

## Chapter 2

# Recognition requirements

## 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) [A *UK RIE*] operating a multilateral trading facility or an organised trading facility must comply with those requirements of-
  - (a) Chapter I of Title II of [*MiFID*]; and
  - (b) any directly applicable EU legislation made under Chapter I; 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 authorised under Article 5 of the markets in financial instruments directive;
- (b) a credit institution authorised in accordance with the capital requirements directive; or
- (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 a multilateral trading facility which has registered that facility as an SME growth market in accordance with Article 33 of the markets in financial instruments directive (an “exchange-operated SME growth market”) must comply with rules made by the FCA for the purposes of this paragraph.

[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 in article 4.1.38 of the markets in financial instruments directive.
- (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 Article 27 of the markets in financial instruments directive.
- (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 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 4.1.1 of the markets in financial instruments directive;
  - “investment firm” has the meaning given in Article 4.1.1 of the markets in financial instruments directive;
  - “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 organized 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)*).