

## Chapter 5

# Applications for Recognition (UK recognised bodies)

## 5.2 Application process

- 5.2.1** **G** An applicant for *recognised body* status needs to demonstrate to the *FCA* that it is able to meet the *recognised body requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognised body requirements* at all times. (Guidance on the *recognised body requirements* applicable to *UK recognised bodies* (and applicants) is given in ■ **REC 2** and ■ **REC 2A**).
- 5.2.1A** **G** In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the *FCA* must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* if it appears to the *FCA* that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of *clearing facilitation services* imposes, or will impose, an excessive requirement (as defined in section 300A of the *Act*) on *persons* directly or indirectly affected by it.
- 5.2.2** **G**
- (1) There is no standard application form. A prospective applicant should contact the Markets Division at the *FCA* at an early stage for advice on the preparation, scheduling and practical aspects of its application.
  - (2) It is very important, if an application is to be processed smoothly and in a reasonable time, that it is comprehensively prepared and based on a well-developed and clear proposal.
- 5.2.3** **G** An application should:
- (1) be made in accordance with any directions the *FCA* may make under section 287 (Application by an investment exchange) of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
  - (2) in the case of an application under section 287 of the *Act*, be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see ■ **REC 5.2.3A G**) (the material specifically prescribed in section 287 or section 288);
  - (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to

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|        |   | <p>demonstrate to the <i>FCA</i> that the <i>recognised body requirements</i> will be met; and</p> <p>(4) be accompanied by the appropriate fee (see ■ REC 7).</p>   |
| 5.2.3A | G | <p>The information required pursuant to sub-sections 287(c), (d) and (e) of the Act is:</p> <ul style="list-style-type: none"> <li>(1) a programme of operations which includes the types of business the applicant proposes to undertake and the applicant's proposed organisational structure;</li> <li>(2) particulars of the persons who effectively direct the business and operations of the exchange; and</li> <li>(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.</li> </ul> |
| 5.2.4  | G | <p>Other information and documentation which should normally accompany an application is listed in more detail in ■ REC 5.2.14 G.</p>  |
| 5.2.5  | G | <p>A prospective applicant who is an <i>authorised person</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as an <i>authorised person</i> can be used to support an application to become a <i>UK recognised body</i>.</p>   |
| 5.2.5A | G | <p>A <i>UK RIE</i> applying for recognition as a <i>RAP</i> may wish to consult the <i>FCA</i> about the extent to which information which it has already supplied in connection with its status as a <i>UK RIE</i> can be used to support an application to be recognised as a <i>RAP</i>.</p>  |
| 5.2.6  | G | <p>Under section 289 of the Act (Applications: supplementary) or (for a <i>RAP</i> applicant) regulation 2 of the <i>RAP regulations</i>, the <i>FCA</i> 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 <i>FCA</i> will normally wish to arrange for its own inspection of an applicant's information technology systems.</p>   |
| 5.2.6A | G | <p>In the case of an application to become a <i>UK RIE</i> or a <i>RAP</i> under subsection 290(1B) of the Act and (for a <i>RAP applicant</i>) regulation 2(8) of the <i>RAP regulations</i>, , the application must be determined by the <i>FCA</i> before the end of the period of six <i>months</i> beginning with the date on which it receives the completed application.</p>  |
| 5.2.7  | G | <p>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 <i>FCA</i>.</p>   |

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| 5.2.8  | G  | <p>(1) The <i>FCA</i> will keep the applicant informed of the progress of the application.</p> <p>(2) It may be necessary to ask the applicant to clarify or amplify some aspects of its proposals. The <i>FCA</i> 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 <i>FCA</i> will explain the nature of the information which it has asked an applicant to supply in connection with its application.</p>  |     |  |     |  |     |  |     |  |
| 5.2.9  | G  | <p>(1) [deleted]</p> <p>(2) [deleted]</p>   |     |  |     |  |     |  |     |  |
| 5.2.10 | G  | [deleted]   |     |  |     |  |     |  |     |  |
| 5.2.11 | G  | [deleted]   |     |  |     |  |     |  |     |  |
| 5.2.12 | G  | Where the <i>FCA</i> considers that it is unlikely to make a <i>recognition order</i> 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 <i>FCA</i> decides that it will not make a <i>recognition order</i> , it will follow the procedure set out in section 298 of the <i>Act</i> (Directions and revocation: procedure) or (in the case of a <i>RAP</i> ) regulation 5 of the <i>RAP regulations</i> and described in more detail in ■ REC 4.8.   |     |  |     |  |     |  |     |  |
| 5.2.13 | G  | [deleted]   |     |  |     |  |     |  |     |  |
| 5.2.14 | G  | <p><b>Information and supporting documentation (see ■ REC 5.2.4 G).</b></p> <table><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 <i>documents</i> ) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i>.</td></tr><tr><td>(2)</td><td>Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> (if not contained in the information listed in REC 5.2.3A G).</td></tr><tr><td>(3)</td><td>Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for a <i>RAP</i>) <i>auction platform</i>, settlement arrangements, clearing facilitation services and <i>custody</i> services which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate.</td></tr><tr><td>(4)</td><td>Copies of the last three annual reports and accounts and, for the current financial year, quarterly <i>management accounts</i>.</td></tr></table> | (1) | Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i> ) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in REC 5.2.3A G). An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i> . | (2) | Details of all business to be conducted by the applicant, whether or not a <i>regulated activity</i> (if not contained in the information listed in REC 5.2.3A G). | (3) | Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for a <i>RAP</i> ) <i>auction platform</i> , settlement arrangements, clearing facilitation services and <i>custody</i> services which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate. | (4) | Copies of the last three annual reports and accounts and, for the current financial year, quarterly <i>management accounts</i> . |
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| (5)  | Details of its business plan for the first three years of operation as a <i>UK recognised body</i> (if not contained in the information listed in REC 5.2.3A G).  |
| (6)  | A full organisation chart and a list of the posts to be held by <i>key individuals</i> (with details of the duties and responsibilities) and the names of the <i>persons</i> proposed for these appointments when these names are available (if not contained in the information listed in REC 5.2.3A G). |
| (7)  | Details of its auditors, bankers, solicitors and any <i>persons</i> providing corporate finance advice or similar services (such as reporting accountants) to the applicant.  |
| (8)  | Details of any <i>relevant functions</i> to be outsourced or delegated, with copies of relevant agreements.   |
| (9)  | Details of information technology systems and of arrangements for their supply, management, maintenance and upgrading, and security.  |
| (10) | Details of all plans to minimise disruption to operation of its <i>facilities</i> in the event of the failure of its information technology systems.  |
| (11) | Details of internal systems for financial control, arrangements for risk management and insurance arrangements to cover operational and other risks.  |
| (12) | Details of its arrangements for managing any counterparty risks.  |
| (13) | Details of internal arrangements to safeguard confidential or privileged information and for handling conflicts of interest.  |
| (14) | Details of arrangements for complying with the <i>notification rules</i> and other requirements to supply information to the FCA.   |
| (15) | Details of the arrangements to be made for monitoring and enforcing compliance with its rules and with its clearing, settlement and default arrangements.   |
| (16) | A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including <i>default rules</i> ) and the results and conclusions reached.   |
| (17) | Details of the procedures to be followed for declaring a <i>member</i> in default, and for taking action after that event to close out positions, protect the interests of other <i>members</i> and enforce its <i>default rules</i> .  |
| (18) | Details of membership selection criteria, rules and procedures, including (for a <i>RAP</i> ) details of how the rules of the <i>UK RIE</i> will change in order to reflect <i>RAP</i> status.  |
| (19) | Details of arrangements for recording transactions effected by, or cleared through, its <i>facilities</i> .   |
| (20) | Details of arrangements for detecting <i>financial crime</i> and <i>market abuse</i> , including arrangements for complying with <i>money laundering</i> law.   |
| (21) | Details of criteria, rules and arrangements for selecting <i>specified investments</i> to be admitted to trading on (or cleared by) an <i>RIE</i> and, where relevant, details of how information regarding <i>specified investments</i> will be disseminated to users of its <i>facilities</i> .         |
| (22) | Details of arrangements for cooperating with the FCA and other appropriate authorities, including draft memoranda of understanding or letters.  |

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| (23) | Details of the procedures and arrangements for making and amending rules, including arrangements for consulting on rule changes. |
| (24) | Details of disciplinary and appeal procedures, and of the arrangements for investigating complaints.                             |