

Recognised Investment Exchanges

Recognised Investment Exchanges

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Chapter 1

Introduction

1.1 Application

[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access. See

www.esma.europa.eu/system/files/esma_2012_122_en.pdf

1.1.1

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The *rules* and *guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *RIEs* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (as *RAPs*) under the *RAP regulations*.

1.1.1A

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The *guidance* in ■ REC 6A applies to *EEA market operators* exercising passporting rights in the *United Kingdom*.

1.1.2

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- (1) *UK RIEs* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses).
- (2) *UK RIEs* must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the *MiFID implementing requirements* in the *MiFID Regulation*. *RAPs* must satisfy the recognition requirements prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the *MiFID Regulation*. *ROIEs* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).
- (3) *UK RIEs* must also comply with notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*.

1.1.3

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- (1) The *recognition requirements* for *UK recognised bodies* and the *MiFID implementing requirements* are set out, with *guidance*, in ■ REC 2. The *RAP recognition requirements* (other than requirements under the *auction regulation* which are not reproduced in *REC*) are set out, with *guidance*, in ■ REC 2A.
- (2) The *notification rules* for *UK recognised bodies* are set out in ■ REC 3 together with *guidance* on those *rules*.

- (3) *Guidance* on the FCA's approach to the supervision of *recognised bodies* is given in ■ REC 4.
- (4) *Guidance* for applicants (and potential applicants) for *UK recognised body* status is given in ■ REC 5.
- (5) The *recognition requirements, notification rules, and guidance* for *ROIEs* and *guidance* for applicants (and potential applicants) for *ROIE* status are set out in ■ REC 6.
- (5A) *Guidance* for *EEA market operators* exercising their passporting rights in the *United Kingdom* is set out in ■ REC 6A.
- (6) The *fees rules* for *recognised bodies* and applicants are set out in ■ FEES 1, ■ 2, ■ 3 and ■ 4 .

1.2 Purpose, status and quotations

Purpose

1.2.1
FCA

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The purpose of the *guidance* (other than in ■ REC 6A) in this sourcebook is to give information on the *recognised body requirements*. The purpose of the *guidance* in ■ REC 6A is to give *EEA market operators* information about their passporting rights in the *United Kingdom*. Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

Status

1.2.2
FCA

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- (1) Most of the provisions in this sourcebook are marked with a G (to indicate *guidance*) or an R (to indicate a *rule*). Quotations from *UK* statute or statutory instruments are marked with the letters "UK" unless they form part of a piece of *guidance*. Quotations from the directly applicable *MiFID Regulation* are marked with the letters "EU". For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader's Guide.
- (2) Where the *guidance* states that the *FCA* may have regard to any factor in assessing or determining whether a *recognised body requirement* is satisfied, it means that the *FCA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the *recognised body requirements*, the *FCA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

Quotations

1.2.3
FCA

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- (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* and the *Companies Act 1989* and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.
- (2) The additions and substitutions are enclosed in square brackets ([]). The omission of words within a quotation is indicated by three dots (...).
- (3) Any words in these quotations which have the same meaning as *Handbook* defined terms are shown in italics and their definitions may be found in the *Glossary*.

- (4) As these quotations contain provisions which impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are *rules* made by the *FCA*.
- (5) None of the editorial changes made by the *FCA* in these quotations can supersede or alter the meaning of the provision concerned.

Chapter 2

Recognition requirements

2.1 Introduction

2.1.1
FCA

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This chapter contains the *recognition requirements* for UK RIEs (other than RAPs) and sets out *guidance* on those requirements. Except for ■ REC 2.5A, references to *recognised body* or *UK recognised bodies* in the rest of this chapter shall be read as referring to UK RIEs. This chapter also contains the *MiFID implementing requirements* for UK RIEs.

2.1.1A
FCA

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Guidance on the *RAP recognition requirements* which apply to RAPs is set out in ■ REC 2A (Recognised Auction Platforms). *Guidance* on the *recognition requirements* for ROIEs is set out in ■ REC 6 (Overseas Investment Exchanges).

2.1.2
FCA

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These *recognition requirements* must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. In addition the *MiFID implementing requirements* must be satisfied by applicants for UK RIE status before recognition is granted and by all UK RIEs at all times while they are recognised. The same standards apply both on initial recognition and throughout the period *recognised body* status is held. The term UK RIE in the *guidance* should be taken, therefore, to refer also to an applicant when appropriate.

2.1.3
FCA

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- (1) The paragraphs in the Schedule to the *Recognition Requirements Regulations* are grouped in this sourcebook in sections which give *guidance* on the same subject for UK RIEs.
- (2) The table in ■ REC 2.1.4 G indicates in which section each of those paragraphs (and the associated *guidance*) can be found.

2.1.4
FCA

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Table Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
Regulation 6	Method of satisfying recognition requirements	2.2
Part I of the Schedule	UK RIE recognition requirements	
Paragraph 1	Financial resources	2.3
Paragraph 2	Suitability	2.4

Recognition Requirements Regulations	Subject	Section in REC 2
Paragraph 3	Systems and controls	2.5
Paragraphs 4(1) and 4(2)(aa)	General safeguards for investors	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
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Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
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Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph 7A	Admission of financial instruments to trading	2.12
Paragraph 7B and 7C	Access to facilities	2.7
Paragraph 7D	Settlement	2.8
Paragraph 7E	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
Paragraph 9A	Operation of a multilateral trading facility	2.16A
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

2.1.5

FCA

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Recitals and articles from the *MiFID Regulation* (and the associated guidance) relevant to market transparency are set out in ■ REC 2.6. Articles from the *MiFID Regulation* relevant to admission to trading are set out in ■ REC 2.12.

2.2 Method of satisfying the recognition requirements

2.2.1

FCA



Recognition Requirements Regulations, Regulation 6

(1) In considering whether a [UK recognised body] or applicant satisfies *recognition requirements* applying to it under these [Recognition Requirements Regulations], the [FCA] may take into account all relevant circumstances including the constitution of the *person* concerned and its *regulatory provisions* within the meaning of section 300E of the *Act*.

(2) Without prejudice to the generality of paragraph (1), a [UK recognised body] or applicant may satisfy *recognition requirements* applying to it under these [Recognition Requirements Regulations] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where a [UK recognised body] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the *Act* on the [UK recognised body] or applicant to satisfy *recognition requirements* applying to it under these [Recognition Requirements Regulations], but it is in addition a *recognition requirement* applying to the [UK recognised body] or applicant that the *person* who performs (or is to perform) the functions is a fit and proper *person* who is able and willing to perform them.

2.2.2

FCA



Relevant circumstances

The FCA will usually expect :

- (1) the constitution, *regulatory provisions* and practices of the *UK recognised body* or applicant;
- (2) the nature (including complexity, diversity and risk) and scale of the *UK recognised body's* or applicant's business;
- (3) the size and nature of the market which is supported by the *UK recognised body's* or applicant's *facilities*;
- (4) the nature and status of the types of investor who use the *UK recognised body's* or applicant's *facilities* or have an interest in the market supported by the *UK recognised body's* or applicant's *facilities*; and
- (5) the nature and scale of the risks to the *statutory objectives* associated with the matters described in (1) to (4);

to be among the relevant circumstances which it will take into account in considering whether a *UK recognised body* or applicant satisfies the *recognition requirements*.

Outsourcing

2.2.3

FCA

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It is the *UK recognised body's* responsibility to demonstrate to the *FCA* that a *person* who performs a function on behalf of the *UK recognised body* is fit and proper and able and willing to perform that function. The *recognition requirement* referred to in Regulation 6(3) applies to the *UK recognised body* and not to any *person* who performs any function on its behalf. In this context, for a *person* to be "fit and proper" does not necessarily imply that he is an *authorised person*, or qualified to be so, or that the required standard is the same as that required either for *authorised persons* or *recognised bodies*.

2.2.4

FCA

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If a *UK recognised body* makes arrangements for functions to be performed on its behalf by *persons* who are *authorised persons* or *recognised bodies*, this does not alter its obligations under Regulation 6.

2.2.5

FCA

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If a *person* who performs a function on behalf of a *UK recognised body* is himself carrying on a *regulated activity* in the *United Kingdom*, he will, unless he is a *person* to whom the *general prohibition* does not apply, need to be either an *authorised person* or an *exempt person*. The *person* to whom a function is delegated is not covered by the *UK recognised body's* exemption.

2.2.6

FCA

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In determining whether the *UK recognised body* meets the *recognition requirement* in Regulation 6(3), the *FCA* may have regard to whether that body has ensured that the *person* who performs that function on its behalf:

- (1) has sufficient resources to be able to perform the function (after allowing for any other activities);
- (2) has adequate systems and controls to manage that function and to report on its performance to the *UK recognised body*;
- (3) is managed by *persons* of sufficient skill, competence and integrity;
- (4) understands the nature of the function it performs on behalf of the *UK recognised body* and its significance for the *UK recognised body's* ability to satisfy the *recognition requirements* and other obligations in or under the *Act*; and
- (5) undertakes to perform that function in such a way as to enable the *UK recognised body* to continue to satisfy the *recognition requirements* and other obligations in or under the *Act*.

2.2.7

FCA

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In determining whether a *UK recognised body* continues to satisfy the *recognition requirements* where it has made arrangements for any function to be performed on its behalf by any *person*, the *FCA* may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:

- (1) the contracts (and other relevant *documents*) between the *UK recognised body* and the *person* who performs the delegated function;

-
- (2) the arrangements made to monitor the performance of that function; and
 - (3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

2.3 Financial resources

2.3.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 1

(1) The [UK RIE] must have financial resources sufficient for the proper performance of its [*relevant functions*] as a [UK RIE].

(2) In considering whether this requirement is satisfied, the [FCA] must (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person, and any activity carried on by the [UK RIE], whether or not it is an *exempt activity*.

2.3.3

FCA



In determining whether a *UK recognised body* has financial resources sufficient for the proper performance of its *relevant functions*, the *FCA* may have regard to:

- (1) the operational and other risks to which the *UK recognised body* is exposed;
- (2) if the *UK recognised body* guarantees the performance of transactions in *specified investments*, the counterparty and market risks to which it is exposed in that capacity;
- (3) the amount and composition of the *UK recognised body's* capital;
- (4) the amount and composition of the *UK recognised body's* liquid financial assets;
- (5) the amount and composition of the *UK recognised body's* other financial resources (such as insurance policies and guarantees, where appropriate);
- (6) the financial benefits, liabilities, risks and exposures arising from the *UK recognised body's* connection with any *person*, including but not limited to, its connection with:
 - (a) any *undertaking* in the same *group* as the *UK recognised body*;
 - (b) any other *person* with a significant shareholding or stake in the *UK recognised body*;
 - (c) any other *person* with whom the *UK recognised body* has made a significant investment whether in the form of equity, debt, or by means of any guarantee or other form of commitment;
 - (d) any *person* with whom it has a significant contractual relationship.
- (7) the nature and extent of the transactions concluded on the *UK RIE*.

2.3.4

FCA

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Accounting information and standards

The *FCA* will usually rely on a *UK recognised body's* published and internal *management accounts* and financial projections, provided that those accounts and projections are prepared in accordance with *UK, US* or international accounting standards.

2.3.5

FCA

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Counterparty and market risks: principles

In assessing whether a *UK recognised body* has sufficient financial resources in relation to counterparty and market risks, the *FCA* may have regard to:

- (1) the amount and liquidity of its financial assets and the likely availability of liquid financial resources to the *UK recognised body* during periods of major market turbulence or other periods of major stress for the *UK financial system*; and
- (2) the nature and scale of the *UK recognised body's* exposures to counterparty and market risks and, where relevant, the counterparties to which it is exposed.

2.3.6

FCA

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Operational and other risks: principles

In assessing whether a *UK recognised body* has sufficient financial resources in relation to operational and other risks, the *FCA* may have regard to the extent to which, after allowing for the financial resources necessary to cover counterparty and market risks, the *UK recognised body's* financial resources are sufficient and sufficiently liquid:

- (1) to enable the *UK recognised body* to continue carrying on properly the *regulated activities* that it expects to carry on; and
- (2) to ensure that it would be able to complete an orderly closure or transfer of its *exempt activities* without being prevented from doing so by insolvency or lack of available funds.

2.3.7

FCA

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Operational and other risks: components of calculation

In considering whether a *UK recognised body* has sufficient financial resources in relation to operational and other risks, the *FCA* will normally have regard to two components: eligible financial resources and net capital.

2.3.9

FCA

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Operational and other risks: UK RIEs - the standard and risk-based approach

- (1) The *FCA* considers that a *UK RIE* which at any time holds:
 - (a) eligible financial resources not less than the greater of:
 - (i) the amount calculated under the standard approach; and
 - (ii) the amount calculated under the risk-based approach; and
 - (b) net capital not less than the amount of eligible financial resources determined under (1)(a);

will, at that time, have sufficient financial resources to meet the *recognition requirement* in respect of operational and other risks unless there are special circumstances indicating otherwise.

- (2) The *FCA* would normally regard the amount calculated under ■ REC 2.3.9G (1)(a)(i) to be a minimum amount of financial resources below which a *UK RIE* would be failing the *recognition requirements*. The *FCA* would expect a *UK RIE* to hold, in addition to this minimum amount, an amount constituting an operational risk buffer calculated in accordance with ■ REC 2.3.22 G.

Operational and other risks: individual guidance

2.3.10

FCA

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The *FCA* would expect to provide a *UK recognised body* with individual *guidance* on the amount of eligible financial resources which it considers would be sufficient for the *UK recognised body* to hold in respect of operational and other risks in order to satisfy the *recognition requirements*. In formulating its individual *guidance*, the *FCA* will ordinarily apply the approach described in ■ REC 2.3.9 G for *UK RIEs*.

Operational and other risks: eligible financial resources

2.3.11

FCA

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For the purposes of ■ REC 2.3, "eligible financial resources" should consist of liquid financial assets held on the balance sheet of a *UK recognised body*, including cash and liquid financial instruments where the financial instruments have minimal market and credit risk and are capable of being liquidated with minimal adverse price effect.

Operational and other risks: net capital

2.3.12

FCA

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For the purposes of ■ REC 2.3, "net capital" should be in the form of equity. For this purpose, the *FCA* considers that common stock, retained earnings, disclosed reserves and other instruments classified as common equity tier one capital or additional tier one capital constitute equity. The *FCA* considers that, when calculating its net capital, a *UK recognised body*:

- (1) should deduct holdings of its own securities, or those of any undertaking in the same *group* as the *UK recognised body*, together with any amount owed to the *UK recognised body* by an undertaking in its *group* under any loan or credit arrangement and any exposure arising under any guarantee, charge or contingent liability given in favour of such an undertaking or a creditor of such undertaking; and
- (2) may include interim earnings that have been independently verified by its auditor.

Operational and other risks: eligible financial resources calculated under the standard approach

2.3.13

FCA

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- (1) Under the standard approach, the amount of eligible financial resources is equal to six months of operating costs.
- (2) Under the standard approach, the *FCA* assumes liquid financial assets are needed to cover the costs that would be incurred during an orderly wind-down of the *UK recognised body's exempt activities*, while continuing to satisfy all the *recognition requirements* and complying with any other obligations under the *Act* (including the obligations to pay periodic fees to the *FCA*).

- (3) For the purposes of the standard approach, the *FCA* would normally expect the calculation of operating costs to be based on the *UK recognised body's* most recent audited annual accounts, with six months of operating costs being equal to one half of the sum of all operating costs reflected in the audited annual accounts of the *UK recognised body* in the course of performing its functions during the year to which the accounts relate. In calculating the gross annual operating costs, the *FCA* would consider it reasonable to exclude non-cash costs (costs that do not involve an outflow of funds).
- (4) The *FCA* considers it to be reasonable for a *UK recognised body* to adjust its operating expenditure calculation if, during the period since its last audited accounts were prepared, its level of operating expenditure has changed materially as documented by the current annual budget or forecast adopted by the *UK recognised body's governing body*.
- (5) The *FCA* considers that it is reasonable for a *UK recognised body* to adjust its operating expenditure to take account of arrangements between two or more undertakings in the same *group*, which are all subject to prudential regulation in the *United Kingdom* under which specified costs are shared or recharged among those undertakings and those costs would otherwise be double-counted in the calculation of their financial resources requirement.

Operational and other risks: eligible financial resources calculated under the risk-based approach (UK RIE's only)

2.3.14
FCA

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- (1) The risk-based approach is intended to ensure that sufficient financial resources are maintained at all times such that a *UK RIE* would not be prevented from implementing an orderly wind-down as a result of the financial impacts of stress events affecting its business or the markets in which it operates.
- (2) Under the risk-based approach the amount of eligible financial resources is calculated by adding together:
 - (a) the amount estimated by the *UK RIE* to absorb the potential business losses that a business of its nature, scale and complexity might incur in stressed but plausible market conditions; and
 - (b) the amount estimated by the *UK RIE* to effect an orderly closure.

In this context, a business loss arises where there is an increase in cost or reduction of revenue relative to a *UK RIE's* expectation of its financial performance, such that a loss needs to be charged against its capital.

Operational and other risks: the risk-based assessment (UK RIEs only)

2.3.15
FCA

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For the purposes of calculating the risk-based approach, the *FCA* would normally expect the *UK RIE* to provide the *FCA* with an annual financial risk assessment that identifies the risks to its business. As a financial risk assessment is likely to form an integral part of the *UK RIE's* management process and decision-making culture, the *FCA* would normally expect it to be approved by the *UK RIE's governing body*.

2.3.16
FCA

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The *FCA* would normally expect to use the financial risk assessment prepared by the *UK RIE* in the course of preparing individual *guidance* on the amount of financial resources that it considers is sufficient for a *UK RIE* to hold in order to satisfy the

recognition requirements. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the *UK RIE* under the risk-based approach.

2.3.17

FCA

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The financial risk assessment should be based on a methodology which provides a reasonable estimate of the potential business losses which a *UK RIE* might incur in stressed but plausible market conditions. The *FCA* would expect a *UK RIE* to carry out a financial risk assessment at least once in every twelve-month period, or more frequently if there are material changes in the nature, scale or complexity of the *UK RIE*'s operations or its business plans that suggest such financial risk assessment no longer provides a reasonable estimate of its potential business losses. The *FCA* considers that it would be reasonable for a financial risk assessment to proceed in the following way:

- (1) Step 1: the *UK RIE* would identify, in writing, the risks to which the business of the *UK RIE* is exposed and which could have a material adverse effect on its financial position, in the light of the nature, scale and complexity of its operations and its business plans. For this purpose, it would be reasonable to refer to the categorisation of risk used under the system of risk management adopted by the *UK RIE* in order to meet its responsibilities under the *recognition requirements* referred to in ■ REC 2.5. That description would identify which risks are indemnified or transferred by the *UK RIE* and which are retained and accepted.
- (2) Step 2: the *UK RIE* would conduct an assessment of the potential business losses that could arise in the event that the risks identified in accordance with step 1 were to materialise. For this purpose, it would be reasonable for a *UK RIE* to develop, and keep under review, a stress and scenario testing plan designed to simulate the effects of a pre-determined series of events, or sets of circumstances, that would be likely to occur following the crystallisation of one or more identified risks, taking into account the systems and controls in place to mitigate those risks. The stress and scenario testing plan would:
 - (a) cover a forward-looking period of at least one year;
 - (b) consider a suitable range of adverse events and sets of circumstances, of a defined severity and duration, which could occur in stressed but plausible market conditions;
 - (c) consider how a particular adverse event or set of circumstances could lead to or be correlated with other events;
 - (d) consider the potential for a particular adverse event or set of circumstances to affect multiple business lines;
 - (e) take into account realistic management actions to resolve such adverse events and circumstances; and
 - (f) where appropriate, involve sensitivity analysis showing the effects of changes to assumptions made about the impact of particular adverse events and circumstances.

In designing its stress and scenario testing plan, the *FCA* considers that it would be reasonable for a *UK RIE* to be guided by any risk-scoring methodology that it deploys for general risk-management purposes that might have application in evaluating the probability and impact of its risks.

- (3) Step 3: the *UK RIE* would assess the eligible financial resources that it would need to hold to cover such potential business losses. Such eligible financial

resources would enable the *UK RIE* to absorb any financial shocks attributable to such business risks were they to arise.

In carrying out this assessment, the *FCA* considers that it would be reasonable for a *UK RIE* to take account of any action which its senior management might plan on taking in response to a given stress event. For example, if the risk appetite of a *UK RIE* is such that it would not pursue recovery from a given stress event (and would instead initiate an orderly wind-down), the assessment of eligible financial resources needed in such circumstances might reasonably be limited to the costs of orderly wind-down from the point in time at which that decision would be likely to be made.

Where a *UK RIE* expects to be making a loss during the period covered by the financial risk assessment as a result of its anticipated business performance in normal market conditions, the business losses which are relevant to the calculation of the risk-based approach are those additional losses which the *UK RIE* would expect to incur in stressed but plausible market conditions.

- (4) Step 4: the *UK RIE* would make an assessment of the cost of orderly closure. The *FCA* considers that an orderly closure should normally include an assessment of the impact of closure on the users of the markets operated by that *UK RIE*. For the purpose of this assessment, the *FCA* considers that it would be reasonable for a *UK RIE* to adopt the amount needed under the standard approach as its cost of orderly closure or to use its own method of calculation based on a scenario plan which comprehensively documents the costs that a *UK RIE* in its position might incur in order to fully implement an orderly wind-down.
- (5) Step 5: the *UK RIE* would produce a proposal for the amount of eligible financial resources considered to be adequate to meet the risk-based approach. Such a proposal would be based on the sum of:
 - (a) the amount assessed to cover potential business losses in accordance with ■ REC 2.3.17G (3); and
 - (b) an amount assessed to cover the cost of orderly closure in accordance with ■ REC 2.3.17G (4).
- (6) Step 6: the *UK RIE* would calculate the amount available as an operational risk buffer in accordance with ■ REC 2.3.22 G. To the extent the amount available is insufficient to constitute an operational risk buffer, the *UK RIE* would include within its proposal the amount it would propose to hold (in addition to the sum of the amounts referred to in (5)(a) and (b)) for those purposes.

2.3.18

FCA

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The *FCA* would normally expect a financial risk assessment to include a description of the methodology applied by the *UK RIE* to arrive at the proposal made in accordance with ■ REC 2.3.17G (5).

2.3.19

FCA

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Where a *UK RIE* is a member of a *group*, the *FCA* would normally expect the annual risk assessment to be accompanied by a consolidated balance sheet:

- (1) of any *group* in which the *UK RIE* is a *subsidiary undertaking*; or

- (2) (if the UK RIE is not a *subsidiary undertaking* in any *group*) of any *group* of which the UK RIE is a *parent undertaking*.

2.3.20

FCA

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The FCA would expect to consider the financial risk assessment, any proposal with respect to an operational risk buffer and, if applicable, the consolidated balance sheet, in formulating its *guidance* on the amount of eligible financial resources it considers to be sufficient for the UK RIE to hold in order to meet the *recognition requirements*. In formulating its guidance, the FCA would, where relevant, consider whether or not the financial risk assessment makes adequate provision for the following risks:

- (1) the risks related to the administration and operation of the UK RIE as a business enterprise (whether as a result of adverse reputational effects, poor execution of business strategy, ineffective response to competition, or otherwise);
- (2) the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by a UK RIE (whether as a result of errors or delays in processing, system outages, insufficient capacity, fraud, data loss and leakage, or otherwise);
- (3) the risk that the financial position of the UK RIE may be adversely affected by its relationships (financial or non-financial) with other entities in the same *group* or by risks which may affect the financial position of the whole *group*, including reputational contagion; and
- (4) any other type of risk which is relevant to that particular UK RIE.

Operational and other risks: purpose of the risk buffer

2.3.21

FCA

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The FCA would normally consider a UK recognised body to be failing the *recognition requirements* if it held financial resources less than the amount calculated under ■ REC 2.3.9G (1)(a)(i) (in respect of UK RIEs). The FCA therefore expects a UK recognised body to hold an operational risk buffer of a sufficient amount in excess of this minimum, to ensure that it is at all times able to comply with its regulatory obligations.

Operational and other risks: calculation of the operational risk buffer - UK recognised bodies

2.3.22

FCA

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- (1) [deleted]
- (2) The FCA would normally expect a UK RIE to hold, in addition to the minimum amount determined under ■ REC 2.3.9G (1)(a)(i), an operational risk buffer consistent with a risk-based approach.
 - (a) Where the amount of eligible financial resources calculated by a UK RIE under ■ REC 2.3.17G (5) (the risk-based approach) is greater than the amount of eligible financial resources calculated under ■ REC 2.3.13 G (the standard approach), and the difference is of an amount sufficient to serve the purposes of the operational risk buffer, then the FCA considers that there would be no need for a UK RIE to hold any further amount as an operational risk buffer.
 - (b) Where the amount of eligible financial resources calculated by a UK RIE under ■ REC 2.3.17G (5) (the risk-based approach) is not sufficient to provide an effective operational risk buffer over and above the amount calculated

under ■ REC 2.3.13 G (the standard approach), then the *FCA* would expect the *UK RIE* to include within its annual risk assessment a proposal to hold additional financial resources sufficient to constitute an operational risk buffer.

- (3) As the operational risk buffer is an amount in excess of the minimum financial resources sufficient to meet the *recognition requirements*, the *FCA* would normally not regard a *UK recognised body* that draws upon or temporarily depletes the operational risk buffer to have failed or be failing a *recognition requirement* in respect of its financial resources. However, the *FCA* would expect to be notified as soon as reasonably practicable if the *UK recognised body* draws upon, or intends to draw upon, its operational risk buffer.

2.4 Suitability

2.4.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 2

(1) The [UK RIE] must be a fit and proper person to perform the [*relevant functions*] of a [UK RIE].

(2) In considering whether this requirement is satisfied, the [FCA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RIE's] connection with any person.

(3) The persons who effectively direct the business and operations of the [UK RIE] must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it.

(4) The persons who are in a position to exercise significant influence over the management of the [UK RIE], whether directly or indirectly must be suitable.

2.4.3

FCA



In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to:

- (1) the commitment shown by the *UK recognised body's governing body* to satisfying the *recognition requirements* and to complying with other obligations in or under the *Act*;
- (2) its arrangements, policies and resources for fulfilling its obligations under the *Act* in relation to its activities as a *UK recognised body*;
- (3) the extent to which its constitution and organisation provide for effective governance;
- (4) the arrangements made to ensure that its *governing body* has effective oversight of the *UK recognised body's relevant functions*;
- (5) the access which its regulatory department has to the *governing body*;
- (6) the size and composition of its *governing body*, including:
 - (a) the number of members of the *governing body* who represent *members* of the *UK recognised body* or other *persons* and the types of *person* whom they represent;

- (b) the number and responsibilities of any members of the *governing body* with executive roles within the *UK recognised body*; and
 - (c) the number of independent members of the *governing body*;
- (7) the structure and organisation of its *governing body*, including any distribution of responsibilities among its members and committees;
 - (8) the integrity and competence of its *governing body* and *key individuals*;
 - (9) breaches of any relevant law, regulation or code of practice by the *UK recognised body* or its *key individuals*;
 - (10) its arrangements for ensuring that it employs individuals who are honest and demonstrate high standards of integrity;
 - (11) the effectiveness of its arrangements to control conflicts of interest (see also REC 2.5); and
 - (12) the independence of its regulatory department from its commercial and marketing departments.

2.4.4

FCA

G

In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to its connections with:

- (1) any *undertaking* in the same *group*;
- (2) any owner or part-owner of the *UK recognised body*;
- (3) any *person* who has the right to appoint or remove members of the *governing body* or other *key individuals*;
- (4) any *person* who is able in practice to appoint or remove members of the *governing body* or other *key individuals*;
- (5) any *person* in accordance with whose instructions the *governing body* or any *key individual* is accustomed to act; and
- (6) any *key individual* in relation to the *UK recognised body* .

2.4.5

FCA

G

In assessing whether its connection with any *person* could affect whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to:

- (1) the reputation and standing of that other *person*, including his standing with any relevant *UK* or *overseas regulator*;
- (2) breaches of any law or regulation by that other *person*;
- (3) the roles of any of the *UK recognised body's key individuals* who have a position within organisations under the control or influence of that other *person*, including their responsibilities in that organisation and the extent and type of their access to its senior management or governing body;

- (4) the extent to which the *UK recognised body* operates as a distinct entity notwithstanding its connection with that other *person*;
- (5) the extent to which the *UK recognised body's governing body* is responsible for its day-to-day management and operations;

but nothing in this paragraph should be taken to imply any restriction on the ability of a *UK recognised body* to outsource any function to any *person* in a manner consistent with Regulation 6 of the Recognition Requirements Regulations.

2.4.6

FCA

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In assessing whether the *persons* who effectively direct the business and operations of the *UK RIE* are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it, the *FCA* may have regard to the repute and experience of the *UK RIE's key individuals*.

2.5 Systems and controls and conflicts

2.5.1

FCA



Schedule to the Recognition Requirements Regulations, paragraph 3

- (1) The [UK RIE] must ensure that the systems and controls used in the performance of its *[relevant functions]* are adequate, and appropriate for the scale and nature of its business.
- (2) Sub-paragraph (1) applies in particular to systems and controls concerning -
 - (a) the transmission of information;
 - (b) the assessment, mitigation and management of risks to the performance of the *[UK RIE's relevant functions]*;
 - (c) the effecting and monitoring of transactions on the *[UK RIE]*;
 - (ca) the technical operation of the *[UK RIE]*, including contingency arrangements for disruption to its *facilities*;
 - (d) the operation of the arrangements mentioned in paragraph 4(2)(d); and
 - (e) (where relevant) the safeguarding and administration of assets belonging to users of the *[UK RIE's facilities]*.

2.5.1A

FCA



Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

- Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
- appropriate arrangements are made to -
- (i) identify conflicts between the interests of the *[UK RIE]*, its owners and operators and the interests of the persons who make use of its *facilities* or the interests of the financial markets operated by it; and
 - (ii) manage such conflicts so as to avoid adverse consequences for the operation of the financial markets operated by the *[UK RIE]* and for the *persons* who make use of its *facilities*.

2.5.3

FCA

G

In assessing whether the systems and controls used by a *UK recognised body* in the performance of its *relevant functions* are adequate and appropriate for the scale and nature of its business, the *FCA* may have regard to the *UK recognised body's*:

- (1) arrangements for managing, controlling and carrying out its *relevant functions*, including:
 - (a) the distribution of duties and responsibilities among its *key individuals* and the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (b) the staffing and resources of the departments of the *UK recognised body* responsible for performing its *relevant functions*;
 - (c) the arrangements made to enable *key individuals* to supervise the departments for which they are responsible;
 - (d) the arrangements for appointing and supervising the performance of *key individuals* (and their departments); and
 - (e) the arrangements by which the *governing body* is able to keep the allocation of responsibilities between, and the appointment, supervision and remuneration of, *key individuals* under review;
- (2) arrangements for the identification and management of conflicts of interest;
- (3) arrangements for internal and external audit; and
- (4) information technology systems.

2.5.4

FCA

G

The following paragraphs set out other matters to which the *FCA* may have regard in assessing the systems and controls used for the transmission of information, risk management, the effecting and monitoring of transactions, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the Recognition Requirements Regulations) and the safeguarding and administration of assets.

Information transmission

2.5.5

FCA

G

In assessing a *UK recognised body's* systems and controls for the transmission of information, the *FCA* may also have regard to the extent to which these systems and controls ensure that information is transmitted promptly and accurately:

- (1) within the *UK recognised body* itself;
- (2) to *members*; and
- (3) (where appropriate) to other market participants or other relevant persons.

Risk management

2.5.6

FCA

G

In assessing a *UK recognised body's* systems and controls for assessing and managing risk, the *FCA* may also have regard to the extent to which these systems and controls enable the *UK recognised body* to:

- (1) identify all the general, operational, legal and market risks wherever they arise in its activities;

- (2) measure and control the different types of risk;
- (3) allocate responsibility for risk management to *persons* with appropriate knowledge and expertise; and
- (4) provide sufficient, reliable information to *key individuals* and, where relevant, the *governing body* of the *UK recognised body*.

Effecting and monitoring of transactions and operation of settlement arrangements

2.5.8

FCA

G

In assessing a *UK RIE's* systems and controls for the effecting and monitoring of transactions, and for the operation of settlement arrangements, the *FCA* may have regard to the totality of the arrangements and processes through which the *UK RIE's* transactions are effected, cleared, and settled, including:

- (1) a *UK RIE's* arrangements under which orders are received and matched, its arrangements for trade and transaction reporting, and (if relevant) its arrangements with another person under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or *clearing house*;
- (2) (if relevant), a *UK RIE's* arrangements under which instructions relating to a transaction to be cleared by another person by means of a *clearing facilitation service* are entered into its systems by the relevant other person and transmitted to the other person; and
- (3) the arrangements made by the *UK RIE* for monitoring and reviewing the operation of these systems and controls.

Safeguarding and administration of assets

2.5.9

FCA

G

In assessing a *UK recognised body's* systems and controls for the safeguarding and administration of assets belonging to users of its *facilities*, the *FCA* may have regard to the totality of the arrangements and processes by which the *UK recognised body*:

- (1) records the assets held and the identity of the owners of (and other *persons* with relevant rights over) those assets;
- (2) records any instructions given in relation to those assets;
- (3) records the carrying out of those instructions;
- (4) records any movements in those assets (or any corporate actions or other events in relation to those assets); and
- (5) reconciles its records of assets held with the records of any *custodian* or *sub-custodian* used to hold these assets, and with the records of beneficial or legal ownership of those assets.

Management of conflicts of interest

2.5.10

FCA

G

A conflict of interest arises in a situation where a *person* with responsibility to act in the interests of one *person* may be influenced in his action by an interest or association

of his own, whether personal or business or employment related. Conflicts of interest can arise both for the *employees* of *UK recognised bodies* and for the *members* (or other *persons*) who may be involved in the decision-making process, for example where they belong to committees or to the *governing body*. Conflicts of interest may also arise for the *UK recognised body* itself as a result of its connection with another *person*.

2.5.12

FCA

G

■ REC 2.5.13 G to ■ REC 2.5.16 G set out the factors to which the *FCA* may have regard in assessing a *UK recognised body's* systems and controls for managing conflicts of interest.

2.5.13

FCA

G

The *FCA* may have regard to the arrangements a *UK recognised body* makes to structure itself and to allocate responsibility for decisions so that it can continue to take proper regulatory decisions notwithstanding any conflicts of interest, including:

- (1) the size and composition of the *governing body* and relevant committees;
- (2) the roles and responsibilities of *key individuals*, especially where they also have responsibilities in other organisations;
- (3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and
- (4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.

2.5.14

FCA

G

The *FCA* may also have regard to the systems and controls intended to ensure that confidential information is only used for proper purposes. Where relevant, *recognised bodies* will have to comply with section 348 (Restrictions on disclosure of confidential information by the *FCA* etc.) and regulations made under section 349 (Exemptions from section 348) of the *Act*.

2.5.15

FCA

G

The *FCA* may also have regard to the contracts of employment, staff rules, letters of appointment for members of the *governing body*, members of relevant committees and other *key individuals* and other guidance given to individuals on handling conflicts of interest. Guidance to individuals may need to cover:

- (1) the need for prompt disclosure of a conflict of interest to enable others, who are not affected by the conflict, to assist in deciding how it should be managed;
- (2) the circumstances in which a general disclosure of conflicts of interest in advance of any particular instance in which a conflict of interest arises may be sufficient;
- (3) the circumstances in which a general advance disclosure may not be adequate;
- (4) the circumstances in which it would be appropriate for a conflicted individual to withdraw from involvement in the matter concerned, without disclosing the interest; and
- (5) the circumstances in which safeguards in addition to disclosure would be required, such as the withdrawal of the individual from the decision-taking process, or from access to relevant information.

2.5.16

FCA

G

The *FCA* may also have regard to the arrangements made:

- (1) for enforcing rules or other provisions applicable to staff and other *persons* involved in regulatory decisions; and
- (2) to keep records of disclosures of conflicts of interest and the steps taken to handle them.

Internal and external audit

2.5.17

FCA

G

A *UK recognised body's* arrangements for internal and external audit will be an important part of its systems and controls. In assessing the adequacy of these arrangements, the *FCA* may have regard to:

- (1) the size, composition and terms of reference of any audit committee of the *UK recognised body's governing body*;
- (2) the frequency and scope of external audit;
- (3) the provision and scope of internal audit;
- (4) the staffing and resources of the *UK recognised body's* internal audit department;
- (5) the internal audit department's access to the *UK recognised body's* records and other relevant information; and
- (6) the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the *UK recognised body*.

Information technology systems

2.5.18

FCA

G

Information technology is likely to be a major component of the systems and controls used by any *UK recognised body*. In assessing the adequacy of the information technology used by a *UK recognised body* to perform or support its *relevant functions*, the *FCA* may have regard to:

- (1) the organisation, management and resources of the information technology department within the *UK recognised body*;
- (2) the arrangements for controlling and documenting the design, development, implementation and use of information technology systems; and
- (3) the performance, capacity and reliability of information technology systems.

2.5.19

FCA

G

The *FCA* may also have regard to the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including:

- (1) the procedures for the evaluation and selection of information technology systems;

- (2) the arrangements for testing information technology systems before live operations;
- (3) the procedures for problem management and system change;
- (4) the arrangements to monitor and report system performance, availability and integrity;
- (5) the arrangements (including spare capacity and access to back-up facilities) made to ensure information technology systems are resilient and not prone to failure;
- (6) the arrangements made to ensure business continuity in the event that an information technology system does fail;
- (7) the arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access; and
- (8) the arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems.

2.5.20

FCA

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The FCA may have regard to the arrangements made to keep clear and complete audit trails of all uses of information technology systems and to reconcile (where appropriate) the audit trails with equivalent information held by system users and other interested parties.



2.5A Guidance on Public Interest Disclosure Act: Whistleblowing

Application and Purpose: Application

2.5A.1
FCA

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This section is relevant to every *UK recognised body* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

Purpose

2.5A.2
FCA

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- (1) The purposes of this section are to:
 - (a) provide *UK recognised bodies* with *guidance* regarding the provisions of PIDA; and
 - (b) Encourage *UK recognised bodies* to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.
- (2) In this section "worker" includes, but is not limited to, an individual who has entered into a contract of employment.

2.5A.3
FCA

G

The *guidance* in this section concerns the effect of PIDA in the context of the relationship between *UK recognised bodies* and the *FCA*. It is not comprehensive guidance on PIDA itself.

Practical Measures: Effect of PIDA

2.5A.4
FCA

G

Under PIDA, any clause or term in an agreement between a worker and his employer is void in so far as it purports to preclude the worker from making a protected disclosure (that is, "blow the whistle").

2.5A.5
FCA

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In accordance with section 1 of PIDA:

- (1) a "protected disclosure" is a qualifying disclosure which meets the relevant requirements set out in that section;
- (2) a "qualifying disclosure" is a disclosure, made in good faith, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:
 - (a) a criminal offence; or

- (b) a failure to comply with any legal obligation; or
- (c) a miscarriage of justice; or
- (d) the putting of the health and safety of any individual in danger; or
- (e) damage to the environment; or
- (f) deliberate concealment relating to any of (a) to (e);

it is immaterial whether the relevant failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

Internal Procedures

2.5A.6
FCA

G

- (1) *UK recognised bodies* are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the *FCA*.
- (2) In considering appropriate internal procedures, *UK recognised bodies* may find the *guidance* provided to *firms* in ■ SYSC 18.2.2 G (2) and ■ SYSC 18.2.2 G (3) helpful.

Link to fitness and propriety

2.5A.7
FCA

G

In determining whether a *UK recognised body* is a fit and proper *person*, the *FCA* may have regard to any relevant factor including, but not limited to, how the *UK recognised body* and *key individuals* have complied with any relevant law (see REC 2.4.3 G (9)).



2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

2.6.1
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(1)
The [UK RIE] must ensure that business conducted by means of its *facilities* conducted in an orderly manner and so as to afford proper protection to investors.

2.6.2
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(aa)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
it has transparent and non-discretionary rules and procedures -
(i) to provide for fair and orderly trading, and
(ii) to establish objective criteria for the efficient execution of orders;

2.6.3
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4A

- (1) The [UK RIE] must make arrangements for-
 - (a) current bid and offer prices for *shares*, and
 - (b) the depth of trading interest in *shares* at the prices which are advertised through its systems,
 to be made available to the public on reasonable commercial terms and on a continuous basis during normal trading hours, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.7 EU and REC 2.6.21 EU to REC 2.6.24 EU)].
- (2) If [a UK RIE] decides to give *investment firms* and *credit institutions* required to publish their quotes in *shares*-
 - (a) in accordance with Article 27 of [MiFID], or
 - (b) by the [FCA],

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non-discriminatory basis.

(3) The [FCA] may waive the requirements of sub-paragraph (1) in the circumstances specified-

(a) in the case of *shares* to be traded on a multilateral trading facility operated by the [UK RIE], in Article 29.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)]; or

(b) in the case of *shares* to be traded on a *regulated market* operated by the [UK RIE], in Article 44.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.10 EU and REC 2.6.13 EU)].

2.6.4
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4B

(1) The [UK RIE] must make arrangements for the price, volume and time of transactions executed in *shares* to be made available to the public as soon as possible after the time of the transaction on reasonable commercial terms, subject to the requirements contained in Chapter IV of the [MiFID Regulation] [(see REC 2.6.15 EU and REC 2.6.21 EU to REC 2.6.24 EU)].

(2) If [a UK RIE] decides to give *investment firms* and *credit institutions* required to make public details of their transactions in *shares*-

(a) in accordance with Article 28 of [MiFID], or

(b) by the [FCA].

access to the arrangements referred to in sub-paragraph (1), it must do so on reasonable commercial terms and on a non discriminatory basis.

(3) The [FCA] may permit [UK RIEs] to defer the publication required by sub-paragraph (1) in the circumstances specified, and subject to the requirements contained-

(a) in the case of *shares* traded on a *multilateral trading facility* operated by [a UK RIE], in Article 30.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)]; or

(b) in the case of *shares* traded on *regulated market* operated by [a UK RIE], in Article 45.2 of [MiFID] and Chapter IV of the [MiFID Regulation] [(see REC 2.6.18 EU)].

(4) If the [FCA] permits [UK RIEs] to defer the publication required by sub-paragraph (1), those [UK RIEs] must ensure that the existence of and the terms of the permission are disclosed to users and members of their *facilities* and to investors.

2.6.5
FCA



Articles 29.2 and 44.2 of *MiFID* provide that the pre-trade transparency requirement can be waived based on market model or the size and type of orders. In particular this obligation can be waived in respect of transactions that are large in scale compared with normal market size for the share or type of share in question. Articles 30.2 and 45.2 of *MiFID* provide that publication of the details of transactions can be deferred based on their type or size. In particular this obligation can be deferred in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares.

2.6.6
FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7E

The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a regulated market operated by it any *financial instrument* which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

2.6.7
FCA



Article 17 of the MiFID Regulation

Pre-trade transparency obligations

- (1) **A ... market operator operating an *MTF* or a *regulated market* shall, in respect of each share admitted to trading on a *regulated market* that is traded within a system operated by it and specified in Table 1 of Annex II [(see REC 2.6.8 EU)], make public the information set out in paragraphs 2 to 6.**
- (2) **Where one of the entities referred to in paragraph 1 operates a continuous auction order book trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the aggregate number of orders and of the shares those orders represent at each price level, for the five best bid and offer price levels.**
- (3) **Where one of the entities referred to in paragraph 1 operates a quote-driven trading system, it shall, for each share as specified in paragraph 1, make public continuously throughout its *normal trading hours* the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices.**

The quotes made public shall be those that represent binding commitments to buy and sell the shares and which indicate the price and volume of shares in which the registered market makers are prepared to buy or sell.

In exceptional market conditions, however, indicative or one-way prices may be allowed for a limited time.
- (4) **Where one of the entities referred to in paragraph 1 operates a periodic auction trading system, it shall, for each**

Pre-trade transparency obligations	
	share specified in paragraph 1, make public continuously throughout its <i>normal trading hours</i> the price that would best satisfy the system's trading algorithm and the volume that would potentially be executable at that price by participants in that system.
(5)	<p>Where one of the entities referred to in paragraph 1 operates a trading system which is not wholly covered by paragraphs 2 or 3 or 4, either because it is a hybrid system falling under more than one of those paragraphs or because the price determination process is of a different nature, it shall maintain a standard of pre-trade transparency that ensures that adequate information is made public as to the price level of orders or quotes for each share specified in paragraph 1, as well as the level of trading interest in that share.</p> <p>In particular, the five best bid and offer price levels and/or two-way quotes of each market maker in that share shall be made public, if the characteristics of the price discovery mechanism permit it.</p>
(6)	A summary of the information to be made public in accordance with paragraphs 2 to 5 is specified in Table 1 of Annex II. [(see REC 2.6.8 EU)]

2.6.8



Table 1 of Annex II to the MiFID Regulation: Information to be made public in accordance with Article 17 (see REC 2.6.9EU)

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
continuous auction or order book trading system	a system that by means of an order book and a trading algorithm operated without human intervention matches sell orders with matching buy orders on the basis of the best available price on a continuous basis	the aggregate number of orders and the shares they represent at each price level, for at least the five best bid and offer price levels.
quote-driven trading system	a system where <i>transactions</i> are concluded on the basis of firm quotes that are continuously made available to participants, which requires	the best bid and offer by price of each market maker in that share, together with the volumes attaching to those prices

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	the market makers to maintain quotes in a size that balances the needs of members and participants to deal in a commercial size and the risk to which the market maker exposes itself	
periodic auction trading system	a system that matches orders on the basis of a periodic auction and a trading algorithm operated without human intervention	the price at which the auction trading system would best satisfy its trading algorithm and the volume that would potentially be executable at that price
trading system not covered by first three rows	A hybrid system falling into two or more of the first three rows or a system where the price determination process is of a different nature than that applicable to the types of system covered by [the] first three rows	adequate information as to the level of orders or quotes and of trading interest; in particular, the five best bid and offer price levels and/or two way quotes of each market maker in the share, if the characteristics of the price discovery mechanism so permit

2.6.9
FCA



Recital 14 to the MiFID Regulation

A waiver from pre-transparency obligations arising under Articles 29 or 44 of [MiFID] [(see REC 2.6.3 UK)] ... should not enable [MiFID investment firms] to avoid such obligations in respect of those transactions in liquid shares which they conclude on a bilateral basis under the rules of a regulated market or an MTF where, if carried out outside the rules of the regulated market or MTF, those transactions would be subject to the requirements to publish quotes set out in Article 27 of [MiFID].

2.6.10
FCA



Article 18 of the MiFID Regulation

Waivers based on market model and type of order or transaction

- (1) Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3 UK)] may be granted by the[FCA] for systems

Waivers based on market model and type of order or transaction

operated by an *MTF* or a *regulated market*, if those systems satisfy one of the following criteria:

- (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
- (b) they formalise negotiated transactions [(see REC 2.6.11 EU)], each of which meets one of the following criteria:
 - (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the *regulated market* or *MTF* operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
 - (ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12 EU)].

For the purposes of point (b), the other conditions specified in the rules of the *regulated market* or *MTF* for a transaction of this kind must also have been fulfilled.

In the case of systems having functionality other than as described in points (a) or (b), the waiver shall not apply to that other functionality.

- (2) Waivers in accordance with Articles 29(2) and 44(2) of [*MiFID*] [(see REC 2.6.3 UK)], based on the type of orders may be granted only in relation to orders held in an order management facility maintained by the *regulated market* or the *MTF* pending their being disclosed to the market.

2.6.11

FCA



Article 19 of the MiFID Regulation

References to negotiated transaction

For the purpose of Article 18(1)(b) [(see REC 2.6.10 EU)] a negotiated transaction shall mean a transaction involving members or participants of a *regulated market* or an *MTF* which is negotiated privately but executed within the *regulated market* or *MTF* and where that member or participant in doing so undertakes one of the following tasks:

References to negotiated transaction

- (a) dealing on own account with another member or participant who acts for the account of a *client*;
- (b) dealing with another member or participant, where both are executing orders on own account;
- (c) acting for the account of both the buyer and seller;
- (d) acting for the account of the buyer, where another member or participant acts for the account of the seller;
- (e) trading for own account against a *client* order.

2.6.12

FCA



Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

- (1) A *transaction* related to an individual share in a *portfolio trade* shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a *transaction* subject to conditions other than the current market price.
- (2) A volume weighted average price *transaction* shall be considered, for the purposes of Article 18(1)(b)(ii) [(see REC 2.6.10 EU)], as a *transaction* subject to conditions other than the current market price.

2.6.13

FCA



Article 20 of the MiFID Regulation

Waivers in relation to transactions which are large in scale

An order shall be considered to be large in scale compared with normal market size if it is equal to or larger than the minimum size of order specified in Table 2 in Annex II [(see REC 2.6.14 EU)]. For the purposes of determining whether an order is large in scale compared to normal market size, all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover, which shall be calculated in accordance with the procedure set out in Article 33.

2.6.14

FCA



Table 2 in Annex II to the MiFID Regulation: Orders large in scale compared with normal market size

Class in terms of average daily turnover (ADT)	ADT < 250 000	250 000 < ADT < 1 000 000	1 000 000 < ADT < 250 000	ADT > 250 000
Minimum size of or-	250 000	100 000	250 000	400 000

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2.6.15

FCA



Article 27(1) of the MiFID Regulation

Post-trade transparency obligation

1. ... *regulated markets*, and ... *market operators operating an MTF* shall, with regard to transactions in respect of shares admitted to trading on *regulated markets* concluded ... within their systems, make public the following details:

- (a) the details specified in points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I [(see REC 2.6.16 EU)]
- (b) an indication that the exchange of shares is determined by factors other than the current market valuation of the share, where applicable [(see REC 2.6.17 EU)];
- (c) an indication that the trade was a negotiated trade, where applicable;
- (d) any amendments to previously disclosed information, where applicable.

Those details shall be made public either by reference to each *transaction* or in a form aggregating the volume and price of all *transactions* in the same share taking place at the same price at the same time.

2.6.16

FCA



Points 2, 3, 6, 16, 17, 18 and 21 of Table 1 of Annex I of the MiFID Regulation

2.	Trading Day	The trading day on which the <i>transaction</i> was executed.
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is reported expressed as Co-ordinated Universal Time (UTC) +/- hours.
6.	Instrument Identification	This shall consist in: - a unique code to be decided by the competent authority (if any) to which

		<p>the report is made identifying the [share] which is the subject of the <i>transaction</i>;</p> <p>- if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...</p>
16.	Unit Price	The price per [share] excluding commission and (where relevant) accrued interest. ...
17.	Price Notation	The currency in which the price is expressed ...
18.	Quantity	The number of units of the [shares].
21.	Venue identification	Identification of the venue where the <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF</i> 's] ... unique harmonised identification code;
		...

2.6.17

FCA



Article 3 of the MiFID Regulation

Transactions related to an individual share in a portfolio trade and volume weighted average price transactions

1. A *transaction* related to an individual share in a *portfolio trade* ... shall ... be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.
2. A volume weighted average price *transaction* ... shall be considered, for the purposes of Article 27(1)(b) [(see REC 2.6.15 EU)] as a *transaction* where the exchange of shares is determined by factors other than the current market valuation of the share.

2.6.18

FCA



Article 28 of the MiFID Regulation

Deferred publication of large transactions

The deferred publication of information in respect of *transactions* may be authorised, for a period no longer than the period specified in Table 4 in Annex II [(see REC 2.6.20 EU)] for the class of share and *transaction* concerned, provided the following criteria are satisfied:

- (a) the *transaction* is between [a *MiFID investment firm*] *dealing on own account* and a *client* of that firm;

Deferred publication of large transactions

(b) the size of that *transaction* is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II [(see REC 2.6.20 EU)].

In order to determine the relevant minimum qualifying size for the purposes of point (b), all shares admitted to trading on a *regulated market* shall be classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

2.6.19

FCA



Article 29(3), second sentence of the MiFID Regulation

Each constituent *transaction* [of a *portfolio trade*] shall be assessed separately for the purposes of determining whether deferred publication in respect of that *transaction* is available under Article 28 (see REC 2.6.18 EU).

2.6.20

FCA



Table 4 in Annex II to the MiFID Regulation: Deferred publication thresholds and delays

The table below shows, for each permitted delay for publication and each class of shares in terms of average daily turnover (ADT), the minimum qualifying size of transaction that will qualify for that delay in respect of a share of that type.

		Class of shares in terms of average daily turnover (ADT)			
		ADT < ?100 000	?100 000 ? 1 000 000	?1 000 000 ? 50 000 000	ADT ? 50 000 000
		Minimum qualifying size of transaction for permitted delay			
Permitted delay for publication	60 minutes	?10 000	Greater of 5% of ADT and ?25 000	Lower of 10% of ADT and ?3 500 000	Lower of 10% of ADT and ?7 500 000
	180 minutes	?25 000	Greater of 15% of ADT and ?75 000	Lower of 15% of ADT and ?5 000 000	Lower of 20% of ADT and ?15 000 000
	Until end of trading day (or roll-over to noon of next trad-	?45 000	Greater of 25% of ADT and ?100 000	Lower of 25% of ADT and ?10 000 000	Lower of 30% of ADT and ?30 000 000

Class of shares in terms of average daily turnover (ADT)				
	ADT < £100 000	£100 000 ≤ ADT < £1 000 000	£1 000 000 ≤ ADT < £50 000 000	ADT ≥ £50 000 000
Minimum qualifying size of transaction for permitted delay				
ing day if trade undertaken in final 12 hours of trading day)				
Until end of trading day next after trade	£60 000	Greater of 50% of ADT and £100 000	Greater of 50% of ADT and £1 000 000	100% of ADT
Until end of second trading day next after trade	£80 000	100% of ADT	100% of ADT	250% of ADT
Until end of third trading day next after trade		250% of ADT	250% of ADT	

2.6.21



Article 29 of the MiFID Regulation

Publication and availability of pre- and post-trade transparency data

1. **A regulated market [or] MTF ... shall be considered to publish pre-trade information on a continuous basis during normal trading hours if that information is published as soon as it becomes available during the normal trading hours of the regulated market [or] MTF concerned, and remains available until it is updated.**
2. **Pre-trade information, and post-trade information relating to transactions taking place on [regulated markets or MTFs] and within normal trading hours, shall be made available as close to real time as possible. Post-trade information relating**

to such *transactions* shall be made available in any case within three minutes of the relevant *transaction*.

3. Information relating to a *portfolio trade* shall be made available with respect to each constituent transaction as close to real time as possible, having regard to the need to allocate prices to particular shares. ...
4. Post-trade information referring to *transactions* taking place on a [*regulated market* or *MTF*] but outside its *normal trading hours* shall be made public before the opening of the next trading day of the [*regulated market* or *MTF*] on which the transaction took place.

2.6.22

FCA



Recital 18 to the MiFID Regulation

Information which is required to be made available as close to real time as possible should be made available as close to instantaneously as technically possible, assuming a reasonable level of efficiency and of expenditure on systems on the part of the person concerned. The information should only be published close to the three minute maximum limit in exceptional cases where the systems available do not allow for a publication in a shorter time

2.6.23

FCA



Article 30 of the MiFID Regulation

Public availability of pre- and post-trade information

... pre- and post-trade information shall be considered to be made public or available to the public if it is made available generally through one of the following to investors located in the Community:

- (a) the facilities of a *regulated market* or an *MTF*;
- (b) the facilities of a third party;
- (c) proprietary arrangements.

2.6.24

FCA



Article 32 of the MiFID Regulation

Arrangements for making information public

Any arrangement to make information public, adopted for the purposes of Article ... 30 [(see REC 2.6.23 EU)] ... , shall satisfy the following conditions:

- (a) it must include all reasonable steps necessary to ensure that the information to be published is reliable, monitored continuously for errors, and corrected as soon as errors are detected;
- (b) it must facilitate the consolidation of the data with similar data from other sources;
- (c) it must make the information available to the public on a non-discriminatory commercial basis at a reasonable cost.

2.6.26
FCA

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In determining whether:

- (1) business conducted by means of a *UK RIE's facilities* is conducted so;
- (2) [deleted]

as to afford proper protection to investors, the *FCA* may, in addition to the matters dealt with in ■ REC 2.7 to ■ REC 2.12, have regard to all the arrangements made by the *UK recognised body* concerning the operation of its *facilities*.

2.6.27
FCA

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The *FCA* may also have regard to the extent to which the *UK recognised body's* rules, procedures and the arrangements for monitoring and overseeing the use of its *facilities*:

- (1) include appropriate measures to prevent the use of its *facilities* for abusive or improper purposes;
- (2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its *facilities*;
- (3) provide appropriate information to enable users of its *facilities* to monitor their use of the *facilities*;
- (4) include appropriate arrangements to enable users of its *facilities* to raise queries about any use of those *facilities* which they are reported to have made;
- (5) include appropriate arrangements to enable users of its *facilities* to comply with any relevant regulatory or legal requirements; and
- (6) include appropriate arrangements to reduce the risk that those *facilities* will be used in ways which are incompatible with relevant regulatory or legal requirements;

and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the *UK recognised body's facilities*, the types of persons who will use the *facilities* and the use which they will make of those *facilities*.

Orderly markets

2.6.28
FCA

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In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to the extent to which the *UK RIE's* rules and procedures:

- (1) are consistent with the *Code of Market Conduct* (see ■ MAR 1);
- (2) prohibit abusive trading practices or the deliberate reporting or publication of false information about trades; and
- (3) prohibit or prevent:
 - (a) trades in which a party is improperly indemnified against losses;
 - (b) trades intended to create a false appearance of trading activity ("wash trades");

- (c) cross trades executed for improper purposes;
- (d) improperly prearranged or prenegotiated trades;
- (e) trades intended to assist or conceal any potentially identifiable trading abuse ("accommodation trades"); and
- (f) trades which one party does not intend to close out or settle.

2.6.29

FCA

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In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to whether the *UK RIE's* arrangements and practices:

- (1) enable *members* and *clients* for whom they act to obtain the best price available at the time for their size and type of trade;
- (2) ensure:
 - (a) sufficient pre-trade transparency in the *UK RIE's* markets taking account of the practices in those markets and the trading systems used; and
 - (b) sufficient post-trade transparency in the *UK RIE's* markets taking into account the nature and liquidity of the *specified investments* traded, market conditions and the scale of transactions, the need (where appropriate) to preserve anonymity for *members* and *clients* for whom they act, and the needs of different market participants for timely price information;
- (2A) (2) does not apply to a *UK RIE's* markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a *UK RIE's* markets for shares admitted to trading on a *regulated market*, see in particular ■ REC 2.6.3 UK and ■ REC 2.6.4 UK and ■ REC 2.6.7 EU to ■ REC 2.6.24 EU;
- (3) include procedures which enable the *UK RIE* to influence trading conditions or suspend trading promptly when necessary to maintain an orderly market; and
- (4) if they include arrangements to support or encourage liquidity:
 - (a) are transparent;
 - (b) are not likely to encourage any *person* to enter into transactions other than for proper trading purposes (which may include hedging, investment, speculation, price determination, arbitrage and filling orders from any *client* for whom he acts);
 - (c) are consistent with a reliable, undistorted price-formation process; and
 - (d) alleviate dealing or other identified costs associated with trading on the *UK RIE's* markets and do not subsidise a market position of a user of its *facilities*.

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39

2.6.30

FCA

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- (1) The *FCA* accepts that block trading, upstairs trading and other types of specialist transactions (such as the "exchange of futures for physicals" in certain commodity markets) can have a legitimate commercial rationale consistent with the orderly conduct of business and proper protection for investors. They may therefore be permitted under the rules of a *UK RIE*, subject to any necessary safeguards, where appropriate.

- (2) (1) does not apply to a UK RIE's markets for shares admitted to trading on a *regulated market*. For pre-trade and post-trade transparency for a UK RIE's markets for shares admitted to trading on a regulated market, see in particular ■ REC 2.6.3 UK and ■ REC 2.6.4 UK and ■ REC 2.6.7EU to ■ REC 2.6.24 EU.

Waiver of pre-trade transparency requirements and deferral of post-trade transparency requirements

2.6.31
FCA

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The FCA has exercised its power referred to in ■ REC 2.6.3 UK(3) to waive the pre-trade transparency requirements referred to in ■ REC 2.6.3 UK(1). The waivers granted are those based on market model (see ■ REC 2.6.10 EU1), type of order (see ■ REC 2.6.10 EU2) and *transactions* which are large in scale (see ■ REC 2.6.13 EU). These waivers apply to all *regulated markets* and MTFs operated by UK RIEs.

2.6.32
FCA

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The FCA has exercised its power referred to in ■ REC 2.6.4 UK(3) to permit the deferral of the post-trade transparency requirements referred to in ■ REC 2.6.4 UK(1). This permission is with respect to large *transactions* (see ■ REC 2.6.17 EU). This permission applies to all *regulated markets* and MTFs operated by UK RIEs.

Arrangements for making information public

2.6.33
FCA

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The FCA considers that for the purposes of ensuring that published information is reliable, monitored continuously for errors, and corrected as soon as errors are detected (see ■ REC 2.6.24 EU(a)), a verification process should be established which does not need to be external from the organisation of the publishing entity, but which should be an independent cross-check of the accuracy of the information generated by the trading process. This process should have the capability to at least identify price and volume anomalies, be systematic and conducted in real-time. The chosen process should be reasonable and proportionate in relation to the business.

2.6.34
FCA

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- (1) In respect of arrangements facilitating the consolidation of data as required in ■ REC 2.6.24 EU(b), the FCA considers information as being made public in accordance with ■ REC 2.6.24 EU(b), if it:
- (a) is accessible by automated electronic means in a machine-readable way;
 - (b) utilises technology that facilitates consolidation of the data and permits commercially viable usage; and
 - (c) is accompanied by instructions outlining how users can access the information.
- (2) The FCA considers that an arrangement fulfils the 'machine-readable' criteria where the data:
- (a) is in a physical form that is designed to be read by a computer;
 - (b) is in a location on a computer storage device where that location is known in advance by the party wishing to access the data; and
 - (c) is in a format that is known in advance by the party wishing to access the data.

- (3) The *FCA* considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.
- (4) The *FCA* considers that information that is made public in accordance with
■ REC 2.6.24 EU should conform to a consistent and structured format based on industry standards. *Regulated markets* or *market operators* operating an *MTF* can choose the structure that they use.

2.7 Access to facilities

2.7.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(a)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -
access to the [UK RIE's] facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors and is in accordance with paragraph 7B;

2.7.1A

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7B

(1) **The [UK RIE] must make transparent and non-discriminatory rules, based on objective criteria, governing access to, or membership of, its facilities.**

(2) **In particular those rules must specify the obligations for users or members of its facilities arising from -**

(a) **the constitution and administration of the [UK RIE];**

(b) **rules relating to transactions on the market;**

(c) **its professional standards for staff of any investment firm or credit institution having access to or membership of a financial market operated by the [UK RIE];**

(d) **conditions established under sub-paragraph (3)(c) for access to or membership of a financial market operated by the [UK RIE] by persons other than investment firms or credit institutions; and**

(e) **the rules and procedures for clearing and settlement of transactions concluded on a financial market operated by the [UK RIE].**

(3) **Rules of the [UK RIE] about access to, or membership of, a financial market operated by it must permit the [UK RIE] to give access to or admit to membership (as the case may be) only -**

(a) **an investment firm,**

- (b) a *credit institution*, or
- (c) a *person* who -
 - (i) is fit and proper,
 - (ii) has a sufficient level of trading ability and competence,
 - (iii) where applicable, has adequate organisational arrangements, and
 - (iv) has sufficient resources for the role he is to perform, taking into account the [UK RIE's] arrangements under paragraph 4(2)(d).
- (4) Rules under this paragraph must enable -
 - (a) an *investment firm* authorised under Article 5 of [MiFID], or
 - (b) a *credit institution* authorised under the *Banking Consolidation Directive*,

by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have direct or remote access to or membership of, any financial market operated by the [UK RIE] on the same terms as a *UK firm*.
- (5) The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or members of its *facilities*.
- (6) This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7C

- (1) This paragraph applies to [a UK RIE] which provides central counterparty, clearing or settlement *facilities*.
- (2) The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those *facilities*.
- (3) The rules under sub-paragraph (2) must enable an *investment firm* or a *credit institution* authorised by the *competent authority* of another *EEA State* (including a *branch* established in the *United Kingdom* of such a firm or institution) to have access to those *facilities* on the same terms as a *UK firm* for the purposes of finalising or arranging the finalisation of transactions in *financial instruments*.
- (4) The [UK RIE] may refuse access to those *facilities* on legitimate commercial grounds.

2.7.3

FCA

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In assessing whether access to a *UK recognised body's facilities* is subject to criteria designed to protect the orderly functioning of the market, or of those *facilities*, and the interests of investors, the *FCA* may have regard to whether:

- (1) the *UK recognised body* limits access as a *member* to *persons*:
 - (a) over whom it can with reasonable certainty enforce its rules contractually;
 - (b) who have sufficient technical competence to use its *facilities*;
 - (c) whom it is appropriate to admit to membership having regard to the size and sophistication of users of its *facilities* and the nature of the business effected by means of, or cleared through, its *facilities*; and
 - (d) (if appropriate) who have adequate financial resources in relation to their exposure to the *UK recognised body* or its central counterparty;
- (2) [deleted]
- (3) indirect access to the *UK recognised body's facilities* is subject to suitable criteria, remains the responsibility of a *member* of the *UK recognised body* and is subject to its rules; and
- (4) where access is granted to *members* outside the *United Kingdom*, there are adequate safeguards against *financial crime* (see also ■ REC 2.10).

2.7.3A

FCA

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■ REC 2.7.3 G does not apply to a *UK RIE's* arrangements to grant access to *investment firms* or *credit institutions*.

Electronic access

2.7.4

FCA

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The *FCA* may have regard to the arrangements made to permit electronic access to the *UK recognised body's facilities* and to prevent and resolve problems likely to arise from the use of electronic systems to provide indirect access to its *facilities* by *persons* other than its *members*, including:

- (1) the rules and guidance governing *members'* procedures, controls and security arrangements for inputting instructions into the system;
- (2) the rules and guidance governing the facilities *members* provide to *clients* to input instructions into the system and the restrictions placed on the use of those systems;
- (3) the rules and practices to detect, identify, and halt or remove instructions breaching any relevant restrictions;
- (4) the quality and completeness of the audit trail of any transaction processed through an electronic connection system; and
- (5) procedures to determine whether to suspend trading by those systems or access to them by or through individual *members*.



2.8 Settlement and clearing facilitation services

2.8.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

satisfactory arrangements which comply with paragraph 7D are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions effected on the [UK RIE] (being rights and liabilities in relation to those transactions);

2.8.1A

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7D

- (1) **The rules of the [UK RIE] must permit a user or member of a regulated market operated by it to use whatever settlement facility he chooses for a transaction.**
- (2) **Sub-paragraph (1) only applies where -**
 - (a) **such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction; and**
 - (b) **the [UK RIE] is satisfied that the smooth and orderly functioning of the financial markets will be maintained.**

2.8.3

FCA



In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions, the FCA may have regard to the *UK recognised body's*:

- (1) rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services;
- (2) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
- (3) where relevant, arrangements for making deliveries and payments, in all relevant jurisdictions;
- (4) procedures to detect and deal with the failure of a *member* to settle in accordance with its rules;

-
- (5) arrangements for taking action to settle a trade if a *member* does not settle in accordance with its rules;
 - (6) arrangements for monitoring its *members'* settlement performance; and
 - (7) (where appropriate) *default rules* and default procedures.

2.9 Transaction recording

2.9.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(e)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-

satisfactory arrangements are made for recording transactions effected on the [UK RIE], and transactions (whether or not effected on the [UK RIE]) which are cleared or to be cleared by means of its facilities;

2.9.3

FCA



In determining whether a *UK recognised body* has satisfactory arrangements for recording the transactions effected on its facilities, or cleared or to be cleared by another person by means of, its *facilities*, the *FCA* may have regard to:

- (1) whether the *UK recognised body* has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least three years (five years in respect of transactions carried out by *members* who are not incorporated in the *United Kingdom* if the *UK recognised body* is a *regulated market*); and
- (2) the type of information recorded and the extent to which the record includes details for each transaction of:
 - (a) the name of the *investment* (and, if relevant, the underlying asset) and the price, quantity and date of the transaction;
 - (b) the identities and, where appropriate, the roles of the counterparties to the transaction;
 - (c) if the *UK recognised body's* rules make provision for transactions or *clearing facilitation services* to be effected, in more than one type of *facility*, or under more than one part of its rules, the type of *facility* in which, or the part of its rules under which, the transaction or *clearing facilitation service* was effected; and
 - (d) the date and manner of settlement of the transaction.

2.10 Financial crime and market abuse

2.10.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(f)
Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-

appropriate measures (including the monitoring of transactions effected on the [UK RIE]) are adopted to reduce the extent to which the [UK RIE's] facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence;

2.10.3

FCA

G

In determining whether a *UK recognised body's* measures are appropriate to reduce the extent to which its *facilities* can be used for a purpose connected with *market abuse* or *financial crime*, to facilitate their detection and to monitor their incidence, the *FCA* may have regard to:

- (1) whether the rules of the *UK recognised body* enable it to disclose any information to the *FCA*, or other appropriate bodies involved in the detection, prevention or pursuit of *market abuse* or *financial crime* in the *United Kingdom* or overseas; and
- (2) whether the arrangements, resources, systems, and procedures of the *UK recognised body* enable it to:
 - (a) monitor the use made of its *facilities* so as to obtain information regarding possible patterns of normal, abnormal or improper use of those *facilities*;
 - (b) detect possible instances of *market abuse* and *financial crime*, for example, by detecting suspicious patterns in the use of its *facilities*;
 - (c) communicate information about *market abuse* and *financial crime* promptly and accurately to appropriate organisations; and
 - (d) cooperate with all relevant bodies in the prevention, investigation and pursuit of *market abuse* and *financial crime*.

2.10.4

FCA

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The law on *market abuse* and *financial crime*, including Part VI of the Criminal Justice Act 1988 and the *Money Laundering Regulations*, applies to *UK recognised bodies*. This *recognition requirement* (and this *guidance*) does not restrict, diminish or alter the obligations contained in that legislation.

2.11 Custody

2.11.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(g)

Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that-

where the [UK RIE's] facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose.

2.11.3

FCA



In determining whether a *UK recognised body* has made satisfactory arrangements for the safeguarding and administration of assets belonging to the users of its *facilities*, the *FCA* may have regard to:

- (1) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;
- (2) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (3) whether the arrangements ensure that the assets are not transferred to the *UK recognised body* or to any other *person* to settle the debts of the owner (or other *person* with the appropriate rights over the assets) except in accordance with valid instructions from a *person* entitled to give those instructions, or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (4) whether the arrangements include satisfactory procedures to ensure that any rights arising in relation to the assets held as a result of any actions by the *issuers* of those assets (or other relevant persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets;
- (5) whether there are adequate arrangements to ensure the proper segregation of assets belonging to the *UK recognised body* (or to *undertakings* in the same *group*) from those belonging to the users of its *facilities* for the safeguarding and administration of assets;
- (6) whether the arrangements include satisfactory procedures for the selection, oversight and review of *custodians* or sub-*custodians* used to hold the assets;

- (7) whether the agreements by which the *UK recognised body* undertakes to safeguard and administer assets belonging to users of its *facilities* include appropriate information regarding the terms and conditions of that service and the obligations of the *UK recognised body* to the user of the service and of the user of the service to the *UK recognised body*;
- (8) whether the records kept of those assets and the operation of the safeguarding services provide sufficient accurate and timely information:
 - (a) to identify the legal and beneficial owners of the assets and of any *persons* who have charges over, or other interests, in the assets;
 - (b) to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and
 - (c) to identify separately the assets owned by (or, where appropriate, on behalf of) different *persons*, including, where appropriate, the assets owned by *members* of the *UK recognised body* and their clients;
- (9) the frequency of reconciliation of the assets held by (or on behalf of) the *UK recognised body* with the accounts held with the *UK recognised body* by the users of its safeguarding and administration services and the extent of the arrangements for resolving a shortfall identified in any reconciliation; and
- (10) the frequency with which statements of their holdings are provided to the users of the safeguarding and administration services, to the owners of the assets held and other appropriate *persons* in accordance with the terms of the agreement by which the *UK recognised body* undertook to safeguard and administer those assets.

2.11.4

FCA

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Where a *UK recognised body* arranges for other *persons* to provide services for the safeguarding and administration services of assets belonging to users of its *facilities*, it will also need to satisfy the *recognition requirement* in Regulation 6 of the *Recognition Requirements Regulations* (see ■ REC 2.2).



2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

2.12.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(c)
 Without prejudice to the generality of sub-paragraph [4(1)], the [UK RIE] must ensure that -

- (c) appropriate arrangements are made for *relevant information* to be made available (whether by the [UK RIE] or, where appropriate, by *issuers* of the [specified investments]) to *persons engaged in dealing* in [specified investments] on the [UK RIE];

2.12.2

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 4(3)
 In sub-paragraph [4(2)(c)],
 "*relevant information*" means information which is relevant in determining the current value of the [specified investments].

2.12.2A

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 7A

- (1) The [UK RIE] must make clear and transparent rules concerning the admission of *financial instruments* to trading on any *financial market* operated by it.
- (2) The rules must ensure that all *financial instruments* admitted to trading on any *regulated market* operated by the [UK RIE] are capable of being traded in a fair, orderly and efficient manner (in accordance with Chapter V of the [MiFID Regulation], where applicable).
- (3) The rules must ensure that -
 - (a) all *transferable securities* admitted to trading on a *regulated market* operated by the [UK RIE] are freely negotiable (in accordance with Chapter V of the [MiFID Regulation], where applicable); and
 - (b) all contracts for derivatives admitted to trading on a regulated market operated by the [UK RIE] are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

- (4) The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable the users of a *multilateral trading facility* operated by it to form investment judgments, taking into account both the nature of the users and the types of instrument traded.
- (5) The [UK RIE] must maintain effective arrangements to verify that issuers of *transferable securities* admitted to trading on a *regulated market* operated by it comply with the *disclosure obligations*.
- (6) The [UK RIE] must maintain arrangements to assist users of a *regulated market* operated by it to obtain access to information made public under the *disclosure obligations*.
- (7) The [UK RIE] must maintain arrangements regularly to review whether the *financial instruments* admitted to trading on a *regulated market* operated by it comply with the admission requirements for those instruments.
- (8) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a *regulated market* operated by it a *transferable security* which has been admitted to trading on another *regulated market*, the [UK RIE]
 -
 - (a) must inform the issuer of that security as soon as is reasonably practicable; and
 - (b) may not require the issuer of that security to demonstrate compliance with the *disclosure obligations*.
- (9) The rules must provide that where a [UK RIE], without obtaining the consent of the issuer, admits to trading on a *multilateral trading facility* operated by it a transferable security which has been admitted to trading on a *regulated market*, it may not require the issuer of that security to demonstrate compliance with the *disclosure obligations*.
- ...
- (11) This paragraph is without prejudice to the generality of paragraph 4.

2.12.2B

FCA



Article 35 of the MiFID Regulation

Transferable securities

- 1. *Transferable securities* shall be considered freely negotiable for the purposes of Article 40(1) of [MiFID] [(see REC 2.12.2A UK)] if they can be traded between the parties to a *transaction*, and subsequently transferred without restriction, and if all

Transferable securities

- securities within the same class as the security in question are fungible.
2. *Transferable securities* which are subject to a restriction on transfer shall not be considered as freely negotiable unless the restriction is not likely to disturb the market.
 3. *Transferable securities* that are not fully paid may be considered as freely negotiable, if arrangements have been made to ensure that the negotiability of such securities is not restricted and that adequate information concerning the fact that the securities are not fully paid, and the implications of that fact for shareholders, is publicly available.
 4. When exercising its discretion whether to admit a share to trading, a *regulated market* shall, in assessing whether the share is capable of being traded in a fair, orderly and efficient manner, take into account the following:
 - (a) the distribution of those shares to the public; and
 - (b) such historical financial information, information about the *issuer*, and information providing a business overview as is required to be prepared under [the *PD*], or is or will be otherwise publicly available.
 5. A *transferable security* that is officially listed in accordance with [*CARD*], and the listing of which is not suspended, shall be deemed to be freely negotiable and capable of being traded in a fair, orderly and efficient manner.
 6. For the purposes of Article 40(1) of [*MiFID*] [(see REC 2.12.2A UK)], when assessing whether a *transferable security* referred to Article 4(1)(18)(c) of [*MiFID*] is capable of being traded in a fair, orderly and efficient manner, the *regulated market* shall take into account, depending on the nature of the security being admitted, whether the following criteria are satisfied:
 - (a) the terms of the security are clear and unambiguous and allow for a correlation between the price of the security and the price or other value measure of the underlying;
 - (b) the price or other value measure of the underlying is reliable and publicly available;
 - (c) there is sufficient information publicly available of a kind needed to value the security;
 - (d) the arrangements for determining the settlement price of the security ensure that this price properly reflects the price or other value measure of the underlying;

Transferable securities

- (e) where the settlement of the security requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying as well as adequate arrangements to obtain relevant information about that underlying.

2.12.2C

FCA



Recital 19 to the MiFID Regulation

For the purposes of the provisions of [the *MiFID Regulation*] as to the admission to trading on a *regulated market* of a *transferable security* as defined in article 4(1)(18)(c) of [*MiFID*], [(see REC 2.12.2B EU6(c))], in the case of a security within the meaning of [the *PD*], there should be considered to be sufficient information publicly available of a kind needed to value that *financial instrument*.

2.12.2D

FCA



Article 36 of the MiFID Regulation

Units in collective investment undertakings

1. A *regulated market* shall, when admitting to trading units in a collective investment undertaking, whether or not that undertaking is constituted in accordance with [the *UCITS Directive*], satisfy itself that the collective investment undertaking complies or has complied with the registration, notification or other procedures which are a necessary precondition for the marketing of the collective investment undertaking in the jurisdiction of the *regulated market*.
2. Without prejudice to [the *UCITS Directive*] or any other Community legislation or national law relating to collective investment undertakings, Member States may provide that compliance with the requirements referred to in paragraph 1 is not a necessary precondition for the admission of units in a collective investment undertaking to trading on a *regulated market*.
3. When assessing whether units in an open-ended collective investment undertaking are capable of being traded in a fair, orderly and efficient manner in accordance with Article 40(1) of [*MiFID*] [(see REC 2.12.2A UK)], the *regulated market* shall take the following aspects into account:
 - (a) the distribution of those units to the public;
 - (b) whether there are appropriate market-making arrangements, or whether the management company of the scheme provides appropriate alternative arrangements for investors to redeem the units;

Units in collective investment undertakings	
(c)	whether the value of the units is made sufficiently transparent to investors by means of the periodic publication of the net asset value.
4.	When assessing whether units in a closed-end collective investment undertaking are capable of being traded in a fair, orderly and efficient manner, in accordance with Article 40(1) of [MiFID] [(see REC 2.12.2A UK)], the <i>regulated market</i> shall take the following aspects into account: <ul style="list-style-type: none"> (a) the distribution of those units to the public; (b) whether the value of the units is made sufficiently transparent to investors, either by publication of information on the fund's investment strategy or by the periodic publication of net asset value.

2.12.2E



Article 37 of the MiFID Regulation

FCA

Derivatives	
1.	When admitting to trading a <i>financial instrument</i> of a kind listed in points 4 to 10 of Section C of Annex I to [MiFID], <i>regulated markets</i> shall verify that the following conditions are satisfied: <ul style="list-style-type: none"> (a) the terms of the contract establishing the <i>financial instrument</i> must be clear and unambiguous, and enable a correlation between the price of the <i>financial instrument</i> and the price or other value measure of the underlying; (b) the price or other value measure of the underlying must be reliable and publicly available; (c) sufficient information of a kind needed to value the derivative must be publicly available; (d) the arrangements for determining the settlement price of the contract must be such that the price properly reflects the price or other value measure of the underlying; (e) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying security or asset rather than cash settlement, there must be adequate arrangements to enable market participants to obtain relevant information about that underlying, as well as adequate settlement and delivery procedures for the underlying.
2.	Where the <i>financial instruments</i> concerned are of a kind listed in Sections C (5), (6), (7) or (10) of Annex I to [MiFID], point (b) of paragraph 1 shall not apply if the following conditions are satisfied:

Derivatives

- (a) the contract establishing that instrument must be likely to provide a means of disclosing to the market, or enabling the market to assess, the price or other value measure of the underlying, where the price or value measure is not otherwise publicly available;
- (b) the *regulated market* must ensure that appropriate supervisory arrangements are in place to monitor trading and settlement in such *financial instruments*;
- (c) the *regulated market* must ensure that settlement and delivery, whether physical delivery or by cash settlement, can be effected in accordance with the contract terms and conditions of those *financial instruments*.

Proper information

2.12.11

FCA

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In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing* in *specified investments* admitted to trading on the UK RIE, the FCA may have regard to:

- (1) the extent to which *members* and *clients* for whom they act are able to obtain information about those *specified investments*, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media, to make a reasonably informed judgment about the value and the risks associated with those *specified investments* in a timely fashion;
- (2) what restrictions, if any, there are on the dissemination of *relevant information* to the UK RIE's *members* and *clients* for whom they act; and
- (3) whether *relevant information* is or can be kept to restricted groups of *persons* in such a way as to facilitate or encourage *dealing* in contravention of the *Code of Market Conduct* (see ■ MAR 1).

Own means of dissemination

2.12.12

FCA

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UK RIEs do not need to maintain their own arrangements for disseminating news or information about *specified investments* (or underlying assets) to their *members* where they have made adequate arrangements for other *persons* to do so on their behalf or there are other effective and reliable arrangements for this purpose.

Rules concerning the admission of financial instruments to trading on a multilateral trading facility

2.12.14

FCA

G

In determining whether a UK RIE has clear and transparent rules concerning the admission of *financial instruments* to trading on any *multilateral trading facility* operated by it, the FCA considers that it is reasonable that the rules be based on criteria designed to promote fair and orderly trading (see ■ REC 2.6.2 UK). In determining whether the rules are based on such criteria, the FCA may have regard to:

- (1) whether there is a sufficient range of *persons* already holding the *financial instrument* (or, where relevant, the underlying asset) or interested in *dealing* in it to bring about adequate forces of supply and demand;
- (2) the extent to which there are any limitations on the *persons* who may hold or deal in the *financial instrument*, or the amounts of the *financial instrument* which may be held; and
- (3) whether the *UK RIE* has adequate procedures for obtaining information relevant for determining whether or not to suspend or discontinue trading in that *financial instrument*.

2.13 Promotion and maintenance of standards

2.13.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 6

(1) The [UK RIE] must be able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities* by persons in the course of using the *facilities* provided by the [UK RIE].

(2) The [UK RIE] must be able and willing to cooperate by the sharing of information or otherwise, with the [FCA].with any other authority, body or person having responsibility in the *United Kingdom* for the supervision or regulation of any *regulated activity* or other financial service, or with an *overseas regulator* within the meaning of section 195 of the *Act*.

2.13.3

FCA



In determining whether a *UK recognised body* is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities*, the *FCA* may have regard to the extent to which the *UK recognised body* seeks to promote and encourage, through its rules, practices and procedures, conduct in *regulated activities* which is consistent with the *Code of Market Conduct* (see ■ MAR 1) and with any other codes of conduct, rules or principles relating to behaviour in *regulated activities* which users of the *UK financial system* would normally expect to apply to the *regulated activity* and the conduct in question.

2.13.4

FCA



In assessing the ability of a *UK recognised body* to cooperate with the *FCA* and other appropriate bodies, the *FCA* may have regard to the extent to which the constitution and rules of the *UK recognised body* and its agreements with its *members* enable it to obtain information from *members* and to disclose otherwise confidential information to the *FCA* and other appropriate bodies.

2.13.5

FCA



In assessing the willingness of a *UK recognised body* to cooperate with the *FCA* and other appropriate bodies, the *FCA* may have regard to:

- (1) the extent to which the *UK recognised body* is willing to provide information about it and its activities to assist the *FCA* in the exercise of its functions;
- (2) the extent to which the *UK recognised body* is open with the *FCA* or other appropriate bodies in regulatory matters;
- (3) how diligently the *UK recognised body* investigates or pursues enquiries from the *FCA* or other appropriate bodies; and

(4) whether the *UK recognised body* participates in appropriate international fora.

2.13.6

FCA

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For the purpose of this section, 'information' includes information held about large positions held by *members* of a *UK recognised body*.

2

2.14 Rules and consultation

2.14.1

FCA



Schedule to the Recognition Requirements Regulations, paragraph 7

(1) The [UK RIE] must ensure that appropriate procedures are adopted for it to make rules, for keeping its rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the [UK RIE's] facilities in appropriate cases.

(3) The [UK RIE] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 8(3) ... (or on any changes it proposes to make to those arrangements).

2.14.3

FCA



In determining whether a *UK recognised body* has appropriate procedures for it to make rules, for keeping its rules under review and for amending them, the *FCA* may have regard to:

- (1) the arrangements made for taking decisions about making and amending rules in the *UK recognised body*, including the level at which the decisions are taken and any provision for the delegation of decisions by the *governing body*;
- (2) the arrangements made for determining whether or not it is appropriate to consult *members* or other users of the *UK recognised body's facilities*;
- (3) the procedures for consulting *members* and other users of its *facilities* in appropriate cases; and
- (4) the arrangements for notifying *members* (and other appropriate *persons*) of rule changes.

2.14.4

FCA



(1) In determining whether a *UK recognised body's* procedures include procedures for consulting users of its *facilities* in appropriate cases, the *FCA* may have regard to whether those procedures include provision for consulting users of those *facilities* before changes are made to any rules relating to its *regulatory functions*.

(2) In the *FCA's* view, a *UK recognised body's* procedures may not need to contain provision for consulting users of its *facilities* before making minor changes to any rules of an administrative or commercial character.

2.14.5

FCA

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- (1) In determining whether a *UK recognised body's* procedures for consulting *members* and other users of its *facilities* are appropriate, the *FCA* may have regard to the range of persons to be consulted by the *UK recognised body* under those procedures.
- (2) In the *FCA's* view, consultation with a smaller range of persons may be appropriate where limited, technical changes to a *UK recognised body's* rules are proposed.
- (3) In the *FCA's* view, a *UK recognised body's* procedures may include provision to restrict consultation where it is essential to make a change to the rules without delay in order to ensure continued compliance with the *recognition requirements* or other obligations under the *Act*.

2.14.6

FCA

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In determining whether a *UK recognised body's* procedures for consulting *members* and other users of its *facilities* are appropriate, the *FCA* may have regard to the extent to which the procedures include:

- (1) informal discussions at an early stage with users of its *facilities* or appropriate representative bodies;
- (2) publication to users of its *facilities* of a formal consultation paper which includes clearly expressed reasons for the proposed changes and an appropriately detailed assessment of the likely costs and benefits;
- (3) adequate time for users of its *facilities* to respond to the consultation paper and for the *UK recognised body* to take their responses properly into account;
- (4) adequate arrangements for making responses to consultation available for inspection by users of its *facilities*, unless the respondent requests otherwise;
- (5) adequate arrangements for ensuring that the *UK recognised body* has proper regard to the representations received; and
- (6) publication, no later than the publication of the amended rules, of a reasoned account of the *UK recognised body's* decision to amend its rules.

2.15 Discipline

2.15.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 8

- (1) The [UK RIE] must have -
 - (a) effective arrangements (which include the monitoring of transactions effected on the [UK RIE]) for monitoring and enforcing compliance with its rules, including rules in relation to the provision of clearing services in respect of transactions other than transactions effected on the [UK RIE];
 - (b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and
 - (c) effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.
- (2) Arrangements made pursuant to sub-paragraph (1) must include procedures for -
 - (a) investigating complaints made to the [UK RIE] about the conduct of persons in the course of using the [UK RIE's] facilities; and
 - (b) the fair, independent and impartial resolution of appeals against decisions of the [UK RIE].
- (3) Where arrangements made pursuant to sub-paragraph (1) include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways -
 - (a) towards meeting expenses incurred by the [UK RIE] in the course of the investigation of the breach in respect of which the penalty is paid, or in the course of any appeal against the decision of the [UK RIE] in relation to that breach;
 - (b) for the benefit of users of the [UK RIE's] facilities;
 - (c) for charitable purposes.

2.15.3

FCA

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In determining whether a *UK recognised body* has effective arrangements for monitoring and enforcing compliance with its rules (including its settlement arrangements), the *FCA* may have regard to:

- (1) the *UK recognised body's* ability to:
 - (a) monitor and oversee the use of its *facilities*;
 - (b) assess its *members'* compliance with its rules (and settlement arrangements, where appropriate);
 - (c) assess the significance of any non-compliance;
 - (d) take appropriate disciplinary action against *members* in breach of its rules (and settlement arrangements, where appropriate);
 - (e) suspend a *member's* access to its *facilities*;
 - (f) refer *members'* or others' conduct to other appropriate authorities for possible action or further investigation;
 - (g) retain authority over a *member* for at least one year after he has ceased to be a *member*;
 - (h) where appropriate, enforce its rules (and settlement arrangements, where appropriate) against users (other than *members*) of its *facilities*; and
 - (i) take action against suppliers of services to *members* (for example, warehouses) whose performance or conduct may be critical to ensuring compliance with its rules (and settlement arrangements, where appropriate);
- (2) the position, management and resources of the departments responsible for monitoring and overseeing the use of the *UK recognised body's facilities* and for enforcing compliance with its rules (and settlement arrangements, where appropriate); and
- (3) the arrangements made for the determination of disciplinary matters including the arrangements for disciplinary hearings and the arrangements made for appeals from the *UK recognised body's* decisions in those matters.

2.15.4

FCA

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In assessing whether the procedures made by a *UK recognised body* to investigate complaints about the users of its *facilities* are satisfactory, the *FCA* may have regard to:

- (1) whether these procedures include arrangements which enable the *UK recognised body* to:
 - (a) acknowledge complaints promptly;
 - (b) consider and investigate these complaints objectively, promptly and thoroughly;
 - (c) provide a timely reply to the complainant; and
 - (d) keep adequate records of complaints and investigations;
- (2) the arrangements made to enable a *person* who is the subject of a complaint to respond in an appropriate manner to that complaint; and

2.15.5

FCA

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In assessing whether the arrangements include procedures for the fair, independent and impartial resolution of appeals against decisions of a *UK recognised body*, the *FCA* may have regard to at least the following factors:

- (1) the appeal procedures of the *UK recognised body*, including the composition and roles of any appeal committees or tribunals, and their relationship to the *governing body*;
- (2) the arrangements made to ensure prompt hearings of appeals from decisions made by the *UK recognised body*;
- (3) the format, organisation and rules of procedure of those hearings;
- (4) the arrangements made to select the *persons* to preside over those hearings and to serve as *members* of any appeal tribunal;
- (5) the provision for determining whether or not such hearings should be in public;
- (6) the provision made to enable an appellant to be aware of the procedure at any appeal hearing and to have the opportunity to prepare and present his case at that hearing;
- (7) the provision made for an appeal tribunal to give an explanation of its decision;
- (8) the provision for publicity for any appeals or for determining whether or not publicity should be given to the outcome of any appeal.

2.15.6

FCA

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In assessing whether a *UK recognised body's* arrangements include appropriate provision for ensuring the application of any financial penalties in ways described in the *recognition requirement*, the *FCA* may have regard to:

- (1) the *UK recognised body's* policy regarding the application of financial penalties;
- (2) the arrangements made for applying that policy in individual cases;

but the *FCA* does not consider that it is necessary for *UK recognised bodies* to follow any specific policy in order to meet this *recognition requirement*.

2.16 Complaints

2.16.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 9

- (1) The [UK RIE] must have effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its *regulatory functions*.
- (2) But sub-paragraph (1) does not extend to -
 - (a) complaints about the content of rules made by the [UK RIE], or
 - (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 8(2)(b).
- (3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by *a person* independent of the [UK RIE], and for him to report on the result of his investigation to the [UK RIE] and to the complainant.
- (4) The arrangements must confer on *the person* mentioned in sub-paragraph (3) the power to recommend, if he thinks appropriate, that the [UK RIE] -
 - (a) makes a compensatory payment to the complainant,
 - (b) remedies the matter complained of,
 or takes both of those steps.
- (5) Sub-paragraph (3) is not to be taken as preventing the [UK RIE] from making arrangements for the initial investigation of a complaint to be conducted by the [UK RIE].

2.16.3

FCA



In determining whether a *UK recognised body* has effective arrangements for the investigation and resolution of complaints arising in connection with the performance of, or failure to perform, any of its *regulatory functions*, the *FCA* may have regard to the extent to which the *UK recognised body's* resources and procedures enable it to:

- (1) acknowledge complaints promptly;
- (2) make an objective, prompt and thorough initial investigation of complaints;
- (3) provide a timely reply to the complainant after that initial investigation;

2.16.4

FCA

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In determining whether a *UK recognised body's* arrangements for the investigation of complaints include appropriate arrangements for the complaint to be fairly and impartially investigated by an independent *person* (a "*complaints investigator*"), the *FCA* may have regard to:

- (4) inform the complainant of his right to apply to the *UK recognised body's complaints investigator*; and
 - (5) keep adequate records of complaints and investigations.
- (1) the arrangements made for appointing (and removing) a *complaints investigator*, including the terms and conditions of such an appointment and the provision for remuneration of a *complaints investigator*;
 - (2) the *complaints investigator's* access to, and relationship with, the *UK recognised body's governing body* and *key individuals*;
 - (3) the arrangements made for giving complainants access to the *complaints investigator*;
 - (4) the facilities made available to the *complaints investigator* to enable him to pursue his investigation and prepare his report and recommendations, including access to the *UK recognised body's* records, *key individuals* and other staff (including, where appropriate suppliers, contractors or other *persons* to whom any functions have been outsourced and their staff); and
 - (5) the arrangements made for the *UK recognised body* to consider the *complaints investigator's* report and recommendations.

2.16A Operation of a multilateral trading facility

2.16A.1

FCA



Schedule to the Recognition Requirements Regulations, Paragraph 9A

- (1) [A UK RIE] operating a *multilateral trading facility* must also operate a *regulated market*.
- (2) [A UK RIE] operating a *multilateral trading facility* must comply with those requirements of-
 - (a) Chapter I of Title II of [*MiFID*], and
 - (b) *MiFID implementing Directive*,which are applicable to a *market operator ...* operating such a facility.
- (3) The requirements of this paragraph do not apply for the purposes of section 292(3)(a) of the Act (requirements for overseas investment exchanges and overseas clearing houses).

2.16A.2

FCA



In determining whether a UK RIE operating a *multilateral trading facility* complies with those requirements of Chapter I of Title II of *MiFID* and the *MiFID implementing Directive* which are applicable to a *market operator* operating such a facility, the FCA will have regard to the compliance of the UK RIE with equivalent *recognition requirements*.

2.17 Recognition requirements relating to the default rules of UK RIEs

2.17.1

FCA

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The text of part of regulation 3 (Interpretation) of and Parts II and IV of the Schedule to the *Recognition Requirements Regulations* is set out below.

2.17.1A

FCA

UK

Regulation 3 (Interpretation) of the Recognition Requirements Regulations:

..."default fund" means the sum of the default fund contributions by the members or designated non-members of a [*recognised investment exchange*] to that exchange or by one [*recognised investment exchange*] to another or by the members of a [*recognised clearing house*] to that clearing house or by one [*recognised clearing house*] to another to the extent those contributions have not been returned or otherwise applied;

"default fund contribution" has the same meaning as in section 188(3A) of the Companies Act [1989];"...

2.17.2

FCA

UK

Schedule to the Recognition Requirements Regulations, Part II

Paragraph 10 (Default rules in respect of market contracts)

- (1) The [*UK RIE*] must have *default rules* which, in the event of a *member* of the [*UK RIE*] being or appearing to be unable to meet his obligations in respect of one or more *market contracts*, enable action to be taken in respect of unsettled *market contracts* to which he is party.
- (2) The [*default rules*] may authorise the taking of the same or similar action in relation to a *member* who appears to be likely to become unable to meet his obligations in respect of one or more *market contracts*.
- (3) The [*default rules*] must enable action to be taken in respect of all unsettled *market contracts*, other than those entered into for the purposes of or in connection with the provision of clearing services for the [*UK RIE*].
- (4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a [*recognised clearing house*] or another [*recognised investment exchange*].

- (5) A [UK RIE] must have [*default rules*] which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more [*market contracts*], enable action to be taken in respect of unsettled [*market contracts*] to which that person is a party.

Paragraph 11 (Content of rules)

- (1) This paragraph applies as regards contracts falling within section 155(2)(a) of the Companies Act [1989].
- (2) The [*default rules*] must provide -
- (a) for all rights and liabilities between those party as principal to unsettled *market contracts* to which the defaulter is party as principal to be discharged and for there to be paid by one party to the other such sum of money (if any) as may be determined in accordance with the [*default rules*];
 - (b) for the sums so payable in respect of different contracts between the same parties to be aggregated or set off so as to produce a net sum; and
 - (c) for the certification by or on behalf of the [UK RIE] of the net sum payable or, as the case may be, of the fact that no sum is payable.
- (3) The reference in sub-paragraph (2) to rights and liabilities between those party as principal to unsettled *market contracts* does not include rights and liabilities -
- (a) in respect of margin; or
 - (b) arising out of a failure to perform a *market contract*.
- (4) The [*default rules*] may make the same or similar provision, in relation to [*designated non-members*] designated in accordance with the procedures mentioned in sub-paragraph (5), as in relation to *members* of the [UK RIE].
- (5) If such provision is made as is mentioned in sub-paragraph (4), the [UK RIE] must have adequate procedures -
- (a) for designating the *persons*, or descriptions of person, in respect of whom action may be taken;
 - (b) for keeping under review the question which *persons* or descriptions of person should be or remain so designated; and
 - (c) for withdrawing such designation.
- (6) The procedures must be designed to secure that -
- (a) a *person* is not, or does not remain, designated if failure by him to meet his obligations in respect of one or more *market contracts* would be unlikely adversely to affect the operation of the market; and

(b) a description of persons is not, or does not remain, designated if failure by a *person* of that description to meet his obligations in respect of one or more *market contracts* would be unlikely adversely to affect the operation of the market.

(7) The [UK RIE] must have adequate arrangements -

(a) for bringing a designation or withdrawal of designation to the attention of the *person* or description of persons concerned; and

(b) where a description of *persons* is designated, or the designation of a description of persons is withdrawn, for ascertaining which *persons* fall within that description.

Paragraph 12 (Content of rules)

(1) This paragraph applies as regards contracts falling within section 155(2)(b) or (c) of the Companies Act [1989].

(2) The [default rules] must provide -

(a) for all rights and liabilities of the defaulter under or in respect of unsettled *market contracts* to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the [default rules];

(b) for the sums so payable by or to the defaulter in respect of different contracts entered into by the defaulter in one capacity for the purposes of section 187 of the Companies Act [1989] to be aggregated or set off so as to produce a net sum;

(bb) if relevant, for that sum to be aggregated with, or set off against, any sum owed by or to the investment exchange by or to AP under an indemnity given or reimbursement or similar obligation in respect of a margin set off agreement in which the defaulter chose to participate so as to produce a net sum;

(c) for the net sum referred to in [(2)](b) or, if relevant, the net sum referred to in [(2)](bb) -

(i) if payable by the defaulter to the exchange, to be set off against -

(aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);

(bb) to the extent (if any) that any sum remains after set off under (aa), any default fund contribution provided by the defaulter remaining after any application of such contribution;

(ii) to the extent (if any) that any sum remains after set off under (i), to be paid from such other funds, including the default fund, or resources as the exchange may apply under its *default rules*;

- (iii) if payable by the exchange to the defaulter, to be aggregated with -
 - (aa) any property provided by or on behalf of the defaulter as cover for margin (or the proceeds of realisation of such property);
 - (bb) any default fund contribution provided by the defaulter remaining after any application of such contribution; and
- (d) for the certification by or on behalf of the [UK RIE] of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(2A) In sub-paragraph (2), "margin set off agreement" means an agreement between the exchange and AP permitting any eligible position to which the Participant Member is party with the exchange and any eligible position to which the Participant Member is party with AP to be taken into account in calculating a net sum owed by or to the Participant Member to either the exchange or AP and/or margin to be provided to, either or both, the exchange and AP.

(2B) In sub-paragraph (2) -

"AP" means a [*recognised clearing house*] or another [*recognised investment exchange*] of whom a Participant Member is a member;

"eligible position" means any position which may be included in the set off calculation;

"Participant Member" means a person who

- (a) is a member of the exchange;
- (b) is a member or participant of AP; and
- (c) chooses to participate, in accordance with the rules of the exchange, in such agreement.

(2C) The property, contribution, funds or resources referred to in (2)(c), against which the net sum is to be set off (or with which it is to be aggregated) are subject to any unsatisfied claims arising out of the default of a defaulter before the default in relation to which the calculation is being made.

(3) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the [*default rules*] authorising -

- (a) the effecting by the [UK RIE] of corresponding contracts in relation to unsettled *market contracts* to which the defaulter is party;

- (b) the transfer of the defaulter's position under an unsettled *market contract* to another *member* of the [UK RIE];
 - (c) the exercise by the UK RIE of any *option* granted by an unsettled *market contract*.
- (4) A "corresponding contract" means a contract on the same terms (except as to price or premium) as the *market contract* but under which the *person* who is the buyer under the *market contract* agrees to sell and the *person* who is the seller under the *market contract* agrees to buy.
- (5) Sub-paragraph (4) applies with any necessary modifications in relation to a *market contract* which is not an agreement to sell.
- (6) The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled *market contract* does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.

Paragraph 12A (Content of rules)

The rules of the [UK RIE] must provide that, in the event of a default, any default fund contribution provided by the defaulter shall only be used in accordance with paragraph 12(2)(c)(i) or (ii).

Paragraph 13 (Notification to other parties affected)

The [UK RIE] must have adequate arrangements for ensuring that -

- (a) in the case of unsettled *market contracts* with a defaulter acting as principal, parties to the contract are notified as soon as reasonably practicable of the default and of any decision taken under the [*default rules*] in relation to contracts to which they are a party; and
- (b) in the case of unsettled *market contracts* with a defaulter acting as agent, parties to the contract and the defaulter's principals are notified as soon as reasonably practicable of the default and of the identity of the other parties to the contract.

Paragraph 14 (Cooperation with other authorities)

The [UK RIE] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any *relevant office-holder* and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a *member* of the [UK RIE] or any [*designated non-member*] or the default of a [*recognised clearing house*] or another [*recognised investment exchange*].

2.17.6

FCA

G

The Companies Act 1989 contains provisions which protect action taken by a UK *recognised body* under its *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.

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Chapter 2A

Recognised Auction Platforms

 **2A.1 Introduction****2A.1.1****FCA****G**

This chapter applies to an *RAP* or to a *UK RIE* applying to become an *RAP*. Regulation 2 of the *RAP regulations* provides that an entity must have *UK RIE* status before it can apply for *RAP* status.

2A.1.2**FCA****G**

The *RAP recognition requirements* must be satisfied by an *RAP* applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that *RAP* status is held. Therefore, the term *RAP* in the *guidance* should be understood to also refer to an applicant where appropriate and where not otherwise stated.

2A.1.3**FCA****G**

The *RAP regulations* apply modified provisions of the *Act* to an *RAP*. For example, an *RAP* is an *exempt person* in respect of its business as an *auction platform* due to the application of section 285 of the *Act* as modified by the *RAP regulations*. Similarly, section 293 of the *Act* is applied and modified by the *RAP regulations* to provide for *notification rules* and notification requirements in relation to *RAPs*.

2A.2 Method of satisfying the RAP recognition requirements

2A.2.1

FCA



Recognised Auction Platforms Regulations, regulation 13

(1) In considering whether [an *RAP*] or applicant satisfies the [*RAP recognition requirements*], the [*FCA*] may-

(a) treat compliance by the [*RAP*] or applicant with the [*recognition requirements* or *MiFID implementing requirements*] applying to it as a [*UK RIE*] as conclusive evidence that the [*RAP*] or applicant satisfies any equivalent [*RAP recognition requirements*] applying to it under these [*RAP regulations*], taking into account any arrangements that would be necessary to meet the [*RAP recognition requirements*], and

(b) take into account all relevant circumstances including the constitution of the *person* concerned.

(2) Without prejudice to the generality of paragraph (1), [an *RAP*] or applicant may satisfy [*RAP recognition requirements*] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where [an *RAP*] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [*RAP regulations*] on the [*RAP*] or applicant to satisfy the [*RAP recognition requirements*], but it is in addition [an *RAP recognition requirement*] applying to the [*RAP*] or applicant that the *person* who performs (or is to perform) the functions is a fit and proper *person* who is able and willing to perform them.

2A.2.2

FCA



The *FCA* will request information from an *RAP* or *RAP* applicant in order to determine whether it meets the *RAP recognition requirements*.

2A.3 **Guidance on RAP recognition requirements**

2A.3.1
FCA

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In assessing compliance with the *RAP recognition requirements*, the *FCA* will have regard to relevant guidance in ■ REC 2 on the equivalent requirements set out in the *Recognition Requirement Regulations*. The *FCA* may also take into account compliance by the *RAP* or *RAP* applicant with the *recognition requirements* (see ■ REC 2A.2.1 UK). The *FCA* will not make a separate assessment of compliance with the *recognition requirements* during the course of examining an application to become an *RAP* or as part of its ongoing supervision of an *RAP*, unless there is a specific reason to do so.

2A.3.2
FCA

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The *guidance* in relation to the *recognition requirements* in the sections of ■ REC 2 listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on RAP recognition requirements

Column A	Column B	Column C
<i>REC 2</i> guidance which applies to an <i>RAP</i>	Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Relevant <i>RAP recognition requirement</i>
REC 2.2.2 G to REC 2.2.7 G (Relevant circumstances and Outsourcing)		Reg 13
REC 2.3.3 G to REC 2.3.9 G (Financial resources)		Reg 14
REC 2.4.3 G to REC 2.4.6 G (Suitability)	In addition to the matters set out in REC 2.4.3 G to REC 2.4.6 G, the <i>FCA</i> will have regard to whether a <i>key individual</i> has been allocated responsibility for overseeing the <i>auction platform</i> of the <i>UK recognised body</i> .	Reg 15
REC 2.5.3 G to REC 2.5.20 G (Systems and controls and conflicts) and REC 2.5A (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16 and 17(2)(f)

Column A	Column B	Column C
<i>REC 2 guidance which applies to an RAP</i>	<i>Modification to REC 2 guidance for an RAP</i>	<i>Relevant RAP recognition requirement</i>
REC 2.6.26 G to REC 2.6.34 G (Safeguards for investors)		Reg 17
REC 2.7.3 G to REC 2.7.4 G (Access to facilities)	The <i>FCA</i> shall have regard to whether an <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to bid under article 18 of the <i>auction regulation</i> .	Reg 17(2)(a) and 20
REC 2.8.3 G to REC 2.8.4 G (Settlement and clearing services)		Reg 17(2)(d) and 21
REC 2.9.3 G to REC 2.9.4 G (Transaction recording)		Reg 17(2)(e)
REC 2.10.3 G to REC 2.10.4 G (Financial crime and market abuse)		Reg 17(2)(g)
REC 2.11.3 G to REC 2.11.4 G (Custody)	REC 2.11.4 G is replaced with the following for an <i>RAP</i> : Where an <i>RAP</i> arranges for other <i>persons</i> to provide services for the safeguarding and administration services of assets belonging to users of its <i>facilities</i> , it will also need to satisfy the <i>RAP recognition requirement</i> in regulation 17(2)(h) of the <i>RAP regulations</i> (see REC 2A.2.1 UK).	Reg 17(2)(h)
REC 2.12.11 G to REC 2.12.12 G (Availability of relevant information)	REC 2.12.11 G to REC 2.12.12 G are replaced with the following for an <i>RAP</i> : REC 2.12.11 G In determining whether appropriate arrangements have been made to make <i>relevant information</i> available to <i>persons</i> engaged in dealing in <i>emissions auction products</i> the <i>FCA</i> may have regard to: (1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>emissions auction products</i> and the terms on which they will be	Reg 17(2)(c)

Column A <i>REC 2 guidance which applies to an RAP</i>	Column B <i>Modification to REC 2 guidance for an RAP</i>	Column C <i>Relevant RAP recognition requirement</i>
	<p>auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media;</p> <p>(2) what restrictions, if any, there are on the dissemination of <i>relevant information</i> to auction bidders; and</p> <p>(3) whether <i>relevant information</i> is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage <i>market abuse</i>.</p> <p>REC 2.12.12 G</p> <p>An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>emissions auction products</i> to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.</p>	
<p>REC 2.13.3 G to REC 2.13.6 G (Promotion and maintenance of standards)</p>		<p>Reg 18</p>
<p>REC 2.14.3 G to REC 2.14.6 G (Rules and consultation)</p>		<p>Reg 19</p>
<p>REC 2.15.3 G to REC 2.15.6 G (Discipline)</p>		<p>Reg 22</p>
<p>REC 2.16.3 G to REC 2.16.4 G (Complaints)</p>		<p>Reg 23</p>

2A.4 Power and procedure for RAP penalties and censures

2A.4.1

FCA

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Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the FCA considers that an *RAP* has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the *auction regulation*, the FCA has the power to impose a civil penalty on that *RAP*.

2A.4.2

FCA

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Where the FCA is entitled to impose a penalty on an *RAP*, it may instead publish a statement censuring it.

2A.4.3

FCA

G

The provisions of the *auction regulation* referred to in ■ REC 2A.4.1 G are directly applicable to an *RAP* and require it to, in summary:

- (1) only grant admission to bid to applicants that comply with the conditions set out in article 19 of the *auction regulation*, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the *auction regulation*;
- (2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the *RAP*;
- (3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
 - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
 - (b) where the *RAP* suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
- (4) monitor the relationship with bidders admitted to bid in its auctions.

2A.4.4

FCA

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The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the FCA's other supervisory powers in relation to *RAPs* (see ■ REC 4) and its power to impose penalties on an *RAP* under the *Money Laundering Regulations*.

The *FCA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in ■ DEPP 6.2.1 G. In deciding between a civil penalty or a public statement, the *FCA* will also have regard to the relevant factors listed in ■ DEPP 6.4.

2A.4.5

FCA

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The *FCA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases.

2A.4.6

FCA

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Where the *FCA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in ■ DEPP 6.5 to ■ DEPP 6.5D in determining the appropriate level of financial penalty.

2A.4.7

FCA

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The *FCA* will also have regard to whether the person followed any of the *FCA*'s guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

2A.4.8

FCA

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When the *FCA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FCA*'s proposed decision.

2A.4.9

FCA

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Where the *FCA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FCA*'s decision maker will be the *RDC*. This is to ensure that the *FCA*'s power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FCA* under other legislation. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.

2A.4.10

FCA

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Sections 393 and 394 of the *Act* apply to notices referred to in this section. See ■ DEPP 2.4 (Third party rights and access to *FCA* material).

2A.4.11

FCA

G

As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in ■ DEPP 6.7 applies to penalties imposed under the *RAP Regulations*.

2A.4.12

FCA

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The *FCA* will apply the approach to publicity that it has outlined in ■ EG 6.

Chapter 3

Notification rules for UK recognised bodies



3.1 Application and purpose

Application

3.1.1
FCA

R

- (1) The *notification rules* in this chapter, which are made under section 293 of the *Act* (Notification requirements), apply to all *UK recognised bodies*.
- (2) The *rules* relating to the form and method of notification in ■ REC 3.2 also apply to *overseas recognised bodies*.

3.1.2
FCA

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The *notification rules* for *overseas recognised bodies* are set out in ■ REC 6. The *guidance* set out at ■ REC 3.3 in relation to the waiving and modification of *notification rules* also applies to the *notification rules* in this chapter and to the *notification rules* in ■ REC 6.

3.1.3
FCA

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The *notification rules* in this chapter are in addition to the requirements on *UK RIEs* to give notice or information to the *FCA* and if applicable, the Bank of England under sub-sections 293(5) and (6) of the *Act*.

3.1.3A
FCA

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The *notification rules* in this chapter which apply to an *RAP* are without prejudice to *notification rules* which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates an *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and an *RAP*.

Purpose

3.1.4
FCA

G

The *notification rules* in this chapter are made by the *FCA* 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*.



3.2 Form and method of notification

Form of notification

3.2.1
FCA

R

Where a *recognised body* is required to give any notice or information under any *notification rule*, it may do so (unless that *rule* expressly provides otherwise) orally or in writing, whichever is the more appropriate in the circumstances, but, where it gives notice or information orally, it must confirm that notice or information in writing promptly.

Method of notification

3.2.2
FCA

R

Unless otherwise stated in the *notification rule*, a written notification required from a *recognised body* under any *notification rule* must be:

- (1) given to, or addressed for the attention of, the *recognised body's* usual supervisory contact at the *FCA*;
- (2) delivered to the *FCA* by one of the methods in ■ REC 3.2.3 R.

3.2.3
FCA

R

Table Methods of notification

Method of delivery
(1) <i>Post</i> to the address in REC 3.2.4 R
(2) Leaving the notification at the address in REC 3.2.4 R and obtaining a time-stamped receipt
(3) Electronic mail to an address for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> and obtaining an electronic confirmation of receipt
(4) Hand delivery to the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i>
(5) Fax to a fax number for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> , provided that the <i>FCA</i> receives a copy of the notification by one of methods (1) - (4) in this table within five <i>business days</i> after the date of the faxed notification

3.2.4

FCA

R The address for a written notification to the *FCA* is:

The Financial Conduct Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Timely notification

3.2.5

FCA

R If a *notification rule* requires notification within a specified period:

- (1) the *recognised body* must give the notification so as to be received by the *FCA* no later than the end of that period; and
- (2) if the end of that period falls on a *day* which is not a *business day*, the notification must be given so as to be received by the *FCA* no later than the first *business day* after the end of that period.

3.2.6

FCA

G

Service of Notice Regulations

The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) do not apply to notifications required under the *notification rules* in this chapter and in **REC 6** because of the specific *rules* in this section.



3.3 Waivers

Statutory power

3.3.1
FCA

G

Under section 294 of the *Act* (Modification or waiver of rules), the *FCA* may, on the application or with the consent of a *recognised body* (including an *ROIE*), direct that any *notification rule* is not to apply to the body or is to apply with such modifications as may be specified in the *waiver*.

3.3.2
FCA

G

A *waiver* given under section 294 of the *Act* may be made subject to conditions.

3.3.3
FCA

G

Under section 294(4) of the *Act*, before the *FCA* may give a *waiver of notification rules*, it must be satisfied that:

- (1) compliance by the *recognised body* with those *notification rules*, or with those *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which those *rules* were made; and
- (2) the *waiver* would not result in undue risk to *persons* whose interests those *rules* are designed to protect.

Applications

3.3.4
FCA

G

Where a *recognised body* wishes to make an application to the *FCA* for a *waiver* of a *notification rule*, it should in the first instance inform its usual supervisory contact at the *FCA*.

3.3.5
FCA

G

There is no application form, but applicants should make their application formally and in writing and in accordance with any direction the *FCA* may make under section 294(2) of the *Act*. Each application should set out at least:

- (1) full particulars of the *waiver* which is requested;
- (2) the reason why the *recognised body* believes that the criteria set out in section 294(4) (and described in ■ REC 3.3.3 G) would be met, if this *waiver* were granted; and
- (3) where the *recognised body* believes that these criteria would be met if the *FCA* gave a *waiver* under section 294 subject to any condition, particulars of the kind of condition contemplated.

3.3.6
FCA

G

The *FCA* may request further information from the applicant, before deciding whether to give a *waiver* under section 294 of the *Act*.

Waivers

3.3.7
FCA

G

Any *waiver* given by the *FCA* under section 294 of the *Act* will be made in writing, stating:

- (1) the name of the *recognised body* in respect of which the *waiver* is made;
- (2) the *notification rules* which are to be waived or modified in respect of that body;
- (3) where relevant, the manner in which any *rule* is to be modified;
- (4) any condition or time limit to which the *waiver* is subject; and
- (5) the date from which the *waiver* is to take effect.

3.3.8
FCA

G

Where the *FCA* considers that it will not give the *waiver* which has been applied for, the *FCA* will give reasons to the applicant for its decision. The *FCA* will endeavour, where practicable, to inform an applicant in advance where it seems that an application is likely to fail unless it is amended or expanded, so that the applicant will have the opportunity to make any necessary amendments or additions before the application is considered.

3.3.9
FCA

G

Where the *FCA* wishes to give a *waiver* under section 294 of the *Act* with the consent of a *recognised body* (rather than on the application of a *recognised body*), the *FCA* will correspond or discuss this with that body in order to agree an appropriate *waiver*.

Reviews of waivers

3.3.10
FCA

G

The *FCA* will periodically review any *waiver* it has given. The *FCA* has the right to revoke a *waiver* under section 294(6) of the *Act*. This right is likely to be exercised in the event of a material change in the circumstances of the *recognised body* or in any fact on the basis of which the *waiver* was given.



3.4 Key individuals and internal organisation

Purpose

3.4.1
FCA

G

The purpose of ■ REC 3.4 is to enable the *FCA* to monitor changes in the arrangements a *UK recognised body* makes for the carrying out of its *relevant functions* or for overseeing the work of *key individuals* or departments responsible for its *relevant functions*.

3.4.2A
FCA

R

Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a *key individual*, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this rule in ■ REC 3.4.4A R to the *FCA*.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

3.4.2B
FCA

R

Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a *key individual*, that *UK RIE* must immediately give notice of that event, and give the name of the *person*.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

3.4.3
FCA

G

- (1) *Key individuals* include the *persons* who, under the operational or managerial arrangements of the *UK recognised body*, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A *person* appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a *key individual*.
- (2) A *key individual* need not be an *employee* of a *UK recognised body*. For example, an *employee* of an *undertaking* in the same *group* or a self-employed contractor of a *UK recognised body* might be a *key individual*, depending on the role he plays in that body.
- (3) A department of a *UK recognised body* should be regarded as responsible for carrying out a *relevant function* if it is responsible for any activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the performance of a *relevant function*.
- (4) The *FCA* does not need to be notified where minor changes are made to the responsibilities of a *key individual*, but where a major change in responsibilities

is made which amounts to a new appointment, the *FCA* should be notified under ■ REC 3.4.2A R.

3.4.4A
FCA

R The following information is specified for the purposes of ■ REC 3.4.2A R:

- (1) that *person's* name;
- (2) his date of birth;
- (3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected , including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body.

[Note: Article 37(1), paragraph 1, second sentence of *MiFID*]

Standing committees

3.4.5
FCA

R Where the *governing body* of a *UK recognised body* delegates any of its functions (which relate to that *UK recognised body's relevant functions*) to a standing committee, or appoints a standing committee to manage or oversee the carrying out of any of that *UK recognised body's relevant functions*, that *UK recognised body* must immediately notify the *FCA* of that event and give the *FCA* the following information:

- (1) the names of the members of that standing committee; and
- (2) the terms of reference of that standing committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

3.4.6
FCA

R Where:

- (1) there is any change in the composition or the terms of reference of any standing committee referred to in ■ REC 3.4.5 R; or
- (2) any such committee is dissolved;

the *UK recognised body* must immediately notify the *FCA* of that event and give particulars of any change referred to in (1) to the *FCA*.

3.4.7
FCA

G

- (1) Standing committees include permanent committees with executive, supervisory, policy-making or rule-making responsibilities. Committees appointed for particular tasks or committees established for purely consultative or advisory purposes would not usually be considered to be standing committees.
- (2) Committees which include *persons* who are not members of the *governing body* can be standing committees.



3.5 Disciplinary action and events relating to key individuals

Disciplinary action

3.5.1
FCA

R

Where any *key individual* of a *UK recognised body*:

- (1) is the subject of any disciplinary action because of concerns about his alleged misconduct;
- (2) resigns as a result of an investigation into his alleged misconduct;
or
- (3) is dismissed for misconduct;

that body must immediately give the *FCA* notice of that event, and give the information specified for the purposes of this *rule* in ■ REC 3.5.2 R.

3.5.2
FCA

R

The following information is specified for the purposes of ■ REC 3.5.1 R:

- (1) the name of the *key individual* and his responsibilities within the *UK recognised body*;
- (2) details of the acts or alleged acts of misconduct by that *key individual*; and
- (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that *key individual*.

Other events

3.5.3
FCA

R

Where a *UK recognised body* becomes aware that any of the following events has occurred in relation to a *key individual*, it must immediately give the *FCA* notice of that event:

- (1) a petition for bankruptcy is presented (or similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom* are commenced) against that *key individual*; or
- (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him;
or

-
- (3) he enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his creditors.



3.6 Constitution and governance

3.6.1

FCA

R

Where a *UK recognised body* is to circulate any notice or other *document* proposing any amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution) to:

- (1) its shareholders (or any group or class of them); or
- (2) its *members* (or any group or class of them); or
- (3) any other group or class of *persons* which has the power to make that amendment or whose consent or approval is required before it may be made;

that *UK recognised body* must give notice of that proposed amendment, and give the information specified for the purposes of this *rule* in ■ REC 3.6.2 R to the *FCA*, at the same time as that notice or *document* is circulated.

3.6.2

FCA

R

The following information is specified for the purposes of ■ REC 3.6.1 R:

- (1) the proposed amendments referred to in ■ REC 3.6.1 R;
- (2) the reasons for the proposal; and
- (3) a description of the group or class of *persons* to whom the proposal is to be circulated.

3.6.3

FCA

G

A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with ■ REC 3.6.1 R by providing a copy of the notice of special resolution issued to its shareholders.

3.6.4

FCA

R

Where a *UK recognised body* makes an amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution), that *UK recognised body* must immediately give the *FCA* notice of that event, and give written particulars of that amendment and of the date on which it is to become or became effective.

3.6.5
FCA

G

A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with ■ REC 3.6.4 R by providing a copy of the special resolution effecting the amendment.

3.6.6
FCA

R

Where any change is made to an agreement which relates to the constitution or governance of a *UK recognised body*:

- (1) between that *UK recognised body* and another *person*; or
- (2) between the owners of that *UK recognised body*; or
- (3) between the owners of that *UK recognised body* and another *person*; or
- (4) between other *persons*;

that *UK recognised body* must give the *FCA* notice of that event as soon as it is aware of it, and give written particulars of that change and of the date on which it is to become or became effective.

3.6.7
FCA

G

The purpose of ■ REC 3.6.6 R is to ensure that the *FCA* is informed of changes to agreements which specify the arrangements by which a *UK recognised body* will be governed or by which important decisions will be taken within that body. It is not intended to cover any agreement by which someone is appointed to be a *key individual* or which covers the terms and conditions of service in such an appointment.



3.7 Auditors

3.7.1

FCA

R

Where the auditors of a *UK recognised body* cease to act as such, that *UK recognised body* must immediately give the *FCA* notice of that event, and the following information:

- (1) whether the appointment of those auditors expired or was terminated;
- (2) the date on which they ceased to act; and
- (3) if it terminated, or decided not to renew, their appointment, its reasons for taking that action or decision.

3.7.2

FCA

R

Where a *UK recognised body* appoints new auditors, that body must immediately give the *FCA* notice of that event, and the following information:

- (1) the name and business address of those new auditors; and
- (2) the date of their appointment as auditors.



3.8 Financial and other information

3.8.1
FCA

R

A UK recognised body must give the FCA:

- (1) a copy of its *annual report and accounts*; and
- (2) a copy of the consolidated *annual report and accounts*:
 - (a) of any *group* in which the UK recognised body is a *subsidiary undertaking*; or
 - (b) (if the UK recognised body is not a *subsidiary undertaking* in any *group*) of any *group* of which the UK recognised body is a *parent undertaking*;

no later than the time specified for the purpose of this rule in
■ REC 3.8.2 R.

3.8.2
FCA

R

The time specified for the purpose of ■ REC 3.8.1 R is the latest of:

- (1) four months after the end of the financial year to which the *document* which is to be given to the FCA relates; or
- (2) the time when the *documents* described in ■ REC 3.8.1 R (1) or ■ REC 3.8.1 R (2)(b) are sent to the *members* or shareholders of the UK recognised body; or
- (3) the time when the *document* described in ■ REC 3.8.1 R (2)(a) are sent to the shareholders in a *parent undertaking* of the *group* to which that *document* relates.

3.8.3
FCA

R

Where an audit committee of a UK recognised body has prepared a report in relation to any period or any matter relating to any *relevant function* of that UK recognised body, the UK recognised body must immediately give the FCA a copy of that report.

3.8.4
FCA

R

A UK recognised body must give the FCA a copy of:

- (1) its quarterly *management accounts*; or

(2) its monthly *management accounts*;
within one month of the end of the period to which they relate.

3.8.5

FCA

G

A *UK recognised body* is not required to provide quarterly and monthly *management accounts* in respect of the same period, but *management accounts* (whether quarterly or monthly) should be submitted for all periods. A *UK recognised body* may choose whichever method is the more suitable for it, but where it intends to change from providing monthly to quarterly *management accounts* (or from quarterly to monthly *management accounts*), it should inform the *FCA* of that fact.

3.8.6

FCA

R

A *UK recognised body* must give the *FCA*:

- (1) a statement of its anticipated income, expenditure and cashflow for each financial year; and
- (2) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

3.8.7

FCA

R

Where the *accounting reference date* of a *UK recognised body* is changed, that body must immediately give notice of that event to the *FCA* and inform it of the new *accounting reference date*.



3.9 Fees and incentive schemes

3.9.1

FCA

G

The purpose of ■ REC 3.9.2 R is to enable the *FCA* to obtain information on changes to standard tariffs for matters such as *membership* and trading and of any scheme introduced by the *UK recognised body* for rebating or waiving fees or charges. A *UK recognised body* is not required to inform the *FCA* of fees or charges for which the *UK recognised body* does not charge according to a standard tariff.

3.9.2

FCA

R

A *UK recognised body* must give the *FCA* a summary of:

- (1) any proposal to change the fees or charges levied on its *members* (or any group or class of them), at the same time as the proposal is communicated to those *members*; and
- (2) any such change, no later than the date when it is published or notified to those *members*.



3.10 Complaints

3

3.10.1

FCA

R

Where a *UK recognised body's complaints investigator* has investigated a complaint arising in connection with the performance of, or failure to perform, any of its *regulatory functions*, and that *complaints investigator* has made a recommendation in respect of that complaint that the *UK recognised body* should:

(1) make a compensatory payment to any *person*; or

(2) remedy the matter which was the subject of that complaint;

the *UK recognised body* must immediately notify the *FCA* of that event, and give the *FCA* a copy of the *complaints investigator's* report and particulars of his recommendations as soon as that report or those recommendations are available to it.

3.11 Insolvency events

3.11.1

FCA

R

On:

- (1) the presentation of a petition for the winding up of a *UK recognised body* (or the commencement of any similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom*); or
- (2) the appointment of a receiver, administrator, liquidator, trustee or sequestrator of assets of that body (or of any similar or analogous appointment under the laws of a jurisdiction outside the *United Kingdom*); or
- (3) the making of a voluntary arrangement by that body with its creditors (or of any similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*);

that body must immediately give the *FCA* notice of that event.



3.12 Legal proceedings

3.12.1

FCA

R

If any civil or criminal legal proceedings are instituted against a *UK recognised body*, it must, unless ■ REC 3.12.2 R applies, immediately give notice of that event and give the following information to the *FCA*:

- (1) in the case of civil proceedings, the name of the claimant, particulars of the claim, the amount of damages and any other remedy sought by the claimant, and particulars of any allegation that any act or omission of that body was in bad faith; and
- (2) in the case of criminal proceedings, particulars of the offence with which that body is charged.

3.12.2

FCA

R

A *UK recognised body* is not required to give notice of civil legal proceedings or information about them to the *FCA* under ■ REC 3.12.1 R, where:

- (1) the amount of damages claimed would not significantly affect that *UK recognised body's* financial resources, if the claim were successful;
- (2) the claim would not have a significant adverse effect on the reputation and standing of that body, if that claim were successful; and
- (3) the claim does not relate to that body's *regulatory functions*.



3.13 Delegation of relevant functions

3.13.1
FCA

G

- (1) The purpose of ■ REC 3.13 is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* or, in relation to an *RAP*, under regulation 13 of the *RAP regulations* . See ■ REC 2.2 and ■ REC 2A.2).
- (2) The *FCA* does not need to be notified of every instance of outsourcing by a *UK recognised body*, but only where an activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the performance of a *relevant function* are outsourced.

3.13.2
FCA

R

Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the *FCA* notice of that event, and:

- (1) inform the *FCA* of the reasons for that delegation or proposed delegation;
- (2) inform the *FCA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or (for an *RAP*) *RAP recognition requirements* following that delegation;
- (3) where it makes such an offer by issuing a written invitation to tender to another body or *person*, give the *FCA* a copy of that invitation to tender; and
- (4) where it makes such an agreement, give the *FCA* a copy of that agreement.

3.13.3
FCA

R

A *UK recognised body* must immediately give the *FCA* notice, where it makes an offer or agrees to undertake any *relevant function* of another *UK recognised body*.



3.14 Products, services and normal hours of operation

Purpose

3.14.1
FCA

G

The purpose of ■ REC 3.14 is to ensure that the *FCA* is informed of planned changes to the services a *UK recognised body* intends to provide and of the normal hours of operation of those services. Unplanned suspensions of those services, unplanned changes in hours of operation and events causing a *UK recognised body* to be unable to provide those services should be notified to the *FCA* under the *rules* in ■ REC 3.15.

Products and services

3.14.2
FCA

R

Where a *UK RIE* proposes to *admit to trading* (or to cease to *admit to trading*) by means of its *facilities*:

- (1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or
- (2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event, and the information specified for the purposes of this *rule* in ■ REC 3.14.6 R to the *FCA*, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.2A
FCA

R

When a *UK RIE* removes a *financial instrument* from trading on a *regulated market*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of *MiFID*]

3.14.3
FCA

R

Where a *UK recognised body* proposes to provide (or to cease to provide) *clearing facilitation services* in respect of:

- (1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or
- (2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event and the information specified for the purposes of this *rule* in ■ REC 3.14.6 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.5
FCA

G

Securities falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

3.14.6
FCA

R

The following information is specified for the purposes of ■ REC 3.14.2 R and ■ REC 3.14.3 R:

- (1) a description of the *specified investment* to which the proposal relates;
- (2) where that *specified investment* is a *derivative*, the proposed terms of that *derivative*; and
- (3) in the case of a *UK RIE* which is admitting that *specified investment* to trading, the name of any *RCH* which will provide clearing services in respect of that *specified investment* under an agreement with that *UK RIE*.

3.14.7
FCA

R

Where:

- (1) a *UK RIE* proposes to amend the standard terms of any *derivative admitted to trading* by means of its *facilities*; or
- (2) a *UK RIE* proposes to amend the standard terms relating to any *derivative* in respect of which it provides *clearing facilitation services*;

it must give the *FCA* notice of that event, and written particulars of those proposed amendments, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.8
FCA

R

Where a *UK recognised body* proposes to make (or to cease to make) arrangements for the safeguarding and administration of assets belonging to any other *person* (other than an *undertaking* in the same *group*), that *recognised body* must give the *FCA* notice of that event, and the information specified for the purposes of this *rule* in ■ REC 3.14.9 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.9 **R** The following information is specified for the purposes of ■ REC 3.14.8 R:
FCA

- (1) a description of the assets (or types of assets) to which the proposal relates; and
- (2) the date or dates on which arrangements referred to in ■ REC 3.14.8 R will be made (or cease to be made).

3.14.10 **G** The FCA does not need to be notified of proposals to offer (or to withdraw offers of) safeguarding and administration services for individual assets of the same type. *Specified investments* (other than *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will also normally be regarded as being of the same type.

Hours of operation

3.14.11 **R** Where a *UK recognised body* proposes to change its normal hours of operation or (for *RAPs*) the timing, frequency or duration of its bidding windows, it must give the FCA notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its *members* or shareholders, or any group or class of them.

3

3.14A Operation of a regulated market or MTF

Purpose

3.14A.1
FCA

G

The purpose of ■ REC 3.14A is to ensure that the *FCA* is informed of planned changes to a *UK RIE* markets and their regulatory status as either a *regulated market* or *MTF*.

Operation of a regulated market

3.14A.2
FCA

R

Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in ■ REC 3.14A.3 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.3
FCA

R

The following information is specified for the purposes of ■ REC 3.14A.2 R:

- (1) where the *UK RIE* proposes to operate a new *regulated market*:
 - (a) a description of the *regulated market*; and
 - (b) a description of the *specified investments* which will be admitted to trading on that *regulated market*.
- (2) where the *UK RIE* proposes to close a *regulated market*, the name of that *regulated market*.

Operation of an MTF

3.14A.4
FCA

R

Where a *UK RIE* proposes to operate a new *MTF* or close an existing *MTF* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in ■ REC 3.14A.5 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14A.5
FCA

R

The following information is specified for the purposes of ■ REC 3.14A.4 R:

- (1) where the *UK RIE* proposes to operate a new *MTF*:

- (a) a description of the *MTF*; and
- (b) a description of the *specified investments* which will be admitted to trading on that *MTF*.

(2) where the *UK RIE* proposes to close a *MTF*, the name of that *MTF*.

Operation of a recognised auction platform

3.14A.6

FCA

G

If a *UK RIE* proposes to operate an *RAP*, it will need to make a separate application to be recognised as an *RAP* (see ■ REC 5 (Applications)).

3

3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1
FCA

G

- (1) The purpose of ■ REC 3.15.2 R to ■ REC 3.15.5 G is to enable the *FCA* to obtain information where a *UK recognised body* decides to suspend the provision of its services in relation to particular *investments* or (for an *RAP*) decides to cancel an auction. Planned changes to the provision of services should be notified to the *FCA* under ■ REC 3.14.
- (2) ■ REC 3.15.6 R to ■ REC 3.15.7 R provide for notification to the *FCA* where a *UK recognised body* is unable to operate or provide its *facilities* for reasons outside its control or where it decides to extend its hours of operation in an emergency.
- (3) ■ REC 3.15.8 R to ■ REC 3.15.9 G provide for notification to the *FCA* where an *RAP* has to cancel an auction in specified circumstances.

Suspension of services

3.15.2
FCA

R

Where, for any reason, an *RIE*:

- (1) suspends trading in any *derivative* (other than an *option* in relation to a *security*), in any type of *security* or in any type of *option* in relation to a *security*; or
- (2) temporarily calls a trading halt in respect of any type of *security* or in any type of *option* in relation to a *security*;

it must immediately give the *FCA* notice of that event, particulars of that *derivative*, type of *security* or type of *option* in relation to a *security*, as the case may be, and the reasons for the action taken.

3.15.2A
FCA

R

When a *UK RIE* suspends trading on a *regulated market* in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: Article 41(1), paragraph 2 of *MiFID*]

3.15.4
FCA **R** Where a *UK recognised body* suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to any other *person* (other than an *undertaking* in the same *group*), that *UK recognised body* must immediately give the *FCA* notice of that event, particulars of that type of asset and the reasons for the action taken.

3.15.5
FCA **G** *Specified investments* (other than *securities* or *options* in relation to *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being assets of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

Inability to operate facilities

3.15.6
FCA **R** Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to operate any of its *facilities* within its normal hours of operation, it must immediately give the *FCA* notice of that inability and inform the *FCA*:

- (1) which *facility* it is unable to operate;
- (2) what event or circumstance has caused it to become unable to operate that *facility* within those hours; and
- (3) what action, if any, it is taking or proposes to take to enable it to recommence operating that *facility*.

Extension of hours of operation

3.15.7
FCA **R** Where, because of the occurrence of any event or circumstances, a *UK recognised body* extends its hours of operation, it must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what event or circumstance has caused it to do so;
- (2) the new hours of operation; and
- (3) the date on which it expects to revert to its normal hours of operation.

Recognised auction platforms - cancellation of auctions

3.15.8
FCA **R** Where an *RAP* has to cancel an auction in the circumstances set out in articles 7(5) or 7(6) of the *auction regulation*, it must immediately give the *FCA* notice of that cancellation.

3.15.9
FCA **G** Under article 7(7) of the *auction regulation*, an *RAP* is required to notify the *FCA* of:

- (1) the methodology used to determine the application of article 7(6) of the *auction regulation*; and

(2) modifications to that methodology made between bidding windows.



3.16 Information technology systems

3.16.1

FCA

G

The purpose of ■ REC 3.16 is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the *documents* containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

3.16.2

FCA

R

Where a *UK recognised body* changes any of its plans for action in the event of a failure of any of its information technology systems resulting in disruption to the operation of its *facilities*, it must immediately give the *FCA* notice of that event, and a copy of the new plan.

3.16.3

FCA

R

Where any reserve information technology system of a *UK recognised body* fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its *facilities* during its normal hours of operation, that body must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what action that *UK recognised body* is taking to restore the operation of the reserve information technology system; and
- (2) when it is expected that the operation of that system will be restored.

3.17 Inability to discharge regulatory functions

3.17.1
FCA

R

Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to discharge any *regulatory function*, it must immediately give the *FCA* notice of its inability to discharge that function, and inform the *FCA*:

- (1) what event or circumstance has caused it to become unable to do so;
- (2) which of its *regulatory functions* it is unable to discharge; and
- (3) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that *regulatory function*.



3.18 Membership

3.18.1

FCA

G

- (1) The purpose of ■ REC 3.18 is to enable the FCA to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the FCA has notice of foreign jurisdictions in which the *members* of *UK recognised bodies* are based. *UK recognised bodies* may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition requirements* or (for *RAPs*) *RAP recognition requirements* continue to be met.
- (2) ■ REC 3.18.2 R focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for an *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. ■ REC 3.18.3 R focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an *RAP*) *RAP recognition requirements* can be met.
- (3) The information required under ■ REC 3.18 is relevant to the FCA's supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the FCA's broader responsibilities concerning integrity of the *UK financial system* and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both ■ REC 3.18.2 R and ■ REC 3.18.3 R, although a single report from the *UK recognised body* covering both notifications would be acceptable to the FCA.

3.18.2

FCA

R

Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to *membership*, it must immediately give the FCA notice of that event, and:

- (1) a description of the type of *person* whom it is admitting to *membership*;
- (2) (in relation to a *UK RIE*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to

3.18.3

FCA

R

Where a *UK recognised body* admits for the first time a *member* whose head or registered office is in a jurisdiction from which that *UK recognised body* has not previously admitted *members*, it must immediately give the *FCA* notice of that event, and:

- (1) the name of that jurisdiction;
- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to *specified investments* or (for an *RAP*) relating to *emissions auction products*; and
- (3) particulars of its reasons for considering that, in admitting a *member* from that jurisdiction to *membership*, it is able to continue to satisfy the *recognition requirements* or (for an *RAP*) the *RAP recognition requirements* which apply to it.

3.18.4

FCA

G

A type of *member* means the description of any group of *members* to whom the same generic description could be applied. For example, the description of any group of *members* separately identified or defined in the rules might constitute a type of *member* for the purposes of this section.



3.19 Investigations

3.19.1

FCA

R

Where a *UK recognised body* becomes aware that a *person* has been appointed by any *regulatory body* (other than the *FCA* or a *UK recognised body*) to investigate:

- (1) any business transacted by means of its *facilities* or
- (2) any aspect of the *clearing facilitation services* which it provides;

it must immediately give the *FCA* notice of that event.

3.19.2

FCA

G

A *UK recognised body* need not give the *FCA* notice of:

- (1) routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of 'theme visits'; or
- (2) routine requests for information; or
- (3) investigations into the conduct of *members* of the *UK recognised body* or of other users of its *facilities* where the use of its *facilities* is a small or incidental part of the subject matter of the investigation.

3.20 Disciplinary action relating to members

3.20.1
FCA

R Where a *UK recognised body* has taken any disciplinary action against any *member* or any *employee* of a *member*, in respect of a breach of a rule relating to the carrying on by the *UK recognised body* of any of its *regulatory functions*, that body must immediately notify the *FCA* of that event, and give:

- (1) the name of the *person* concerned;
- (2) details of the disciplinary action taken by the *UK recognised body*; and
- (3) the *UK recognised body's* reasons for taking that disciplinary action.

3.20.2
FCA

R Where an appeal is lodged against any disciplinary action referred to in **■ REC 3.20.1 R**, the *UK recognised body* must immediately give the *FCA* notice of that event, and:

- (1) the name of the appellant and the grounds on which the appeal is based, immediately; and
- (2) the outcome of the appeal, when known.

3.21 Criminal offences and civil prohibitions

3.21.1

FCA

R

Where a *UK recognised body* has evidence tending to suggest that any *person* has:

- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or
- (2) been engaged in *market abuse*; or
- (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
- (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (*Insider dealing*); or
- (5) committed a criminal offence under the *Money Laundering Regulations*;

it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of *MiFID*. The rest of Article 26(2), first sentence (in so far as it relates to *market operators* operating an *MTF*) and Article 43(2), first sentence of *MiFID* is implemented by ■ REC 3.25.1 R]

3.22 Restriction of, or instruction to close out, open positions

3.22.1

FCA

R

Where a *UK RIE* decides to:

- (1) restrict the open position on any of the contracts of a *member*,
or
- (2) issue instructions to a *member* to close out its positions on any contracts;

that *UK RIE* must immediately give the *FCA* notice of that event, and the *member's* name, the nature and size of any position to be restricted or closed out and the reasons for the *UK RIE's* decision.

3.22.2

FCA

R

Where an *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse*, *financial crime* or anti-competitive behaviour in accordance with article 57 of the *auction regulation*, the *RAP* must give the *FCA* notice of that event and details of the remedial measures proposed.



3.23 Default

3.23.1

FCA

R

Where a *UK RIE* decides to put a *member* into default, it must immediately give notice of that event, and give the following information to the *FCA*, at the same time as that decision is communicated to that *member* or to any other *member* (or group or class of them) of that body:

- (1) the name of the *member* and (where relevant) the class of membership;
- (2) the reasons for that decision; and
- (3) the names of any other exchange, *clearing house* or *auction platform* on which, to the best of that *UK RIE*'s knowledge, that *member* clears business or transacts for, or in respect of, its *clients*.



3.24 Transfers of ownership

3.24.1

FCA

R

When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also an *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

- (1) give the name of the *person(s)* concerned; and
- (2) give details of the transfer.

[Note: Article 38(2)(b) of *MiFID*]

3.24.2

FCA

G

The *FCA* may regard a person who falls within any of the cases in section 301(B)(2) of the *Act* as being in a position to exercise significant influence.



3.25 Significant breaches of rules and disorderly trading conditions

3.25.1

FCA

R

A UK RIE and an RAP must immediately notify the FCA of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets or auctions.

[Note: Article 26(2), first sentence (part) and Article 43(2), first sentence (part) of *MiFID*. The rest of Article 26(2), first sentence (in so far as it relates to *market operators* operating an *MTF*) and Article 43(2), first sentence of *MiFID* is implemented by ■ REC 3.21.1 R (2)]

3.26 Proposals to make regulatory provision

Statutory power

3.26.1
FCA

G

Under section 300B(1) of the *Act* (Duty to notify proposal to make regulatory provision), a *UK RIE* that proposes to make any *regulatory provision* must give written notice of the proposal to the *FCA* without delay.

3.26.2
FCA

G

Under section 300B(2) of the *Act*, the *FCA* may, by rules under section 293 (Notification requirements):

- (1) specify descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or
- (2) provide that the duty applies only to specified descriptions of *regulatory provision* or in specified circumstances.

3.26.3
FCA

G

Under section 300B(3) of the *Act*, the *FCA* may also by rules under section 293:

- (1) make provision as to the form and contents of the notice required, and
- (2) require the *UK recognised body* to provide such information relating to the proposal as may be specified in the rules or as the *FCA* may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

3.26.4
FCA

R

The duty in section 300B(1) of the *Act* does not apply to any of the following:

- (1) any *regulatory provision* which is required under *EU* law or any enactment or rule of law in the *United Kingdom*; or
- (2) (a) the specification of the standard terms of any *derivative* which a *UK RIE* proposes to *admission to trading*, or the amendment of the standard terms of any *derivative* already *admitted to trading*; or
- (b) the specification or any amendment of standard terms relating to the provision of *clearing facilitation services* for any *derivative*; or

- (c) the specification or any amendment of operating procedures which are reasonably consequential on any *regulatory provision* falling within (a) or (b); or
- (3) any *regulatory provision* which is expressed to have effect for no longer than three months which is made by a *UK recognised body* in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or
- (4) any *regulatory provision* which does not impose a requirement (including any obligation or burden) on *persons* affected (directly or indirectly) by it; or
- (5) any other *regulatory provision* which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other *regulatory provision* not otherwise the subject of a notice under section 300B(1) of the *Act*):
 - (a) materially increases disclosure, reporting or corporate governance requirements imposed on any *person* (whether directly or indirectly); or
 - (b) imposes a material limitation affecting any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of *financial instruments* which may be *listed* or the subject of *admission to trading* on the *facilities* operated by the *UK RIE* proposing to make the *regulatory provision*; or
 - (c) materially limits access to, or use by, any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the *facilities* operated by the *UK recognised body* proposing to make the *regulatory provision* or
 - (d) materially adds to the circumstances in which any *person* (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

Notice to the FCA

A notice under section 300B(1) of the *Act* of a proposal to make a *regulatory provision* must be in writing and state expressly that it is a notice for the purpose of that section. To be effective, a notice must:

- (1) contain full particulars of the proposal to make a *regulatory provision* which is the subject of that notice; and
- (2) either be accompanied by sufficient supporting information to enable the *FCA* to assess the purpose and effect of the proposed

3.26.5

FCA

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regulatory provision or refer to such information in circumstances where such information has already been provided to the FCA.

3.26.6

FCA

G

In determining whether a *UK RIE* has provided sufficient supporting information, the FCA may have regard to the extent to which the information includes:

- (1) clearly expressed reasons for the proposed *regulatory provision*; and
- (2) an appropriately detailed assessment of the likely costs and benefits of the proposed *regulatory provision*.

3.26.7

FCA

R

A *UK RIE* must provide such additional information in connection with a notice under section 300B(1) of the Act as the FCA may reasonably require.

3.26.8

FCA

G

Where a *UK RIE* wishes to give notice to the FCA for the purposes of section 300B(1) of the Act, it should in the first instance inform its usual supervisory contact at the FCA.

3.26.9

FCA

G

The FCA expects that an advanced draft of any consultation document a *UK RIE* intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in ■ REC 3.26.5 R .

Chapter 4

Supervision

4.1 Application and purpose

Application

4.1.1
FCA

G

■ REC 4.2 to ■ REC 4.2E, ■ REC 4.3, ■ REC 4.5 and ■ REC 4.6A apply to *UK recognised bodies*. ■ REC 4.2F to ■ REC 4.2G, ■ REC 4.4 and ■ REC 4.6 to ■ REC 4.8 apply to all *recognised bodies*. ■ REC 4.8 applies to applicants for recognition as a *recognised body*.

Purpose

4.1.2
FCA

G

This chapter sets out the *FCA's* approach to the supervision of *recognised bodies* and contains *guidance* on:

- (1) the arrangements for investigating complaints about *recognised bodies* made under section 299 of the *Act* (Complaints about recognised bodies) (■ REC 4.4);
- (2) the *FCA's* approach to the exercise of its powers under:
 - (a) (for *RIEs*) section 296 of the *Act* (Appropriate regulator's power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations* to give directions to *recognised bodies* (■ REC 4.6);
 - (b) (for *RIEs*) section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations* to revoke *recognition orders* (■ REC 4.7);

and the procedure to be followed in those cases and where the *FCA* decides to refuse an application for recognition as a *recognised body* (■ REC 4.8); and
- (3) the *FCA's* approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the *Companies Act 1989* to give directions to *UK RIEs* in relation to action under their *default rules* (■ REC 4.5).

4.1.3
FCA

G

The *FCA's* general approach to supervision is intended to ensure that:

- (1) the *FCA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognised body requirements*; and
- (2) the *FCA's* supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the *regulatory objectives*.

4.1.4

FCA

G

In applying these principles of risk based supervision to the supervision of *recognised bodies*, the FCA has had particular regard to the special position of *recognised bodies* under the *Act* as well as to its general duties set out in section 2 of the *Act* (The FCA's general duties).

4.1.5

FCA

G

More information on the supervision of *UK recognised bodies* is given in ■ REC 4.2 and ■ REC 4.3. More information on the supervision of *overseas recognised bodies* is given in ■ REC 6.

4.2 The supervisory relationship with UK recognised bodies

4.2.1

FCA

G

The *FCA* expects to have an open, cooperative and constructive relationship with *UK recognised bodies* to enable it to have a broad picture of the *UK recognised body's* activities and its ability to meet the *recognised body requirements*. This broad picture is intended to complement the information which the *FCA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see ■ REC 3). The *FCA* will usually arrange meetings between the Markets Division and *key individuals* of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.

4.2.2

FCA

G

UK recognised bodies are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognised body requirements*.

4.2.3

FCA

G

The *FCA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognised body requirements* when considering any changes to its business or operations.

4.2.4

FCA

G

However, the *FCA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with their plans and operational initiatives, and will provide it with appropriate assurance that the *recognised body requirements* will continue to be satisfied.



4.2A Publication of information by UK RIEs and RAPs

4.2A.1

FCA

G

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* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, as the *FCA* may reasonably require.

4.2A.2

FCA

G

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* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FCA* may reasonably require.

4.2A.3

FCA

G

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 *FCA* may reasonably require.

 4.2B Exercise of passport rights by a UK RIE

4.2B.1

FCA

G

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, multilateral trading facility or auction platform* operated by it, it must give the *FCA* 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

FCA

G

The *FCA* must, within one month of receiving the *UK RIE*'s notice, send a copy of it to the *Host State regulator*.

4.2B.3

FCA

G

The *UK RIE* may not make the arrangements until the *FCA* has sent a copy of the notice to the *Host State regulator*.

4.2B.4

FCA

G

The requirements that a *UK RIE* must give the *FCA* written notice and the *UK RIE* may not make the arrangements until the *FCA* 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

- 4.2C.1**
FCA **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 *FCA*, before making the acquisition . Furthermore, those *persons* are required to obtain the *FCA*'s approval before acquiring control or increasing the level of control held.
- 4.2C.2**
FCA **G** The *FCA* 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*). The reference to any financial market is to be read as including a reference to any *auction platform* as a result of the *RAP regulations*.
- 4.2C.3**
FCA **G** If a proposed acquirer has complied with the obligation to notify, the procedure the *FCA* 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.6**
FCA **G** The *FCA*'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**
FCA **G** If the *FCA* 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**
FCA **G** The powers the *FCA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FCA*'s refusal to approve the acquisition of control or the *FCA*'s objection to the exercise of control are set out in sections 301J and 301K of the *Act*.
- 4.2C.9**
FCA **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

4.2D.1

FCA

G

- (1) Under section 313A of the *Act*, the *FCA* 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 *FCA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.

4.2D.2

FCA

G

The procedure the *FCA* 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 *FCA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FCA* 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

FCA

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Under section 313C(1) of the *Act*, if the *FCA* 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 *ESMA* and the competent authorities of all other *EEA States* of its decision.

4.2D.4

FCA

G

Under section 313C(2) of the *Act*, if the *FCA* 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 *FCA* must inform the competent authorities of all other *EEA States* of the action taken by the *UK RIE*.

4.2D.5

FCA

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Under sections 313C(3) and (4) of the *Act*, if the *FCA* 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 *FCA* must require each *UK RIE* to suspend the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.

4.2D.6

FCA

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Under sections 313C(3) and (5) of the *Act*, if the *FCA* 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 *FCA* must require each *UK RIE* to remove the instrument from trading on any *regulated market* or *multilateral trading facility* operated by the *UK RIE*.

4



4.2E Information: compliance of UK recognised bodies with EU requirements

4.2E.1

FCA

G

Under section 293A of the *Act*, the *FCA* may require a *UK recognised body* to give such information as it reasonably requires in order to satisfy itself that the *UK recognised body* is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the *Act* by the Treasury.



4.2F Information gathering power on FCA's own initiative

4.2F.1

FCA

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- (1) While the *FCA* will seek to obtain information from an *RIE* in the context of an open, cooperative and constructive relationship with the *RIE*, where it appears to the *FCA* that obtaining information in that context will not achieve the necessary results, the *FCA* or (as the case may be) its officers may, under section 165(7) of the *Act*, by notice in writing, require any of the following persons to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require:
 - (a) the *RIE*; or
 - (b) a person who is connected with the *RIE*.
- (2) Under section 165(11) of the *Act*, a person is connected with a *recognised body* if he is or has at any relevant time been:
 - (a) a member of the *RIE*'s group; or
 - (b) a controller of the *RIE*; or
 - (c) any other member of a partnership of which the *RIE* is a member; or
 - (d) a person mentioned in Part I of Schedule 15 of the *Act* (reading references in that Part to the 'authorised person' as references to the *RIE*).

4.2G.1

FCA

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- 4.2G Reports by skilled persons**
- (1) Where the *FCA* exercises its power conferred by section 166(1) of the *Act* (Reports by skilled persons), ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R (to the extent they relate to the *FCA*'s powers under section 166 of the *Act*) apply to a *RIE* in the same way as they apply to a *firm*.
 - (2) The guidance in ■ SUP 5 which relates to the *FCA*'s power in section 166 of the *Act* also applies to a *RIE* in the same way as it applies to a *firm*.



4.3 Risk assessments for UK recognised bodies

4.3.1

FCA

G

Information is needed to support the *FCA'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 *FCA's* general duties under the *Act*. The central element of the process of risk based supervision is a systematic assessment by the *FCA* (a risk assessment) of the main supervisory risks and concerns for each regulated entity.

4.3.2

FCA

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For each *UK recognised body*, the *FCA* 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

FCA

G

The risk assessment will guide the *FCA's* supervisory focus. It is important, therefore, that there is good dialogue between the *FCA* and the *recognised body*. The *FCA* 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 *FCA* 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

FCA

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) or *RAP recognition requirements* (see ■ REC 2A.3.2 G).

The FCA's arrangements

4.4.2

FCA

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The *Act* does not provide a mechanism for appeals to the *FCA* from decisions by *recognised bodies* in relation to complaints. However, the *FCA* 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 *FCA's* arrangements for investigating *relevant complaints*.

4.4.3

FCA

G

Where the *FCA* 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 *FCA* 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 *FCA* will encourage the complainant to do so.

4.4.4

FCA

G

The *FCA* 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 *FCA*.

4.4.5

FCA

G

When it is considering a *relevant complaint*, the *FCA* 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

FCA

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The *FCA* 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 FCA supervision of action by UK RIEs under their default rules

4.5.1

FCA

G

UK RIEs 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

FCA

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

FCA

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The Companies Act 1989 also gives the FCA powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the appropriate regulator to give directions) (see ■ REC 4.5.4 G), the FCA may direct a UK RIE to take, or not to take, action under its *default rules*. Before exercising these powers the FCA must consult the UK RIE. The FCA 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

FCA

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Table The Companies Act 1989: section 166

The FCA 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] has not taken action under its *default rules*- if it appears to [the FCA] that it could take action, [the FCA] may direct it to do so,

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

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and [the FCA] shall not give a direction unless [the FCA] 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, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

The FCA 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] has not taken action under its *default rules* - if it appears to the [FCA] that it is proposing to take or may take action, [the FCA] may direct it not to do so.

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

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and the [FCA] shall not give a direction unless [the FCA] 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, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

4.5.5
FCA

G Other than in exceptional circumstances, the *FCA* will consult with the Bank of England before exercising these powers.

4.5.6
FCA

G 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.

4.5.7
FCA

G 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.

4.5.8
FCA

G Under section 166(7) of the Companies Act 1989, where a *UK RIE* has taken action either of its own accord or in response to a direction, the *FCA* may direct it to do or not to do specific things subject to these being within the powers of the *UK RIE* under its *default rules*. However,

- (1) where the *UK RIE* is acting in accordance with a direction given by the *FCA* to take action under section 166(2)(a) of the *Act* on the basis that failure to take action would involve undue risk to investors or other participants in the market, the *FCA* will not direct it to do or not to do specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings; and
- (2) where the *UK RIE* has taken action under its *default rules* without being directed to do so, the *FCA* will not direct it to do or not to do specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that:

- (a) the direction will not impede or frustrate the proper and efficient conduct of the default proceedings; or
- (b) the direction is necessary:
 - (i) having regard to the public interest in the stability of the *UK financial system*;
 - (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime); or
 - (iii) in connection with a particular exercise of a power under Part 1 of the Banking Act 2009.

Section 167 of the Companies Act 1989

4.5.9

FCA

G

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

- (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 RIE* 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 *FCA* under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

4.5.10

FCA

G

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 *FCA* to take action under section 166 of the Companies Act 1989 (see REC 4.5.4G).

4.5.11

FCA

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The procedure is that the *FCA* 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 *FCA* that it proposes to take action forthwith; or
- (3) is directed to take action by the *FCA* 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

FCA

G

Under section 296 of the *Act* (FCA's power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FCA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognised body requirements*. In the case of a *UK RIE* (including one which operates an *RAP*) those steps may include granting the *FCA* 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 .

4.6.3

FCA

G

The *FCA* is likely to exercise its power under section 296 of the *Act* or regulation 3 of the *RAP regulations* if it considers that:

- (1) there has been, or was likely to be, a failure to satisfy one or more of the *recognised body requirements* which has serious consequences;
- (2) compliance with the direction would ensure that one or more of the *recognised body requirements* is satisfied; and
- (3) the *recognised body* is capable of complying with the direction.

4.6.4

FCA

G

Under section 298(7) of the *Act* (Directions and revocation: procedure), and (for *RAPs*) regulation 5(7) of the *RAP regulations*, the *FCA* 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 reasonably necessary to do so. For *RAPs*, the *FCA* need not follow the procedure set out in regulation 5 of the *RAP regulations* or may cut short the procedure, if it considers it essential to do so.

4.6A The section 192C power to direct qualifying parent undertakings

4.6A.1

FCA

G

- (1) Under section 192C of the *Act* (Power to direct qualifying parent undertaking), the *FCA* has the power to give a direction to the qualifying parent undertaking of a *UK RIE* if the general condition is satisfied.
- (2) For the purposes of section 192C of the *Act*, a parent undertaking of a *UK RIE* is a 'qualifying parent undertaking' if:
 - (a) the parent undertaking is a body corporate which is incorporated in the United Kingdom, or has a place of business in the United Kingdom;
 - (b) the parent undertaking is not itself an *authorised person*, a *RIE* or a *RCH*; and
 - (c) the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (3) For the purposes of section 192C of the *Act*, the general condition is that the *FCA* considers that it is desirable to give the direction in order to advance one of more of its operational objectives.
- (4) In exercising or deciding whether to exercise its power under section 192(c) of the *Act*, the *FCA* will have regard to any statement of policy published under this section and for the time being in force.

[Note:1. Treasury has issued a draft order for consultation prescribing the types of financial institutions which are qualifying parent undertakings. See the draft *Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201**, as published in the Treasury consultation paper titled 'A new approach to financial regulation: draft secondary legislation': http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf.

2. The *FCA* has issued a statement of policy with respect to the giving of directions under section 192C. <http://www.fca.org.uk/news/firms/fca-statement-of-policy-on-the-use-of-the-power-to-direct-qualifying-parent-undertakings>]

4.7 The section 297 power to revoke recognition

- 4.7.1** **FCA** **G** Under section 297 of the *Act* (Revoking recognition) and (for *RAPs*) under regulation 4 of the *RAP regulations* , the *FCA* has the power to revoke a *recognition order* relating to a *recognised body*.
- 4.7.2** **FCA** **G** The *FCA* will revoke a *recognition order* if:
- (1) [deleted]
 - (2) the *recognised body* has asked the *FCA* to revoke the order.
- 4.7.2A** **FCA** **G** Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also an *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as an *RAP*.
- 4.7.3** **FCA** **G** The *FCA* will usually consider revoking a *recognition order* if:
- (1) the *recognised body* is failing or has failed to satisfy one or more of the *recognised body 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* (*FCA*'s power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
 - (3) for some other reason, it would not be appropriate for the *FCA* to give a direction under section 296 or (for *RAPs*) regulation 3 of the *RAP regulations*; 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 ; or
 - (5) in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an *auction platform* at

any time during the period of six *months* ending with the day the *RAP recognition order* is revoked.

4.7.4

FCA

G

The *FCA* 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 one or more of the *recognised body requirements*; or
- (2) the *recognised body* does not appear to be willing to satisfy one or more of the *recognised body requirements*; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* or (for *RAPs*) regulation 3 of the *RAP regulations*; 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 one or more of the *recognised body requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

4.7.5

FCA

G

In addition to the relevant factors set out in ■ REC 4.7.4 G, the *FCA* will usually consider that it would not be able to secure an *ROIE*'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 *FCA* that the *ROIE* 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*.

4.8 The section 298 procedure

4.8.1

FCA

G

A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations*; or
- (2) make a direction under section 296 (*FCA's* powers to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for *RAPs*) regulation 2 of the *RAP regulations* ;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) and (for *RAPs*) regulation 5 of the *RAP regulations* set out procedures (see ■ REC 4.8.9 G) which the *FCA* 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 regulation 4(1) of the *RAP regulations*) or :

- (a) in case where the *FCA* proposes to make a direction under section 296 it considers it is reasonably necessary not to follow, or to cut short, the procedure (see ■ REC 4.8.7 G); or
- (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *Rap regulations*, it considers it is essential not to follow, or to cut, short, the procedure.

4.8.2

FCA

G

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

4.8.3

FCA

G

In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* 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 one or more of the *recognised body requirements* may affect the *statutory objectives*.

4.8.4
FCA

G

In considering whether or not to make a *recognition order*, the *FCA* 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
FCA

G

The procedures laid down in section 298 of the *Act* and (for *RAPs*) regulation 5 of the *RAP regulations* are summarised, with the *FCA*'s *guidance* about the actions it proposes to take in following these procedures, in the tables at ■ REC 4.8.9 G and ■ REC 4.8.10 G respectively .

4.8.6
FCA

G

Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* 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.

4.8.9
FCA

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Table Key steps in the section 298 procedure

The <i>FCA</i> will:	<i>Guidance</i>
(1) give written notice to the <i>RIE</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the period within which representations should be made (unless subsequently extended by the <i>FCA</i>).
(2) receive representations from the <i>RIE</i> or applicant concerned;	The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>RIE</i> (or applicant). It will normally only hear oral representations from the <i>RIE</i> on request.
(3) write promptly to <i>RIE</i> (or applicant) who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>RIE</i> (or applicant) further time to respond.
(4) have regard to representations made;	
(5) (when it has reached its decision) notify the <i>RIE</i> (or applicant) concerned in writing.	

4.8.10
FCA

G

For *RAPs*, key steps in the regulation 5 procedure

The <i>FCA</i> will:	<i>Guidance</i>
(1) give written notice to the <i>RAP</i> (or applicant);	The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an in-

		<p>vation to make representations, and the date by which representations should be made.</p>
(2)	<p>take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be;</p>	<p>The <i>FCA</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.</p>
(3)	<p>publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected;</p>	
(4)	<p>receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take;</p>	<p>The <i>FCA</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>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request.</p>
(5)	<p>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;</p>	<p>The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond.</p>
(6)	<p>have regard to representations made;</p>	
(7)	<p>(when it has reached its decision) notify the <i>RAP</i> (or applicant) concerned in writing;</p>	
(8)	<p>(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>RAP</i> or applicant and to other <i>persons</i> likely to be affected.</p>	<p>The <i>FCA</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.</p>

4.9 Disciplinary measures

4.9.1

FCA

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- (1) Under sections 312E and 312F of the *Act*, if the *FCA* considers that a *recognised body* has contravened a requirement imposed by the *FCA* under any provision of the *Act* that relates to a *RIE*, or under any provision of the *Act* whose contravention constitutes an offence the *FCA* has power to prosecute, or by a qualifying EU provision specified by the Treasury, it may:
 - (a) publish a statement to that effect; or
 - (b) impose on the body a financial penalty of such amount as it considers appropriate.
- (2) The procedures and policies which the *FCA* will follow if it proposes to publish a statement under section 312E or to impose a penalty under section 312F, and if it decides to publish such statement or impose such penalty, are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power to impose a penalty under section 312F of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[**Note:**The *FCA* has issued a statement of policy for consultation with respect to the exercise of its powers under section 312F of the *Act*.]

4.9.2

FCA

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- (1) Under section 192K of the *Act*, if the *FCA* considers that a qualifying parent undertaking of a *UK RIE* has contravened a requirement of a direction given by the *FCA* under section 192C of the *Act*, or a provision of rules made by the *FCA* under section 192J of the *Act*, it may:
 - (a) impose a penalty of such amount as it considers appropriate on the qualifying parent undertaking of the *UK RIE*, or any person who was knowingly concerned in the contravention; or
 - (b) publish a statement censuring the person.
- (2) The procedures which the *FCA* will follow if it proposes to take action, and if it decides to take action against a *person*, under section 192K are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power under section 192K of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[Note: The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 192K of the Act.]

Chapter 5

Applications for Recognition (UK recognised bodies)



5.1 Introduction and legal background

5.1.1

FCA

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A *body corporate* or an unincorporated association may apply to the FCA 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*.

5.1.1A

FCA

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A *UK RIE* may apply to the FCA for recognition as an *RAP* under regulation 2 of the *RAP regulations*.

5.1.2

FCA

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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 *ROIE* status is given in ■ REC 6.



5.2 Application process

5.2.1

FCA

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

5.2.1A

FCA

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In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the *FCA* must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* if it appears to the *FCA* 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 facilitation 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

FCA

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- (1) There is no standard application form. A prospective applicant should contact the Markets Division at the *FCA* 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

FCA

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An application should:

- (1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
- (2) in the case of an application under section 287 of the *Act*, 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 *FCA* that the *recognised body requirements* will be met; and
- (4) be accompanied by the appropriate fee (see ■ REC 7).

<p>5.2.3A FCA</p>	<p>G</p>	<p>The information required pursuant to sub-sections 287(c), (d) and (e) of the <i>Act</i> is:</p> <ol style="list-style-type: none"> (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.
<p>5.2.4 FCA</p>	<p>G</p>	<p>Other information and documentation which should normally accompany an application is listed in more detail in ■ REC 5.2.14 G.</p>
<p>5.2.5 FCA</p>	<p>G</p>	<p>A prospective applicant who is an <i>authorised person</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as an <i>authorised person</i> can be used to support an application to become a <i>UK recognised body</i>.</p>
<p>5.2.5A FCA</p>	<p>G</p>	<p>A <i>UK RIE</i> applying for recognition as an <i>RAP</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as a <i>UK RIE</i> can be used to support an application to be recognised as an <i>RAP</i>.</p>
<p>5.2.6 FCA</p>	<p>G</p>	<p>Under section 289 of the <i>Act</i> (Applications: supplementary) or (for an <i>RAP</i> applicant) regulation 2 of the <i>RAP regulations</i>, the <i>FCA</i> 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 <i>FCA</i> will normally wish to arrange for its own inspection of an applicant's information technology systems.</p>
<p>5.2.6A FCA</p>	<p>G</p>	<p>In the case of an application to become a <i>UK RIE</i> or an <i>RAP</i>, under subsection 290(1B) of the <i>Act</i> and (for an <i>RAP</i> applicant) regulation 2(8) of the <i>RAP regulations</i>, the application must be determined by the <i>FCA</i> before the end of the period of six <i>months</i> beginning with the date on which it receives the completed application.</p>
<p>5.2.7 FCA</p>	<p>G</p>	<p>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 <i>FCA</i>.</p>
<p>5.2.8 FCA</p>	<p>G</p>	<ol style="list-style-type: none"> (1) The <i>FCA</i> 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 <i>FCA</i> 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 <i>FCA</i> will explain the nature of the information which it has asked an applicant to supply in connection with its application.

5.2.12

FCA

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Where the *FCA* considers that it is unlikely to make a *recognition order* 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 *FCA* 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) or (in the case of an *RAP*) regulation 5 of the *RAP regulations* and described in more detail in ■ REC 4.8.

5.2.14

FCA

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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). An applicant for *RAP* status must provide details of the relationship between the governance arrangements in place for the *UK RIE* and the *RAP*.
- (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 or (for an *RAP*) *auction platform*, settlement arrangements, *clearing facilitation services* and *custody* services which it plans to supply. An applicant for *RAP* status must provide details on the relationship between the *auction platform* and any secondary market in *emissions auction products* which it operates or plans to operate.
- (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.
- (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 *FCA*.
- (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 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 , including (for an *RAP*) details of how the rules of the *UK RIE* will change in order to reflect *RAP* status.
- (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* 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 *FCA* 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

6.1 Introduction and legal background

6.1.1

FCA

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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* wishes to undertake *regulated activities* in the *United Kingdom*, it will need to:

- (1) obtain a *Part 4A permission* from the *FCA*;
- (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 *FCA* to be an *ROIE*.

6.1.2

FCA

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Having the status of an *ROIE* facilitates the participation of *overseas investment exchanges* in *UK markets*. In comparison with *Overseas Investment Exchanges* and *Overseas Clearing Houses* 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

FCA

G

- (1) *Overseas investment exchanges* 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* 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 *FCA* before deciding whether to seek *authorisation* or recognition.

6.2.2

FCA

G

A prospective applicant may wish to contact the Markets Division at the *FCA* 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

FCA

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Applicants for *authorised person* status should refer to the *FCA* website "How do I get authorised": <http://www.fca.org.uk/firms/about-authorisation> . Applications for recognition as an *overseas recognised body* should be addressed to:

The Financial Conduct Authority (Markets Division)

25 The North Colonnade

Canary Wharf

London E14 5HS

6.2.4

FCA

G

There is no standard application form for application for recognition as an *ROIE*. An application should be made in accordance with any direction the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* and should include:

- (1) the information, evidence and explanatory material necessary to demonstrate to the *FCA* 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* on, or arranged to be cleared through 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

FCA

G

The *FCA* 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 *FCA* will endeavour to meet the applicant's reasonable timing requirements.

6.2.6

FCA

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

FCA

G

Before making a *recognition order*, the FCA will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (Overseas investment exchanges) have been met. These requirements are the only *recognition requirements* applicable to ROIEs .

6.3.2

FCA

UK

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* other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph;
- (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]
- (c) the applicant is able and willing to co-operate with the [FCA] by the sharing of information and in other ways; and
- (d) adequate arrangements exist for co-operation between the [FCA] 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 [FCA] 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

FCA

G

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



6.5 FCA decision on recognition

6.5.1

FCA

G

If the *FCA* 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

FCA

G

Where the *FCA* 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 *FCA* 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.

6.6 Supervision

6.6.1

FCA

G

An *ROIE* is required to notify the *FCA* 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 *ROIE* to provide the *FCA* with a report (at least once a year) which contains:

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

6.6.2

FCA

G

The following events are examples of events likely to affect an assessment of whether an *ROIE* is continuing to satisfy the *recognition requirements*

- (1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:
 - (a) governing exchanges or, if relevant to an *ROIE*'s satisfaction of the recognition requirements, *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 *ROIE*, or of a class of bodies which includes the *ROIE*;
 - (d) which affect:
 - (i) the ability of the *ROIE* 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) the ability of the *ROIE* 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 *ROIE* 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 *ROIE*, or its supervisor in its *home territory*, and the *FCA*; 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

FCA

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 *ROIE* 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

FCA

G

If an *ROIE* 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

FCA

G

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

6.6.6

FCA

G

Copies of the report should be sent to the *FCA* 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

FCA

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 *ROIEs*.

Purpose

6.7.2

FCA

G

The *notification rules* in this chapter are made by the *FCA* 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

FCA

R

Where an *ROIE* 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 *FCA'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

FCA

R

An *ROIE* 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

FCA

R

An *ROIE* must include in the first report submitted under section 295(1) of the *Act* after the *recognition order* in relation to that *ROIE* 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 *FCA* but which were not included in the application or in any supplementary information submitted to the *FCA* before the *recognition order* was made.

6.7.6

FCA

G

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

Changes of address

6.7.7

FCA

R

Where an *ROIE* 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 *FCA* 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

FCA

R

Where an *ROIE* 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 *ROIE* in performing any *regulated activity* in its *home territory* or in the *United Kingdom*;

it must immediately notify the *FCA* of that fact and must give the *FCA* 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

FCA

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 *ROIEs regulated activities* to which it relates;
- (2) an explanation of how the revocation or modification restricts or will restrict the *ROIE* 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

FCA

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

FCA

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

FCA

R

The *rules* relating to the form and method of notification in ■ REC 3.2 also apply to *ROIEs*.

Waivers

6.7.13

FCA

G

ROIEs may apply to the *FCA* 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 to supervise

6.8.1

FCA

G

The *FCA* has similar powers to supervise *ROIEs* to those it has to supervise *UK RIEs*. It may (in addition to any other powers it might exercise):

- (1) give directions to an *ROIE* 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 *ROIE* is failing, or has failed, to comply with the *recognition requirements* or any other obligation in or under the *Act* ; or
- (3) require an *ROIE* or a person connected with the *ROIE*, under section 165 of the *Act*, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; or
- (4) require any of the following persons, under section 166 of the *Act*, to provide the *FCA* with a report on any matter, or appoint a skilled person to provide the *FCA* with information or produce documents with respect to any matter:
 - (a) the *ROIE*; or
 - (b) any other member of the *ROIE's* group; or
 - (c) a partnership of which the *ROIE* is a member; or
 - (d) a person who has at any time been a person falling within (a), (b) or (c).

6.8.2

FCA

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The *FCA* will follow the approach in ■ REC 4.6, ■ REC 4.7 , ■ REC 4.8 , ■ REC 4.2F and ■ REC 4.2G if it is considering exercising these powers in relation to an *ROIE*.

Chapter 6A

EEA market operators in the United Kingdom



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

6A.1.1
FCA

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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 *FCA* notice of the operator's intention.

6A.1.2
FCA

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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
FCA

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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.1.4
FCA

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In accordance with the *RAP regulations*, references in section 312A of the *Act* to specified *regulated market* and market are to be read as including reference to a specified *auction platform* and an *auction platform* as applicable.



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

6A.2.1
FCA

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Under section 312B of the *Act*, the *FCA* 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 *FCA* has clear and demonstrable grounds for believing that the operator has contravened a relevant requirement, and
- (2) the *FCA* has first complied with sections 312B(3) to (9) of the *Act*.

6A.2.2
FCA

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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
FCA

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The procedure the *FCA* 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
FCA

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If the *FCA* exercises this prohibition power it must at the earliest opportunity notify the Commission and *ESMA* of the action taken in relation to the operator.

6A.2.5
FCA

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The operator's *exempt person* status ceases to apply if the *FCA* exercises this prohibition power.

6A.2.6
FCA

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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 *FCA* is satisfied that the contravention which led the *FCA* to exercise its prohibition power has been remedied.

6A.2.7
FCA

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In accordance with the *RAP regulations*, references in section 312B of the *Act* to *regulated market* are to be read as including reference to an *auction platform* and references to *MiFID* are to be read as including reference to the *auction regulation*.

6A

Recognised Investment Exchanges

REC TP 1 Transitional provisions

Introduction

FCA

- 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*

Recognised Investment Exchanges

Schedule 1 Record keeping requirements

Sch 1.1 G

FCA

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* (in the case of *RAPs*, see *REC 2.9* as applied by *REC 2A.3.2 G*).

RAPs also have separate record keeping obligations under the *auction regulation*.

Recognised Investment Exchanges

Schedule 2 Notification requirements

Sch 2.1 G

FCA

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. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

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 *FCA* under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for *ROIEs* is given in REC 6.6.

Sch 2.2 G

FCA

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
<i>UK RIEs</i>				
The <i>Act</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
The <i>Act</i> s293(6)(a)	Changes to arrangements for <i>clearing facilitation services</i> in respect of <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 <i>clearing facilitation services</i>	Details of change	Change to criteria	Without delay
<i>RAPs</i>				

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
The <i>auction regulation</i> article 7(7)	Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i>	See REC 3.15	Event concerned	Without delay
<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 or (for <i>RAPs</i>) the timing, frequency or duration of its bidding windows	See REC 3.14	See REC 3.14	Immediately

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
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> or (for <i>RAPs</i>) the cancellation of an auction	See REC 3.15	Event concerned	Immediately
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 the <i>recognition requirements</i> or (for <i>RAPs</i>) the <i>RAP recognition requirement</i> in regulation 20 can still be met	Admission of new type of non- <i>authorised 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 or (for <i>RAPs</i>) restriction on maximum bid size or other remedial measures	Details of decision to restrict member's open position or instruction to close out position or (for <i>RAPs</i>) details of the event and remedial measures proposed	Decision to take action or (for <i>RAPs</i>) proposal 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

Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
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>ROIEs</i>				
The Act s295	Report to <i>FCA</i>	Statement as to whether events have occurred which would affect the <i>FCA's</i> assessment of whether the <i>recognition requirements</i> are met	Not applicable	Once a year
<i>Notification rules for ROIEs (see REC 6.7)</i>				
REC 6.7.3 R	Events which might affect the <i>FCA's</i> 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

Schedule 5 Rights of action for damages

Sch 5.1 G

FCA

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

Schedule 6 Rules that can be waived

Sch 6.1 G

FCA

The *notification rules* in REC 3 and REC 6 can be *waived* by the *FCA* 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 *FCA*.)