Recognised Investment Exchanges
Recognised Investment Exchanges

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Chapter 1

Introduction
1.1 Application

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

(2) The recognition requirements and guidance in REC 2 relate primarily to UK RIEs which are recognised, or applying to be recognised, to operate a regulated market in the United Kingdom.

(3) While some recognition requirements in REC 2 apply to other trading venues operated by UK RIEs, guidance in respect of those venues is set out in MAR 5 and MAR 5A.

1.1.1A [deleted]

1.1.2 (1) UK RIEs are exempt persons under section 285 of the Act (Exemption for recognised investment exchanges and clearing houses).

(2) UK RIEs must satisfy recognition requirements prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the Recognition Requirements Regulations. UK RIEs must also satisfy the MiFID/MiFIR requirements. RAPs must satisfy the recognition requirements prescribed by the Treasury in the RAP regulations, under the UK auctioning regulations and must also be UK RIEs and so are subject to the MiFID/MiFIR requirements. RQIEs must satisfy recognition requirements laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).

(3) UK RIEs must also comply with the following:

(a) notification requirements in, and notification rules made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the Act; and

(b) any rules made under the FCA’s rule-making power in regulation 11 of the Recognition Requirements Regulations.

1.1.3 (1) The recognition requirements for UK recognised bodies are set out, with guidance, in REC 2. The RAP recognition requirements (other than requirements under the UK auctioning regulations which are not reproduced in REC) are set out, with guidance, in REC 2A.

(1A) Key relevant MiFID/MiFIR requirements directly applicable to UK recognised bodies are signposted as “Notes”.

(2) The notification rules for UK recognised bodies are set out in REC 3 together with guidance on those rules.
(3) Guidance on the FCA’s approach to the supervision of recognised bodies is given in REC 4.

(4) Guidance for applicants (and potential applicants) for UK recognised body status is given in REC 5.

(5) The recognition requirements, notification rules, and guidance for ROIEs and guidance for applicants (and potential applicants) for ROIE status are set out in REC 6.

(5A) [deleted]

(6) The fees rules for recognised bodies and applicants are set out in FEES 1, 2, 3 and 4.
1.2 Purpose, status and quotations, notes or references

Purpose

1.2.1 [G] The purpose of the guidance in this sourcebook is to give information on the recognised body requirements. Explanations of the purposes of the rules in this sourcebook are given in the chapters concerned.

Status

1.2.2 [G] (1) Most of the provisions in this sourcebook are marked with a G (to indicate guidance) or an R (to indicate a rule). Quotations from UK statute or statutory instruments are marked with the letters “UK” unless they form part of a piece of guidance. Other informative text regarding provisions of EU directives or onshored regulations which is meant to be for the convenience of readers but is not part of the legislative material is preceded by the word “Note”. For a discussion of the status of provisions marked with a letter, see Chapter 6 of the Reader’s Guide.

(2) Where the guidance states that the FCA may have regard to any factor in assessing or determining whether a recognised body requirement is satisfied, it means that the FCA will take that factor into account so far as it is relevant.

(3) In determining whether a recognised body satisfies the recognised body requirements, the FCA will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the guidance.

Quotations

1.2.3 [G] (1) This sourcebook contains quotations from the Act, the Recognition Requirements Regulations, the RAP regulations, the Companies Act 1989 and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.

(2) The additions and substitutions are enclosed in square brackets ([ ]). The omission of words within a quotation is indicated by three dots (...).
(3) Any words in these quotations which have the same meaning as *Handbook* defined terms are shown in italics and their definitions may be found in the *Glossary*.

(4) As these quotations contain provisions which impose obligations, they are printed in bold type. The use of bold type is not intended to indicate that these quotations are *rules* made by the *FCA*.

(5) None of the editorial changes made by the *FCA* in these quotations can supersede or alter the meaning of the provision concerned.
Chapter 2

Recognition requirements
2.1 Introduction

2.1.1 G (1) This chapter contains the recognition requirements for UK RIEs (other than RAPs) and sets out guidance on those requirements.

(2) This chapter also contains “Notes” with informative text in relation to MiFID/MiFIR requirements applicable directly to UK RIEs operating trading venues.

(3) This chapter directs UK RIEs to certain recognition requirements and guidance on those requirements found in other parts of the Handbook.

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

2.1.3 G (1) The paragraphs in the Schedule to the Recognition Requirements Regulations are grouped in this sourcebook in sections which give guidance on the same subject for UK RIEs.

(2) The table in REC 2.1.4 G indicates in which section each of those paragraphs (and the associated guidance) can be found.

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2.1.5 **[deleted]**
Section 2.2 : Method of satisfying the recognition requirements

2.2 Method of satisfying the recognition requirements

2.2.1 Recognition Requirements Regulations, Regulation 6

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

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

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

Relevant circumstances

2.2.2 The FCA will usually expect:

(1) the constitution, regulatory provisions and practices of the UK recognised body or applicant;

(2) the nature (including complexity, diversity and risk) and scale of the UK recognised body’s or applicant’s business;

(3) the size and nature of the market which is supported by the UK recognised body’s or applicant’s facilities;

(4) the nature and status of the types of investor who use the UK recognised body’s or applicant’s facilities or have an interest in the market supported by the UK recognised body’s or applicant’s facilities;

(4A) competition in the markets for services provided, or proposed to be provided, by the UK recognised body or applicant in its capacity as such; and

(5) the nature and scale of the risks to the statutory objectives associated with the matters described in (1) to (4A);
REC 2 : Recognition requirements

Section 2.2 : Method of satisfying the recognition requirements

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

Outsourcing

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

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

[Note: MiFID RTS 7 contains further requirements for a trading venue whose systems enable algorithmic trading when outsourcing all or part of its functions]

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

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

(1) has sufficient resources to be able to perform the function (after allowing for any other activities);

(2) has adequate systems and controls to manage that function and to report on its performance to the UK recognised body;

(3) is managed by persons of sufficient skill, competence and integrity;

(4) understands the nature of the function it performs on behalf of the UK recognised body and its significance for the UK recognised body’s ability to satisfy the recognition requirements and other obligations in or under the Act; and

(5) undertakes to perform that function in such a way as to enable the UK recognised body to continue to satisfy the recognition requirements and other obligations in or under the Act.

[Note: MiFID RTS 7 contains further requirements for a trading venue whose systems enable algorithmic trading when outsourcing all or part of its functions]
In determining whether a UK recognised body continues to satisfy the recognition requirements where it has made arrangements for any function to be performed on its behalf by any person, the FCA may have regard, in addition to any of the matters described in the appropriate section of this chapter, to the arrangements made to exercise control over the performance of the function, including:

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

(2) the arrangements made to monitor the performance of that function; and

(3) the arrangements made to manage conflicts of interest and protect confidential regulatory information.

[Note: MiFID RTS 7 contains further requirements for a trading venue whose systems enable algorithmic trading when outsourcing all or part of its functions]
2.3 Financial resources

2.3.1 UK

Schedule to the Recognition Requirements Regulations, Paragraph 1

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

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

2.3.2 UK

[deleted]

2.3.3 G

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

(1) the operational and other risks to which the UK recognised body is exposed;

(2) if the UK recognised body guarantees the performance of transactions in specified investments, the counterparty and market risks to which it is exposed in that capacity;

(3) the amount and composition of the UK recognised body’s capital;

(4) the amount and composition of the UK recognised body’s liquid financial assets;

(5) the amount and composition of the UK recognised body’s other financial resources (such as insurance policies and guarantees, where appropriate);

(6) the financial benefits, liabilities, risks and exposures arising from the UK recognised body’s connection with any person, including but not limited to, its connection with:

(a) any undertaking in the same group as the UK recognised body;

(b) any other person with a significant shareholding or stake in the UK recognised body;

(c) any other person with whom the UK recognised body has made a significant investment whether in the form of equity, debt, or by means of any guarantee or other form of commitment;
(d) any person with whom it has a significant contractual relationship.

(7) the nature and extent of the transactions concluded on the UK RIE.

Accounting information and standards

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

Counterparty and market risks: principles

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

(1) the amount and liquidity of its financial assets and the likely availability of liquid financial resources to the UK recognised body during periods of major market turbulence or other periods of major stress for the UK financial system; and

(2) the nature and scale of the UK recognised body’s exposures to counterparty and market risks and, where relevant, the counterparties to which it is exposed.

Operational and other risks: principles

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

(1) to enable the UK recognised body to continue carrying on properly the regulated activities that it expects to carry on; and

(2) to ensure that it would be able to complete an orderly closure or transfer of its exempt activities without being prevented from doing so by insolvency or lack of available funds.

Operational and other risks: components of calculation

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

(1) [deleted]

(2) [deleted]
Operational and other risks: UK RIEs - the standard and risk-based approach

2.3.9 G  
(1) The FCA considers that a UK RIE which at any time holds:

(a) eligible financial resources not less than the greater of:

(i) the amount calculated under the standard approach; and

(ii) the amount calculated under the risk-based approach; and

(b) net capital not less than the amount of eligible financial resources determined under (1)(a);

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

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

Operational and other risks: individual guidance

2.3.10 G  
The FCA would expect to provide a UK recognised body with individual guidance, issued with a frequency determined in accordance with the usual prudential cycle for such bodies, communicated from time to time, on the amount of eligible financial resources which it considers would be sufficient for the UK recognised body to hold in respect of operational and other risks to satisfy the recognition requirements. In formulating its individual guidance, the FCA will ordinarily apply the approach described in REC 2.3.9G for UK RIEs.

Operational and other risks: eligible financial resources

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

Operational and other risks: net capital

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

(1) should deduct holdings of its own securities, or those of any undertaking in the same group as the UK recognised body, together with any amount owed to the UK recognised body by an undertaking in its group under any loan or credit arrangement and any exposure arising under any guarantee, charge or contingent liability given in favour of such an undertaking or a creditor of such undertaking; and
Operational and other risks: eligible financial resources calculated under the standard approach

2.3.13

(1) Under the standard approach, the amount of eligible financial resources is equal to six months of operating costs.

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

(3) For the purposes of the standard approach, the FCA would normally expect the calculation of operating costs to be based on the UK recognised body's most recent audited annual accounts, with six months of operating costs being equal to one half of the sum of all operating costs reflected in the audited annual accounts of the UK recognised body in the course of performing its functions during the year to which the accounts relate. In calculating the gross annual operating costs, the FCA would consider it reasonable to exclude non-cash costs (costs that do not involve an outflow of funds).

(4) The FCA considers it to be reasonable for a UK recognised body to adjust its operating expenditure calculation if, during the period since its last audited accounts were prepared, its level of operating expenditure has changed materially as documented by the current annual budget or forecast adopted by the UK recognised body’s governing body.

(5) The FCA considers that it is reasonable for a UK recognised body to adjust its operating expenditure to take account of arrangements between two or more undertakings in the same group, which are all subject to prudential regulation in the United Kingdom under which specified costs are shared or recharged among those undertakings and those costs would otherwise be double-counted in the calculation of their financial resources requirement.

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

2.3.14

(1) The risk-based approach is intended to ensure that sufficient financial resources are maintained at all times such that a UK RIE would not be prevented from implementing an orderly wind-down as a result of the financial impacts of stress events affecting its business or the markets in which it operates.

(2) Under the risk-based approach the amount of eligible financial resources is calculated by adding together:

(a) the amount estimated by the UK RIE to absorb the potential business losses that a business of its nature, scale and complexity might incur in stressed but plausible market conditions; and

(b) the amount estimated by the UK RIE to effect an orderly closure.
In this context, a business loss arises where there is an increase in cost or reduction of revenue relative to a UK RIE's expectation of its financial performance, such that a loss needs to be charged against its capital.

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

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

2.3.16 The FCA would normally expect to use the most recent financial risk assessment prepared by the UK RIE in the course of preparing individual guidance, issued in accordance with the usual prudential cycle for such bodies, on the amount of financial resources that it considers is sufficient for a UK RIE to hold to satisfy the recognition requirements. The financial risk assessment would provide the basis for calculating the amount of eligible financial resources that should be held by the UK RIE under the risk-based approach.

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

1. **Step 1:** the UK RIE would identify, in writing, the risks to which the business of the UK RIE is exposed and which could have a material adverse effect on its financial position, in the light of the nature, scale and complexity of its operations and its business plans. For this purpose, it would be reasonable to refer to the categorisation of risk used under the system of risk management adopted by the UK RIE in order to meet its responsibilities under the recognition requirements referred to in REC 2.5. That description would identify which risks are indemnified or transferred by the UK RIE and which are retained and accepted.

2. **Step 2:** the UK RIE would conduct an assessment of the potential business losses that could arise in the event that the risks identified in accordance with step 1 were to materialise. For this purpose, it would be reasonable for a UK RIE to develop, and keep under review, a stress and scenario testing plan designed to simulate the effects of a pre-determined series of events, or sets of circumstances, that would be likely to occur following the crystallisation of one or more identified risks, taking into account the systems and controls in place to mitigate those risks. The stress and scenario testing plan would:
   
   (a) cover a forward-looking period of at least one year;
(b) consider a suitable range of adverse events and sets of circumstances, of a defined severity and duration, which could occur in stressed but plausible market conditions;

(c) consider how a particular adverse event or set of circumstances could lead to or be correlated with other events;

(d) consider the potential for a particular adverse event or set of circumstances to affect multiple business lines;

(e) take into account realistic management actions to resolve such adverse events and circumstances; and

(f) where appropriate, involve sensitivity analysis showing the effects of changes to assumptions made about the impact of particular adverse events and circumstances.

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

(3) Step 3: the UK RIE would assess the eligible financial resources that it would need to hold to cover such potential business losses. Such eligible financial resources would enable the UK RIE to absorb any financial shocks attributable to such business risks were they to arise.

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

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

(4) Step 4: the UK RIE would make an assessment of the cost of orderly closure. The FCA considers that an orderly closure should normally include an assessment of the impact of closure on the users of the markets operated by that UK RIE. For the purpose of this assessment, the FCA considers that it would be reasonable for a UK RIE to adopt the amount needed under the standard approach as its cost of orderly closure or to use its own method of calculation based on a scenario plan which comprehensively documents the costs that a UK RIE in its position might incur in order to fully implement an orderly wind-down.

(5) Step 5: the UK RIE would produce a proposal for the amount of eligible financial resources considered to be adequate to meet the risk-based approach. Such a proposal would be based on the sum of:
(a) the amount assessed to cover potential business losses in accordance with REC 2.3.17G (3); and

(b) an amount assessed to cover the cost of orderly closure in accordance with REC 2.3.17G (4).

(6) Step 6: the UK RIE would calculate the amount available as an operational risk buffer in accordance with REC 2.3.22G. To the extent the amount available is insufficient to constitute an operational risk buffer, the UK RIE would include within its proposal the amount it would propose to hold (in addition to the sum of the amounts referred to in (5)(a) and (b)) for those purposes.

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

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

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

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

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

(1) the risks related to the administration and operation of the UK RIE as a business enterprise (whether as a result of adverse reputational effects, poor execution of business strategy, ineffective response to competition, or otherwise);

(2) the risk that deficiencies in information systems or internal processes, human errors, management failures, or disruptions from external events will result in the reduction, deterioration, or breakdown of services provided by a UK RIE (whether as a result of errors or delays in processing, system outages, insufficient capacity, fraud, data loss and leakage, or otherwise);

(3) the risk that the financial position of the UK RIE may be adversely affected by its relationships (financial or non-financial) with other entities in the same group or by risks which may affect the financial position of the whole group, including reputational contagion; and

(4) any other type of risk which is relevant to that particular UK RIE.
Operational and other risks: purpose of the risk buffer

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

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

(1) [deleted]

(2) The FCA would normally expect a UK RIE to hold, in addition to the minimum amount determined under REC 2.3.9G (1)(a)(i), an operational risk buffer consistent with a risk-based approach.

(a) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G (5) (the risk-based approach) is greater than the amount of eligible financial resources calculated under REC 2.3.13 G (the standard approach), and the difference is of an amount sufficient to serve the purposes of the operational risk buffer, then the FCA considers that there would be no need for a UK RIE to hold any further amount as an operational risk buffer.

(b) Where the amount of eligible financial resources calculated by a UK RIE under REC 2.3.17G (5) (the risk-based approach) is not sufficient to provide an effective operational risk buffer over and above the amount calculated under REC 2.3.13 G (the standard approach), then the FCA would expect the UK RIE to include within its annual risk assessment a proposal to hold additional financial resources sufficient to constitute an operational risk buffer.

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

2.4.1 UK

Schedule to the Recognition Requirements Regulations, Paragraph 2

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

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

(3) The members of the management body must be of sufficiently good repute and possess sufficient knowledge, skill and experience to perform their duties.

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

2.4.2 UK

[deleted]

2.4.3 G

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

(1) the commitment shown by the UK recognised body's management body to satisfying the recognition requirements and to complying with other obligations in or under the Act;

(2) its arrangements, policies and resources for fulfilling its obligations under the Act in relation to its activities as a UK recognised body;

(3) the extent to which its constitution and organisation provide for effective governance;

[Note: MiFID RTS 7 contains further governance requirements for a trading venue whose systems enable algorithmic trading]

(4) the arrangements made to ensure that its management body has effective oversight of the UK recognised body's relevant functions;

(5) the access which its regulatory department has to the management body;

(6) [deleted]

(7) [deleted]
(8) [deleted]

(9) breaches of any relevant law, regulation or code of practice by the UK recognised body or its key individuals;

(10) its arrangements for ensuring that it employs individuals who are honest and demonstrate high standards of integrity;

(11) the effectiveness of its arrangements to control conflicts of interest (see also REC 2.5); and

(12) the independence of its regulatory department from its commercial and marketing departments.

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

(1) any undertaking in the same group;

(2) any owner or part-owner of the UK recognised body;

(3) any person who has the right to appoint or remove members of the management body;

(4) any person who is able in practice to appoint or remove members of the management body;

(5) any person in accordance with whose instructions the management body is accustomed to act; and

(6) any key individual in relation to the UK recognised body.

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

(1) the reputation and standing of that other person, including his standing with any relevant UK or overseas regulator;

(2) breaches of any law or regulation by that other person;

(3) the roles of any of the UK recognised body’s key individuals who have a position within organisations under the control or influence of that other person, including their responsibilities in that organisation and the extent and type of their access to its senior management or governing body;

(4) the extent to which the UK recognised body operates as a distinct entity notwithstanding its connection with that other person;

(5) the extent to which the UK recognised body’s management body is responsible for its day-to-day management and operations;

but nothing in this paragraph should be taken to imply any restriction on the ability of a UK recognised body to outsource any function to any person in a manner consistent with Regulation 6 of the Recognition Requirements Regulations.
In assessing whether the persons who effectively direct the business and operations of the UK RIE are of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the financial markets operated by it, the FCA may have regard to the repute and experience of the UK RIE’s key individuals.
## 2.4A Management body

### 2.4A.1 UK

Schedule to the Recognition Requirements Regulations, paragraph 2A

1. The composition of the management body of a [UK RIE] must reflect an adequately broad range of experience.

2. The management body must possess adequate collective knowledge, skills and experience in order to understand the [UK RIE’s] activities and main risks.

3. Members of the management body must -
   - (a) commit sufficient time to perform their functions on the management body;
   - (b) act with honesty, integrity and independence of mind; and
   - (c) effectively -
     - (i) assess and challenge, where necessary, the decisions of the senior management; and
     - (ii) oversee and monitor decision making.

4. The management body must -
   - (a) define and oversee the implementation of governance arrangements that ensure the effective and prudent management of the [UK RIE] in a manner which promotes the integrity of the market, which at least must include the -
     - (i) the segregation of duties in the organisation; and
     - (ii) the prevention of conflicts of interest;
   - (b) monitor and periodically assess the effectiveness of the [UK RIE’s] governance arrangements; and
   - (c) take appropriate steps to address any deficiencies found as a result of the monitoring under paragraph (b).

5. A [UK RIE] must -
   - (a) devote adequate human and financial resources to the induction and training of members of the management body;
   - (b) ensure that the management body has access to the information and documents it requires to oversee and monitor management decision-making; and
   - (c) notify the FCA of the identity of all the members of its management body.

6. A [UK RIE] and, if it has a nomination committee, its nomination committee must engage a broad set of qualities and competences when recruiting persons to the management body, and for that purpose have a policy promoting diversity on the management body.
(7) The number of directorships a member of the management body can hold at the same time must take into account individual circumstances and the nature, scale and complexity of the [UK RIE’s] activities.

2.4A.2 UK

Schedule to the Recognition Requirements Regulations, paragraph 2B

(1) If the [UK RIE] is significant the following requirements apply to the management body -

   (a) members of the management body must not at the same time hold positions exceeding more than one of the following combinations –

      (i) one executive directorship with two non-executive directorships (or where so authorised by the FCA under regulation 44(1) [of the MiFI Regulations], three non-executive directorships); or

      (ii) four non-executive directorships (or where so authorised by the FCA under regulation 44(1) [of the MiFI Regulations], five non-executive directorships); and

   (b) the management body must have a nomination committee unless it is prevented by law from selecting and appointing its own members.

(2) For the purposes of sub-paragraph (1)(a) -

   (a) any directorship in which the person represents the United Kingdom is not counted;

   (b) executive or non-executive directorships -

      (i) held within the same group, or

      (ii) held within the same undertaking where the [UK RIE] holds a qualifying holding,

      shall be counted as a single directorship; and

   (c) any directorship in an organisation which does not pursue predominantly commercial objectives is not counted.

(3) The nomination committee referred to in sub-paragraph (1)(b) must -

   (a) be composed of members of the management body who do not perform an executive function in the [UK RIE];

   (b) identify and recommend to the [UK RIE] persons to fill management body vacancies;

   (c) at least annually assess the structure, size, composition and performance of the management body and make recommendations to the management body;

   (d) at least annually assess the knowledge, skills and experience of individual members of the management body and of the management body collectively and report to the management body accordingly; and

   (e) periodically review the policy of the management body for the selection and appointment of senior management and make recommendations to the management body; and

   (f) be able to use any forms of resource it deems appropriate, including external advice.
(4) In performing its functions under sub-paragraph (3), the nomination committee must take account of the need to ensure that the management body’s decision making is not dominated by-
   (a) any one individual; or
   (b) a small group of individuals,
   in a manner that is detrimental to the interests of the [UK RIE] as a whole.

(5) In performing its function under sub-paragraph 3(b) the nomination committee must -
   (a) evaluate the balance of knowledge, skills, diversity and experience of the management body;
   (b) prepare a description of the roles, capabilities and expected time commitment for any particular appointment;
   (c) decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to meet that target;
   (d) engage a broad set of qualities and competences, and for that purpose have a policy promoting diversity on the management body.

(6) In sub-paragraph (1), "significant" in relation to a [UK RIE] means significant in terms of the size and internal organisation of the [UK RIE] and the nature, scale and complexity of the [UK RIE’s] activities.

(7) In sub-paragraph (2)(b)(ii) —
   “qualifying holding” means a direct or indirect holding in an investment firm which represents 10% or more of the capital or of the voting rights, as set out in Articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists;

2.4A.3 The FCA will assess an application under section 299AB of the Act for a person on a management body to hold an additional non-executive directorship on a case-by-case basis, having regard to the person’s ability to commit sufficient time to perform their functions on the management body and the complexity, nature and scale of operations of the UK RIE.
2.5 Systems and controls, algorithmic trading and conflicts

2.5.1 Schedule to the Recognition Requirements Regulations, paragraphs 3 – 3H

Paragraph 3 – Systems and controls

(1) The [UK RIE] must ensure that the systems and controls, including procedures and arrangements, used in the performance of its functions and the functions of the trading venues it operates are adequate, effective and appropriate for the scale and nature of its business.

(2) Sub-paragraph (1) applies in particular to systems and controls concerning -

(a) the transmission of information;
(b) the assessment, mitigation and management of risks to the performance of the [UK RIE's relevant functions];
(c) the effecting and monitoring of transactions on the [UK RIE];
(ca) the technical operation of the [UK RIE], including contingency arrangements for disruption to its facilities;
(d) the operation of the arrangements mentioned in paragraph 4(2)(d); and
(e) (where relevant) the safeguarding and administration of assets belonging to users of the [UK RIE's] facilities.
(f) the resilience of its trading systems;
[Note: MiFID RTS 7 contains requirements on the resilience of trading systems operated by trading venues that enable algorithmic trading]
(g) the ability to have sufficient capacity to deal with peak order and message volumes;
[Note: MiFID RTS 7 contains requirements on the adequacy of capacity of trading systems operated by trading venues that enable algorithmic trading]
(h) the ability to ensure orderly trading under conditions of severe market stress;
(i) the effectiveness of business continuity arrangements to ensure the continuity of the [UK RIE's] services if there is any failure of its trading systems including the testing of the [UK RIE's] systems and controls;
(j) the ability to reject orders that exceed predetermined volume or price thresholds or which are clearly erroneous;
(k) the ability to ensure algorithmic trading systems cannot create or contribute to disorderly trading conditions on trading venues operated by the [UK RIE];
(l) the ability to ensure disorderly trading conditions which arise from the use of algorithmic trading systems, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the [UK RIE’s] trading system by a member or participant are capable of being managed;

[Note: MiFID RTS 9 contains requirements on the ratio of unexecuted orders to transactions to be taken into account by a trading venue that operates electronic continuous auction order book, quote-driven or hybrid trading systems]

(m) the ability to ensure the flow of orders is able to be slowed down if there is a risk of system capacity being reached;

(n) the ability to limit and enforce the minimum tick size which may be executed on its trading venues; and

(o) the requirement for members and participants to carry out appropriate testing of algorithms.

[Note: MiFID RTS 7 contains requirements on the appropriate testing of algorithms to ensure that trading systems, when they enable algorithmic trading, cannot create or contribute to disorderly trading conditions]

(3) For the purposes of sub-paragraph 2(c), the [UK RIE] must -

(a) establish and maintain effective arrangements and procedures including the necessary resource for the regular monitoring of the compliance by members or participants with its rules; and

(b) monitor orders sent including cancellations and the transactions undertaken by its members or participants under its systems in order to identify infringements of those rules, disorderly trading conditions or conduct that may indicate behavior that is prohibited under the market abuse regulation or system disruptions in relation to a financial instrument.

(4) For the purpose of sub-paragraph (2)(o) the [UK RIE] must provide environments to facilitate such testing.

(5) The [UK RIE] must be adequately equipped to manage the risks to which it is exposed, to implement appropriate arrangements and systems to identify all significant risks to its operation, and to put in place effective measures to mitigate those risks.

Paragraph 3A – Market making arrangements

(1) The [UK RIE] must -

(a) have written agreements with all investment firms pursuing a market making strategy on trading venues operated by it (“market making agreements”);

(b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of investment firms enter into such agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis;

(c) monitor and enforce compliance with the market making agreements;

(d) inform the FCA of the content of its market making agreements; and

(e) provide the FCA with any information it requests which is necessary for the FCA to satisfy itself that the market making agreements comply with paragraphs (c) and (d) of this sub-paragraph and sub-paragraph 2.

(2) A market making agreement must specify-
(a) the obligations of the investment firm in relation to the provision of liquidity;
(b) where applicable, any obligations arising from the participation in a scheme mentioned in sub-paragraph (1)(b);
(c) any incentives in terms of rebates or otherwise offered by the [*UK RIE*] to the investment firm in order for it to provide liquidity to the market on a regular and predictable basis; and
(d) where applicable, any other rights accruing to the investment firm as a result of participation in the scheme referred to in sub-paragraph (1)(b).

(3) For the purposes of this paragraph, an investment firm pursues a market making strategy if -

(a) the firm is a member or participant of one or more trading venues;
(b) the firm’s strategy, when dealing on own account, involves posting firm, simultaneous two-way quotes of comparable size at competitive prices relating to one or more financial instruments on a single trading venue, across different trading venues; and
(c) the result is providing liquidity on a regular and frequent basis to the overall market.

**Paragraph 3B – Halting trading**

(1) The [*UK RIE*] must be able to -

(a) temporarily halt or constrain trading on any trading venue operated by it if there is a significant price movement in a financial instrument on such a trading venue or a related trading venue during a short period; and
(b) in exceptional cases be able to cancel, vary, or correct any transaction.

(2) For the purposes of sub-paragraph (1), the [*UK RIE*] must ensure that the parameters for halting trading are appropriately calibrated in a way which takes into account -

(a) the liquidity of different asset classes and subclasses;
(b) the nature of the trading venue market model; and
(c) the types of users,

to ensure the parameters are sufficient to avoid significant disruptions to the orderliness of trading.

(3) The [*UK RIE*] must report the parameters mentioned in sub-paragraph (2) and any material changes to those parameters to the FCA in a format to be specified by the FCA.

(4) If a trading venue operated by the [*UK RIE*] is material in terms of liquidity of the trading of a financial instrument and it halts trading in the United Kingdom in that instrument it must have systems and procedures in place to ensure that it notifies the FCA.

*[Note: MiFID RTS 12 contains requirements for when a regulated market is material in terms of liquidity in a financial instrument for purposes of trading halt notifications]*

**Paragraph 3C – Direct electronic access**

Where the [*UK RIE*] permits direct electronic access to a trading venue it operates, it must -

(1) (a) ensure that a member of, or participant in that trading venue is only permitted to provide direct electronic access to the venue if the member or participant -
(i) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;

(ii) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;

(iii) is a person who falls within regulation 30(1A) of the Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 and has permission under Part 4A of the Act to carry on a regulated activity which is any of the investment services or activities;

(iv) is a third country firm providing the direct electronic access in the course of exercising rights under Article 46.1 (general provisions) of the markets in financial instruments regulation;

(v) is a third country firm and the provision of the direct electronic access by that firm is subject to the exclusion in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001; or

(vi) is a third country firm which does not come within paragraph (iv) or (v) and is otherwise permitted to provide the direct electronic access under the Act;

(b) ensure that appropriate criteria are set and applied for the suitability of persons to whom direct electronic access services may be provided;

(c) ensure that a member of, or participant in, the trading venue retains responsibility for adherence to the requirements of any provisions of the law of the United Kingdom relied on by the United Kingdom before IP completion day to implement the markets in financial instruments directive in respect of orders and trades executed using the direct electronic access service, as those provisions have effect on IP completion day, in the case of rules made by the FCA under the Act, and as amended from time to time, in all other cases;

(d) set appropriate standards regarding risk controls and thresholds on trading through direct electronic access;

(e) be able to distinguish and if necessary stop orders or trading on that trading venue by a person using direct electronic access separately from -

(i) other orders; or

(ii) trading by the member or participant providing the direct electronic access; and

(f) have arrangements in place to suspend or terminate the provision to a client of direct electronic access to that trading venue by a member of, or participant in, the trading venue in the case of non-compliance with this paragraph.

[Note: MiFID RTS 7 contains requirements on direct electronic access permitted through a trading venue’s systems]

Paragraph 3D – Co-location services

(1) The [UK RIE’s] rules on colocation services must be transparent, fair and nondiscriminatory.

[Note: MiFID RTS 10 contains requirements to ensure co-location services are transparent, fair and non-discriminatory]
(1) The [UK RIE’s] fee structure, for all fees it charges including execution fees and ancillary fees and rebates it grants, must -

(a) be transparent, fair and non-discriminatory;
[Note: MiFID RTS 10 contains requirements to ensure fee structures are transparent, fair and non-discriminatory]

(b) not create incentives to place, modify or cancel orders, or execute transactions, in a way which contributes to disorderly trading conditions or market abuse; and
[Note: MiFID RTS 10 contains requirements concerning prohibited fee structures]

(c) impose market making obligations in individual shares or suitable baskets of shares for any rebates that are granted.

(2) Nothing in sub-paragraph (1) prevents the [UK RIE] from -

(a) adjusting its fees for cancelled orders according to the length of time for which the order was maintained;

(b) calibrating its fees to each financial instrument to which they apply;

(c) imposing a higher fee -

(i) for placing an order which is cancelled than an order which is executed;

(ii) on participants placing a high ratio of cancelled orders to executed orders; or

(iii) on a person operating a high-frequency algorithmic trading technique,

in order to reflect the additional burden on system capacity.

### Paragraph 3F – Algorithmic trading

(1) The [UK RIE] must require members of and participants in trading venues operated by it to flag orders generated by algorithmic trading in order for it to be able to identify the -

(a) the different algorithms used for the creation of orders; and

(b) the persons initiating those orders.

### Paragraph 3G – Tick size regimes

(1) Subject to paragraph 1A, the [UK RIE] must adopt tick size regimes in respect of trading venues operated by it in -

(a) shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on each trading venue; and

[Note: MiFID RTS 11 contains requirements on the tick size regime for shares, depositary receipts, exchange traded funds and certificates]

(b) any financial instrument for which technical standards are adopted by FCA under paragraphs 24 and 25 of Part 2 of Schedule 3 to the markets in financial instruments regulation which is traded on that trading venue.

[Note: MiFID RTS 11]

(1A) The application of tick sizes shall not prevent the [UK RIE] from matching orders that are large in scale (as determined in accordance with Article 4 of the markets in financial instruments regulation) at the mid-point within the current bid and offer prices.

[Note: MiFID RTS 11]

(2) The tick size regime must -
(a) be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread taking into account desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and

(b) adapt the tick size for each financial instrument appropriately.


[Note: MiFID RTS 11]

Paragraph 3H – Synchronisation of business clocks


[Note: MiFID RTS 25]

2.5.1A UK Schedule to the Recognition Requirements Regulations, paragraph 4(2)(ea)

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

appropriate arrangements are made to -

(i) identify conflicts between the interests of the [UK RIE], its owners and operators and the interests of the persons who make use of its facilities or the interests of the trading venues operated by it; and

(ii) manage such conflicts so as to avoid adverse consequences for the operation of the trading venues operated by the [UK RIE] and for the [persons] who make use of its facilities.

2.5.1B R In paragraph 3B(3) of the Schedule to the Recognition Requirements Regulations, under which a UK RIE must report the parameters for halting trading to the FCA, such information must be provided to the FCA in writing and delivered by any one of the methods in REC 3.2.3R.

2.5.2 UK [deleted]

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

(1) arrangements for managing, controlling and carrying out its relevant functions, including:
(a) the distribution of duties and responsibilities among the **members of the management body** and the departments of the **UK recognised body** responsible for performing its **relevant functions**;

(b) (where the staffing requirements in **MiFID RTS 7** do not apply to the **UK RIE**) the staffing and resources of the departments of the **UK recognised body** responsible for performing its **relevant functions**; and

(c) the arrangements made to enable **members of the management body** to supervise the departments or functions for which they are responsible;

(2) arrangements for the identification and management of conflicts of interest;

(3) arrangements for internal and external audit; and

(4) information technology systems.

**2.5.4**

- **REC 2.5.5G** to **REC 2.5.20G** set out other matters to which the **FCA** may have regard in assessing the **UK RIE's** systems and controls used for the transmission of information, risk management, the operation of settlement arrangements (the matters covered in paragraph 4(2)(d) of the Schedule to the **Recognition Requirements Regulations**), the safeguarding and administration of assets and certain other aspects of its operations.

**2.5.4A**

Where the **MiFID/MiFIR Systems Regulations** apply to a **UK RIE**, the **FCA** will, in assessing the **UK RIE's** systems and controls, additionally have regard to the **UK RIE's** satisfaction of any relevant requirements in those regulations. Of particular importance is **MiFID RTS 7**, which will apply where a **trading venue** allows or enables **algorithmic trading**.

**Information transmission**

- **2.5.5**

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

  (1) within the **UK recognised body** itself;

  (2) to **members**; and

  (3) (where appropriate) to other market participants or other relevant persons.

**Risk management**

- **2.5.6**

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

  (1) identify all the general, operational, legal and market risks wherever they arise in its activities;
(2) measure and control the different types of risk;

(3) allocate responsibility for risk management to persons with appropriate knowledge and expertise; and

(4) provide sufficient, reliable information to key individuals and, where relevant, the governing body of the UK recognised body.

2.5.7 [deleted]

Operation of settlement arrangements and effecting and monitoring of transactions

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

(1) (in relation to non-derivatives transactions) a UK RIE’s arrangements with another person under which any rights or liabilities arising from transactions are discharged including arrangements for transmission to a settlement system or clearing house;

(2) (in relation to non-derivatives transactions and if relevant), a UK RIE’s arrangements under which instructions relating to a transaction, to be cleared by another person by means of a clearing facilitation service are entered into its systems by the relevant other person and transmitted to the other person; and

(3) the arrangements made by the UK RIE for monitoring and reviewing the operation of these systems and controls.

[Note: In relation to derivative transactions, MiFID RTS 26 contains requirements on the systems for clearing such transactions]

2.5.8A Where the requirements of MiFID RTS 7 in respect of effecting and monitoring transactions do not apply to a UK RIE, the FCA may, in addition, assess the UK RIE’s systems and controls for the effecting and monitoring of transactions. In doing so, it will have regard to the UK RIE’s arrangements under which orders are received and matched, and its arrangements for trade and transaction reporting.

Safeguarding and administration of assets

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

(1) records the assets held and the identity of the owners of (and other persons with relevant rights over) those assets;

(2) records any instructions given in relation to those assets;

(3) records the carrying out of those instructions;
(4) records any movements in those assets (or any corporate actions or other events in relation to those assets); and

(5) reconciles its records of assets held with the records of any custodian or sub-custodian used to hold these assets, and with the records of beneficial or legal ownership of those assets.

Management of conflicts of interest

A conflict of interest arises in a situation where a person with responsibility to act in the interests of one person may be influenced in his or her action by an interest or association of his or her own, whether personal or business or employment related. Conflicts of interest can arise both for the employees of UK recognised bodies and for the members (or other persons) who may be involved in the decision-making process, for example where they belong to committees or to the management body. Conflicts of interest may also arise for the UK recognised body itself as a result of its connection with another person.

The FCA recognises that a UK RIE has legitimate interests of its own and that its general business policy may properly be influenced by other persons (such as its owners). Such a connection does not necessarily imply the existence of a conflict of interest nor is it necessary to exclude individuals closely connected with other persons (for example, those responsible for the stewardship of the owner’s interests) from all decision-making processes in a UK recognised body. However, there may be decisions, primarily regulatory decisions, from which it may be appropriate to exclude an individual in certain circumstances where an interest, position or connection of his conflicts with the interest of the recognised body.

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

(1) the size and composition of the management body and relevant committees;

(2) the roles and responsibilities of members of the management body, especially where they also have responsibilities in other organisations;

(3) the arrangements for transferring decisions or responsibilities to alternates in individual cases; and

(4) the arrangements made to ensure that individuals who may have a permanent conflict of interest in certain circumstances are excluded from the process of taking decisions (or receiving information) about matters in which that conflict of interest would be relevant.
The FCA may also have regard to the systems and controls intended to ensure that confidential information is only used for proper purposes. Where relevant, recognised bodies will have to comply with section 348 (Restrictions on disclosure of confidential information by the FCA etc.) and regulations made under section 349 (Exemptions from section 348) of the Act.

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

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

The FCA may also have regard to the arrangements made:

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

Internal and external audit

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

1. the size, composition and terms of reference of any audit committee of the UK recognised body's governing body;
2. the frequency and scope of external audit;
3. the provision and scope of internal audit;
4. the staffing and resources of the UK recognised body's internal audit department;
(5) the internal audit department's access to the UK recognised body's records and other relevant information; and

(6) the position, responsibilities and reporting lines of the internal audit department and its relationship with other departments of the UK recognised body.

Information technology systems

2.5.18 Where MiFID RTS 7 applies to the UK RIE, the FCA may, in assessing the adequacy of the UK recognised body's information technology systems, have regard to:

(1) the organisation, management and resources of the information technology department within the UK recognised body;

(2) the arrangements for documenting the design, development, implementation and use of information technology systems; and

(3) the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including the procedures for the evaluation and selection of information technology systems.

2.5.19 Where MiFID RTS 7 does not apply to a UK RIE, the FCA may in addition have regard to the performance, capacity and reliability of its systems. The FCA may also have regard to the arrangements for maintaining, recording and enforcing technical and operational standards and specifications for information technology systems, including:

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

(2) the arrangements for testing information technology systems before live operations;

(3) the procedures for problem management and system change;

(4) the arrangements to monitor and report system performance, availability and integrity;

(5) the arrangements (including spare capacity and access to back-up facilities) made to ensure information technology systems are resilient and not prone to failure;

(6) the arrangements made to ensure business continuity in the event that an information technology system does fail;

(7) the arrangements made to protect information technology systems from damage, tampering, misuse or unauthorised access; and

(8) the arrangements made to ensure the integrity of data forming part of, or being processed through, information technology systems.
2.5.20 The FCA may have regard to the arrangements made to keep clear and complete audit trails of all uses of information technology systems and to reconcile (where appropriate) the audit trails with equivalent information held by system users and other interested parties.
2.5A Guidance on Public Interest Disclosure Act: Whistleblowing

Application and Purpose: Application

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

Purpose

(1) The purposes of this section are to:

(a) provide UK recognised bodies with guidance regarding the provisions of PIDA; and

(b) Encourage UK recognised bodies to consider adopting and communicating to workers appropriate internal procedures for handling workers' concerns as part of an effective risk management system.

(2) In this section "worker" includes, but is not limited to, an individual who has entered into a contract of employment.

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

Practical Measures: Effect of PIDA

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

In accordance with section 1 of PIDA:

(1) a "protected disclosure" is a qualifying disclosure which meets the relevant requirements set out in part 4A of the Employment Rights Act 1996;

(2) a "qualifying disclosure" is a disclosure, made in the public interest, of information which, in the reasonable belief of the worker making the disclosure, tends to show that one or more of the following (a "failure") has been, is being, or is likely to be, committed:

(a) a criminal offence; or
Section 2.5A : Guidance on Public Interest Disclosure Act: Whistleblowing

2.5A.6  
(1) **UK recognised bodies** are encouraged to consider adopting appropriate internal procedures which will encourage their workers with concerns to blow the whistle internally about matters which are relevant to the functions of the **FCA**.

(2) In considering appropriate internal procedures, **UK recognised bodies** may find the **guidance provided to firms** in **SYSC 18.2.2 G (2)** and **SYSC 18.2.2 G (3)** helpful.

2.5A.7  
In determining whether a **UK recognised body** is a fit and proper **person**, the **FCA** may have regard to any relevant factor including, but not limited to, how the **UK recognised body and key individuals** have complied with any relevant law (see **REC 2.4.3 G (9)**).
2.6 General safeguards for investors, suspension and removal of financial instruments from trading and order execution on regulated markets

2.6.1 UK Schedule to the Recognition Requirements Regulations, Paragraph 4(1)

The [UK RIE] must ensure that business conducted by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

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

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

(i) it has transparent rules and procedures -

(ii) to provide for fair and orderly trading, and

(iii) to establish objective criteria for the efficient execution of orders;

2.6.2A UK Schedule to the Recognition Requirements Regulations, Paragraph 4C

(1) The [UK RIE] must make available to the public, without any charges, data relating to the quality of execution of transactions on the trading venues operated by the [UK RIE] on at least an annual basis.

(2) Reports must include details about price, costs, speed and likelihood of execution for individual financial instruments.

2.6.3 UK [deleted]

2.6.4 UK [deleted]

2.6.5 G [deleted]

2.6.6 UK (1) The rules of the [UK RIE] must provide that the [UK RIE] must not exercise its power to suspend or remove from trading on a trading venue operated by it any financial instrument which no longer complies with its rules, where such step would be likely to cause signific
ant damage to the interests of investors or the orderly functioning of the financial markets.

(2) Where the [UK RIE] suspends or removes any financial instrument from trading on a trading venue it operates it must also suspend or remove from trading on that venue any derivative that relates to or is referenced to that financial instrument where that is required to support the objectives of the suspension or removal of trading of that financial instrument.

(3) Where the [UK RIE] suspends or removes any financial instrument from trading on a trading venue it operates, including any derivative in accordance with sub-paragraph (2), it must make that decision public and notify the FCA.

(4) Where following a decision made under sub-paragraph (2) the [UK RIE] lifts a suspension or re-admits any financial instrument to trading on a trading venue it operates, including any derivative suspended or removed from trading in accordance with that sub-paragraph, it must make that decision public and notify the FCA.

[Note: MiFID RTS 18 contains requirements on the suspension and removal of financial instruments from trading]

2.6.6B UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZA

[Note: This paragraph is relevant to regulated markets only. See REC 2.16A regarding MTFs or OTFs]

(1) A [UK RIE] must have non-discretionary rules for the execution of orders on a regulated market operated by it.

(2) A [UK RIE] must not on a regulated market operated by it -
   (a) execute any client orders against its proprietary capital; or
   (b) engage in matched principal trading.

2.6.7 UK [Note: article 3 of MiFIR covers pre-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments, and article 8 of MiFIR imposes similar requirements in respect of bonds, structured finance products, emission allowances and derivatives]

2.6.8 UK [Note: MiFID RTS 1 on transparency requirements for trading venues in respect of shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments and the obligation for investment firms to execute transactions in certain shares on a trading venue or a systematic internaliser]

2.6.9 EU [deleted]

2.6.10 UK [Note: articles 4 and 5 of MiFIR, MiFID RTS 1 and MiFID RTS 3 on the double volume cap mechanism and the provision of information for the purposes of transparency and other calculations] Article 18 of the MiFID Regulation
## Waivers based on market model and type of order or transaction

1. Waivers in accordance with Article 29(2) and 44(2) of [MiFID] [(see REC 2.6.3 UK)] may be granted by the [FCA] for systems operated by an [MTF] or a [regulated market], if those systems satisfy one of the following criteria:
   
   (a) they must be based on a trading methodology by which the price is determined in accordance with a reference price generated by another system, where that reference price is widely published and is regarded generally by market participants as a reliable reference price;
   
   (b) they formalise negotiated transactions [(see REC 2.6.11 EU)], each of which meets one of the following criteria:
      
      (i) it is made at or within the current volume weighted spread reflected on the order book or the quotes of the market makers of the regulated market or MTF operating that system or, where the share is not traded continuously, within a percentage of a suitable reference price, being a percentage and a reference price set in advance by the system operator;
      
      (ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12 EU].

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

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

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

### 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;

(b) dealing with another member or participant, where both are executing orders on own account;

(c) acting for the account of both the buyer and seller;

(d) acting for the account of the buyer, where another member or participant acts for the account of the seller;

(e) trading for own account against a client order.
2.6.11A UK [Note: article 8 of MiFIR]

2.6.11B UK [Note: MiFID RTS 2 with regard to regulatory technical standards on transparency requirements for trading venues with respect to bonds, structured finance products, emission allowances and derivatives]

2.6.11C R [Note: article 9 of MiFIR]

2.6.12 EU [deleted]

2.6.13 EU [deleted]

2.6.14 EU [deleted]

2.6.15 UK [Note: article 6 of MiFIR now covers post-trade transparency requirements for trading venues in respect of shares, depositary receipts, ETFs, certificates and other similar financial instruments and article 10 of MiFIR imposes similar requirements in respect of bonds, structured finance products, emission allowances and derivatives] 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 UK [Note: MiFID RTS 1] 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 transaction was executed.

3. Trading Time The time at which the transaction was executed, reported in the local time of the competent authority to which the transaction will be reported, and the basis in which the transaction is re-
6. Instrument Identification

This shall consist in:

- 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 transaction;
- 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 transaction was executed. That identification shall consist ... [of the regulated market or MTFs] ... unique harmonised identification code; ...

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2.6.17 EU

[deleted]

2.6.18 UK [Note: article 7 of MiFIR]

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

2.6.18A UK [Note: article 10 of MiFIR]

2.6.18B UK [Note: MiFID RTS 22]

2.6.18C UK [Note: article 11 of MiFIR]
In determining whether:

1. business conducted by means of a UK RIE’s facilities is conducted so;

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

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

1. include appropriate measures to prevent the use of its facilities for abusive or improper purposes;

2. provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its facilities;

3. provide appropriate information to enable users of its facilities to monitor their use of the facilities;

4. include appropriate arrangements to enable users of its facilities to raise queries about any use of those facilities which they are reported to have made;

5. include appropriate arrangements to enable users of its facilities to comply with any relevant regulatory or legal requirements; and

6. include appropriate arrangements to reduce the risk that those facilities will be used in ways which are incompatible with relevant regulatory or legal requirements;
and in this paragraph "appropriate" should be taken to mean appropriate having regard to the nature and scale of the UK recognised body’s facilities, the types of persons who will use the facilities and the use which they will make of those facilities.

Orderly markets

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

(1) are consistent with the Market Abuse Regulation;

(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.

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

(1) enable members and clients for whom they act to obtain the best price available at the time for their size and type of trade;

(2) demonstrate that the UK RIE is able to satisfy:
   (a) either or both of the following:
      (i) (for shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments traded on its trading venues) the pre-trade transparency requirements in article 3 of MiFIR, unless waived by the FCA under article 4 of MiFIR in which case the FCA will have regard to the UK RIE’s ability to demonstrate that it is able to satisfy article 5(7) of MiFIR; or
      (ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) the pre-trade transparency requirements in article 8 of MiFIR, unless waived or temporarily suspended by the FCA under article 9 of MiFIR; and
   (b) either or both of the following:
Section 2.6: General safeguards for investors, suspension and removal of financial instruments from trading and order...

(i) (for shares, depositary receipts, exchange traded funds, certificates and other similar financial instruments traded on its trading venues) the post-trade transparency requirements set out in article 6 of MiFIR, unless the FCA has provided for deferred publication in accordance with article 7 of MiFIR; or

(ii) (for bonds, structured finance products, emission allowances and derivatives traded on its trading venues) the directly applicable post-trade transparency requirements set out in article 10 of MiFIR, unless the FCA has provided for deferred publication or temporarily suspended such post-trade transparency requirements in accordance with article 11 of MiFIR. In the event the FCA has provided for deferred publication of the post-trade transparency requirements, regard would be had to the UK RIE’s ability to demonstrate that it is able to satisfy any other requests made by the FCA pursuant to article 11(3) of MiFIR; and

(c) (for all financial instruments referred to in REC 2.6.29G(2)(a) or REC 2.6.29(2)(b) traded on its trading venue) the obligation to make pre-trade and post-trade data available separately and on a reasonable commercial basis in accordance with articles 12 and 13 of MiFIR, and MiFID RTS 14 on the specification of the offering of pre-trade data and post-trade data and the level of disaggregation.

(2A) [deleted]

(3) [deleted]

(4) [deleted]

2.6.29A G In addition to the matters set out in REC 2.6.29G, the FCA may have regard to the UK recognised body’s compliance with relevant requirements of MiFID RTS 7 on the prevention of disorderly trading conditions.

2.6.30 G [deleted]

2.6.31 G [deleted]

2.6.32 G [deleted]

2.6.33 G [deleted]

2.6.34 G [deleted]
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 its trading venues;
   (c) its professional standards for staff of any investment firm or qualifying 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 trading venue operated by the [UK RIE] by persons other than investment firms or qualifying credit institutions; and
   (e) the rules and procedures for clearing and settlement of transactions concluded on a trading venue operated by the [UK RIE].
(3) [Note: see paragraph 9ZC below, replacing paragraph 7B(3)]
(4) [deleted]
   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 trading venue operated by the [UK RIE] on the same terms as a UK firm.
(5) The [UK RIE] must make arrangements regularly to provide the [FCA] with a list of users or members of its facilities.
Section 2.7 : Access to facilities

(6) This paragraph is without prejudice to the generality of paragraph 4.

2.7.1B UK 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) [deleted]
(4) The [UK RIE] may refuse access to those facilities on legitimate commercial grounds.

2.7.1C UK Schedule to the Recognition Requirements Regulations, Paragraph 9ZC

[Note: this sub-paragraph is relevant to regulated markets only. See ■ REC 2.16A regarding MTFs or OTFs.]

(1) The rules of the [UK RIE] about access to, or membership of, a regulated market operated by it must permit the [UK RIE] to give access to or admit membership to (as the case may be) only -
   (a) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;
   (b) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;
   (c) a person who –
      (i) is of sufficient good repute;
      (ii) has a sufficient level of trading ability, competence and experience;
      (iii) where applicable has adequate organisational arrangements; and
      (iv) has sufficient resources for the role it is to perform, taking account of the [UK RIE’s] arrangements under paragraph 4(2)(d).

2.7.2 UK [deleted]

2.7.2A UK [deleted]

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

(1) the UK recognised body limits access as a member to persons:
   (a) over whom it can with reasonable certainty enforce its rules contractually;
   (b) who have sufficient technical competence to use its facilities;
(c) whom it is appropriate to admit to membership having regard to the size and sophistication of users of its facilities and the nature of the business effected by means of, or cleared through, its facilities; and

(d) (if appropriate) who have adequate financial resources in relation to their exposure to the UK recognised body or its central counterparty; and

(2) [deleted]

(3) [deleted]

(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 [G] REC 2.7.3 G does not apply to a UK RIE’s arrangements to grant access to investment firms or credit institutions.

2.7.4 [G] [deleted]
Section 2.7A: Position management and position reporting in relation to commodity derivatives

2.7A Position management and position reporting in relation to commodity derivatives

Paragraph 7BA – Position management

(1) A [UK RIE] operating a trading venue which trades commodity derivatives must apply position management controls on that venue, which must at least enable the [UK RIE] to -
   
   (a) monitor the open interest positions of persons;
   
   (b) access information, including all relevant documentation, from persons about-
       (i) the size and purpose of a position or exposure entered into;
       (ii) any beneficial or underlying owners;
       (iii) any concert arrangements; and
       (iv) any related assets or liabilities in the underlying market;
   
   (c) require a person to terminate or reduce a position on a temporary or permanent basis as the specific case may require and to unilaterally take appropriate action to ensure the termination or reduction if the person does not comply; and
   
   (d) where appropriate, require a person to provide liquidity back into the market at an agreed price and volume on a temporary basis with the express intent of mitigating the effects of a large or dominant position.

(2) The position management controls must take account of the nature and composition of market participants and of the use they make of the contracts submitted to trading and must-
   
   (a) be transparent;
   
   (b) be non-discriminatory; and
   
   (c) specify how they apply to persons.

(3) A [UK RIE] must inform the FCA of the details of the position management controls in relation to each trading venue it operates.

Paragraph 7BB – Position reporting

(1) This paragraph applies to a [UK RIE] operating a trading venue which trades commodity derivatives, emission allowances, or emission allowance derivatives.

(2) The [UK RIE] must -
(a) where it meets the minimum threshold, as specified in article 83 (position reporting) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, make public a weekly report with the aggregate positions held by the different categories of persons for the different commodity derivatives, emission allowances, or emission allowance derivatives traded on the trading venue specifying -

(i) the number of long and short positions by such categories;
(ii) changes of those positions since the previous report;
(iii) the percentage of the total open interest represented by each category; and
(iv) the number of persons holding a position in each category; and

(b) provide the FCA with a complete breakdown of the positions held by all persons, including the members and participants and their clients, on the trading venue on a daily basis, or more frequently if that is required by the FCA.

(3) For the weekly report mentioned in sub-paragraph (2)(a) the [UK RIE] must -

(a) categorise persons in accordance with the classifications required under sub-paragraph (4); and

(b) differentiate between positions identified as-

(i) positions which in an objectively measurable way reduce risks directly relating to commercial activities; or
(ii) other positions.

(4) The [UK RIE] must classify persons holding positions in commodity derivatives, emission allowances, or emission allowance derivatives according to the nature of their main business, taking account of any applicable authorisation or registration, as -

(a) an investment firm or qualifying credit institution;
(b) an investment fund, either as an undertaking for collective investment in transferrable securities within the meaning of section 236A of the Act, an AIF or an AIFM within the meaning of regulations 3 and 4 respectively of the Alternative Investment Fund Managers Regulations 2013 (SI 2013/1773);
(c) another financial institution, including an insurance undertaking within the meaning of section 417 of the Act, a reinsurance undertaking within the meaning of section 417 of the Act, and an occupational pension scheme within the meaning of section 1(1) of the Pension Schemes Act 1993;
(d) a commercial undertaking; or
(e) in the case of emission allowances, or emission allowance derivatives, an operator with compliance obligations under Directive 2003/87/EC of the European Parliament and the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community.

[Note: 1993 c.48. Section 1 was amended by section 239 of the Pension Schemes Act 2004 (c. 35) and S.I. 2007/3014.]

(5) The [UK RIE] must communicate the weekly report mentioned in sub-paragraph (2)(a) to the FCA.

2.7A The recognition requirements in respect of position management and position reporting set out in ■REC 2.7A.1UK apply to a UK RIE operating a trading venue. An investment firm operating a trading venue which trades:

(1) commodity derivatives must apply position management controls on that venue in accordance with ■MAR 10.3.

(2) commodity derivatives or emission allowances must provide position reports in accordance with ■MAR 10.4.
2.8 Settlement and clearing facilitation services

2.8.1 [UK]  Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(d)

[Note: This sub-paragraph is relevant to regulated markets only. See REC 2.16A regarding MTFs or OTFs.]

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);

[Note: article 29 of MiFIR and MiFID RTS 26 contain requirements for the clearing of derivative transactions for operators of regulated markets]

2.8.1A [UK]  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 [UK]  [deleted]

2.8.3 [G]  In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its regulated markets, the FCA may have regard to:

(1A) (in relation to transactions in derivatives) the UK recognised body’s ability to demonstrate that such transactions are cleared by a CCP in accordance with article 29(1) of MiFIR;
REC 2 : Recognition requirements

Section 2.8 : Settlement and clearing requirements

(1B) (in relation to transactions in derivatives which are to be cleared pursuant to article 29(1) of MiFIR or under article 4 of EMIR) the UK recognised body’s ability to demonstrate that its regulated markets ensure such transactions are submitted and accepted for clearing as quickly as technologically practicable using automated systems in accordance with article 29(2) of MiFIR and MiFID RTS 26; and

(1C) (in relation to other types of transactions effected on the UK recognised body’s regulated markets) the following factors:

(a) the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;

(b) arrangements for matching trades and ensuring that the parties are in agreement about trade details;

(c) where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;

(d) procedures to detect and deal with the failure of a member to settle in accordance with its rules;

(e) arrangements for taking action to settle a trade if a member does not settle in accordance with its rules;

(f) arrangements for monitoring its members’ settlement performance; and

(g) (where appropriate) default rules and default procedures.

(1) [deleted]

(2) [deleted]

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

(7) [deleted]

2.8.4 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  UK

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;

[Note: article 25 of MiFIR requires the operator of a trading venue to keep relevant data relating to all orders in financial instruments which are advertised through their systems at the disposal of the FCA]

2.9.2  UK

[deleted]

2.9.3  G

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

(1) whether the UK recognised body has arrangements for creating, maintaining and safeguarding an audit trail of transactions for at least five years; and

(2) the type of information recorded and the extent to which the record includes:

(a) for each transaction traded on or completed through its facilities which the UK recognised body is responsible for reporting in accordance with article 26 of MiFIR, the details set out in:

(i) article 26(3) of MiFIR;

(ii) MiFID RTS 22 on the reporting of transactions to competent authorities;

(iii) article 27(1) of MiFIR; and

(iv) MiFID RTS 23 on the data standards and formats for financial instrument reference data;

(b) for other transactions effected on the UK recognised body’s facilities, details of:

(i) the name of the investment (and if relevant, the underlying asset) and the price, quantity and date of the transaction;

(ii) the identities and, where appropriate, the roles of the counterparties to the transaction;
(iii) if the UK recognised body’s rules make provision for transactions or clearing facilitation services to be effected, in more than one type of facility, or under more than one part of its rules, the type of facility in which, or the part of its rules under which, the transaction or clearing facilitation service was effected; and

(iv) the date and manner of settlement of the transaction.

2.9.4 [deleted]
2.10 Financial crime and market abuse

2.10.1 UK 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 UK [deleted]

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

(1) whether the rules of the UK recognised body enable it to disclose any information to the FCA, or other appropriate bodies involved in the detection, prevention or pursuit of market abuse or financial crime in the United Kingdom or overseas; and

(2) whether the arrangements, resources, systems, and procedures of the UK recognised body enable it to:

(a) monitor the use made of its facilities so as to obtain information regarding possible patterns of normal, abnormal or improper use of those facilities;

(b) detect possible instances of market abuse and financial crime, for example, by detecting suspicious patterns in the use of its facilities;

(c) communicate information about market abuse and financial crime promptly and accurately to appropriate organisations; and

(d) cooperate with all relevant bodies in the prevention, investigation and pursuit of market abuse and financial crime.

2.10.4 G 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.
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.

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

(1) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;

(2) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(3) whether the arrangements ensure that the assets are not transferred to the UK recognised body or to any other person to settle the debts of the owner (or other person with the appropriate rights over the assets) except in accordance with valid instructions from a person entitled to give those instructions, or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(4) whether the arrangements include satisfactory procedures to ensure that any rights arising in relation to the assets held as a result of any actions by the issuers of those assets (or other relevant persons) are held, transferred or acted upon in a timely and accurate manner in accordance with the instructions of the owner of those assets or in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets;

(5) whether there are adequate arrangements to ensure the proper segregation of assets belonging to the UK recognised body (or to undertakings in the same group) from those belonging to the users of its facilities for the safeguarding and administration of assets;
(6) whether the arrangements include satisfactory procedures for the selection, oversight and review of custodians or sub-custodians used to hold the assets;

(7) whether the agreements by which the UK recognised body undertakes to safeguard and administer assets belonging to users of its facilities include appropriate information regarding the terms and conditions of that service and the obligations of the UK recognised body to the user of the service and of the user of the service to the UK recognised body;

(8) whether the records kept of those assets and the operation of the safeguarding services provide sufficient accurate and timely information:
   (a) to identify the legal and beneficial owners of the assets and of any persons who have charges over, or other interests, in the assets;
   (b) to record separately any additions, reductions and transfers in each account of assets held for safeguarding or administration; and
   (c) to identify separately the assets owned by (or, where appropriate, on behalf of) different persons, including, where appropriate, the assets owned by members of the UK recognised body and their clients;

(9) the frequency of reconciliation of the assets held by (or on behalf of) the UK recognised body with the accounts held with the UK recognised body by the users of its safeguarding and administration services and the extent of the arrangements for resolving a shortfall identified in any reconciliation; and

(10) the frequency with which statements of their holdings are provided to the users of the safeguarding and administration services, to the owners of the assets held and other appropriate persons in accordance with the terms of the agreement by which the UK recognised body undertook to safeguard and administer those assets.

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

2.12.1 UK

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 UK

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 UK

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 trading venue operated by it.

[Note: MiFID RTS 17 specifies further conditions for financial instruments to be admitted to trading on regulated markets]

(2) [Note: the MiFi Regulations amending the Recognition Requirements Regulations]

(3) [deleted]

(4) [deleted]

(5) [deleted]

(6) [deleted]

(7) [deleted]

(8) [deleted]

(9) [deleted]

... [deleted]

(11) [deleted]
Schedule to the Recognition Requirements Regulations, Paragraph 9ZB

[Note: This paragraph is relevant to regulated markets only. See REC.2.16A regarding MTFs or OTFs.]

1. The rules of the [UK RIE] must ensure that all -
   (a) [financial instruments] admitted to trading on a [regulated market] operated by it are capable of being traded in a fair, orderly and efficient manner;
   (b) [transferable securities] admitted to trading on a [regulated market] operated by it are freely negotiable; and
   (c) contracts for derivatives admitted to trading on a [regulated market] operated by it are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

[Note: MiFID RTS 17 specifies further conditions for financial instruments to be admitted to trading on regulated markets]

2. The rules of the [UK RIE] must provide that where the [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.

3. 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.

4. The [UK RIE] must maintain arrangements to assist members of or participants in a regulated market operated by it to obtain access to information made public under the disclosure obligations.

5. The [UK RIE] must maintain arrangements to regularly review regularly whether financial instruments admitted to trading on a regulated market operated by it comply with the admission requirements for those instruments.

[Note: see MiFID RTS 17]

6. In this paragraph -
   “the disclosure obligations” are the initial ongoing and ad hoc disclosure requirements contained in-
   (a) Articles 17, 18 and 19 of the market abuse regulation;
   (b) those provisions of Part 6 of the Act and Part 6 rules (within the meaning of section 73A of the Act) which were relied on by the United Kingdom before IP completion day to implement—
      (i) Articles 3, 5, 7, 8, 14 and 16 of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectuses to be published when securities are offered to the public or admitted to trading;
      (ii) Articles 4 to 6, 14 and 16 to 19 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 re...
Section 2.12: Availability of relevant information and admission of financial instruments to trading

2.12.2B UK [Note: article 1 of MiFID RTS 17]

2.12.2C EU [deleted]

2.12.2D UK [Note: article 2 of MiFID RTS 17]

2.12.2E UK [Note: article 3 of MiFID RTS 17]

2.12.2E EU

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]

2.12.11 G [deleted]

2.12.12 G [deleted]
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<th>2.12.13</th>
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<td>2.12.14</td>
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2.13 Promotion and maintenance of standards

2.13.1 **UK** Schedule to the Recognition Requirements Regulations, Paragraph 6

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

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

2.13.2 **UK** [deleted]

2.13.3 **G** In determining whether a UK recognised body is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of regulated activities, the FCA may have regard to the extent to which the UK recognised body seeks to promote and encourage, through its rules, practices and procedures, conduct in regulated activities which is consistent with the Market Abuse Regulation and with any 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 **G** In assessing the ability of a UK recognised body to cooperate with the FCA and other appropriate bodies, the FCA may have regard to the extent to which the constitution and rules of the UK recognised body and its agreements with its members enable it to obtain information from members and to disclose otherwise confidential information to the FCA and other appropriate bodies.

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

1. the extent to which the UK recognised body is willing to provide information about it and its activities to assist the FCA in the exercise of its functions;

2. the extent to which the UK recognised body is open with the FCA or other appropriate bodies in regulatory matters;
(3) how diligently the UK recognised body investigates or pursues enquiries from the FCA or other appropriate bodies; and

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

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

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

(1) the arrangements made for taking decisions about making and amending rules in the UK recognised body, including the level at which the decisions are taken and any provision for the delegation of decisions by the governing body;

(2) the arrangements made for determining whether or not it is appropriate to consult members or other users of the UK recognised body's facilities;

(3) the procedures for consulting members and other users of its facilities in appropriate cases; and

(4) the arrangements for notifying members (and other appropriate persons) of rule changes.

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

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

2.14.5 In determining whether a UK recognised body's procedures for consulting members and other users of its facilities are appropriate, the FCA may have regard to the range of persons to be consulted by the UK recognised body under those procedures.

(1) In the FCA's view, consultation with a smaller range of persons may be appropriate where limited, technical changes to a UK recognised body's rules are proposed.

(2) In the FCA's view, a UK recognised body's procedures may include provision to restrict consultation where it is essential to make a change to the rules without delay in order to ensure continued compliance with the recognition requirements or other obligations under the Act.

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

(1) informal discussions at an early stage with users of its facilities or appropriate representative bodies;

(2) publication to users of its facilities of a formal consultation paper which includes clearly expressed reasons for the proposed changes and an appropriately detailed assessment of the likely costs and benefits;

(3) adequate time for users of its facilities to respond to the consultation paper and for the UK recognised body to take their responses properly into account;

(4) adequate arrangements for making responses to consultation available for inspection by users of its facilities, unless the respondent requests otherwise;

(5) adequate arrangements for ensuring that the UK recognised body has proper regard to the representations received; and

(6) publication, no later than the publication of the amended rules, of a reasoned account of the UK recognised body's decision to amend its rules.
### 2.15 Discipline

#### 2.15.1 UK

*Schedule to the Recognition Requirements Regulations, Paragraph 8*

<table>
<thead>
<tr>
<th>(1)</th>
<th>The [UK RIE] must have -</th>
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<tbody>
<tr>
<td>(a)</td>
<td>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]);</td>
</tr>
<tr>
<td>(b)</td>
<td>effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in paragraph 4(2)(d); and</td>
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<tr>
<td>(c)</td>
<td>effective arrangements for monitoring transactions effected on the [UK RIE] in order to identify disorderly trading conditions.</td>
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<tr>
<th>(2)</th>
<th>Arrangements made pursuant to sub-paragraph (1) must include procedures for -</th>
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<tbody>
<tr>
<td>(a)</td>
<td>investigating complaints made to the [UK RIE] about the conduct of persons in the course of using the [UK RIE's] facilities; and</td>
</tr>
<tr>
<td>(b)</td>
<td>the fair, independent and impartial resolution of appeals against decisions of the [UK RIE].</td>
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<tr>
<th>(3)</th>
<th>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 -</th>
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<tbody>
<tr>
<td>(a)</td>
<td>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;</td>
</tr>
<tr>
<td>(b)</td>
<td>for the benefit of users of the [UK RIE's] facilities;</td>
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<tr>
<td>(c)</td>
<td>for charitable purposes.</td>
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#### 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.

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.
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.

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

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

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

#### 2.16.1 UK

<table>
<thead>
<tr>
<th><strong>Schedule to the Recognition Requirements Regulations, Paragraph 9</strong></th>
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<tbody>
<tr>
<td><strong>(1)</strong> 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.</td>
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<tr>
<td><strong>(2)</strong> But sub-paragraph (1) does not extend to -</td>
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<tr>
<td>(a) complaints about the content of rules made by the [UK RIE], or</td>
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<tr>
<td>(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).</td>
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<tr>
<td><strong>(3)</strong> 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.</td>
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<tr>
<td><strong>(4)</strong> The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks appropriate, that the [UK RIE] -</td>
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<tr>
<td>(a) makes a compensatory payment to the complainant,</td>
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<tr>
<td>(b) remedies the matter complained of,</td>
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<tr>
<td>or takes both of those steps.</td>
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<tr>
<td><strong>(5)</strong> 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].</td>
</tr>
</tbody>
</table>

#### 2.16.2 UK

[deleted]

#### 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 FCA may have regard to the extent to which the UK recognised body's resources and procedures enable it to:

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

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

(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 (MTF) or an organised trading facility (OTF)

Schedule to the Recognition Requirements Regulations, Paragraph 9A-9H

(1) [A UK RIE] operating a multilateral trading facility or an organised trading facility must also operate a regulated market.

(2) An exchange operating a multilateral trading facility or an organised trading facility must comply with those requirements of-

(a) any provisions of the law of the United Kingdom relied on by the United Kingdom before IP completion day to implement Chapter 1 of Title II of the markets in financial instruments directive—

(i) as they have effect on IP completion day, in the case of rules made by the FCA under the Act; and

(ii) as amended from time to time, in all other cases;

(b) any EU regulation originally made under Chapter 1 of the markets in financial instruments directive which is retained direct EU legislation, or any subordinate legislation (within the meaning of the Interpretation Act 1978) made under those provisions on or after IP completion day;

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).

(4) A [UK RIE] operating a multilateral trading facility or organised trading facility must provide the FCA with a detailed description of -

(a) the functioning of the multilateral trading facility or organised trading facility;

(b) any links to another trading venue owned by the same [UK RIE] or to a systematic internaliser owned by the same exchange; and

(c) a list of the facility’s members, participants and users.

[Note: MiFID ITS 19 prescribes the content and format of the description of the functioning of a MTF or OTF to be provided to the FCA]

(5) Any multilateral trading facility or an organised trading facility operated by the [UK RIE] must have at least three materially active members or users who each have the opportunity to interact with all the others in respect of price formation.

Paragraph 9B – Specific requirements for multilateral trading facilities: execution of orders
(1) A [UK RIE] must have non-discretionary rules for the execution of orders on a multilateral trading facility operated by it.

(2) A [UK RIE] must not on a multilateral trading facility operated by it -
   (a) execute any client orders against its proprietary capital; or
   (b) engage in matched principal trading.

Paragraph 9C – Specific requirements for multilateral trading facilities: access to a facility

The rules of the [UK RIE] about access to, or membership of, a multilateral trading facility regulated market operated by it must permit the [UK RIE] to give access to or admit to membership to (as the case may be) only -

(a) an investment firm which has permission under Part 4A of the Act to carry on a regulated activity which is an investment service or activity;

(b) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits.

(c) a person who –
   (i) is of sufficient good repute;
   (ii) has a sufficient level of trading ability, and competence and experience;
   (iii) where applicable, has adequate organisational arrangements; and
   (iv) has sufficient resources for the role it is to perform, taking account of the financial arrangements the [UK RIE] has established in order to guarantee the adequate settlement transactions.

Paragraph 9D – Specific requirements for multilateral trading facilities: disclosure

(1) The rules of the [UK RIE] must provide that where it, 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, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.

(2) The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of a multilateral trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

Paragraph 9E – SME growth markets

(1) A [UK RIE] operating an SME growth market (an “exchange-operated SME growth market”) must comply with rules made by the FCA for the purposes of this paragraph as they have effect on IP completion day.

[Note: REC 2.16A.1D]

(2) An exchange-operated SME growth market must not admit to trading a financial instrument which is already admitted to trading on another SME growth market unless the issuer of the instrument has been informed of the proposed admission to trading and has not objected.
(3) Where an exchange-operated SME growth market exchange admits a financial instrument to trading in the circumstances of paragraph (2), that exchange-operated SME growth market may not require the issuer of the financial instrument to demonstrate compliance with -

(a) any obligation relating to corporate governance, or
(b) the disclosure obligations.

(4) In this paragraph, "the disclosure obligations" has the same meaning as in paragraph 9ZB.

Paragraph 9F – Specific requirements for organised trading facilities: execution of orders

(1) A [UK RIE] operating an organised trading facility must -

(a) execute orders on that facility on a discretionary basis in accordance with sub-paragraph (4);
(b) not execute any client orders on that facility against its proprietary capital or the proprietary capital of any entity that is part of the same group or legal person as the [UK RIE] unless in accordance with sub-paragraph (2);
(c) not operate a systematic internaliser within the same legal entity;
(d) ensure that the organised trading facility does not connect with a systematic internaliser in a way which enables orders in an organised trading facility and orders or quotes in a systematic internaliser to interact; and
(e) ensure that the organised trading facility does not connect with another organised trading facility in a way which enables orders in different organised trading facilities to interact.

(2) A [UK RIE] may only engage in -

(a) matched principal trading on an organised trading facility operated by it in respect of-

(i) bonds,
(ii) structured finance products,
(iii) emission allowances,
(iv) derivatives which have not been declared subject to the clearing obligation in accordance with Article 5 of the EMIR regulation,

where the client has consented to that; or
(b) dealing on own account on an organised trading facility operated by it, otherwise than in accordance with sub-paragraph (a), in respect of sovereign debt instruments for which there is not a liquid market.

(3) If the [UK RIE] engages in matched principal trading in accordance with sub-paragraph (2)(a) it must establish arrangements to ensure compliance with the definition of matched principal trading.

(4) The discretion which the [UK RIE] must exercise in executing a client order may only be the discretion mentioned in sub-paragraph (5) or in sub-paragraph (6) or both.

(5) The first discretion is whether to place or retract an order on the organised trading facility.

(6) The second discretion is whether to match a specific client order with other orders available on the organised trading facility at a given time, provided the exercise of such discretion is in compliance
with specific instructions received from the client and in accordance with the [UK RIE’s] obligations under—

(a) section 11.2A of the Conduct of Business sourcebook;


(c) Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions; and


(7) Where the organised trading facility crosses client orders the [UK RIE] may decide if, when and how much of two or more orders it wants to match within the system.

(8) Subject to the requirements of this paragraph, with regard to a system that arranges transactions in non-equities, the [UK RIE] may facilitate negotiation between clients so as to bring together two or more comparable potentially trading interests in a transaction.

(9) The [UK RIE] must comply with rules made by the FCA as they have effect on IP completion day as to how Articles 24, 25, 27 and 28 of the markets in financial instruments directive apply to its operation of an organised trading facility.

(10) Nothing in this paragraph prevents a [UK RIE] from engaging an investment firm to carry out market making on an independent basis on an organised trading facility operated by the [UK RIE] provided the investment firm does not have close links with the [UK RIE].

(11) In this paragraph -

“close links” has the meaning given in Article 2(1)(21) of the markets in financial instruments regulation;

“investment firm” has the meaning given in Article 2(1A) of the markets in financial instruments regulation;

“non-equities” means bonds, structured finance products, emissions allowances and derivatives traded on a trading venue to which Article 8(1) of the markets in financial instrument regulation applies.

**Paragraph 9G – Specific requirements for organised trading facilities: disclosure**

(1) The rules of the [UK RIE] must provide that where it, without obtaining the consent of the issuer, admits to trading on an organised trading facility operated by it a transferable security which has been admitted to trading on a regulated market, the [UK RIE] may not require the issuer of that security to demonstrate compliance with the disclosure obligations.
(2) The [UK RIE] must maintain arrangements to provide sufficient publicly available information (or satisfy itself that sufficient information is publicly available) to enable users of the organised trading facility operated by it to form investment judgements, taking into account both the nature of the users and the types of instruments traded.

(3) In this paragraph, “the disclosure obligations” has the same meaning as in paragraph 9ZB.

Paragraph 9H – Specific requirements for organised trading facilities: FCA request for information

(1) A [UK RIE] must, when requested to do so, provide the FCA with a detailed explanation in respect of an organised trading facility operated by it, or such a facility it proposes to operate, of -

(a) why the organised trading facility does not correspond to and cannot operate as a multilateral trading facility, a regulated market or a systematic internaliser;

(b) how discretion will exercised in executing client orders, and in particular when an order to the organized trading facility may be retracted and when and how two or more client orders will be matched within the facility; and

(c) its use of matched principal trading.

(2) Any information required under sub-paragraph (1) must be provided to the FCA in the manner which it considers appropriate.

In determining whether there are satisfactory arrangements for securing the timely discharge of the rights and liabilities of the parties to transactions effected on its multilateral trading facility, the FCA may have regard to:

(1) (in relation to transactions in derivatives which are to be cleared pursuant to article 4 of EMIR or otherwise agreed by the relevant transacting parties to be cleared) the UK recognised body’s ability to demonstrate that its multilateral trading facility ensures such transactions are submitted and accepted for clearing as quickly as technologically practicable in accordance with article 29(2) of MiFIR and MiFID RTS 26; and

(2) (in relation to other types of transactions effected on the UK recognised body’s multilateral trading facility) the following factors:

the rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services, and where relevant the degree of oversight or supervision already exercised by central banks or other supervisory authorities with respect to such other provider of clearing and settlement services;

arrangements for matching trades and ensuring that the parties are in agreement about trade details;

where relevant, arrangements in making deliveries and payments, in all relevant jurisdictions;

procedures to detect and deal with the failure of a member to settle in accordance with its rules;

arrangements for taking action to settle a trade if a member does not settle in accordance with its rules;
arrangements for monitoring its members’ settlement performance; and
where relevant, default rules and default procedures.

2.16A.1B R For the purposes of compliance with paragraph 9F(9) of the Schedule to the Recognition Requirements Regulations, MAR 5A.3.9R applies to a UK RIE as though it was a firm.

2.16A.1C R In paragraphs 9H(1) and (2) of the Schedule to the Recognition Requirements Regulations where the UK RIE must provide information in respect of an organised trading facility operated by it, such information must be provided to the FCA in writing and delivered by any one of the methods set out in REC 3.2.3R.

2.16A.1D R For the purposes of complying with the requirement set out in paragraph 9E of the Schedule to the Recognition Requirements Regulations (SME Growth Markets), the rules set out by the FCA in MAR 5.10 (Operation of an SME growth market) apply to a UK RIE operating a multilateral trading facility as an SME growth market, as though it was an investment firm.

[Note: article 33 of MiFID]

2.16A.2 G In determining whether a UK RIE operating a multilateral trading facility (including an SME growth market) or organised trading facility) complies with this chapter, the FCA will have regard to the compliance of the UK RIE with equivalent recognition requirements. A UK RIE operating such facilities should also have regard to the guidance set out in MAR 5 (Multilateral trading facilities (MTFs)) and MAR 5A (Organised trading facilities (OTFs)).
2.16B Operation of a data reporting service

Schedule to the Recognition Requirements Regulations, Paragraph 91

A [UK RIE] providing data reporting services must comply with—

(a) the Data Reporting Services Regulations 2017 (SI 2017/699);
(b) the requirements of [MAR 9];

A UK RIE offering, or applying to offer, the operation of a data reporting service should have regard to the guidance relating to such service in [MAR 9] (Data reporting services).
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.

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];...
(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 officeholder 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
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 2A

Recognised Auction Platforms
2A.1 Introduction

2A.1.1 This chapter applies to a RAP or to a UK RIE applying to become a RAP. Regulation 2 of the RAP regulations provides that an entity must have UK RIE status before it can apply for RAP status.

2A.1.2 The RAP recognition requirements must be satisfied by a RAP applicant for recognition to be granted. These requirements apply both on initial recognition and throughout the period that RAP status is held. Therefore, the term RAP in the guidance should be understood to also refer to an applicant where appropriate and where not otherwise stated.

2A.1.3 The RAP regulations apply modified provisions of the Act to a RAP. For example, a RAP is an exempt person in respect of its business as an auction platform due to the application of section 285 of the Act as modified by the RAP regulations. Similarly, section 293 of the Act is applied and modified by the RAP regulations to provide for notification rules and notification requirements in relation to RAPs.
2A.2 Method of satisfying the RAP recognition requirements

2A.2.1 Recognised Auction Platforms Regulations, regulation 13

(1) In considering whether [a RAP] or applicant satisfies the [RAP recognition requirements], the [FCA] may:

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

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

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

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

2A.2.2 The FCA will request information from a RAP or RAP applicant in order to determine whether it meets the RAP recognition requirements.
In assessing compliance with the RAP recognition requirements, the FCA will have regard to relevant guidance in REC 2 on the equivalent requirements set out in the Recognition Requirement Regulations. The FCA may also take into account compliance by the RAP or RAP applicant with the recognition requirements (see REC 2A.2.1UK). The FCA will not make a separate assessment of compliance with the recognition requirements during the course of examining an application to become a RAP or as part of its ongoing supervision of a RAP, unless there is a specific reason to do so.

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

Table: Guidance on RAP recognition requirements

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<tr>
<th>Column A</th>
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<td>REC 2.2.2G to REC 2.2.7G (Relevant circumstances and Outsourcing)</td>
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<td>Reg 13</td>
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<td>REC 2.3.3G to REC 2.3.9G (Financial resources)</td>
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<td>REC 2.4.3G to REC 2.4.6G (Suitability)</td>
<td>In addition to the matters set out in REC 2.4.3G to REC 2.4.6G, the FCA will have regard to whether a key individual has been allocated responsibility for overseeing the auction platform of the UK recognised body.</td>
<td>Reg 15</td>
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<td>REC 2.5.3G to REC 2.5.20G (Systems and controls and conflicts) and REC 2.5A (Guidance on Public Interest Disclosure Act: Whistleblowing)</td>
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<td>REC 2.6.26G to REC 2.6.34G (Safeguards for investors)</td>
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<tr>
<td>Column A</td>
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<tr>
<td>REC 2.7.3G to REC 2.7.4G (Access to facilities)</td>
<td>The FCA shall have regard to whether a RAP provides access to bid at auctions only to those persons eligible to apply for admission to bid under regulation 16 of the UK auctioning regulations.</td>
<td>Reg 17(2)(a) and 20</td>
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<tr>
<td>REC 2.8.3G to REC 2.8.4G (Settlement and clearing services)</td>
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<tr>
<td>REC 2.11.3G to REC 2.11.4G (Custody)</td>
<td>REC 2.11.4G is replaced with the following for a RAP: Where a RAP 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 RAP recognition requirement in regulation 17(2)(h) of the RAP regulations (see REC 2A.2.1UK).</td>
<td>Reg 17(2)(h)</td>
</tr>
<tr>
<td>REC 2.12.1G to REC 2.12.2G (Availability of relevant information)</td>
<td>REC 2.12.1G to REC 2.12.2G are replaced with the following for a RAP: In determining whether appropriate arrangements have been made to make relevant information available to persons engaged in dealing in emissions auction products the FCA may have regard to: (1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those emissions auction products and the terms on which they will be</td>
<td>Reg 17(2)(c)</td>
</tr>
</tbody>
</table>
### Guidance on RAP recognition

<table>
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<th>Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>REC 2 guidance which applies to a RAP</td>
<td>Modification to REC 2 guidance for a RAP</td>
<td>Relevant RAP recognition requirement</td>
</tr>
<tr>
<td>auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media; (2) what restrictions, if any, there are on the dissemination of relevant information to auction bidders; and (3) whether relevant information is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage market abuse.</td>
<td>Rec 2.12.2G A RAP does not need to maintain its own arrangements for providing information on the terms of emissions auction products to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.</td>
<td>Rec 18</td>
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REC 2.13.3G to REC 2.13.6G (Promotion and maintenance of standards)  
REC 2.14.3G to REC 2.14.6G (Rules and consultation)  
REC 2.15.3G to REC 2.15.6G (Discipline)  
REC 2.16.3G to REC 2.16.4G (Complaints)  

Reg 18  
Reg 19  
Reg 22  
Reg 23
2A.4 Power and procedure for RAP penalties and censures

2A.4.1 Under regulation 5A (Power to impose civil penalties) of the RAP Regulations, where the FCA considers that a RAP has contravened any requirement in regulations 17, 18(8), 19(1) or (2), or 37 of the UK auctioning regulations, the FCA has the power to impose a civil penalty on that RAP.

2A.4.2 Where the FCA is entitled to impose a penalty on a RAP, it may instead publish a statement censuring it.

2A.4.3 The provisions of the UK auctioning regulations referred to in 2A.4.1G are applicable to a RAP and require it to, in summary:

(1) only grant admission to bid to applicants that comply with the conditions set out in regulation 17 of the UK auctioning regulations, including the prerequisite that the applicants are eligible to bid in accordance with regulation 16 of the UK auctioning regulations;

(2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the RAP;

(3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:

(a) that is not, or is no longer, eligible to bid (under regulation 16 of the UK auctioning regulations); does not meet, or no longer meets, the requirements of regulations 16, 17 and 18 of the UK auctioning regulations; or is wilfully or repeatedly in breach of the UK auctioning regulations, the terms and conditions of its admission to bid or other related instructions or agreements; or

(b) where the RAP suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the law enforcement authorities to pursue or apprehend the perpetrators of those activities; and

(4) monitor the relationship with bidders admitted to bid in its auctions.

2A.4.4 The power in regulation 5A of the RAP Regulations to impose a civil penalty or publish a statement adds to the FCA’s other supervisory powers in relation to RAPs (see 4) and its power to impose penalties on a RAP under the
Money Laundering Regulations. The FCA will use this power under the RAP Regulations where it is appropriate to do so and with regard to the relevant factors listed in DEPP 6.2.1G. In deciding between a civil penalty or a public statement, the FCA will also have regard to the relevant factors listed in DEPP 6.4.

2A.4.5 The FCA will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the RAP Regulations or the Money Laundering Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases.

2A.4.6 Where the FCA uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in DEPP 6.5 to DEPP 6.5D in determining the appropriate level of financial penalty.

2A.4.7 The FCA will also have regard to whether the person followed any of the FCA’s guidance and will not take action under regulation 5A of the RAP Regulations where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.

2A.4.8 When the FCA proposes or decides to take action against a RAP in exercise of its power in regulation 5A of the RAP Regulations, it must give the RAP a warning notice or a decision notice respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a warning notice, the RAP has a right to make representations on the FCA’s proposed decision.

2A.4.9 Where the FCA is proposing or deciding to publish a statement censuring a RAP or impose a penalty on the RAP under regulation 5A of the RAP Regulations, the FCA’s decision maker will be the RDC. This is to ensure that the FCA’s power to censure or impose a penalty on a RAP has the same layer of separation in the decision-making process, and is exercised consistently with, similar penalty and censure powers of the FCA under other legislation. The RDC will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3. A RAP that receives a decision notice under regulation 5A of the RAP Regulations may refer the matter to the Tribunal.

2A.4.10 Sections 393 and 394 of the Act apply to notices referred to in this section. See DEPP 2.4 (Third party rights and access to FCA material).

2A.4.11 As with cases under the Act, the FCA may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in DEPP 6.7 applies to penalties imposed under the RAP Regulations.

2A.4.12 The FCA will apply the approach to publicity that it has outlined in EG 6.
Chapter 3

Notification rules for UK recognised bodies
3.1 Application and purpose

Application

3.1.1 The notification rules in this chapter, which are made under section 293 of the Act (Notification requirements), apply to all UK recognised bodies.

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

3.1.3A The notification rules in this chapter which apply to a RAP are without prejudice to notification rules which apply to a UK RIE which operates the RAP. However, a UK RIE which operates a RAP may make a single notification where a notification is required both in its capacity as a UK RIE and a RAP.

Purpose

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

Form of notification

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

(1) given to, or addressed for the attention of, the recognised body's usual supervisory contact at the FCA;

(2) delivered to the FCA by one of the methods in □ REC 3.2.3 R.

3.2.3 Methods of notification

Method of delivery

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

The address for a written notification to the FCA is:

The Financial Conduct Authority
12 Endeavour Square
London, E20 1JN
Timely notification

If a notification rule requires notification within a specified period:

1. the recognised body must give the notification so as to be received by the FCA no later than the end of that period; and

2. if the end of that period falls on a day which is not a business day, the notification must be given so as to be received by the FCA no later than the first business day after the end of that period.

Service of Notice Regulations

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

**Statutory power**

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

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

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

1. compliance by the recognised body with those notification rules, or with those rules as unmodified, would be unduly burdensome or would not achieve the purpose for which those rules were made; and

2. the waiver would not result in undue risk to persons whose interests those rules are designed to protect.

**Applications**

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

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

1. full particulars of the waiver which is requested;

2. the reason why the recognised body believes that the criteria set out in section 294(4) (and described in REC 3.3.3 G) would be met, if this waiver were granted; and

3. where the recognised body believes that these criteria would be met if the FCA gave a waiver under section 294 subject to any condition, particulars of the kind of condition contemplated.
The FCA may request further information from the applicant, before deciding whether to give a waiver under section 294 of the Act.

**Waivers**

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

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

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

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

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

Purpose

3.4.1 The purpose of REC 3.4 is to enable the FCA to monitor the changes a UK recognised body makes in the arrangements for carrying out its relevant functions.

3.4.2 [deleted]

3.4.2A Where, in relation to a UK RIE a proposal has been made to appoint or elect a person as a member of the management body, 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 3.4A R to the FCA.

[Note: article 45(8) of MiFID]

3.4.2B Where, in relation to a UK RIE a person has resigned as, or has ceased to be, a member of the management body, that UK RIE must immediately give notice of that event, and give the information specified for the purposes of this rule in REC 3.4AR to the FCA.

[Note: article 45(8) of MiFID]

3.4.3 (1) Members of the management body 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 member of the management body.

(2) A member of the management body 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 member of the management body, depending on the role he or she plays in that body.

(3) A department of a UK recognised body should be regarded as responsible for carrying out a relevant function if it is responsible for any activity or activities which form a significant part of a relevant


function or which make a significant contribution to the performance of a relevant function.

(4) The FCA does not need to be notified where minor changes are made to the responsibilities of a member of the management body, but where a major change in responsibilities is made which amounts to a new appointment, the FCA should be notified under ■REC 3.4.2A R.

3.4.4 [deleted]

3.4.4A R

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

(1) that person’s name;

(2) their date of birth;

(3) where applicable, a description of the responsibilities which they will have in the post to which they are to be appointed or elected, including for a UK RIE which operates a RAP where the person has responsibilities both in the UK RIE and RAP, a description of the responsibilities he or she has they have in respect of each body;

(4) where applicable, a description of the responsibilities in the post from which they resigned or otherwise ceased to act, including for a UK RIE which operates a RAP where the person had responsibilities both in the UK RIE and the RAP, a description of the responsibilities they had in respect of each body; and

(5) the information necessary for the FCA to assess whether the UK RIE complies with ■REC 2.4.1UK, ■REC 2.4A.1UK and ■REC 2.4A.2UK in relation to the member of the management body’s appointment, election, resignation or otherwise ceasing to act.

[Note: article 45(8) 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 FCA of that event and give the FCA the following information:

(1) the names of the members of that standing committee; and

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

3.4.6 R

Where:

(1) there is any change in the composition or the terms of reference of any standing committee referred to in ■REC 3.4.5 R; or
(2) any such committee is dissolved;
the UK recognised body must immediately notify the FCA of that event and give particulars of any change referred to in (1) to the FCA.

(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.
Disciplinary action and events relating to members of the management body

3.5 Disciplinary action and events relating to members of the management body

3.5.1 Where any member of the management body of a UK recognised body:

(1) is the subject of any disciplinary action because of concerns about his or her alleged misconduct; or

(2) resigns as a result of an investigation into his or her alleged misconduct; or

(3) is dismissed for misconduct;

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

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

(1) the name of the member of the management body and his or her responsibilities within the UK recognised body;

(2) details of the acts or alleged acts of misconduct by that member of the management body; and

(3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that member of the management body.

Other events

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

(1) a petition for bankruptcy is presented (or similar or analogous proceedings under the law of a jurisdiction outside the United Kingdom are commenced) against that member of the management body; 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 her; or
(3) he or she enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the United Kingdom) with his or her creditors.
3.6 Constitution and governance

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

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

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

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

3.6.5 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.
Where any change is made to an agreement which relates to the constitution or governance of a UK recognised body:

1. between that UK recognised body and another person; or
2. between the owners of that UK recognised body; or
3. between the owners of that UK recognised body and another person; or
4. between other persons;

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

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

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

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

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

(1) the name and business address of those new auditors; and
(2) the date of their appointment as auditors.
3.8 Financial and other information

3.8.1 A UK recognised body must give the FCA:

(1) a copy of its annual report and accounts; and

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

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

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

(1) four months after the end of the financial year to which the document which is to be given to the FCA relates; or

(2) the time when the documents described in ▬REC 3.8.1 R (1) or ▬REC 3.8.1 R (2)(b) are sent to the members or shareholders of the UK recognised body; or

(3) the time when the document described in ▬REC 3.8.1 R (2)(a) are sent to the shareholders in a parent undertaking of the group to which that document relates.

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

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

(1) its quarterly management accounts; or

(2) its monthly management accounts;

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

3.8.6 A UK recognised body must give the FCA:

(1) a statement of its anticipated income, expenditure and cashflow for each financial year; and

(2) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

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

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

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

(1) any proposal to change the fees or charges levied on its members (or any group or class of them), at the same time as the proposal is communicated to those members; and

(2) any such change, no later than the date when it is published or notified to those members.

3.9.3 If the proposed change is to introduce, amend or renew a scheme for rebating or waiving fees or charges, the summary referred to in REC 3.9.2R(1) must be given in the form specified in REC 3 Annex 1R.
3.10 Complaints

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

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

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

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

3.11.1 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**);

doing so, that body must immediately give the **FCA** notice of that event.
3.12 Legal proceedings

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

(1) in the case of civil proceedings, the name of the claimant, particulars of the claim, the amount of damages and any other remedy sought by the claimant, and particulars of any allegation that any act or omission of that body was in bad faith; and

(2) in the case of criminal proceedings, particulars of the offence with which that body is charged.

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

(1) the amount of damages claimed would not significantly affect that UK recognised body’s financial resources, if the claim were successful;

(2) the claim would not have a significant adverse effect on the reputation and standing of that body, if that claim were successful; and

(3) the claim does not relate to that body’s regulatory functions.
3.13 Delegation of relevant functions

Application

3.13.1-2 R This section applies to a UK RIE where it is outsourcing its operational functions other than in relation to systems allowing or enabling algorithmic trading.

3.13.1-1 G The notification requirements in MiFID RTS 7, specifying organisational requirements of regulated markets allowing algorithmic trading through their systems, apply to a UK RIE where those operational functions are to be outsourced.

3.13.1 G (1) The purpose of REC 3.13 is to enable the FCA to monitor any significant instances where UK recognised bodies outsource their functions to other persons (as permitted under Regulation 6 of the Recognition Requirements Regulations or, in relation to a RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

(2) The FCA does not need to be notified of every instance of outsourcing by a UK recognised body, but only where an activity or activities which form a significant part of a relevant function or which make a significant contribution to the performance of a relevant function are outsourced.

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

(1) inform the FCA of the reasons for that delegation or proposed delegation;

(2) inform the FCA of the reasons why it is satisfied that it will continue to meet the recognition requirements or (for a RAP) RAP recognition requirements following that delegation;

(3) where it makes such an offer by issuing a written invitation to tender to another body or person, give the FCA a copy of that invitation to tender; and

(4) where it makes such an agreement, give the FCA a copy of that agreement.
A UK recognised body must immediately give the FCA notice, where it makes an offer or agrees to undertake any relevant function of another UK recognised body.
3.14 Products, services and normal hours of operation

Purpose

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

Products and services

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

(1) a specified investment (other than a security or an option in relation to a security); or

(2) a type of security or a type of option in relation to a security;

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

3.14.2A When a UK RIE removes a financial instrument from trading on a trading venue, it must immediately give the FCA notice of that event and relevant information including particulars of that financial instrument, any derivative that is also removed from trading that relates or is referenced to that financial instrument, and the reasons for the action taken.

[Note: articles 32(2) and 52(2), paragraph 1 of MiFID. REC 2.6.6UK(4) requires that the FCA be notified when a trading suspension for a financial instrument is lifted or a financial instrument is re-admitted to trading. MiFID ITS 2 specifies a format for communication by the operator to the FCA.]

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

(1) a specified investment (other than a security or an option in relation to a security); or

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

3.14.4 R [deleted]

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 RIE proposes to amend the standard terms relating to any derivative in respect of which it provides clearing facilitation services;

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

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

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

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 R3.14.8 R will be made (or cease to be made).

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

Hours of operation

3.14.11 Where a UK recognised body proposes to change its normal hours of operation or (for RAPs) the timing, frequency or duration of its bidding windows, it must give the FCA notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its members or shareholders, or any group or class of them.
3.14A Operation of a trading venue

Purpose

3.14A.1 The purpose of REC 3.14A is to ensure that the FCA is informed of planned changes to a UK RIE’s markets and their regulatory status as either a regulated market, MTF or OTF.

Operation of a regulated market

3.14A.2 Where a UK RIE proposes to operate a new regulated market or close an existing regulated market it must give the FCA notice of that event and the information specified for the purposes of this rule in REC 3.14A.3 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.3 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 description of the regulated market; and
   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 or OTF

3.14A.4 Where a UK RIE proposes to operate a new MTF or OTF or close an existing MTF or OTF it must give the FCA notice of that event and the information specified for the purposes of this rule in REC 3.14A.5 R, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).
The following information is specified for the purposes of [REC 3.14A.4 R:]

(1) [Note: [REC 2.16A.1(2) requires the FCA to be provided with a detailed description of the operation of an MTF or OTF. The description must be provided in the form set out in MiFID ITS 19.]]

(2) Where the UK RIE proposes to close a MTF or OTF, the name of that MTF or OTF.

### Operation of a recognised auction platform

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

In accordance with regulation 23(3) of the UK auctioning regulations, a RAP must submit a detailed exit strategy to the FCA within three months from the date of its appointment.

For the form and method of notifications [REC 3.2.2R applies.

### Pre- and post-trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

A UK RIE operating a trading venue that proposes to take advantage of a waiver in accordance with articles 4 or 9 of MiFIR (in relation to pre-trade transparency for equity or non-equity instruments) must make an application for it to the FCA using the form in [MAR 5 Annex 1D].

[Note: articles 4 and 9 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

A UK RIE operating a trading venue that proposes to take advantage of a deferral in accordance with articles 7 or 11 of MiFIR in relation to post-trade transparency for equity or non-equity instruments must apply for it in writing to the FCA.

[Note: articles 7 and 11 of MiFIR, and MiFID RTS 1 and MiFID RTS 2]

A UK RIE should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the FCA by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to its usual supervisory contact at the FCA. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.
3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1 The purpose of REC 3.15.2 to REC 3.15.5 G is to enable the FCA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular investments or (for a RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FCA under REC 3.14.

3.15.2 Where, for any reason, an RIE halts trading in a financial instrument on a trading venue which is material in terms of liquidity in that financial instrument, it must immediately give the FCA notice of that event, particulars of that financial instrument, and the reasons for the action taken.

3.15.2A When a UK RIE suspends trading on a trading venue in any financial instrument, it must immediately give the FCA notice of that event and relevant information including particulars of that financial instrument and the reasons for the action taken.

3.15.3 Where a UK recognised body suspends providing clearing facilitation 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 FCA notice of that event, particulars of that derivative, type of security or type of option in relation to a security, as the case may be, and the reasons for the action taken.
Where a **UK recognised body** suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to any other **person** (other than an **undertaking** in the same **group**), that **UK recognised body** must immediately give the **FCA** notice of that event, particulars of that type of asset and the reasons for the action taken.

**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

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

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

### Extension of hours of operation

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

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

### Recognised auction platforms - cancellation of auctions

Where a **RAP** has to cancel an auction in the circumstances set out in regulation 11 of the **UK auctioning regulations**, it must immediately give the **FCA** notice of that cancellation.

[deleted]
3.16 Information technology systems

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

[Note: MiFID RTS 7 requires that the operator of a trading venue assess whether the capacity of its trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, the operator of the trading venue must inform its competent authority about any measures planned to expand capacity or add new capabilities, and the timeframe for such measures. MiFID RTS 7 also requires the operator to report to its competent authority any severe trading interruption not due to market volatility and any other material connectivity disruptions.]

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

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

(1) what action that UK recognised body is taking to restore the operation of the reserve information technology system; and

(2) when it is expected that the operation of that system will be restored.
Where, because of the occurrence of any event or circumstances, a UK recognised body is unable to discharge any regulatory function, it must immediately give the FCA notice of its inability to discharge that function, and inform the FCA:

(1) what event or circumstance has caused it to become unable to do so;

(2) which of its regulatory functions it is unable to discharge; and

(3) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that regulatory function.
3.18 Membership

3.18.1 (1) The purpose of ■ REC 3.18 is to enable the FCA to monitor changes in the types of member admitted by UK recognised bodies and to ensure that the FCA has notice of foreign jurisdictions in which the members of UK recognised bodies are based. UK recognised bodies may admit persons who are not authorised persons or persons who are not located in the United Kingdom, provided that the recognition requirements or (for RAPs) RAP recognition requirements continue to be met.

(2) ■ REC 3.18.2 R focuses on the admission of persons who are not authorised persons (whether or not they are located in the United Kingdom) and on whether the specific recognition requirement or (for a RAP) RAP recognition requirement relating to access to facilities can still be met. ■ REC 3.18.3 R focuses on the admission of members from outside the UK and whether all relevant recognition requirements or (for a RAP) RAP recognition requirements can be met. In the case of investment firms and credit institutions, only UK entities will be eligible to bid on a RAP.

(3) The information required under ■ REC 3.18 is relevant to the FCA’s supervision of the UK recognised body’s obligations in relation to the enforceability of compliance with the UK recognised body’s rules. It is also relevant to the FCA’s broader responsibilities concerning integrity of the UK financial system and, in particular, its functions in relation to market abuse and financial crime. It may also be necessary in the case of members based outside the United Kingdom to examine the implications for the enforceability of default rules or collateral and the settlement of transactions, and thus the ability of the UK RIE to continue to meet the recognition requirements. It follows that the admission of a member from outside the United Kingdom who is not an authorised person could require notification under both ■ REC 3.18.2 R and ■ REC 3.18.3 R, although a single report from the UK recognised body covering both notifications would be acceptable to the FCA.

[Note: Paragraph 3A of the Schedule to the Recognition Requirements Regulations (■ REC 2.5.1UK) requires a UK RIE to inform the FCA about the content of a written agreement entered into with a member investment firm pursuing a market making strategy on a trading venue operated by the UK RIE]

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

(1) a description of the type of person whom it is admitting to membership; and

(2) (in relation to a UK RIE) particulars of its reasons for considering that, in admitting that type of person to membership, it is able to continue to satisfy the recognition requirement in paragraph 4(2)(a) of the Schedule to the Recognition Requirements Regulations which applies to it.

(3) (in relation to a RAP) particulars of its reasons for considering that, in admitting that type of person to membership, it is able to continue to satisfy the RAP recognition requirement in regulation 20 of the RAP regulations (Access to auctions) which applies to it.

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

(1) the name of that jurisdiction;

(2) the name of any regulatory authority in that jurisdiction which regulates that member in respect of activities relating to specified investments or (for a RAP) relating to emissions auction products; and

(3) particulars of its reasons for considering that, in admitting a member from that jurisdiction to membership, it is able to continue to satisfy the recognition requirements or (for a RAP) the RAP recognition requirements which apply to it.

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

(1) any business transacted by means of its facilities or

(2) any aspect of the clearing facilitation services which it provides;

it must immediately give the FCA notice of that event.

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

(1) routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of 'theme visits'; or

(2) routine requests for information; or

(3) investigations into the conduct of members of the UK recognised body or of other users of its facilities where the use of its facilities is a small or incidental part of the subject matter of the investigation.
3.20 Disciplinary action relating to members

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

(1) the name of the person concerned;

(2) details of the disciplinary action taken by the UK recognised body; and

(3) the UK recognised body’s reasons for taking that disciplinary action.

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

(1) the name of the appellant and the grounds on which the appeal is based, immediately; and

(2) the outcome of the appeal, when known.
3.21 Criminal offences and civil prohibitions

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

(1) been carrying on any regulated activity in the United Kingdom in contravention of the general prohibition; or

(2) been engaged in market abuse; or

(3) committed a criminal offence under the Act or subordinate legislation made under the Act; or

(4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (insider dealing); or

(5) committed a criminal offence under the Money Laundering Regulations;

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

[Note: article 31(2), first sentence (part) and article 54(2), first sentence (part) of MiFID. The rest of article 31(2), first sentence (in so far as it relates to market operators operating an MTF or OTF) and article 54(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 Where a UK RIE decides to:

(1) restrict the open position on any of the contracts of a member; or

(2) issue instructions to a member to close out its positions on any contracts;

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

3.22.2 Where a RAP proposes to impose a maximum bid size or take other remedial measures to mitigate risks of market abuse, financial crime or anti-competitive behaviour, the RAP must give the FCA notice of that event and details of the remedial measures proposed, in accordance with regulation 40 of the UK auctioning regulations.
Where a UK RIE decides to put a member into default, it must immediately give notice of that event, and give the following information to the FCA, at the same time as that decision is communicated to that member or to any other member (or group or class of them) of that body:

(1) the name of the member and (where relevant) the class of membership;

(2) the reasons for that decision; and

(3) the names of any other exchange, clearing house or auction platform on which, to the best of that UK RIE's knowledge, that member clears business or transacts for, or in respect of, its clients.
3.24 Transfers of ownership

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

(1) give the name of the person(s) concerned; and

(2) give details of the transfer.

[Note: article 46(2)(b) of MiFID]

3.24.2 The FCA may regard a person who falls within any of the cases in section 301(8)[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 A UK RIE and a RAP must immediately notify the FCA of:

(1) significant breaches of its rules; or

(2) disorderly trading conditions on any of its markets or auctions; or

(2) conduct that may indicate behaviour prohibited under the Market Abuse Regulation; or

(4) system disruptions in relation to a financial instrument.

[Note: article 31(2), first sentence (part) and article 54(2), first sentence (part) of MiFID. The rest of article 31(2), first sentence (in so far as it relates to market operators operating an MTF or OTF) and article 54(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 Under section 300B(1) of the Act (Duty to notify proposal to make regulatory provision), a UK RIE that proposes to make any regulatory provision must give written notice of the proposal to the FCA without delay.

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

(1) specify descriptions of regulatory provision in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or

(2) provide that the duty applies only to specified descriptions of regulatory provision or in specified circumstances.

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

(1) make provision as to the form and contents of the notice required, and

(2) require the UK recognised body to provide such information relating to the proposal as may be specified in the rules or as the FCA may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision

3.26.4 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 any enactment or rule of law in the United Kingdom; or

(2) (a) the specification of the standard terms of any derivative which a UK RIE proposes to admission to trading, or the amendment of the standard terms of any derivative already admitted to trading; or

(b) the specification or any amendment of standard terms relating to the provision of clearing facilitation services for any derivative; or
(c) the specification or any amendment of operating procedures which are reasonably consequential on any regulatory provision falling within (a) or (b); or

(3) any regulatory provision which is expressed to have effect for no longer than three months which is made by a UK recognised body in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or

(4) any regulatory provision which does not impose a requirement (including any obligation or burden) on persons affected (directly or indirectly) by it; or

(5) any other regulatory provision which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other regulatory provision not otherwise the subject of a notice under section 300B(1) of the Act):

(a) materially increases disclosure, reporting or corporate governance requirements imposed on any person (whether directly or indirectly); or

(b) imposes a material limitation affecting any person (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of financial instruments which may be listed or the subject of admission to trading on the facilities operated by the UK RIE proposing to make the regulatory provision; or

(c) materially limits access to, or use by, any person (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the facilities operated by the UK recognised body proposing to make the regulatory provision; or

(d) materially limits or restricts the ability of any person to supply services (including, without limitation, trading, clearing, settlement or information services) to persons who are users of the facilities operated by the UK RIE proposing to make the regulatory provision (whether directly or indirectly, including by the imposition of an obligation or burden on the supplier or on a user of the UK RIE); or

(e) materially adds to the circumstances in which any person (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

**Notice to the FCA**

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

(1) contain full particulars of the proposal to make a regulatory provision which is the subject of that notice; and

(2) either be accompanied by sufficient supporting information to enable the FCA to assess the purpose and effect of the proposed regulatory provision or refer to such information in circumstances where such information has already been provided to the FCA.
In determining whether a UK RIE has provided sufficient supporting information, the FCA may have regard to the extent to which the information includes:

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

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

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

The FCA expects that an advanced draft of any consultation document a UK RIE intends to publish in connection with a proposed regulatory provision could provide some or all of the information described in REC 3.26.5 R.
3.27 RAP auction clearing price and adjustment of the auction calendar

(1) In accordance with regulation 7(1)(a) of the UK auctioning regulations, the auction clearing price is the price of the bid at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned.

(2) A RAP must decide on the methodology to determine the auction clearing price and the secondary market price in circumstances where the auction clearing price (determined in accordance with (1)) would be significantly below the price on the secondary market prevailing during and immediately before the bidding window, taking into account the short-term volatility of the price of allowances over a defined period preceding the auction. In determining that methodology, the RAP must treat the price of the bid which matches or exceeds the secondary market price as the auction clearing price (regulations 7(1)(b), 7(2) and 7(4) of the UK auctioning regulations).

(3) In accordance with regulation 7(4) of the UK auctioning regulations, a RAP is required to notify the FCA the methodology in (2) before an auction is started.

(4) In accordance with regulation 7(6) of the UK auctioning regulations, a RAP is required to notify the FCA without delay if, in between two bidding windows, it modifies the methodology in (2).

(5) The notifications referred to in REC 3.27.1G(3) and (4) should be undertaken in accordance with REC 3.2.2R.
Form for notifying incentive scheme proposals (REC 3.9.3R(1))

Annex 1 – Incentive Schemes (REC 3.9.3R)

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Chapter 4

Supervision
4.1 Application and purpose

Application

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

1. the arrangements for investigating complaints about recognised bodies made under section 299 of the Act (Complaints about recognised bodies) (REC 4.4);

2. the FCA's approach to the exercise of its powers under:
   a. (for RIEs) section 296 of the Act (Appropriate regulator's power to give directions) or (for RAPs) regulation 3 of the RAP regulations to give directions to recognised bodies (REC 4.6);
   b. (for RIEs) section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations to revoke recognition orders (REC 4.7);

   and the procedure to be followed in those cases and where the FCA decides to refuse an application for recognition as a recognised body (REC 4.8); and

3. the FCA's approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the Companies Act 1989 to give directions to UK RIEs in relation to action under their default rules (REC 4.5).

Purpose

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

1. the FCA has sufficient assurance that recognised bodies continue at all times to satisfy the recognised body requirements; and

2. the FCA's supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the regulatory objectives.
4.1.4 In applying these principles of risk based supervision to the supervision of recognised bodies, the FCA has had particular regard to the special position of recognised bodies under the Act as well as to its general duties set out in section 2 of the Act (The FCA's general duties).

4.1.5 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.
The FCA expects to have an open, cooperative and constructive relationship with UK recognised bodies to enable it to have a broad picture of the UK recognised body's activities and its ability to meet the recognised body requirements. This broad picture is intended to complement the information which the FCA will obtain under section 293 of the Act (Notification requirements) or under notification rules made under that section (see Section 3). The FCA will usually arrange meetings between the Infrastructure and Trading Firms Department and members of the management body 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.

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

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

However, the FCA also expects that UK recognised bodies will keep it informed of all significant developments and of progress with their plans and operational initiatives, and will provide it with appropriate assurance that the recognised body requirements will continue to be satisfied.
Section 4.2A : Publication of information by UK RIEs and RAPs

4.2A Publication of information by UK RIEs and RAPs

4.2A.1 Under subsections 292A(1) and (2) of the Act, a UK RIE must as soon as practicable after a recognition order is made in respect of it publish such particulars of the ownership of the UK RIE, including the identity and scale of interests of the persons who are in a position to exercise significant influence over the management of the UK RIE or (where the UK RIE is also a RAP) the RAP, whether directly or indirectly, as the FCA may reasonably require.

4.2A.2 Under subsections 292A(3) and (4) of the Act, a UK RIE must as soon as practicable after becoming aware of a transfer of ownership of the UK RIE which gives rise to a change of persons who are in a position to exercise significant influence over the management of the UK RIE or (where the UK RIE is also a RAP) the RAP, whether directly or indirectly, publish such particulars of any such transfer as the FCA may reasonably require.

4.2A.3 Under subsection 292A(5) of the Act, a UK RIE must publish such particulars of any decision it makes to suspend or remove a financial instrument from trading on a regulated market operated by it, or lift a suspension or readmit the instrument, as the FCA may reasonably require.
4.2C Control over a UK RIE

4.2C.1 G Section 301A(1) of chapter 1A of Part XVIII of the Act places an obligation on a person who decides to acquire or increase control (see sections 301D and 301E of the Act) over a UK RIE to notify the FCA, before making the acquisition. Furthermore, those persons are required to obtain the FCA’s approval before acquiring control or increasing the level of control held.

4.2C.2 G The FCA will approve an acquisition or an increase in control if it is satisfied that the acquisition by the person seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the UK RIE (see section 301F(4) of the Act). The reference to any financial market is to be read as including a reference to any auction platform as a result of the RAP regulations.

4.2C.3 G If a proposed acquirer has complied with the obligation to notify, the procedure the FCA will follow if it approves or does not approve of that person acquiring or increasing control is set out in sections 301F and 301G of the Act.

4.2C.4 G [deleted]

4.2C.5 G [deleted]

4.2C.6 G The FCA’s internal arrangements provide for any decisions to refuse to approve an acquisition or object to an existing control to be taken at an appropriately senior level.

4.2C.7 G If the FCA refuses to approve an acquisition or objects to an existing control, the person concerned may refer the matter to the Tribunal (see EG 2.39).

4.2C.8 G The powers the FCA can exercise in the event that a person acquires or continues to exercise control notwithstanding the FCA’s refusal to approve the acquisition of control or the FCA’s objection to the exercise of control are set out in sections 301J and 301K of the Act.

4.2C.9 G The offences for which a person who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the Act is liable are set out in section 301L of the Act.
4.2D Suspension and removal of financial instruments from trading by the FCA

4.2D.1 Under section 313A of the Act, the FCA may for the purpose of protecting:
   (a) the interests of investors; or
   (b) the orderly functioning of the financial markets;
   require a UK RIE to suspend or remove a financial instrument from trading.

4.2D.2 The procedure the FCA will follow if it exercises its power to require a UK RIE to suspend or remove a financial instrument from trading is set out in sections 313B to 313BE of the Act. The FCA’s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the FCA exercises this power, the UK RIE concerned and the issuer (if any) of the relevant financial instrument may refer the matter to the Tribunal (see §EG 2.39).

4.2D.3 [deleted]

4.2D.4 [deleted]

4.2D.5 [deleted]

4.2D.6 [deleted]

4.2D.7 Under sections 313CA(2) and (3) of the Act, if the FCA imposes a requirement to suspend or remove a financial instrument from trading, the FCA must require any trading venue or systematic internaliser, falling under its jurisdiction as defined in section 313D of the Act, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of inside information about the issuer or the instrument, unless such a step would cause significant damage to the interests of investors or
the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the financial instrument.

4.2D.8 [G] Under sections 313CB (2) and (3) of the Act, if the FCA receives notice that a person operating a trading venue has suspended or removed a financial instrument from trading on the trading venue because the instrument no longer complies with the venue’s rules, the FCA must require any other trading venue or systematic internaliser, falling under its jurisdiction as defined in section 313D of the Act, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of inside information about the issuer or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the financial instrument.

4.2D.9 [G] The FCA receives notice for the purposes of ■REC 4.2D.8G when it is informed of the suspension or removal decision by the RIE, investment firm with a Part 4A permission enabling it to carry on MiFID business, or CRD credit institution that operates the trading venue.

4.2D.10 [deleted]

4.2D.11 [deleted]
4.2E Information: compliance of UK recognised bodies with specified requirements

4.2E.1 Under section 293A of the Act, the FCA may require a UK recognised body to give such information as it reasonably requires in order to satisfy itself that the UK recognised body is complying with any qualifying provision that is specified, or of a description specified, for the purposes of section 293A of the Act by the Treasury.
4.2F Information gathering power on FCA’s own initiative

4.2F.1 (1) While the FCA will seek to obtain information from an RIE in the context of an open, cooperative and constructive relationship with the RIE, where it appears to the FCA that obtaining information in that context will not achieve the necessary results, the FCA or (as the case may be) its officers may, under section 165(7) of the Act, by notice in writing, require any of the following persons to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require:
   (a) the RIE; or
   (b) a person who is connected with the RIE.

(2) Under section 165(11) of the Act, a person is connected with a recognised body if he is or has at any relevant time been:
   (a) a member of the RIE’s group; or
   (b) a controller of the RIE; or
   (c) any other member of a partnership of which the RIE is a member; or
   (d) a person mentioned in Part I of Schedule 15 of the Act (reading references in that Part to the ‘authorised person’ as references to the RIE).
(1) Where the FCA exercises its power conferred by section 166(1) of the Act (Reports by skilled persons), SUP 5.5.1 R, SUP 5.5.5 R and SUP 5.5.9 R (to the extent they relate to the FCA’s powers under section 166 of the Act) apply to a RIE in the same way as they apply to a firm.

(2) The guidance in SUP 5 which relates to the FCA’s power in section 166 of the Act also applies to a RIE in the same way as it applies to a firm.
### 4.3 Risk assessments for UK recognised bodies

#### 4.3.1
Information is needed to support the FCA's risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the regulatory objectives and the FCA's general duties under the Act. The central element of the process of risk based supervision is a systematic assessment by the FCA (a risk assessment) of the main supervisory risks and concerns for each regulated entity.

#### 4.3.2
For each UK recognised body, the FCA will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of recognised bodies under the Act, the nature of the UK recognised body's members, the position of other users of its facilities and the business environment more generally.

#### 4.3.3
The risk assessment will guide the FCA's supervisory focus. It is important, therefore, that there is good dialogue between the FCA and the recognised body. The FCA expects to review its risk assessment with the staff of the UK recognised body to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with members of the management body of the UK recognised body. If appropriate, the FCA may send a detailed letter to the body's chief executive, chairman or both with proposals for further action or work to address particular concerns or issues and seek their comments on the risk assessment.
4.4 Complaints

Recognised body’s arrangements

4.4.1 Recognised bodies may receive complaints from time to time from their members and other people, both about the conduct of members and about the recognised body itself. A UK recognised body will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant recognition requirements (see ■ REC 2.15 and ■ REC 2.16) or RAP recognition requirements (see ■ REC 2A.3.2G).

The FCA’s arrangements

4.4.2 The Act does not provide a mechanism for appeals to the FCA from decisions by recognised bodies in relation to complaints. However, the FCA is required by section 299 of the Act (Complaints about recognised bodies) to have arrangements to investigate complaints (called relevant complaints in the Act) which it considers relevant to the question of whether a recognised body should remain recognised as such. This section describes aspects of the FCA’s arrangements for investigating relevant complaints.

4.4.3 Where the FCA receives a complaint about a recognised body, it will, in the first instance, seek to establish whether the complainant has approached the recognised body. Where this is not the case, the FCA will ask the complainant to complain to the recognised body. Where the complainant is dissatisfied with the handling of the complaint, but has not exhausted the recognised body’s own internal complaints procedures (in the case of a complaint against a UK recognised body, including by applying to that body’s complaints investigator), the FCA will encourage the complainant to do so.

4.4.4 The FCA will not usually consider a complaint which has not, in the first instance, been made to the recognised body concerned, unless there is good reason for believing that it is a relevant complaint which merits early consideration by the FCA.

4.4.5 When it is considering a relevant complaint, the FCA will make its own enquiries as appropriate with the recognised body, the complainant and other persons. It will usually ask the recognised body and the complainant to comment upon any preliminary or draft conclusions of its review and to confirm any matters of fact at that stage.

4.4.6 The FCA will communicate the outcome of its review of a relevant complaint to the complainant and the recognised body, but will normally only discuss
any action which it considers the recognised body should take with the recognised body itself.
4.5  FCA supervision of action by UK RIEs under their default rules

4.5.1  
UK RIEs which, under their rules, have market contracts are required to have default rules enabling them (among other things) to take action in relation to a member who appears to be unable to meet his obligations in respect of one or more unsettled market contracts. The detailed recognition requirements relating to the default rules are set out in REC 2.17.

4.5.2  
The default rules are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled market contract are discharged, and for there to be paid between the defaulter and each counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under default rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

4.5.3  
The Companies Act 1989 also gives the FCA powers to supervise the taking of action under default rules. Under section 166 of the Companies Act 1989 (Powers of the appropriate regulator to give directions) (see REC 4.5.4 G), the FCA may direct a UK RIE to take, or not to take, action under its default rules. Before exercising these powers the FCA must consult the UK RIE in question; and the FCA shall not give a direction unless the FCA is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

4.5.4  
The FCA may issue a "positive" direction (to take action) under section 166(2)(a) of the Companies Act 1989:

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

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

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and [the FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.
The FCA may issue a "negative" direction (not to take action) under section 166(2)(b) of the Companies Act 1989:

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

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

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and the [FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

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

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

(1) a bankruptcy order or an award of sequestration of the defaulter’s estate has been made, or an interim receiver or interim trustee has been appointed; or

(2) a winding-up order has been made, a resolution for voluntary winding-up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;

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

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

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

(1) where the UK RIE is acting in accordance with a direction given by the FCA to take action under section 166(2)(a) of the Act on the basis that failure to take action would involve undue risk to investors or other participants in the market, the FCA will not direct it to do or not to do specific things which the UK RIE has power to do under its default rules, unless the FCA is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings; and

(2) where the UK RIE has taken action under its default rules without being directed to do so, the FCA will not direct it to do or not to do
specific things which the UK RIE has power to do under its default rules, unless the FCA is satisfied that:

(a) the direction will not impede or frustrate the proper and efficient conduct of the default proceedings; or

(b) the direction is necessary:

(i) having regard to the public interest in the stability of the UK financial system;

(ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime); or

(iii) in connection with a particular exercise of a power under Part 1 of the Banking Act 2009.

Section 167 of the Companies Act 1989

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

(1) a bankruptcy order; or

(2) an award of sequestration of his estate; or

(3) an order appointing an interim receiver of his property; or

(4) an administration or winding-up order; or

(5) a resolution for a voluntary winding-up; or

(6) an order appointing a provisional liquidator;

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

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

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

(1) takes action under its default rules; or

(2) notifies the FCA that it proposes to take action forthwith; or

(3) is directed to take action by the FCA under section 166(2)(a) of the Companies Act 1989;

the provisions of sections 158 to 165 of the Companies Act 1989 do not apply in relation to market contracts to which the member or designated non-
member is a party or to anything done by the UK recognised body for the purpose of, or in connection with, the settlement of any market contracts.
4.6 The section 296 power to give directions

4.6.1 Under section 296 of the Act (FCA’s power to give directions) and (for RAPs) under regulation 3 of the RAP regulations, the FCA has the power to give directions to a recognised body to take specified steps in order to secure its compliance with the recognised body requirements. In the case of a UK RIE (including one which operates a RAP) those steps may include granting the FCA access to the UK RIE’s premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any regulated activity by the UK RIE for the period specified in the direction.

4.6.2 [deleted]

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

1. there has been, or was likely to be, a failure to satisfy one or more of the recognised body requirements which has serious consequences;

2. compliance with the direction would ensure that one or more of the recognised body requirements is satisfied; and

3. the recognised body is capable of complying with the direction.

4.6.4 Under section 298(7) of the Act (Directions and revocation: procedure), the FCA need not follow the consultation procedure set out in the rest of section 298 (see REC 4.8) or may cut short that procedure, if it considers it reasonably necessary to do so. For RAPs, the FCA need not follow the procedure set out in regulation 5 of the RAP regulations or may cut short the procedure, if it considers it essential to do so.
(1) Under section 192C of the Act (Power to direct qualifying parent undertaking), the FCA has the power to give a direction to the qualifying parent undertaking of a UK RIE if the general condition is satisfied.

(2) For the purposes of section 192C of the Act, a parent undertaking of a UK RIE is a ‘qualifying parent undertaking’ if:

(a) the parent undertaking is a body corporate which is incorporated in the United Kingdom, or has a place of business in the United Kingdom;

(b) the parent undertaking is not itself an authorised person, a RIE or a RCH; and

(c) the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.

(3) For the purposes of section 192C of the Act, the general condition is that the FCA considers that it is desirable to give the direction in order to advance one or more of its operational objectives.

(4) In exercising or deciding whether to exercise its power under section 192C of the Act, the FCA will have regard to any statement of policy published under this section and for the time being in force.

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

4.7 The section 297 power to revoke recognition

4.7.1 Under section 297 of the Act (Revoking recognition) and (for RAPs) under regulation 4 of the RAP regulations, the FCA has the power to revoke a recognition order relating to a recognised body.

4.7.2 The FCA will revoke a recognition order if:

(1) [deleted]

(2) the recognised body has asked the FCA to revoke the order.

4.7.2A Where the FCA makes a revocation order under section 297 of the Act in relation to a UK RIE which is also a RAP, the FCA will also revoke the recognition order relating to its status as a RAP.

4.7.3 The FCA will usually consider revoking a recognition order if:

(1) the recognised body is failing or has failed to satisfy one or more of the recognised body requirements and that failure has or will have serious consequences; or

(2) it would not be possible for the recognised body to comply with a direction under section 296 of the Act (FCA’s power to give directions) or (for RAPs) regulation 3 of the RAP regulations; or

(3) for some other reason, it would not be appropriate for the FCA to give a direction under section 296 or (for RAPs) regulation 3 of the RAP regulations; or

(4) in the case of a UK RIE, it has not carried on the business of an investment exchange during the 12 months beginning with the day on which the recognition order took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six months ending with the day the recognition order is revoked.

(5) in the case of a RAP in relation to its RAP recognition order, it has not carried on the business of an auction platform during the 12 months beginning with the day on which the RAP recognition order took effect in relation to it, or it has not carried on the business of an auction platform at any time during the period of six months ending with the day the RAP recognition order is revoked.
4.7.4 The FCA would be likely to consider the conditions in REC 4.7.3 G (2) or REC 4.7.3 G (3) to be triggered in the following circumstances:

1. The recognised body appears not to have the resources or management to be able to organise its affairs so as to satisfy one or more of the recognised body requirements; or

2. The recognised body does not appear to be willing to satisfy one or more of the recognised body requirements; or

3. The recognised body is failing or has failed to comply with a direction made under section 296 of the Act or (for RAPs) regulation 3 of the RAP regulations; or

4. The recognised body has ceased to carry out regulated activities in the United Kingdom, or has so changed the nature of its business that it no longer satisfies one or more of the recognised body requirements in respect of the regulated activities for which recognised body status is relevant.

4.7.5 In addition to the relevant factors set out in REC 4.7.4 G, the FCA will usually consider that it would not be able to secure an ROIE’s compliance with the recognition requirements or other obligations in or under the Act by means of a direction under section 296 of the Act, if it appears to the FCA that the ROIE is prevented by any change in the legal framework or supervisory arrangements to which it is subject in its home territory from complying with the recognition requirements or other obligations in or under the Act.
4.8 The section 298 procedure

4.8.1  A decision to:

1. revoke a recognition order under section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations; or

2. make a direction under section 296 (FCA’s powers to give directions) or (for RAPs) regulation 3 of the RAP regulations; or

3. refuse to make a recognition order under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for RAPs) regulation 2 of the RAP regulations;

is a serious one and section 298 of the Act (Directions and revocation: procedure) sets out procedures (see ▬REC 4.8.9 G) which the FCA will follow unless:

in the case of a revocation of a recognition order, the recognised body concerned has given its consent (see section 297(1) or regulation 4(1) of the RAP regulations) or:

(a) in the case where the FCA proposes to make a direction under section 296, it considers it is reasonably necessary not to follow, or to cut short, the procedure (see ▬REC 4.8.7G); or

(b) (for RAPs) in a case where the FCA proposes to make a direction under regulation 3 of the RAP regulations, it considers it is essential not to follow, or to cut, short, the procedure.

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

4.8.3 In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the Act or (for RAPs) regulation 3 or 4 of the RAP regulations, the FCA will have regard to all relevant information and factors including:

1. its guidance to recognised bodies;

2. the results of its routine supervision of the body concerned;

3. the extent to which the failure or likely failure to satisfy one or more of the recognised body requirements may affect the statutory objectives.
In considering whether or not to make a recognition order, the FCA will have regard to all relevant information and factors, including its guidance to recognised bodies and applicants and the information provided by applicants. Details of the application processes and other guidance for applicants are set out in REC 5 and (for overseas applications) REC 6.

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

Before exercising its powers under section 296 or section 297 of the Act or (for RAPs) regulation 3 or 4 of the RAP regulations, the FCA will usually discuss its intention, and the basis for this, with the members of the management body or other appropriate representatives of the recognised body. It will usually discuss its intention not to make a recognition order with appropriate representatives of the applicant.

Key steps in the section 298 procedure

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

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<tr>
<td>(5)</td>
<td>(when it has reached its decision) notify the RIE (or applicant) concerned in writing.</td>
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### 4.8.10 For RAPs, key steps in the regulation 5 procedure

<table>
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<th>Guidance</th>
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<tbody>
<tr>
<td>(1)</td>
<td>give written notice to the RAP (or applicant);</td>
</tr>
<tr>
<td>(2)</td>
<td>take such steps as it considers reasonably practicable to bring the notice to the attention of the members of the RAP or of the applicant, as the case may be;</td>
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<td>(3)</td>
<td>publish the notice so as to bring it to the attention of other persons likely to be affected;</td>
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<tr>
<td>(4)</td>
<td>receive representations from the RAP or applicant concerned, any member of the RAP or applicant, and any other person who is likely to be affected by the action the FCA proposes to take;</td>
</tr>
<tr>
<td>(5)</td>
<td>write promptly to any person who requests the opportunity to make oral representations if it decides not to hear that person’s representations;</td>
</tr>
<tr>
<td>(6)</td>
<td>have regard to representations made;</td>
</tr>
<tr>
<td>(7)</td>
<td>(when it has reached its decision) notify the RAP (or applicant) concerned in writing;</td>
</tr>
<tr>
<td>(8)</td>
<td>(if it has decided to give a direction, or revoke or refuse to make a recognition order) take such steps as it considers reasonably practicable to bring its decision to the attention of members of the RAP or applicant and to other persons likely to be affected.</td>
</tr>
</tbody>
</table>
4.9 Disciplinary measures

4.9.1 (1) Under sections 312E and 312F of the Act, if the FCA considers that a recognised body has contravened a requirement imposed by the FCA under any provision of the Act that relates to a RIE, or under any provision of the Act whose contravention constitutes an offence the FCA has power to prosecute, or by a qualifying provision specified by the Treasury, it may:

(a) publish a statement to that effect; or

(b) impose on the body a financial penalty of such amount as it considers appropriate.

(2) The procedures and policies which the FCA will follow if it proposes to publish a statement under section 312E or to impose a penalty under section 312F, and if it decides to publish such statement or impose such penalty, are set out in DEPP.

(3) In exercising or deciding whether to exercise its power to impose a penalty under section 312F of the Act, the FCA will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

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

4.9.2 (1) Under section 192K of the Act, if the FCA considers that a qualifying parent undertaking of a UK RIE has contravened a requirement of a direction given by the FCA under section 192C of the Act, or a provision of rules made by the FCA under section 192J of the Act, it may:

(a) impose a penalty of such amount as it considers appropriate on the qualifying parent undertaking of the UK RIE, or any person who was knowingly concerned in the contravention; or

(b) publish a statement censuring the person.

(2) The procedures which the FCA will follow if it proposes to take action, and if it decides to take action against a person, under section 192K are set out in DEPP.

(3) In exercising or deciding whether to exercise its power under section 192K of the Act, the FCA will also have regard to any statement of
policy published under this section and in force at a time when the contravention in question occurred.

[Note: The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 192K of the Act.]
Chapter 5

Applications for Recognition
(UK recognised bodies)
5.1 Introduction and legal background

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

5.1.2 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 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 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 (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 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 subsections 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 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 Other information and documentation which should normally accompany an application is listed in more detail in § REC 5.2.14 G.

5.2.5 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 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 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 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 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 Applications for Recognition (UK recognised bodies)

### 5.2.8

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

1. [deleted]
2. [deleted]

### 5.2.10

[deleted]

### 5.2.11

[deleted]

### 5.2.12

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

[deleted]

### 5.2.14

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

<table>
<thead>
<tr>
<th></th>
<th>Details</th>
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<tbody>
<tr>
<td>1</td>
<td>Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous documents) and any agreements between the applicant, its owners or other persons relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for RAP status must provide details of the relationship between the governance arrangements in place for the UK RIE and the RAP.</td>
</tr>
<tr>
<td>2</td>
<td>Details of all business to be conducted by the applicant, whether or not a regulated activity (if not contained in the information listed in REC 5.2.3A G).</td>
</tr>
<tr>
<td>3</td>
<td>Details of the facilities which the applicant plans to operate, including details of the trading platform or (for a RAP) auction platform, settlement arrangements, clearing facilitation services and custody services which it plans to supply. An applicant for RAP status must provide details on the relationship between the auction platform and any secondary market in emissions auction products which it operates or plans to operate.</td>
</tr>
<tr>
<td>4</td>
<td>Copies of the last three annual reports and accounts and, for the current financial year, quarterly management accounts.</td>
</tr>
<tr>
<td></td>
<td>Details of its business plan for the first three years of operation as a <strong>UK recognised body</strong> (if not contained in the information listed in REC 5.2.3A G).</td>
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<td></td>
<td>A full organisation chart and a list of the posts to be held by <strong>key individuals</strong> (with details of the duties and responsibilities) and the names of the <strong>persons</strong> proposed for these appointments when these names are available (if not contained in the information listed in REC 5.2.3A G).</td>
</tr>
<tr>
<td></td>
<td>Details of its auditors, bankers, solicitors and any <strong>persons providing</strong> corporate finance advice or similar services (such as reporting accountants) to the applicant.</td>
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<td></td>
<td>Details of any <strong>relevant functions</strong> to be outsourced or delegated, with copies of relevant agreements.</td>
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<tr>
<td></td>
<td>Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.</td>
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<td></td>
<td>Details of all plans to minimise disruption to operation of its <strong>facilities</strong> in the event of the failure of its information technology systems.</td>
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<tr>
<td></td>
<td>Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.</td>
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<tr>
<td></td>
<td>Details of its arrangements for managing any counterparty risks.</td>
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<td></td>
<td>Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.</td>
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<tr>
<td></td>
<td>Details of arrangements for complying with the <strong>notification rules</strong> and other requirements to supply information to the <strong>FCA</strong>.</td>
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<tr>
<td></td>
<td>Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.</td>
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<tr>
<td></td>
<td>A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including <strong>default rules</strong>) and the results and conclusions reached.</td>
</tr>
<tr>
<td></td>
<td>Details of the procedures to be followed for declaring a <strong>member</strong> in default, and for taking action after that event to close out positions, protect the interests of other <strong>members</strong> and enforce its <strong>default rules</strong>.</td>
</tr>
<tr>
<td></td>
<td>Details of membership selection criteria, rules and procedures, including (for a <strong>RAP</strong>) details of how the rules of the <strong>UK RIE</strong> will change in order to reflect <strong>RAP</strong> status.</td>
</tr>
<tr>
<td></td>
<td>Details of arrangements for recording transactions effected by, or cleared through, its <strong>facilities</strong>.</td>
</tr>
<tr>
<td></td>
<td>Details of arrangements for detecting <strong>financial crime</strong> and <strong>market abuse</strong>, including arrangements for complying with <strong>money laundering</strong> law.</td>
</tr>
<tr>
<td></td>
<td>Details of criteria, rules and arrangements for selecting <strong>specified investments</strong> to be admitted to trading on (or cleared by) an <strong>RIE</strong> and, where relevant, details of how information regarding <strong>specified investments</strong> will be disseminated to users of its <strong>facilities</strong>.</td>
</tr>
<tr>
<td></td>
<td>Details of arrangements for cooperating with the <strong>FCA</strong> and other appropriate authorities, including draft memoranda of understanding or letters.</td>
</tr>
<tr>
<td></td>
<td>Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes.</td>
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<td></td>
<td>Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.</td>
</tr>
</tbody>
</table>
Chapter 6

Overseas Investment Exchanges
6.1 Introduction and legal background

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

1. obtain a Part 4A permission from the FCA; or
2. [deleted]
3. [deleted]
4. obtain exempt person status by being declared by the FCA to be an ROIE.

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

6.2.1 (1) Overseas investment exchanges which are considering whether to seek authorisation or recognition should first consider whether they will be carrying on regulated activities in the United Kingdom. Overseas investment exchanges which do not carry on regulated activities in the United Kingdom need take no action.

(2) Prospective applicants should discuss authorisation and recognition with the FCA before deciding whether to seek authorisation or recognition.

6.2.2 A prospective applicant may wish to contact the Infrastructure and Trading Firms Department at the FCA at an early stage for advice on the preparation, scheduling and practical aspects of an application to become an overseas recognised body.

6.2.3 Applicants for authorised person status should refer to the FCA website “Authorisation”: [www.fca.org.uk/firms/authorisation] Applications for recognition as an overseas recognised body should be addressed to:

The Financial Conduct Authority (Infrastructure and Trading Firms Department)
12 Endeavour Square
London, E20 1JN

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

(1) the information, evidence and explanatory material necessary to demonstrate to the FCA that the recognition requirements (set out in REC 6.3) will be met;

(2) the application fee (see REC 7);

(3) the address of the applicant's head office in its home territory;

(4) the address of a place in the United Kingdom for the service on the applicant of notices or other documents required or authorised to be served on it under the Act (see section 292(1));
(5) the applicant’s regulatory provisions;

(6) one copy of each of the following documents:
   (a) its most recent annual report and accounts; and
   (b) the applicant’s memorandum and articles of association or any similar or analogous documents; and

(7) information identifying the following (if not contained in the documents listed in (5) or (6) or the material referred to in (1)):
   (a) any type of regulated activity which the applicant envisages carrying on in the United Kingdom;
   (b) any type of specified investment dealt in on, or arranged to be cleared through the applicant;
   (c) the date by which the applicant wishes the recognition order to take effect; and
   (d) any body or authority which supervises the applicant under the law of the home territory, the status of the applicant under that law, and the enactment or regulation under which the supervision is conducted.

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

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

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

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

Section 292(3)
The requirements are that-

(a) investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with -

(i) recognition requirements, other than any such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph; and

(ii) requirements contained in any directly applicable Community regulation made under the markets in financial instruments directive or markets in financial instruments regulation;

(b) there are adequate procedures for dealing with a person who is unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the ROIE;

(c) the applicant is able and willing to co-operate with the FCA by the sharing of information and in other ways; and

(d) adequate arrangements exist for co-operation between the FCA and those responsible for the supervision of the applicant in the country or territory in which the applicant’s head office is situated.

Section 292(4)
In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the FCA is to have regard to-

(a) the relevant law and practice of the country or territory in which the applicant’s head office is situated;

(b) the rules and practices of the applicant.

6.3.3 The reference to recognition requirements in section 292(3)(a) of the Act is a reference to the requirements applicable to UK RIÉs in the Recognition Requirements Regulations. These requirements are set out, together with guidance, in REC 2.
6.5 FCA decision on recognition

6.5.1 If the FCA considers that the requirements of the Act are satisfied, it may make a recognition order, which will state the date on which it takes effect.

6.5.2 Where the FCA considers that it is unlikely to make a recognition order, it will discuss its concerns with the applicant with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application. If the FCA decides to refuse to make a recognition order, it will follow the procedure set out in section 298 of the Act (Directions and revocation: procedure) (which applies in consequence of section 290(5) of the Act (Recognition orders)) which is described in more detail in REC 4.8.

6.5.3 [deleted]
6.6 Supervision

6.6.1 An ROIE is required to notify the FCA of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the Act (Notification: overseas investment exchanges and overseas clearing houses) requires each ROIE to provide the FCA with a report (at least once a year) which contains:

1. a statement as to whether any events have occurred which are likely to affect the FCA’s assessment of whether it is satisfied that the ROIE continues to satisfy the recognition requirements set out in the section 292(3) of the Act (Overseas investment exchanges and overseas clearing houses) (see REC 6.3);

2. the information specified in the FCA’s notification rules for ROIEs (see REC 6.7).

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

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

2. significant changes to its internal organisation or structure;

3. significant changes to the practices of the ROIE applying to any regulated activities carried on by it in the United Kingdom;

4. any other event or series of events in relation to the body which:
(a) affects or may significantly affect cooperation between the ROIE, or its supervisor in its home territory, and the FCA; or

(b) has or may have a substantial effect on the structure of the markets in which the body operates; or

(c) brings about or may bring about a substantial change in the nature and composition of its membership in the United Kingdom; or

(d) brings about or may bring about a substantial change in the regulated activities undertaken by it in the United Kingdom.

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

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

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

6.6.6 Copies of the report should be sent to the FCA within two months after the end of the period to which it relates.
6.7 Notification rules for overseas recognised bodies

Application

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

Purpose

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

Reports under section 295

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

6.7.4 An ROIE must include in its report submitted in compliance with section 295(1) of the Act:

(1) particulars of any changes to:
   (a) its memorandum and articles of association or any similar or analogous documents;
   (b) its regulatory provisions;
   (c) its chairman or president, or chief executive (or equivalent);

(2) particulars of any disciplinary action (or any similar or analogous action) taken against it by any supervisory authority in its home territory, whether or not that action has been made public in that territory;

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

(4) a statement as to whether any events have occurred which are likely to have any material effect on competition;
where those events occurred, or the period covered by that annual report and accounts ended, in the period covered by that report.

**First report**

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

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

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

(3) any annual report and accounts which covered a period ending;

after the application for recognition was submitted to the FCA but which were not included in the application or in any supplementary information submitted to the FCA before the recognition order was made.

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

**Changes of address**

6.7.7 Where an ROIE proposes to change:

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

(2) the address of its head office;

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

**Revocation or modification of home territory licence, permission or authorisation**

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

(1) revoked; or

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

it must immediately notify the FCA of that fact and must give the FCA the information specified for the purposes of this rule in REC 6.7.9 R, as soon as that information is known to it.
The following information is specified for the purposes of REC 6.7.8:

1. particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the ROIE's regulated activities to which it relates;

2. an explanation of how the revocation or modification restricts or will restrict the ROIE in carrying on any regulated activity in its home territory or in the United Kingdom;

3. the date on which the revocation or modification took, or will take, effect and, if it is a temporary measure, any date on which, or any conditions that must be met before which, it will cease to have effect; and

4. any reasons given for the revocation or modification.

**Language of notice**

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

**Form and method of notification**

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

**Waivers**

ROIEs may apply to the FCA for a waiver of any of the notification rules. The procedure is the same as that for applications from UK recognised bodies. Guidance on the procedure is given in REC 3.3.
6.8 Powers to supervise

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

1. give directions to an ROIE under section 296 of the Act (Authority’s power to give directions) if it has failed, or is likely to fail, to satisfy the recognition requirements or if it has failed to comply with any other obligation imposed by or under the Act; or

2. revoke a recognition order under section 297 of the Act (Revoking recognition) if an ROIE is failing, or has failed, to comply with the recognition requirements or any other obligation in or under the Act; or

3. require an ROIE or a person connected with the ROIE, under section 165 of the Act, to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require; or

4. require any of the following persons, under section 166 of the Act, to provide the FCA with a report on any matter, or appoint a skilled person to provide the FCA with information or produce documents with respect to any matter:
   a. the ROIE; or
   b. any other member of the ROIE’s group; or
   c. a partnership of which the ROIE is a member; or
   d. a person who has at any time been a person falling within (a), (b) or (c).

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

Chapter 6A

EEA market operators in the United Kingdom [deleted]
Chapter 7

Fees
[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES 4 Annex 6R]
[deleted: the provisions in relation to Recognised Investment Exchanges and Recognised Clearing Houses are set out in FEES?3 Annex 3R]
Recognised Investment Exchanges

REC TP 1
Transitional provisions

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<tr>
<td>1</td>
<td>This schedule sets out the transitional provisions in <em>REC</em>.</td>
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<tr>
<td>2</td>
<td>The <em>Recognition Requirements Regulations</em> also contain transitional provisions applying to recognised bodies.</td>
</tr>
<tr>
<td>3</td>
<td><em>GEN</em> also contains some technical transitional provisions that apply throughout the <em>Handbook</em>.</td>
</tr>
</tbody>
</table>
Recognised Investment Exchanges

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record keeping requirements as such in REC.

UK recognised bodies have obligations under the Recognition Requirements Regulations to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their facilities. See REC 2.9 for guidance (in the case of RAPs, see REC 2.9 as applied by REC 2A.3.2G).

RAPs also have separate record keeping obligations under the UK auctioning regulations.
Recognised Investment Exchanges

Schedule 2
Notification requirements

Sch 2.1 G

The following table summarises the notification requirements applicable to all recognised bodies. The notification rules are set out in detail in REC 3 (Notification rules for UK recognised bodies) and REC 6.7 and, to avoid unnecessary repetition, are not set out in detail here. The notification rules for RAPs differ in some respects from the notification rules for UK RIEs (for example, due to requirements contained in the UK auctioning regulations).

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

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

Sch 2.2 G

<table>
<thead>
<tr>
<th>Reference to legislation or Handbook</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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<tbody>
<tr>
<td><strong>UK RIEs</strong></td>
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<tr>
<td>The Acts 293(5)</td>
<td>Changes to rules and guidance</td>
<td>Details of change</td>
<td>Change to rule or guidance</td>
<td>Without delay</td>
</tr>
<tr>
<td>Companies Act 1989 s157</td>
<td>Proposed changes to default rules</td>
<td>Details of proposed change</td>
<td>Proposal to change default rules</td>
<td>14 days in advance of change</td>
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<tr>
<td>The Act s293(6)(a)</td>
<td>Changes to arrangements for clearing facilitation services in respect of on-exchange transactions</td>
<td>Details of change</td>
<td>Change to arrangements</td>
<td>Without delay</td>
</tr>
<tr>
<td>The Act s293(6)(b)</td>
<td>Changes to criteria determining to whom it will provide clearing facilitation services</td>
<td>Details of change</td>
<td>Change to criteria</td>
<td>Without delay</td>
</tr>
<tr>
<td>The Act s300B(1)</td>
<td>Proposal to make regulatory provision</td>
<td>Details of proposal</td>
<td>Proposal to make regulatory provision</td>
<td>Without delay</td>
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<tr>
<td><strong>RAPs</strong></td>
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<td>Regulation 7(4) and 7(6) of the UK auc-</td>
<td>Either a methodology or a modification to that meth-</td>
<td>See REC 3.27</td>
<td>Event concerned</td>
<td>Without delay</td>
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## Schedule 2
### Notification requirements

<table>
<thead>
<tr>
<th>Reference to legislation or Handbook</th>
<th>Matter to be notified</th>
<th>Contents of notification</th>
<th>Trigger event</th>
<th>Time allowed</th>
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</thead>
<tbody>
<tr>
<td><strong>Regulation 10(2) of the UK auctioning regulations</strong></td>
<td>Adjustment to the auction calendar where the modification manner is not already provided for in the UK auctioning regulations</td>
<td>See REC 3.27</td>
<td>Event concerned</td>
<td>Without delay</td>
</tr>
<tr>
<td><strong>Regulation 11 of the UK auctioning regulations</strong></td>
<td>Cancellation of an auction in the circumstances set out in regulation 11 of the UK auctioning regulations</td>
<td>See REC 3.15</td>
<td>Event concerned</td>
<td>Without delay</td>
</tr>
<tr>
<td><strong>Regulation 23(3) of the UK auctioning regulations</strong></td>
<td>Submission of exit strategy</td>
<td>See REC 3.14A</td>
<td>Date of appointment as a RAP</td>
<td>Within 3 months from the date of appointment</td>
</tr>
<tr>
<td><strong>Regulation 40 of the UK auctioning regulations</strong></td>
<td>Restriction on maximum bid size or other remedial measures</td>
<td>See REC 3.22.2</td>
<td>Proposal to take action</td>
<td>Immediately</td>
</tr>
</tbody>
</table>

### Notification rules for UK recognised bodies (see REC 3 (Notification rules for UK recognised bodies))

<p>| REC 3.4 | Details of change | See REC 3.4 | See REC 3.4 |
| REC 3.5 | Details of disciplinary action or awareness of event | Disciplinary action or awareness of event | Immediately |
| REC 3.6 | Details of proposals to amend constitution, amendments to constitution and agreements relating to constitution | Communication of proposal to amend constitution, making amendment to constitution or awareness of agreement relating to constitution | Immediately |
| REC 3.7 | Details of removal or appointment of auditors | Removal or appointment of auditors | Immediately |
| REC 3.8 | See REC 3.8 | See REC 3.8 |
| REC 3.9 | Summary of proposals to change fees and charges and changes to fees and charges | Communication to members | Immediately |</p>
<table>
<thead>
<tr>
<th>Reference to legislation or Handbook</th>
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</tr>
</thead>
<tbody>
<tr>
<td>REC 3.10</td>
<td>Complaints</td>
<td>Copy of adverse report and details of recommendations from complaints investigator</td>
<td>Availability of report or recommendations</td>
<td>Immediately</td>
</tr>
<tr>
<td>REC 3.11</td>
<td>Insolvency events</td>
<td>Notice of insolvency event</td>
<td>Insolvency event</td>
<td>Immediately</td>
</tr>
<tr>
<td>REC 3.12</td>
<td>Legal proceedings</td>
<td>Details of legal proceedings commenced against UK recognised body</td>
<td>Institution of proceedings</td>
<td>Immediately</td>
</tr>
<tr>
<td>REC 3.13</td>
<td>Delegation of relevant functions</td>
<td>Details of offers or agreements to delegate relevant functions and offers or agreements to undertake relevant functions on behalf of another recognised body</td>
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</tr>
<tr>
<td>REC 3.14</td>
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<td>See REC 3.14</td>
<td>See REC 3.14</td>
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</tr>
<tr>
<td>REC 3.14A</td>
<td>Operation of a trading venue or (for RAPs) their exit strategy</td>
<td>Details of proposal to operate a new trading venue or close an existing trading venue or (for RAPs) their exit strategy</td>
<td>Communication of proposal to members or shareholders or (for RAPs) date of appointment</td>
<td>Immediately or (for RAPs) within 3 months from the date of appointment</td>
</tr>
<tr>
<td>REC 3.15</td>
<td>Suspension of services and inability to operate facilities or (for RAPs) the cancellation of an auction</td>
<td>See REC 3.15</td>
<td>Event concerned</td>
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</tr>
<tr>
<td>REC 3.16</td>
<td>Information technology systems</td>
<td>Details of business continuity plans and details of failure of reserve information technology system</td>
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</tr>
<tr>
<td>REC 3.17</td>
<td>Inability to discharge regulatory functions</td>
<td>Details of inability to discharge a regulatory functions</td>
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<tr>
<td>REC 3.18</td>
<td>Membership</td>
<td>Information regarding new types of member and reasons for con-</td>
<td>Admission of new type of non-authorised person or person from new</td>
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</tr>
<tr>
<td>Reference to legislation or Handbook</td>
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</tr>
<tr>
<td>• Schedule 2</td>
<td>considering the recognition requirements or (for RAPs) the RAP recognition requirement in regulation 20 of the RAP regulations can still be met</td>
<td>non-UK jurisdiction to membership</td>
<td>Immediately</td>
<td></td>
</tr>
<tr>
<td>REC 3.19</td>
<td>Investigations</td>
<td>Notice of appointment of person to investigate use of facilities or provision of services</td>
<td>Awareness of appointment</td>
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<tr>
<td>REC 3.20</td>
<td>Disciplinary action</td>
<td>Details of person against whom disciplinary action taken</td>
<td>Taking disciplinary action</td>
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<tr>
<td>REC 3.21</td>
<td>Criminal offences and civil prohibitions</td>
<td>Evidence tending to suggest contraventions of the general prohibition, certain criminal offences or market abuse</td>
<td>Having evidence concerned</td>
<td>Immediately</td>
</tr>
<tr>
<td>REC 3.22</td>
<td>Restriction on open position or instruction to close out</td>
<td>Details of decision to restrict member's open position or instruction to close out position</td>
<td>Decision to take action</td>
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<tr>
<td>REC 3.23</td>
<td>Default</td>
<td>Notice of decision to put member into default</td>
<td>Communicating decision to member concerned or any other member</td>
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<tr>
<td>REC 3.24</td>
<td>Transfers of ownership</td>
<td>Details of transfer of ownership</td>
<td>When the UK RIE becomes aware of the transfer of ownership</td>
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</tr>
<tr>
<td>REC 3.25</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
<td>Significant breaches of rules and disorderly trading conditions</td>
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<tr>
<td>REC 3.26</td>
<td>Proposal to make regulatory provision</td>
<td>Details of proposal</td>
<td>Proposal to make regulatory provision</td>
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<tr>
<td>REC 3.27</td>
<td>For RAPs: Auction clearing price methodology and manner to modify auction calendar</td>
<td>See REC 3.27</td>
<td>Event concerned</td>
<td>Immediately</td>
</tr>
</tbody>
</table>

**ROIEs**

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<tr>
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<tbody>
<tr>
<td>The Act s295</td>
<td>Report to FCA</td>
<td>Statement as to whether events have occurred which would affect</td>
<td>Not applicable</td>
<td>Once a year</td>
</tr>
<tr>
<td>Reference to legislation or Handbook</td>
<td>Matter to be notified</td>
<td>Contents of notification</td>
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<tr>
<td></td>
<td>the FCA’s assessment of whether the recognition requirements are met</td>
<td></td>
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**Notification rules for ROIEs (see REC 6.7)**

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<tr>
<td>REC 6.7.3 R</td>
<td>Events which might affect the FCA’s assessment of whether the recognition requirements are met</td>
<td>Particulars of event</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
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<tr>
<td>REC 6.7.4 R</td>
<td>Inclusion of certain matters in report</td>
<td>See REC 6.7.4 R</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
</tr>
<tr>
<td>REC 6.7.5 R</td>
<td>First report</td>
<td>See REC 6.7.5 R</td>
<td>Not applicable</td>
<td>Include in report under s295</td>
</tr>
<tr>
<td>REC 6.7.7 R</td>
<td>Changes of address</td>
<td>Details of new addresses</td>
<td>Decision to change address</td>
<td>14 days in advance of change of address</td>
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<tr>
<td>REC 6.7.8 R and REC 6.7.9 R</td>
<td>Revocation or modification of home territory licence etc</td>
<td>Details of revocation or modification</td>
<td>Awareness of revocation or modification</td>
<td>Immediately</td>
</tr>
</tbody>
</table>
Recognised Investment Exchanges

Schedule 5
Rights of action for damages

Sch 5.1 G

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

Schedule 6
Rules that can be waived

Sch 6.1 G

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