

**RECOGNISED INVESTMENT EXCHANGES AND RECOGNISED CLEARING HOUSES (NOTIFICATION OBLIGATIONS) (AMENDMENT) INSTRUMENT 2007**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
  - (2) section 156 (General supplementary powers);
  - (3) section 157(1) (Guidance);
  - (4) section 293 (Notification requirements); and
  - (5) section 300B (Duty to notify proposal to make regulatory provision).
- B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 19 December 2007.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC) is amended in accordance with Annex B to this instrument.

**Citation**

- F. This instrument may be cited as the Recognised Investment Exchanges and Recognised Clearing Houses (Notification Obligations) (Amendment) Instrument 2007.

By order of the Board  
6 December 2007

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

- notification rule*
- (1) ...
  - (2) (in relation to a *recognised body*) a *rule* made by the *FSA* under section 293 of the *Act* (Notification requirements) or section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses):
    - (a) requiring a *recognised body* to give the *FSA*:
      - ~~(a)~~ notice of, and specified information regarding,
        - (i) specified events relating to the body;
        - ~~(b)~~ (ii) specified information relating to the body at specified times or in respect of specified periods; and
        - ~~(c)~~ (iii) any other information required to be given by such a *rule*; or
      - (b) specifying descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty to notify the *FSA* of such *regulatory provision* in section 300B(1) of the *Act* does not apply or providing that the duty to notify applies only to specified descriptions of *regulatory provision* or in specified circumstances; or
      - (c) making provision as to the form and contents of the notice required under (b), and requiring *recognised bodies* to provide specified information in connection with that notification.
- regulatory provisions*
- ...
  - (c) (in relation to a *clearing house*):
    - (i) ...
    - (ii) if it provides, or proposes to provide, clearing services for persons other than *RIEs*, the criteria which it will apply when determining to whom it will provide those services;:
  - (d) (in *REC 3.26*) (in accordance with section 300E of the *Act*) *regulatory provision* means any rule, guidance, arrangements, policy or practice.

## Annex B

### Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text.

#### **3.26 Proposals to make regulatory provision**

##### Statutory power

- 3.26.1 G Under section 300B(1) of the Act (Duty to notify proposal to make regulatory provision), a UK recognised body that proposes to make any regulatory provision must give written notice of the proposal to the FSA without delay.
- 3.26.2 G Under section 300B(2) of the Act, the FSA 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 G Under section 300B(3) of the Act, the FSA 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 FSA may reasonably require.

##### Disapplication of duty to notify proposal to make regulatory provision

- 3.26.4 R 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 Community law or 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 admit 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 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 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 FSA

- 3.26.5    R    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 FSA 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 FSA.
- 3.26.6 G In determining whether a *UK recognised body* has provided sufficient supporting information, the FSA 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*.
- 3.26.7 R A *UK recognised body* must provide such additional information in connection with a notice under section 300B(1) of the Act as the FSA may reasonably require.
- 3.26.8 G Where a *UK recognised body* wishes to give notice to the FSA for the purposes of section 300B(1) of the Act, it should in the first instance inform its usual supervisory contact at the FSA.
- 3.26.9 G The FSA expects that an advanced draft of any consultation document a *UK recognised body* intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in *REC 3.26.5R*
- 4.8.1 G A decision to:
- ...
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision);
- is a serious one and section 298 of the Act (Directions and revocation: procedure) sets out a procedure (see *REC 4.8.9G*) which the FSA will follow...
- ...
- 5.2.1A G In addition, under section 290A of the Act (Refusal of recognition on ground of excessive regulatory provision), the FSA must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* or *UK RCH* if it appears to the FSA 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 services imposes, or will impose, an excessive requirement (as defined in section 300A of the Act) on *persons* directly or indirectly affected by it.

...

Sch 2	Notification requirements					
...						
Sch 2.2	G	Handbook reference	Matter to be notified	Contents of notification	Trigger event	Time allowed
		UK recognised bodies				
		The <u>Aets Acts</u> s293(5)	Changes to <i>rules and guidance</i>	Details of change	Change to rule or guidance	Without delay
		The <u>Act</u> s300B(1)	<u>Proposal to make regulatory provision</u>	<u>Details of proposal</u>	<u>Proposal to make regulatory provision</u>	<u>Without delay</u>
		Companies Act 1989 s157	...			
		...				
		<i>Notification rules for UK recognised bodies</i> (see Notification rules for UK recognised bodies)				
		...				
		<i>REC 3.25</i>	...			
		<u><i>REC 3.26</i></u>	<u>Proposal to make regulatory provision</u>	<u>Details of proposal</u>	<u>Proposal to make regulatory provision</u>	<u>Without delay</u>
		...				

Sch 4	Powers exercised	
Sch 4.1	G	The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FSA</i> to make the <i>rules</i> in <i>REC</i> :
		...
		Section 295 (Notification: overseas investment exchanges and overseas clearing houses) Paragraph 17(1) of Schedule 1 (Fees).
		<u>Section 300B (Duty to notify proposal to make regulatory provision).</u>
		...