

## 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*.
- 2.1.1A** **G** *Guidance* on the *RAP recognition requirements* which apply to *RAPs* is set out in ■ **REC 2A** (Recognised Auction Platforms). *Guidance* on the *recognition requirements* for *ROIEs* is set out in ■ **REC 6** (Overseas Investment Exchanges).
- 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.
- 2.1.4** **G** **Location of recognition requirements and guidance**

Recognition Requirements Regulations	Subject	Section in REC 2/ other parts of the Handbook
Regulation 6	Method of satisfying recognition requirements	2.2
Part I of the Schedule	UK RIE recognition requirements	
Paragraph 1	Financial resources	2.3
Paragraph 2	Suitability	2.4
Paragraphs 2A and 2B	Management Body	2.4A
Paragraphs 3, 3A, 3B, 3C, 3D, 3E, 3G and 3H	Systems and controls, market making agreements, halting trading, direct electronic access, co-location services, fee structures, algorithmic trading, tick size regimes, synchronisation of business clocks	2.5
Paragraphs 4(1), 4(2)(aa) and 4C	General safeguards for investors and publication of data regarding execution of transactions	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(c)	Availability of relevant information	2.12
Paragraph 4(2)(d)	Settlement	2.8
Paragraph 4(2)(e)	Transaction recording	2.9
Paragraph 4(2)(ea)	Conflicts	2.5
Paragraph 4(2)(f) and 4(2)(fa)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraphs 7A and 9ZB (regulated markets only)	Admission of financial instruments to trading	2.12
Paragraphs 7B, 7C and 9ZC (regulated markets only)	Access to facilities	2.7
Paragraphs 7BA & 7BB	Position management and position reporting re commodity derivatives	2.7A
Paragraph 7D	Settlement and clearing facilitation services	2.8

Recognition Requirements Regulations	Subject	Section in REC 2/ other parts of the Handbook
Paragraphs 7E and 7F	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
Paragraphs 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H and 9ZD	Operation of a multilateral trading facility or an organised trading facility	2.16A/ MAR 5 and MAR 5A
Paragraph 9ZA (regulated markets only)	Order execution	2.6
Paragraph 9K	Provision of data reporting services	2.16B/ MAR 9
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

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**G** [deleted]



## 2.2 Method of satisfying the recognition requirements

### 2.2.1 UK 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 G 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);

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** **G** 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** **G** 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** **G** 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** **G** 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]

### 2.2.7

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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**

2.3.4 **G** 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**

2.3.5 **G** 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**

2.3.6 **G** 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**

2.3.7 **G** 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.

2.3.8 **G** (1) [deleted]  
(2) [deleted]

**Operational and other risks: UK RIEs - the standard and risk-based approach**

2.3.9

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- (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 2.3.22 G.

**Operational and other risks: individual guidance**

2.3.10

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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 2.3.9 G for *UK RIEs*.

**Operational and other risks: eligible financial resources**

2.3.11

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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

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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

- (2) may include interim earnings that have been independently verified by its auditor.

**Operational and other risks: eligible financial resources calculated under the standard approach**

2.3.13

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- (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

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- (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 **G** 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 **G** 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 **G** 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 2.3.22 G. 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**

2.3.21 **G** 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**

2.3.22 **G**

- (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

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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

G

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.

### 2.4.6

G

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.

2.4A.2

UK

Schedule to the Recognition Requirements Regulations, paragraph 2B

(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.

- (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;

"Directive 2004/109/EC" means Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

2.4A.3

**G** 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

UK

#### 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.

[Note: SYSC 15A contains requirements relating to the operational resilience of UK RIEs]

- (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]

**Paragraph 3E – Fee structures**

- (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.

(3) The tick size regime must comply with Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds.  
 [Note: MiFID RTS 11]

**Paragraph 3H – Synchronisation of business clocks**

(1) The [UK RIE] must synchronise the business clocks it uses to record the date and time of any reportable event in accordance with Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy 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** G ■ 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** G 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** G 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 **G** 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 **G** [deleted]

**Operation of settlement arrangements and effecting and monitoring of transactions**

2.5.8 **G** 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 **G** 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 **G** 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

- 2.5.10** G 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*.
- 2.5.11** G 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*.
- 2.5.12** G ■ REC 2.5.13 G to ■ REC 2.5.16 G set out the factors to which the *FCA* may have regard in assessing a *UK recognised body's* systems and controls for managing conflicts of interest.
- 2.5.13** G 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.

2.5.14 **G** 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*.

2.5.15 **G** 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.

2.5.16 **G** 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**

2.5.17 **G** 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

G

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

G

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

**G**

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**

**2.5A.1** **G** This section is relevant to every *UK recognised body* to the extent that the Public Interest Disclosure Act 1998 ("PIDA") applies to it.

**Purpose**

**2.5A.2** **G**

- (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.

**2.5A.3** **G** 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**

**2.5A.4** **G** 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").

**2.5A.5** **G** 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

- (b) a failure to comply with any legal obligation; or
  - (c) a miscarriage of justice; or
  - (d) the putting of the health and safety of any individual in danger; or
  - (e) damage to the environment; or
  - (f) deliberate concealment relating to any of (a) to (e);
- it is immaterial whether the relevant failure occurred, occurs or would occur in the *United Kingdom* or elsewhere, and whether the law applying to it is that of the *United Kingdom* or of any other country or territory.

**Internal Procedures**

2.5A.6

G

- (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.

**Link to fitness and propriety**

2.5A.7

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, 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 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 -  
 it has transparent rules and procedures -  
 (i) to provide for fair and orderly trading, and  
 (ii) to establish objective criteria for the efficient execution of orders;
- 2.6.2A UK **Schedule to the Recognition Requirements Regulations, Paragraph 4C**  
[deleted]  
[deleted]
- 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 significant

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)	<p>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 <i>MTF</i> or a <i>regulated market</i>, if those systems satisfy one of the following criteria:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) they formalise negotiated transactions [(see REC 2.6.11 EU)], each of which meets one of the following criteria: <ul style="list-style-type: none"> <li>(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 <i>regulated market</i> or <i>MTF</i> 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;</li> <li>(ii) it is subject to conditions other than the current market price of the share [see REC 2.6.12 EU].</li> </ul> </li> </ul> <p>For the purposes of point (b), the other conditions specified in the rules of the <i>regulated market</i> or <i>MTF</i> for a transaction of this kind must also have been fulfilled.</p> <p>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.</p>
(2)	<p>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 <i>regulated market</i> or the <i>MTF</i> pending their being disclosed to the market.</p>

2.6.11

UK

[Note: article 5 of MiFIR, and MiFID RTS 3] **Article 19 of the MiFID Regulation**

References to negotiated transaction	
<p>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 <i>regulated market</i> or an <i>MTF</i> which is negotiated privately but executed within the <i>regulated market</i> or <i>MTF</i> and where that member or participant in doing so undertakes one of the following tasks:</p>	
(a)	dealing on own account with another member or participant who acts for the account of a <i>client</i> ;
(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 <i>client</i> 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.	<p>... <i>regulated markets</i>, and ... <i>market operators</i> operating an <i>MTF</i> shall, with regard to transactions in respect of shares admitted to trading on <i>regulated markets</i> concluded ... within their systems, make public the following details:</p> <ul style="list-style-type: none"> <li>(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)]</li> <li>(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)];</li> <li>(c) an indication that the trade was a negotiated trade, where applicable;</li> <li>(d) any amendments to previously disclosed information, where applicable.</li> </ul> <p>Those details shall be made public either by reference to each <i>transaction</i> or in a form aggregating the volume and price of all <i>transactions</i> in the same share taking place at the same price at the same time.</p>

- 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 <i>transaction</i> was executed.
3.	Trading Time	The time at which the <i>transaction</i> was executed, reported in the local time of the competent authority to which the <i>transaction</i> will be reported, and the basis in which the <i>transaction</i> is re-

6.	Instrument Identification	ported expressed as Co-ordinated Universal Time (UTC) +/- hours. 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 <i>transaction</i> ;  - 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 <i>transaction</i> was executed. That identification shall consist ... [of the <i>regulated market</i> or <i>MTF's</i> ] ... unique harmonised identification code;  ...

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*]

2.6.19	EU	[deleted]
2.6.20	EU	[deleted]
2.6.21	EU	[deleted]
2.6.22	EU	[deleted]
2.6.23	EU	[deleted]
2.6.24	EU	[deleted]
2.6.25	EU	[deleted]
2.6.26	G	<p>In determining whether:</p> <ol style="list-style-type: none"><li>(1) business conducted by means of a <i>UK RIE's facilities</i> is conducted so;</li><li>(2) [deleted]</li></ol> <p>as to afford proper protection to investors, the <i>FCA</i> 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 <i>UK recognised body</i> concerning the operation of its <i>facilities</i>.</p>
2.6.27	G	<p>The <i>FCA</i> may also have regard to the extent to which the <i>UK recognised body's</i> rules, procedures and the arrangements for monitoring and overseeing the use of its <i>facilities</i>:</p> <ol style="list-style-type: none"><li>(1) include appropriate measures to prevent the use of its <i>facilities</i> for abusive or improper purposes;</li><li>(2) provide appropriate safeguards for investors against fraud or misconduct, recklessness, negligence or incompetence by users of its <i>facilities</i>;</li><li>(3) provide appropriate information to enable users of its <i>facilities</i> to monitor their use of the <i>facilities</i>;</li><li>(4) include appropriate arrangements to enable users of its <i>facilities</i> to raise queries about any use of those <i>facilities</i> which they are reported to have made;</li><li>(5) include appropriate arrangements to enable users of its <i>facilities</i> to comply with any relevant regulatory or legal requirements; and</li><li>(6) include appropriate arrangements to reduce the risk that those <i>facilities</i> will be used in ways which are incompatible with relevant regulatory or legal requirements;</li></ol>

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**

2.6.28

G

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.

2.6.29

G

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:

- (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 UK 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 UK 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.

		(6) This paragraph is without prejudice to the generality of paragraph 4.
2.7.1B	UK	<p><b>Schedule to the Recognition Requirements Regulations, Paragraph 7C</b></p> <p>(1) This paragraph applies to [a <i>UK RIE</i>] which provides central counterparty, clearing or settlement <i>facilities</i>.</p> <p>(2) The [<i>UK RIE</i>] must make transparent and non-discriminatory rules based on objective criteria, governing access to those <i>facilities</i>.</p> <p>(3) [deleted]</p> <p>(4) The [<i>UK RIE</i>] may refuse access to those <i>facilities</i> on legitimate commercial grounds.</p>
2.7.1C	UK	<p><b>Schedule to the Recognition Requirements Regulations, Paragraph 9ZC</b></p> <p>[<b>Note:</b> this sub-paragraph is relevant to <i>regulated markets</i> only. See ■ REC 2.16A regarding <i>MTFs</i> or <i>OTFs</i>.]</p> <p>(1) The rules of the [<i>UK RIE</i>] about access to, or membership of, a regulated market operated by it must permit the [<i>UK RIE</i>] to give access to or admit membership to (as the case may be) only -</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(b) a qualifying credit institution that has Part 4A permission to carry on the regulated activity of accepting deposits;</li> <li>(c) a person who – <ul style="list-style-type: none"> <li>(i) is of sufficient good repute;</li> <li>(ii) has a sufficient level of trading ability, competence and experience;</li> <li>(iii) where applicable has adequate organisational arrangements; and</li> <li>(iv) has sufficient resources for the role it is to perform, taking account of the [<i>UK RIE</i>'s] arrangements under paragraph 4(2)(d).</li> </ul> </li> </ul>
2.7.2	UK	[deleted]
2.7.2A	UK	[deleted]
2.7.3	G	<p>In assessing whether access to a <i>UK recognised body's facilities</i> is subject to criteria designed to protect the orderly functioning of the market, or of those <i>facilities</i>, and the interests of investors, the <i>FCA</i> may have regard to whether:</p> <ul style="list-style-type: none"> <li>(1) the <i>UK recognised body</i> limits access as a <i>member to persons</i>: <ul style="list-style-type: none"> <li>(a) over whom it can with reasonable certainty enforce its rules contractually;</li> <li>(b) who have sufficient technical competence to use its <i>facilities</i>;</li> </ul> </li> </ul>

- (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]

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

2.7A.1 **UK**

**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.2

- G** 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*;

- (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

**G** 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.

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[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.

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:

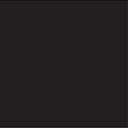
- (1) the level of protection which the arrangements provide against the risk of theft or other types or causes of loss;
- (2) whether the arrangements ensure that assets are only used or transferred in accordance with the instructions of the owner of those assets or in accordance with the terms of the 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.

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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]

...

(11) [deleted]

2.12.2AA UK

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

relating to the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market; as they have effect on IP completion day in the case of Part 6 rules;

(c)

(d) any subordinate legislation (within the meaning of the Interpretation Act 1978) made under any of the provisions mentioned in paragraphs (a), (b)(i) and (b)(ii) on or after IP completion day.

**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]

2.12.13 **G** [deleted]

2.12.14 **G** [deleted]



## 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**

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

**2.14 Rules and consultation**

**2.14.1 UK 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).

**2.14.2 UK [deleted]**

**2.14.3 G** 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.

**2.14.4 G**

- (1) 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*.
- (2) 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

2.14.5

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minor changes to any rules of an administrative or commercial character.

- (1) 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.
- (2) 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.
- (3) 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

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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**

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

**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.

2.15.4

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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.

2.15.5 **G** 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.

2.15.6 **G** 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 Schedule to the Recognition Requirements Regulations, Paragraph 9

(1)	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 <i>regulatory functions</i> .
(2)	But sub-paragraph (1) does not extend to - <ul style="list-style-type: none"> <li>(a) complaints about the content of rules made by the [UK RIE], or</li> <li>(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).</li> </ul>
(3)	The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a <i>person</i> independent of the [UK RIE], and for him to report on the result of his investigation to the [UK RIE] and to the complainant.
(4)	The arrangements must confer on the <i>person</i> mentioned in sub-paragraph (3) the power to recommend, if he thinks appropriate, that the [UK RIE] - <ul style="list-style-type: none"> <li>(a) makes a compensatory payment to the complainant,</li> <li>(b) remedies the matter complained of,</li> </ul> or takes both of those steps.
(5)	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].

### 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;

### 2.16.4

**G**

(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)

### 2.16A.1 UK 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 1 December 2021, 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;
  - (b) Articles 64 to 66 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;
  - (c) [deleted]
  - (d) [deleted]
- (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 1 December 2021 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 be exercised in executing client orders, and in particular when an order to the organised 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.

### 2.16A.1A 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 *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 Requirement 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 9I**

2.16B.1 **UK**

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

- (a) The Data Reporting Services Regulations 2017 (SI 2017/699)
- (b) the requirements of [ ];
- (c) [deleted]Chapter 6 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;
- (d) [deleted]Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers;
- (e) [deleted]Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting service providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments.

2.16B.2 **G**

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).

**2.17 Recognition requirements relating to the default rules of UK RIEs**

**2.17.1** G 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.

**2.17.1A** UK 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];"...

**2.17.2** UK **Schedule to the Recognition Requirements Regulations, Part II**

**Paragraph 10 (Default rules in respect of market contracts)**

- (1) The [*UK RIE*] must have *default rules* which, in the event of a member of the [*UK RIE*] being or appearing to be unable to meet his obligations in respect of one or more *market contracts*, enable action to be taken in respect of unsettled *market contracts* to which he is party.
- (2) The [*default rules*] may authorise the taking of the same or similar action in relation to a member who appears to be likely to become unable to meet his obligations in respect of one or more *market contracts*.
- (3) The [*default rules*] must enable action to be taken in respect of all unsettled *market contracts*, other than those entered into for the purposes of or in connection with the provision of clearing services for the [*UK RIE*].
- (4) Sub-paragraph (5) applies where the exchange has arrangements for transacting business with, or in relation to common members of, a [*recognised clearing house*] or another [*recognised investment exchange*].
- (5) A [*UK RIE*] must have [*default rules*] which in the event of the clearing house or the investment exchange being or appearing to be unable to meet its obligations in respect of one or more [*market contracts*], enable action to be taken in respect of unsettled [*market contracts*] to which that person is a party.

**Paragraph 11 (Content of rules)**

- (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 <i>market contracts</i> 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 [ <i>default rules</i> ];
	(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 <i>default rules</i> ;
	(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 [ <i>recognised clearing house</i> ] or another [ <i>recognised investment exchange</i> ] 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

	<p>(a) is a member of the exchange;</p> <p>(b) is a member or participant of AP; and</p> <p>(c) chooses to participate, in accordance with the rules of the exchange, in such agreement.</p>
(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)	<p>The reference in sub-paragraph (2) to the rights and liabilities of a defaulter under or in respect of an unsettled <i>market contract</i> includes (without prejudice to the generality of that provision) rights and liabilities arising in consequence of action taken under provisions of the [<i>default rules</i>] authorising -</p> <p>(a) the effecting by the [<i>UK RIE</i>] of corresponding contracts in relation to unsettled <i>market contracts</i> to which the defaulter is party;</p> <p>(b) the transfer of the defaulter's position under an unsettled <i>market contract</i> to another member of the [<i>UK RIE</i>];</p> <p>(c) the exercise by the <i>UK RIE</i> of any <i>option</i> granted by an unsettled <i>market contract</i>.</p>
(4)	A "corresponding contract" means a contract on the same terms (except as to price or premium) as the <i>market contract</i> but under which the <i>person</i> who is the buyer under the <i>market contract</i> agrees to sell and the <i>person</i> who is the seller under the <i>market contract</i> agrees to buy.
(5)	Sub-paragraph (4) applies with any necessary modifications in relation to a <i>market contract</i> 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 <i>market contract</i> does not include, where he acts as agent, rights or liabilities of his arising out of the relationship of principal and agent.
<b>Paragraph 12A (Content of rules)</b>	
The rules of the [ <i>UK RIE</i> ] 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).	
<b>Paragraph 13 (Notification to other parties affected)</b>	
The [ <i>UK RIE</i> ] must have adequate arrangements for ensuring that -	
	<p>(a) in the case of unsettled <i>market contracts</i> 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 [<i>default rules</i>] in relation to contracts to which they are a party; and</p> <p>(b) in the case of unsettled <i>market contracts</i> 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.</p>
<b>Paragraph 14 (Cooperation with other authorities)</b>	
The [ <i>UK RIE</i> ] must be able and willing to cooperate, by the sharing of information and otherwise, with the Secretary of State, any <i>relevant office-holder</i> and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a <i>member</i> of the [ <i>UK</i>	

*RIE] or any [designated non-member] or the default of a [recognised clearing house] or another [recognised investment exchange].*

2.17.3 **UK** [deleted]

2.17.4 **G** [deleted]

2.17.5 **G** [deleted]

2.17.6 **G** 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*.

