

Type of system	Description of system	Summary of information to be made public, in accordance with Article 17
	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



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



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

Waivers based on market model and type of order or transaction

- (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



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:

- (a) dealing on own account with another member or participant who acts for the account of a *client*;

References to negotiated transaction	
(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 <i>client</i> order.

2.6.12 

Article 3 of the MiFID Regulation

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

2.6.13 

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 <i>regulated market</i> 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 

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 < ?500 000	?500 000 ? ADT < ?1 000 000	?1 000 000 ? ADT < ?25 000 000	?25 000 000 ? ADT < ?50 000 000	ADT ? ?50 000 000
Minimum size of order qualifying as large in scale compared	?50 000	?100 000	?250 000	?400 000	?500 000

with normal market size

2.6.15



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



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: <ul style="list-style-type: none"> - a unique code to be decided by the competent authority (if any) to which the report is made identifying the [share] which is the subject of the <i>transaction</i>; |

		- if the [share] in question does not have a unique identification code, the report must include the name of the [share] ...
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



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



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;
- (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

Deferred publication of large transactions

classified in accordance with their average daily turnover to be calculated in accordance with Article 33.

2

2.6.19



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



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 trading day if trade undertaken)	?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				
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



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



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



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.

2.6.25



Schedule to the Recognition Requirements Regulations, Paragraph 19(1)

The [UK RCH] must ensure that its facilities are such as to afford proper protection to investors.

2.6.26

G

In determining whether:

- (1) business conducted by means of a *UK RIE's facilities* is conducted so; or
- (2) a *UK RCH's facilities* are such;

as to afford proper protection to investors, the *FSA* 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

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The *FSA* 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

G

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 *FSA* 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

G

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 *FSA* 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* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.

2.6.30

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- (1) The *FSA* 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 **G** The *FSA* 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 **G** The *FSA* 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 **G** The *FSA* 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** **G**
- (1) In respect of arrangements facilitating the consolidation of data as required in ■ REC 2.6.24 EU(b), the *FSA* 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 *FSA* 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 *FSA* considers that publication on a non-machine-readable website would not meet the *MiFID* requirements.

(4) The *FSA* 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  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  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 [FSA] 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



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.

2.7.2



Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(a)

Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that -

access to the [UK RCH's] *facilities* is subject to criteria designed to protect the orderly functioning of those *facilities* and the interests of investors;

2.7.2A



Schedule to the Recognition Requirements Regulations, Paragraph 21A

- (1) The [UK RCH] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement *facilities* provided by it.
- (2) The rules under sub-paragraph (1) 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*.
- (3) The [UK RCH] may refuse access to those *facilities* on legitimate commercial grounds.

2.7.3



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 *FSA* 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



■ 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



The *FSA* 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 services

- 2.8.1**  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**  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.
- 2.8.2**  Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(b)
Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that -
its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services, (being rights and liabilities in relation to those transactions);
- 2.8.3**  In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions, the *FSA* may have regard to the *UK recognised body's*:
- (1) rules and practices relating to clearing and settlement;


- (2) arrangements for matching trades and ensuring that the parties are in agreement about trade details;
- (3) arrangements for making deliveries and payments and, where relevant, for collecting margin and holding collateral, 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.


2.8.4


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A *UK recognised body* will not be regarded as failing to comply with the *recognition requirement* merely because it is unable to arrange for a specific transaction to be settled.

2.9 Transaction recording

2.9.1  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;

2.9.2  Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(c)
Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that-
satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities;

2.9.3  In determining whether a *UK recognised body* has satisfactory arrangements for recording the transactions effected on, or cleared or to be cleared by means of, its *facilities*, the *FSA* 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 to be effected, cleared or to be cleared 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 was effected, cleared or to be cleared; and
 - (d) the date and manner of settlement of the transaction.

2.9.4

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Where transactions are effected on an *UK RIE* and cleared through an *UK RCH*, the *UK recognised bodies* concerned may agree which information is to be recorded by each *UK recognised body* and need not duplicate each other's records.

2.10 Financial crime and market abuse




- 2.10.1**  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;
- 2.10.2**  Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(d)
Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that-
appropriate measures are adopted to reduce the extent to which the [UK RCH'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**  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 *FSA* may have regard to:
- (1) whether the rules of the *UK recognised body* enable it to disclose any information to the *FSA*, 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*.

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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**  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.
- 2.11.2**  Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(e)
Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that-
where the [UK RCH'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**  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 *FSA* 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.


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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  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  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  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



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



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



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

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*.

2.12.3 **D** [deleted]

2.12.4 **G** [deleted]

2.12.5 **G** [deleted]

2.12.6 **G** [deleted]

2.12.7 **G** [deleted]

2.12.8 **G** [deleted]

2.12.9 **G** [deleted]

2.12.10 **G** [deleted]

Proper information

2.12.11 **G** 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 FSA 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

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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.

2.12.13

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[deleted]

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






2.12.14

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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 *FSA* 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 *FSA* 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**  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 [FSA], 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.
- 2.13.2**  Schedule to the Recognition Requirements Regulations, Paragraph 20
- (1)** The [UK RCH] 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 RCH].
- (2)** The [UK RCH] must be able and willing to cooperate, by the sharing of information or otherwise, with the [FSA], 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**  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 *FSA* 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**  In assessing the ability of a *UK recognised body* to cooperate with the *FSA* and other appropriate bodies, the *FSA* 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 *FSA* and other appropriate bodies.

2.13.5

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In assessing the willingness of a *UK recognised body* to cooperate with the *FSA* and other appropriate bodies, the *FSA* 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 *FSA* in the exercise of its functions;
- (2) the extent to which the *UK recognised body* is open with the *FSA* or other appropriate bodies in regulatory matters;
- (3) how diligently the *UK recognised body* investigates or pursues enquiries from the *FSA* or other appropriate bodies; and
- (4) whether the *UK recognised body* participates in appropriate international fora.

2.13.6

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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*.

2.14 Rules and consultation

- 2.14.1  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).
- 2.14.2  Schedule to the Recognition Requirements Regulations, paragraph 21
- (1) The [UK RCH] 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 RCH's] facilities in appropriate cases.
- (3) The [UK RCH] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) ... (or on any changes it proposes to make to those arrangements).
- 2.14.3  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 *FSA* 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

2.14.4

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- (4) the arrangements for notifying *members* (and other appropriate *persons*) of rule changes.
- (1) In determining whether a *UK recognised body's* procedures include procedures for consulting users of its *facilities* in appropriate cases, the *FSA* 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 *FSA'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

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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 *FSA* may have regard to the range of persons to be consulted by the *UK recognised body* under those procedures.
- (2) In the *FSA'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 *FSA'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

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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 *FSA* 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



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.

2.15.2



Schedule to the Recognition Requirements Regulations, Paragraph 22

(1) The [UK RCH] must have effective arrangements for monitoring and enforcing compliance with its rules.

(2) The arrangements must include procedures for -

(a) investigating complaints made to the [UK RCH] about the conduct of persons in the course of using the [UK RCH's] facilities; and

(b) the fair, independent and impartial resolution of appeals against decisions of the [UK RCH].

(3) Where the arrangements 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 RCH] 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 RCH] in relation to that breach;

(b) for the benefit of users of the [UK RCH's] facilities;

(c) for charitable purposes.

2.15.3



In determining whether a *UK recognised body* has effective arrangements for monitoring and enforcing compliance with its rules (and, in the case of a *UK RIE*, its settlement arrangements), the *FSA* 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);

2.15.4

G

In assessing whether the procedures made by a *UK recognised body* to investigate complaints about the users of its *facilities* are satisfactory, the *FSA* 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
- (3) the documentation of these procedures and the arrangements made to ensure that the existence of these procedures is brought to the attention of *persons* who might wish to make a complaint.

2.15.5

G

In assessing whether the arrangements include procedures for the fair, independent and impartial resolution of appeals against decisions of a *UK recognised body*, the *FSA* 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

G

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 *FSA* 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 *FSA* 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



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].

2.16.2



Schedule to the Recognition Requirements Regulations, Paragraph 23

- (1) The [UK RCH] 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 RCH], or

- (b) **complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in paragraph 22(2)(b).**
- (3) **The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the [UK RCH], and for him to report on the result of his investigation to the [UK RCH] and to the complainant.**
- (4) **The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the [UK RCH] -**
 - (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 RCH] from making arrangements for the initial investigation of a complaint to be conducted by the [UK RCH].**

2.16.3

G

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 *FSA* 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;
- (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.

2.16.4



G

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 *FSA* may have regard to:


- (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**  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**  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 FSA 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 recognised bodies

2.17.1  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  **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  **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].

Paragraph 15 (Margin)

- (1) Where the [UK RIE] provides clearing services, the [default rules] of the [UK RIE] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.

- (2) This paragraph is without prejudice to the requirements of any *rules* relating to clients' money made by the [FSA] under sections 138 and 139 of the *Act*.
- (3) For the purposes of this paragraph, "client account of the defaulter" means an account held by the [UK RIE] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.
- (4) In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.

2.17.3



Schedule to the Recognition Requirements Regulations, Part IV

Paragraph 24 (Default rules in respect of market contracts)

- (1) The [UK RCH] must have *default rules* which, in the event of a *member* of the [UK RCH] being or appearing to be unable to meet his obligations in respect of one or more *market contracts*, enable action to be taken to close out his position in relation to all unsettled *market contracts* to which he is a party.
- (2) The [*default rules*] may authorise the taking of the same or similar action where a *member* appears to be likely to become unable to meet his obligations in respect of one or more *market contracts*.
- (3) Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a [*recognised investment exchange*] or another [*recognised clearing house*].
- (4) A [UK RCH] must have [*default rules*] which in the event of the investment exchange or the clearing house 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 25 (Content of rules)

- (1) 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 clearing house 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 [(1)](b) or, if relevant, the net sum referred to in [(1)](bb)
 - (i) if payable by the defaulter to the clearing house, 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 clearing house may apply under its [*default rules*];
 - (iii) if payable by the clearing house 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 RCH*] of the sum finally payable or, as the case may be, of the fact that no sum is payable.

(1A) In sub-paragraph (1), "margin set off agreement" means an agreement between the clearing house and AP permitting any eligible position to which the Participant Member is party with the clearing house 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 or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.

- (1B) In sub-paragraph (1A) -
- "AP" means a [*recognised investment exchange*] or another [*recognised clearing house*] 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 clearing house;
 - (b) is a member or participant of AP; and
 - (c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.
- (1C) The property, contribution, funds or resources referred to in (1)(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.
- (2) The reference in sub-paragraph (1) 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 RCH* 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 RCH*];
 - (c) the exercise by the [*UK RCH*] of any *option* granted by an unsettled *market contract*.
- (3) 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.
- (4) Sub-paragraph (3) applies with any necessary modifications in relation to a *market contract* which is not an agreement to sell.
- (5) The reference in sub-paragraph (1) 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 25A (Content of rules)

The rules of the [UK RCH] 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 25(1)(c)(i) or (ii).

Paragraph 26 (Notification to other parties affected)

The [UK RCH] must have adequate arrangements for ensuring that parties to unsettled *market contracts* with a defaulter 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.

Paragraph 27 (Cooperation with other authorities)

The [UK RCH] 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 RCH] or the default of a [recognised investment exchange] or another [recognised clearing house].

Paragraph 28 (Margin)

- (1) The [default rules] of the [UK RCH] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.
- (2) This paragraph is without prejudice to the requirements of any *rules* relating to clients' money made by the [FSA] under sections 138 and 139 of the *Act*.
- (3) For the purposes of this paragraph, "client account of the defaulter" means an account held by the [UK RCH] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.
- (4) In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.

2.17.4

G

UK RIEs which, under their rules, have *market contracts* and UK RCHs which, under their rules, enter into *market contracts* are required to have *default rules*. The *default rules* must enable the UK recognised body to take action in relation to a *member*, an interoperating RIE or RCH and, for an RIE, a *designated non-member*, who appears unable, or likely to become unable, to meet his obligations in respect of one or more unsettled *market contracts*.

- 2.17.5 **G** This action is to provide for all rights and liabilities of the defaulter (including a *recognised investment exchange* or a *recognised clearing house*) and any counterparty to an unsettled *market contract* to be discharged and for there to be paid between the defaulter and each counterparty one sum representing the net amount of all the contracts between them. Property provided by the defaulter as cover for margin or any relevant sum owed under a margin set-off arrangement), or any remaining default fund contribution provided by the defaulter, may be set off against any amount owing by the defaulter. At the conclusion of this process, the *UK recognised body* must certify the sum finally payable in each case.
- 2.17.6 **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*.

Chapter 3

Notification rules for UK recognised bodies



3.1 Application and purpose

Application

- 3.1.1 **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 **G** 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 **G** The *notification rules* in this chapter are in addition to the requirements on *UK recognised bodies* to give notice or information to the *FSA* under sub-sections 293(5), (6) and (7) of the *Act*.

Purpose

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



3.2 Form and method of notification

Form of notification

3.2.1

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

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 *FSA*;
- (2) delivered to the *FSA* by one of the methods in ■ REC 3.2.3 R.

3.2.3

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>FSA</i> and obtaining an electronic confirmation of receipt
(4)	Hand delivery to the <i>recognised body's</i> usual supervisory contact at the <i>FSA</i>
(5)	Fax to a fax number for the <i>recognised body's</i> usual supervisory contact at the <i>FSA</i> , provided that the <i>FSA</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 **R** The address for a written notification to the *FSA* is:

The Financial Services Authority

25 The North Colonnade

Canary Wharf

London E14 5HS

Timely notification

3.2.5 **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 *FSA* 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 *FSA* no later than the first *business day* after the end of that period.

Service of Notice Regulations

3.2.6 **G** The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) contain provisions relating to the service of documents on the *FSA*. They 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 **G** Under section 294 of the *Act* (Modification or waiver of rules), the *FSA* may, on the application or with the consent of a *recognised body* (including an *overseas recognised body*), 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 **G** A *waiver* given under section 294 of the *Act* may be made subject to conditions.

3.3.3 **G** Under section 294(4) of the *Act*, before the *FSA* 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 **G** Where a *recognised body* wishes to make an application to the *FSA* for a *waiver* of a *notification rule*, it should in the first instance inform its usual supervisory contact at the *FSA*.

3.3.5 **G** There is no application form, but applicants should make their application formally and in writing and in accordance with any direction the *FSA* 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 *FSA* gave a *waiver* under section 294 subject to any condition, particulars of the kind of condition contemplated.

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

Waivers

3.3.7 **G** Any *waiver* given by the *FSA* 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 **G** Where the *FSA* considers that it will not give the *waiver* which has been applied for, the *FSA* will give reasons to the applicant for its decision. The *FSA* 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 **G** Where the *FSA* 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 *FSA* will correspond or discuss this with that body in order to agree an appropriate *waiver*.

Reviews of waivers

3.3.10 **G** The *FSA* will periodically review any *waiver* it has given. The *FSA* 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 **G** The purpose of ■ REC 3.4 is to enable the *FSA* 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*.

Key individuals

3.4.2 **R** Where, in relation to a *UK RCH*, a *person* has been appointed or elected, has resigned as, or has ceased to be, a *key individual*, that *UK RCH* must immediately give notice of that event, and give the information specified for the purposes of this rule in ■ REC 3.4.4 R to the *FSA*.

3.4.2A **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 *FSA*.

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

3.4.2B **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 **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 *FSA* 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 *FSA* should be notified under ■ REC 3.4.2 R.

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

- (1) where a *person* has been appointed or elected as a *key individual*:
 - (a) that *person's* name;
 - (b) his date of birth;
 - (c) a description of the responsibilities which he will have in the post to which he has been appointed or elected; or
- (2) where a *person* has resigned as or otherwise ceased to be a *key individual*, that *person's* name.

3.4.4A **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.

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

Standing committees

3.4.5 **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 *FSA* of that event and give the *FSA* 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

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 FSA of that event and give particulars of any change referred to in (1) to the FSA.

3.4.7

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

- 3.5.2 **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 **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 *FSA* 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 **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 *FSA*, at the same time as that notice or *document* is circulated.
- 3.6.2 **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 **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 **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 *FSA* 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 **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 **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 *FSA* 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 **G** The purpose of **■ REC 3.6.6 R** is to ensure that the *FSA* 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

3.7 Auditors

3.7.1 **R** Where the auditors of a *UK recognised body* cease to act as such, that *UK recognised body* must immediately give the *FSA* 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 **R** Where a *UK recognised body* appoints new auditors, that body must immediately give the *FSA* 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** **R** A UK recognised body must give the FSA:
- (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** **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 FSA 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** **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 FSA a copy of that report.
- 3.8.4** **R** A UK recognised body must give the FSA 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

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 *FSA* of that fact.

3.8.6

R

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

- (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

R

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



3.9 Fees and incentive schemes

3.9.1

G

The purpose of **REC 3.9.2 R** is to enable the *FSA* 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 *FSA* of fees or charges for which the *UK recognised body* does not charge according to a standard tariff.

3.9.2

R

A *UK recognised body* must give the *FSA* 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

3.10.1

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 *FSA* of that event, and give the *FSA* 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

3.11.1

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 *FSA* notice of that event.

3.12 Legal proceedings

3.12.1 **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 *FSA*:

- (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 **R** A *UK recognised body* is not required to give notice of civil legal proceedings or information about them to the *FSA* 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

G

- (1) The purpose of **REC 3.13** is to enable the *FSA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as they are permitted to do under Regulation 6 of the *Recognition Requirements Regulations*. See **REC 2.2**).
- (2) The *FSA* 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

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 *FSA* notice of that event, and:

- (1) inform the *FSA* of the reasons for that delegation or proposed delegation;
- (2) inform the *FSA* of the reasons why it is satisfied that it will continue to meet the *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 *FSA* a copy of that invitation to tender; and
- (4) where it makes such an agreement, give the *FSA* a copy of that agreement.

3.13.3

R

A *UK recognised body* must immediately give the *FSA* 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 **G** The purpose of **■ REC 3.14** is to ensure that the *FSA* 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 *FSA* under the *rules* in **■ REC 3.15**.

Products and services

3.14.2 **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 *FSA* notice of that event, and the information specified for the purposes of this *rule* in **■ REC 3.14.6 R** to the *FSA*, 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 **R** When a *UK RIE* removes a *financial instrument* from trading on a *regulated market*, it must immediately give the *FSA* 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 **R** Where a *UK recognised body* proposes to provide (or to cease to provide) clearing 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, unless ■ REC 3.14.4 R applies, give the *FSA* 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).

3.14.4 **R** A *UK RCH* is not required to give the *FSA* notice or information under ■ REC 3.14.3 R where it proposes to offer (or to cease to offer) clearing services under an agreement with a *UK RIE* in respect of a *specified investment* for which that *UK RIE* is required to give the *FSA* notice under ■ REC 3.14.2 R, provided that the *UK RIE* has given the *FSA* the information specified in ■ REC 3.14.6 R (3).

3.14.5 **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 **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 **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 recognised body* proposes to amend the standard terms relating to the provision of clearing services for any *derivative* in respect of which it provides clearing services;

it must give the *FSA* 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 **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 *FSA* 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:

- (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 FSA 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, it must give the FSA 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.



3.14A Operation of a regulated market or MTF

Purpose

3.14A.1 **G** The purpose of ■ REC 3.14A is to ensure that the *FSA* 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 **R** Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FSA* 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 **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 **R** Where a *UK RIE* proposes to operate a new *MTF* or close an existing *MTF* it must give the *FSA* 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 **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*.



3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1

G

- (1) The purpose of ■ REC 3.15.2 R to ■ REC 3.15.5 G is to enable the *FSA* to obtain information where a *UK recognised body* decides to suspend the provision of its services in relation to particular *investments*. Planned changes to the provision of services should be notified to the *FSA* under ■ REC 3.14.
- (2) ■ REC 3.15.6 R to ■ REC 3.15.7 R provide for notification to the *FSA* 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.

Suspension of services

3.15.2

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 *FSA* 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

R

When a *UK RIE* suspends trading on a *regulated market* in any *financial instrument*, it must immediately give the *FSA* 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*]

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3.15.3

R

Where a *UK recognised body* suspends providing clearing services generally in respect of any *derivative* (other than an *option* in relation to a *security*), type of *security* or type of *option* in relation to a *security*, it must immediately give the *FSA* 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.

3.15.4 **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 *FSA* notice of that event, particulars of that type of asset and the reasons for the action taken.

3.15.5 **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 **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 *FSA* notice of that inability and inform the *FSA*:

- (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 **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 *FSA* notice of that event, and inform the *FSA*:

- (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.



3.16 Information technology systems

- 3.16.1** **G** The purpose of **REC 3.16** is to ensure that the *FSA* 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 *FSA* 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** **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 *FSA* notice of that event, and a copy of the new plan.
- 3.16.3** **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 *FSA* notice of that event, and inform the *FSA*:
- (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

3.17.1

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 *FSA* notice of its inability to discharge that function, and inform the *FSA*:

- (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

G

- (1) The purpose of ■ REC 3.18 is to enable the *FSA* to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the *FSA* 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* 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* 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* can be met.
- (3) The information required under ■ REC 3.18 is relevant to the *FSA*'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 *FSA*'s broader responsibilities concerning market confidence and financial stability 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 recognised body* 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 *FSA*.

3.18.2

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 *FSA* notice of that event, and:

- (1) a description of the type of *person* whom it is admitting to *membership*; and
- (2) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) or paragraph 19(2)(a)

of the Schedule to the *Recognition Requirements Regulations* which applies to it.

3.18.3

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 *FSA* 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*; 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* which apply to it.

3.18.4

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

R

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

- (1) any business transacted by means of its *facilities*, if it is an *RIE*;
or
- (2) any aspect of the clearing services which it provides;

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

3.19.2

G

A *UK recognised body* need not give the *FSA* 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 **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 *FSA* 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 **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 *FSA* 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

3.21.1

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 *FSA* 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

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 *FSA* 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.



3.23 Default

3.23.1

R

Where a *UK recognised body* decides to put a *member* into default, it must immediately give notice of that event, and give the following information to the *FSA*, 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 or *clearing house* on which, to the best of that *UK recognised body's* knowledge, that *member* clears business or transacts for, or in respect of, its *clients*;

and as soon as practicable afterwards, give the *FSA* a summary of the *member's* open positions, margin liability, cash and collateral balances in respect of that *member's* accounts (including *client* accounts).

3.24 Transfers of ownership

3.24.1 **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*, whether directly or indirectly, it must immediately notify the *FSA* 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 **G** The *FSA* 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

R

A UK RIE must immediately notify the FSA of:

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

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

3.26.2 **G** Under section 300B(2) of the *Act*, the *FSA* 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 **G** Under section 300B(3) of the *Act*, the *FSA* 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 *FSA* may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

3.26.4 **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 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 FSA

3.26.5

R

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 *FSA* to assess the purpose and effect of the proposed

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

3.26.6 **G** In determining whether a *UK recognised body* has provided sufficient supporting information, the FSA 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 **R** A *UK recognised body* must provide such additional information in connection with a notice under section 300B(1) of the Act as the FSA may reasonably require.

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

3.26.9 **G** The FSA expects that an advanced draft of any consultation document a *UK recognised body* 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 **G** ■ REC 4.2, ■ REC 4.3 and ■ REC 4.5 apply to *UK recognised bodies*. ■ 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 **G** This chapter sets out the *FSA'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 *FSA's* approach to the exercise of its powers under:
 - (a) section 296 of the *Act* (*FSA's* power to give directions) to give directions to *recognised bodies* (■ REC 4.6);
 - (b) section 297 of the *Act* (Revoking recognition) to revoke *recognition orders* (■ REC 4.7);
 and the procedure to be followed in those cases and where the *FSA* decides to refuse an application for recognition as a *recognised body* (■ REC 4.8); and
- (3) the *FSA'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 recognised bodies* in relation to action under their *default rules* (■ REC 4.5).

- 4.1.3 **G** The *FSA's* general approach to supervision is intended to ensure that:

- (1) the *FSA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognition requirements* and other obligations imposed by or under the *Act* and *UK RIEs* continue at all times to satisfy the *MiFID implementing requirements*; and
- (2) the *FSA's* supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the *regulatory objectives*.

4.1.4 **G** In applying these principles of risk based supervision to the supervision of *recognised bodies*, the FSA 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 FSA's general duties).

4.1.5 **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
- 4.2.1 **G** The *FSA* 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 *recognition requirements*. This broad picture is intended to complement the information which the *FSA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see ■ REC 3). The *FSA* 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 **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 *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act*.
- 4.2.3 **G** The *FSA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognition requirements*, the *MiFID implementing requirements* (in the case of a *UK RIE*) and other obligations in or under the *Act* when considering any changes to its business or operations.
- 4.2.4 **G** However, the *FSA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with its plans and operational initiatives, and will provide it with appropriate assurance that the *recognition requirements* and the *MiFID implementing requirements* (in the case of a *UK RIE*) will continue to be satisfied.