

Chapter 5

Applications for Recognition (UK recognised bodies)

5.1 Introduction and legal background

- 5.1.1** **G** A *body corporate* or an unincorporated association may apply to the *FCA* for recognition as a *UK recognised body* under sections 287 (Application by an investment exchange) or 288 (Application by a clearing house) of the *Act*.
- 5.1.1A** **G** A *UK RIE* may apply to the *FCA* for recognition as a *RAP* under regulation 2 of the *RAP regulations*.
- 5.1.2** **G** This chapter sets out *guidance* for *UK* applicants and for *UK* entities which are considering making an application. *Guidance* for applicants and prospective applicants for *ROIE* status is given in ■ **REC 6**.



5.2 Application process

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

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

5.2.2 **G**

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

5.2.3 **G** An application should:

- (1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
- (2) in the case of an application under section 287 of the *Act*, be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see ■ REC 5.2.3A G) (the material specifically prescribed in section 287 or section 288);
- (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to

demonstrate to the *FCA* that the *recognised body requirements* will be met; and

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

5.2.3A **G** The information required pursuant to sub-sections 287(c), (d) and (e) of the *Act* is:

(1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;

(2) particulars of the persons who effectively direct the business and operations of the exchange; and

(3) particulars of the ownership of the exchange, and in particular the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the exchange, whether directly or indirectly.

5.2.4 **G** Other information and documentation which should normally accompany an application is listed in more detail in ■ REC 5.2.14 G.

5.2.5 **G** A prospective applicant who is an *authorised person* may wish to consult the *FCA* about the extent to which information which it has already supplied in connection with its status as an *authorised person* can be used to support an application to become a *UK recognised body*.

5.2.5A **G** A *UK RIE* applying for recognition as a *RAP* may wish to consult the *FCA* about the extent to which information which it has already supplied in connection with its status as a *UK RIE* can be used to support an application to be recognised as a *RAP*.

5.2.6 **G** Under section 289 of the *Act* (Applications: supplementary) or (for a *RAP* applicant) regulation 2 of the *RAP regulations*, the *FCA* may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the *FCA* will normally wish to arrange for its own inspection of an applicant's information technology systems.

5.2.6A **G** In the case of an application to become a *UK RIE* or a *RAP* under subsection 290(1B) of the *Act* and (for a *RAP applicant*) regulation 2(8) of the *RAP regulations*, the application must be determined by the *FCA* before the end of the period of six *months* beginning with the date on which it receives the completed application.

5.2.7 **G** At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the *FCA*.

- 5.2.8** **G** (1) The *FCA* will keep the applicant informed of the progress of the application.
- (2) It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The *FCA* may wish to discuss various aspects of the application and may invite the applicant to attend one or more meetings for that purpose. When requested to do so, the *FCA* will explain the nature of the information which it has asked an applicant to supply in connection with its application.
- 5.2.9** **G** (1) [deleted]
- (2) [deleted]
- 5.2.10** **G** [deleted]
- 5.2.11** **G** [deleted]
- 5.2.12** **G** Where the *FCA* considers that it is unlikely to make a *recognition order* it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see ■ REC 5.2.7 G). If the *FCA* decides that it will not make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) or (in the case of a *RAP*) regulation 5 of the *RAP regulations* and described in more detail in ■ REC 4.8.
- 5.2.13** **G** [deleted]
- 5.2.14** **G** **Information and supporting documentation (see ■ REC 5.2.4 G).**
- | | |
|-----|--|
| (1) | Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i>) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i> . |
| (2) | Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> (if not contained in the information listed in REC 5.2.3A G). |
| (3) | Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for a <i>RAP</i>) <i>auction platform</i> , settlement arrangements, clearing facilitation services and <i>custody services</i> which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate. |
| (4) | Copies of the last three annual reports and accounts and, for the current financial year, quarterly <i>management accounts</i> . |

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

(24) Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.

