

## Chapter 2

# Recognition requirements

2.15 Discipline

2.15.1 UK 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 UK [deleted]

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

- (1) the UK recognised body's ability to:

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

2.15.4

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

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

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

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

2.15.6

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

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

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