

Chapter 2

Recognition requirements

2.11 Custody

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

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

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

2.11.2 **UK** [deleted]

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

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

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

2.11.4

G 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).