

Chapter 3

Notification rules for UK recognised bodies



3.26 Proposals to make regulatory provision

Statutory power

- 3.26.1

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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.
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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.
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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

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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
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- (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

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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*.

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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*.
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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.
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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*.
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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.