in respect of *oil market activity* and other *energy market activity* that is undertaken by a *firm*.
- (2) The *collateral rules* apply, where relevant, in respect of *energy market activity*.

Appointed representatives and tied agents

1.4.5

G

- (1) Although CASS does not apply directly to a *firm's appointed representatives*, a *firm* will always be responsible for the acts and omissions of its *appointed representatives* in carrying on business for which the *firm* has accepted responsibility (section 39(3) of the Act). In determining whether a *firm* has complied with any provision of CASS, anything done or omitted by a *firm's appointed representative* (when acting as such) will be treated as having been done or omitted by the *firm* (section 39(4) of the Act). Equally, CASS does not apply directly to *tied agents*. A *MiFID investment firm* will be fully and unconditionally responsible for the acts and omission of the *tied agents* that it appoints.
- (2) *Firms* should also refer to ■ SUP 12 (Appointed representatives), which sets out requirements which apply to *firms* using *appointed representatives* and *tied agents*.

Depositories

1.4.6

R

The *client money chapter* does not apply to a *depository* when acting as such.

1.4.7

R

The remainder of CASS applies to a *depository*, when acting as such, with the following general modifications:

- (1) except in the *mandate rules*, '*client*' means '*trustee*', '*trust*' or '*collective investment scheme*' as appropriate; and
- (2) in the *mandate rules*, '*client*' means '*trustee*' '*collective investment scheme*' or '*collective investment scheme instrument*' as appropriate.

1.4.8

R

- (1) Other than the *mandate rules*, CASS does not apply to a *trustee firm* which is not a *depository*, or the trustee of a *personal pension scheme* or *stakeholder pension scheme*, unless *MiFID* applies to it, in which case the *custody chapter* and the *client money chapter* do apply.
- (2) In the *custody chapter*, the *client money chapter* and the *mandate rules*, '*client*' means '*trustee*', '*trust*', '*trust instrument*' or '*beneficiary*', as appropriate.



1.5 Application: electronic media and E-Commerce

Application to electronic media

- 1.5.1** G ■ GEN 2.2.14 R (References to writing) has the effect that electronic media may be used to make communications that are required by the *Handbook* to be "in writing" unless a contrary intention appears.
- 1.5.2** G For any electronic communication with a *customer*, a *firm* should:

 - (1) have in place appropriate arrangements, including contingency plans, to ensure the secure transmission and receipt of the communication; it should also be able to verify the authenticity and integrity of the communication; the arrangements should be proportionate and take into account the different levels of risk in a *firm's* business;
 - (2) be able to demonstrate that the *customer* wishes to communicate using this form of media; and
 - (3) if entering into an agreement, make it clear to the *customer* that a contractual relationship is created that has legal consequences.
- 1.5.3** G *Firms* should note that ■ GEN 2.2.14 R does not affect any other legal requirement that may apply in relation to the form or manner of executing a *document* or agreement.
- 1.5.4** G [deleted]

Chapter 1A

CASS firm classification and operational oversight

1A.1 Application

1A.1.1

R

- (1) Subject to (2) and (3), this chapter applies to a *firm* to which either or both of ■ CASS 6 (Custody rules) and ■ CASS 7 (Client money rules) applies.
- (2) In relation to a *firm* to which ■ CASS 5 (Client money: insurance mediation activity) and ■ CASS 7 (Client money rules) apply, this chapter does not apply in relation to *client money* that a *firm* holds in accordance with ■ CASS 5.
- (3) The *rules* and *guidance* in ■ CASS 1A.2 apply to a *firm* even if at the date of the determination or, as the case may be, the notification, either or both of ■ CASS 6 and ■ CASS 7 do not apply to it, provided that:
 - (a) either or both of those chapters applied to it during part or all of the previous calendar year; or
 - (b) it projects that either or both will apply to it in the current calendar year.



1A.2 CASS firm classification

1A.2.1

G

The application of certain *rules* in this chapter depends upon the 'CASS firm type' within which a *firm* falls. The 'CASS firm types' are defined in accordance with ■ CASS 1A.2.7 R. The 'CASS firm type' within which a *firm* falls is also used to determine whether it is required to have the *CASS operational oversight function* described in ■ CASS 1A.3.1A R and the reporting obligations that apply to it in ■ SUP 16.14 (Client money and asset return).

1A.2.2

R

- (1) A *firm* must once every year, and within the time limit provided for by ■ CASS 1A.2.9R, determine whether it is a *CASS large firm*, *CASS medium firm* or a *CASS small firm* according to the amount of *client money* or *safe custody assets* which it holds, using the limits set out in the table in ■ CASS 1A.2.7 R.
- (2) For the purpose of determining its 'CASS firm type' in accordance with ■ CASS 1A.2.7 R, a *firm* must:
 - (a) if it currently holds *client money* or *safe custody assets*, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year ending on 31 December and use that figure to determine its 'CASS firm type';
 - (b) if it did not hold *client money* or *safe custody assets* in the previous calendar year but projects that it will do so in the current calendar year, calculate the higher of the highest total amount of *client money* and the highest total value of *safe custody assets* that it projects that it will hold during that year and use that figure to determine its 'CASS firm type'; but
 - (c) in either case, exclude from its calculation any *client money* held in accordance with ■ CASS 5 (Client money: insurance mediation activity).

PAGE
3

1A.2.3

R

For the purpose of calculating the value of the total amounts of *client money* and *safe custody assets* that it holds on any given *day* during a calendar year a *firm* must:

- (1) in complying with ■ CASS 1A.2.2R (2)(a), base its calculation upon internal reconciliations performed during the previous year;

- (2) in relation to *client money* or *safe custody assets* denominated in a currency other than sterling, translate the value of that *money* or that *safe custody assets* into sterling at the previous *day's* closing spot exchange rate; and
- (3) in relation to *safe custody assets* only, calculate their total value using the previous *day's* closing mark to market valuation, or if in relation to a particular *safe custody asset* none is available, the most recent available valuation.

1A.2.4

G

One of the consequences of ■ CASS 1A.2.2 R is that a *firm* that determines itself to be a *CASS small firm* or a *CASS medium firm* will, at least if it exceeds during the course of a calendar year either of the limits in ■ CASS 1A.2.7 R that applies to it, become in the next calendar year:

- (1) in the case of a *CASS small firm*, a *CASS medium firm* or a *CASS large firm*; and
- (2) in the case of a *CASS medium firm*, a *CASS large firm*.

1A.2.5

R

- (1) Notwithstanding ■ CASS 1A.2.2 R, provided that the conditions in (2) are satisfied a *firm* may elect to be treated:
 - (a) as a *CASS medium firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS small firm*; and
 - (b) as a *CASS large firm*, in the case of a *firm* that is classed by the application of the limits in ■ CASS 1A.2.7 R as a *CASS medium firm*.
- (2) The conditions to which (1) refers are that in either case:
 - (a) the election is made by including it in the notice to the FSA provided under ■ CASS 1A.2.8 R or ■ CASS 1A.2.9 R;
 - (b) it is given at least one week before the election is intended to take effect; and
 - (c) the FSA has not objected.

1A.2.6

G

■ CASS 1A.2.5 R provides a *firm* with the ability to opt in to a higher category of 'CASS firm type'. This may be useful for a *firm* whose holding of *client money* and *safe custody assets* is near the upper categorisation limit for a *CASS small firm* or a *CASS medium firm*.

1A.2.7 **R** CASS firm types

CASS firm type	Highest total amount of <i>client money</i> held during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year	Highest total value of <i>safe custody assets</i> held by the <i>firm</i> during the <i>firm's</i> last calendar year or as the case may be that it projects that it will hold during the current calendar year
<i>CASS large firm</i>	more than £1 billion	more than £100 billion
<i>CASS medium firm</i>	an amount equal to or greater than £1 million and less than or equal to £1 billion	an amount equal to or greater than £10 million and less than or equal to £100 billion
<i>CASS small firm</i>	less than £1 million	less than £10 million

1A.2.8 **R** In relation to the calendar year ending on 31 December 2011, a *firm* must notify the *FSA* in writing:

- (1) by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous year; or
- (2) by 31 January 2011 of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during 2011, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in 2011; or
- (3) in any other case, before the date on which the *firm* begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of 2011; and
- (4) in every case, of its 'CASS firm type' classification.

1A.2.8A **R** In addition, in relation to the calendar year ending on 31 December 2011, a *CASS small firm* must by 31 July 2011 notify the *FSA* in writing of:

- (1) the highest total amount of *client money* and the highest total value of *safe custody assets* held during the period between 1 January 2011 and 30 June 2011; or

- (2) if it did not hold *client money* or *safe custody assets* in that period, the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects, as at the date of its notification to the *FSA* under this *rule*, it will hold between 1 July 2011 and 31 December 2011.

1A.2.9

R

In relation to each calendar year beginning with that which ends on 31 December 2012, a *firm* must notify the *FSA* in writing:

- (1) within 15 *business days* of 31 December of the previous calendar year, of the highest total amount of *client money* and the highest total value of *safe custody assets* held during the previous calendar year, if it held *client money* or *safe custody assets* in that previous calendar year; or
- (2) within 15 *business days* of 31 December of the previous year, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the then current calendar year, if it did not hold *client money* or *safe custody assets* in the previous calendar year but at the date of its notification to the *FSA* projects that it will do so in the then current calendar year; or
- (3) in any other case, before the date on which the *firm* begins to hold *client money* or *safe custody assets*, of the highest total amount of *client money* and the highest total value of *safe custody assets* that the *firm* projects that it will hold during the remainder of the then current calendar year; and
- (4) in every case, of its 'CASS firm type' classification.

1A.2.10

R

For the purpose of the annual notification to which **■** CASS 1A.2.8 R and **■** CASS 1A.2.9 R refer, and for the purpose of the notification to which **■** CASS 1A.2.8A R refers, a *firm* must apply the calculation *rule* in **■** CASS 1A.2.3 R.

1A.2.11

G

For the purpose of **■** CASS 1A.2.9R (1), the *FSA* will treat that obligation as satisfied if a *firm* submits a *CMAR* for the month ending 31 December in compliance with **■** SUP 16.14.3 R.



1A.3 Responsibility for CASS operational oversight

1A.3.1

R

A CASS *small firm* must allocate to a *director* performing a *significant influence function* or a *senior manager* performing a *significant influence function* responsibility for:

- (1) oversight of the *firm's* operational compliance with CASS;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a *CMAR* to the *FSA* in accordance with ■ SUP 16.14.

CF10a: the CASS operational oversight function

1A.3.1A

R

A CASS *medium firm* and a CASS *large firm* must allocate to a *director* or *senior manager* the function of:

- (1) oversight of the operational effectiveness of that *firm's* systems and controls that are designed to achieve compliance with CASS;
- (2) reporting to the *firm's governing body* in respect of that oversight; and
- (3) completing and submitting a *CMAR* to the *FSA* in accordance with ■ SUP 16.14.

1A.3.1B

G

■ CASS 1A.3.1A R describes the *controlled function* known as the *CASS operational oversight function*. The *table of controlled functions* in ■ SUP 10.4.5 R together with SUP 10.7.9 R specify the *CASS operational oversight function* as a *required function* for a *firm* to which ■ CASS 1A.3.1A R applies.

1A.3.2

R

[deleted]

1A.3.3

R

- (1) Subject to (2), a *firm* must make and retain an appropriate record of the *person* to whom responsibility is allocated in accordance with ■ CASS 1A.3.1 R or ■ CASS 1A.3.1A R.

- (2) A *CASS small firm* must make and retain such a record only where it allocates responsibility to a *person* other than the *person* in that *firm* who performs the *compliance oversight function*.
- (3) A *firm* must ensure that the record made under this *rule* is retained for a period of five years after it is made.

Client Assets

Chapter 2

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LME-002966



[Chapter Deleted]

Client Assets

Chapter 3

Collateral

PAGE
1



LME-002968

3.1 Application and Purpose

Application

- 3.1.1** **R** This chapter applies to a *firm* when it receives or holds assets in connection with an arrangement to secure the obligation of a *client* in the course of, or in connection with, its *designated investment business*, including *MiFID business*.
- 3.1.2** **G** *Firms* are reminded that this chapter does not apply to an *incoming EEA firm*, other than an *insurer*, with respect to its *passport activities*. The application of this chapter is also dependent on the location from which the activity is undertaken (see **■** CASS 1.3.2 R and **■** CASS 1.3.3 R).
- 3.1.3** **R** This chapter does not apply to a *firm* that has only a bare security interest (without rights to hypothecate) in the *client's* asset. In such circumstances, the *firm* must comply with the *custody rules* or *client money rules* as appropriate.
- 3.1.4** **G** For the purpose of this chapter only, a bare security interest in the *client's* asset gives a *firm* the right to realise the assets only on a *client's* default and without the right to use other than in default.

Purpose

- 3.1.5** **G** The purpose of this chapter is to ensure that an appropriate level of protection is provided for those assets over which a *client* gives a *firm* certain rights. The arrangements covered by this chapter are those under which the *firm* is given a right to use the asset, and the *firm* treats the asset as if legal title and associated rights to that asset had been transferred to the *firm* subject only to an obligation to return equivalent assets to the *client* upon satisfaction of the *client's* obligation to the *firm*. The rights covered in this chapter do not include those arrangements by which the *firm* has only a bare security interest in the *client's* asset (in which case the *custody rules* or *client money rules* apply).
- 3.1.6** **G** Examples of the arrangements covered by this chapter include the taking of collateral by a *firm*, under the ISDA English Law (transfer of title) and the New York Law Credit Support Annexes (assuming the right to rehypothecate has not been disappplied).
- 3.1.7** **G** This chapter recognises the need to apply a differing level of regulatory protection to the assets which form the basis of the two different types of arrangement described in

■ CASS 3.1.5 G. Under the bare security interest arrangement, the asset continues to belong to the *client* until the *firm's* right to realise that asset crystallises (that is, on the *client's* default). But under a "right to use arrangement", the *client* has transferred to the *firm* the legal title and associated rights to the asset, so that when the *firm* exercises its right to treat the asset as its own, the asset ceases to belong to the *client* and in effect becomes the *firm's* asset and is no longer in need of the full range of *client* asset protection. The *firm* may exercise its right to treat the asset as its own by, for example, clearly so identifying the asset in its own books and records.

3.1.8

G

A *prime brokerage firm* is reminded of the additional obligations in CASS 9.3.1R which apply to *prime brokerage agreements*.

3.2 Requirements

Application

- 3.2.1 **R** [deleted]
- 3.2.2 **R** A *firm* that receives or holds a *client's* assets under an arrangement to which this chapter applies and which exercises its right to treat the assets as its own must ensure that it maintains adequate records to enable it to meet any future obligations including the return of equivalent assets to the *client*.
- 3.2.3 **G** If the *firm* has the right to use the *client's* asset under a "right to use arrangement" but has not yet exercised its right to treat the asset as its own, the *client money rules* or the *custody rules* will continue to apply as appropriate until such time as the *firm* exercises its right, at which time **■** CASS 3.2.2 R will apply.
- 3.2.4 **G** When appropriate, *firms* that enter into the arrangements with *retail clients* covered in this chapter will be expected to identify in the statement of *custody assets* sent to the *client* in accordance with **■** COBS 16.4 (Statements of client designated investments or client money) details of the assets which form the basis of the arrangements. Where the *firm* utilises global netting arrangements, a statement of the assets held on this basis will suffice.

Client Assets

Chapter 4

[Deleted]





[Chapter Deleted]

Chapter 5

Client money: insurance mediation activity

5.1.1

R

5.1 Application

- (1) ■ CASS 5.1 to ■ CASS 5.6 apply, subject to (2), (3) and ■ CASS 5.1.3 R to ■ CASS 5.1.6 R, to a *firm* that receives or holds *money* in the course of or in connection with its *insurance mediation activity*.
- (2) ■ CASS 5.1 to ■ CASS 5.6 do not, subject to (3), apply:
 - (a) to a *firm* to the extent that it acts in accordance with the *client money chapter*; or
 - (b) to a *firm* in carrying on an *insurance mediation activity* which is in respect of a *reinsurance contract*; or
 - (c) to an *insurance undertaking* in respect of its *permitted activities*; or
 - (d) to a *managing agent* when acting as such; or
 - (e) with respect to *money* held by a *firm* which:
 - (i) is an *approved bank*; and
 - (ii) has requisite capital under article 4(4)(b) of the *Insurance Mediation Directive*;
but only when held by the *firm* in an account with itself, in which case the *firm* must notify the *client* (whether through a *client* agreement, *terms of business*, or otherwise in writing) that:
 - (iii) *money* held for that *client* in an account with the *approved bank* will be held by the *firm* as banker and not as trustee (or in Scotland as agent); and
 - (iv) as a result, the *money* will not be held in accordance with ■ CASS 5.1 to ■ CASS 5.6.
- (3) A *firm* may elect to comply with:

- (a) ■ CASS 5.1 to ■ CASS 5.6 in respect of *client money* which it receives in the course of carrying on *insurance mediation activity* in respect of *reinsurance contracts*; and
 - (b) ■ CASS 5.1, ■ CASS 5.2 and ■ CASS 5.4 to ■ CASS 5.6 in respect of *money* which it receives in the course of carrying on an activity which would be *insurance mediation activity*, and which *money* would be *client money*, but for article 72D of the *Regulated Activities Order* (Large risks contracts where risk situated outside the EEA);
- but the election must be in respect of all the *firm's* business which consists of that activity.
- (4) A *firm* must keep a record of any election in (3).

5.1.2 **G** A *firm* that is an *approved bank*, and relies on the exemption under ■ CASS 5.1.1 R (2)(e), should be able to account to all of its *clients* for amounts held on their behalf at all times. A bank account opened with the *firm* that is in the name of the *client* would generally be sufficient. When *money* from *clients* deposited with the *firm* is held in a pooled account, this account should be clearly identified as an account for *clients*. The *firm* should also be able to demonstrate that an amount owed to a specific *client* that is held within the pool can be reconciled with a record showing that individual's *client* balance and is, therefore, identifiable at any time.

5.1.3 **R** An *authorised professional firm* regulated by The Law Society (of England and Wales), The Law Society of Scotland or The Law Society of Northern Ireland that, with respect to its *regulated activities*, is subject to the rules of its *designated professional body* as specified in ■ CASS 5.1.4 R, in force on 14 January 2005, must comply with those rules and if it does so, it will be deemed to comply with ■ CASS 5.2 to ■ CASS 5.6.

5.1.4 **R** For the purposes of ■ CASS 5.1.3 R the relevant rules are:

- (1) If regulated by the Law Society (of England and Wales);
 - (a) the Solicitors' Accounts Rules 1998; or
 - (b) where applicable, the Solicitors Overseas Practice Rules 1990;
- (2) if regulated by the Law Society of Scotland, the Solicitors' (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001;
- (3) if regulated by the Law Society of Northern Ireland, the Solicitors' Accounts Regulations 1998.

5.1.4A **R** (1) A *firm* will, subject to (3), be deemed to comply with ■ CASS 5.3 to ■ CASS 5.6 if it receives or holds *client money* and it either: