

Chapter 3

Notification rules for UK recognised bodies

3.3 Waivers

Statutory power

- 3.3.1 **G** Under section 294 of the *Act* (Modification or waiver of rules), the *FCA* may, on the application or with the consent of a *recognised body* (including an *ROIE*), direct that any *notification rule* is not to apply to the body or is to apply with such modifications as may be specified in the *waiver*.
- 3.3.2 **G** A *waiver* given under section 294 of the *Act* may be made subject to conditions.
- 3.3.3 **G** Under section 294(4) of the *Act*, before the *FCA* may give a *waiver* of *notification rules*, it must be satisfied that:
- (1) compliance by the *recognised body* with those *notification rules*, or with those *rules* as unmodified, would be unduly burdensome or would not achieve the purpose for which those *rules* were made; and
 - (2) the *waiver* would not result in undue risk to *persons* whose interests those *rules* are designed to protect.

Applications

- 3.3.4 **G** Where a *recognised body* wishes to make an application to the *FCA* for a *waiver* of a *notification rule*, it should in the first instance inform its usual supervisory contact at the *FCA*.
- 3.3.5 **G** There is no application form, but applicants should make their application formally and in writing and in accordance with any direction the *FCA* may make under section 294(2) of the *Act*. Each application should set out at least:
- (1) full particulars of the *waiver* which is requested;
 - (2) the reason why the *recognised body* believes that the criteria set out in section 294(4) (and described in ■ REC 3.3.3 G) would be met, if this *waiver* were granted; and
 - (3) where the *recognised body* believes that these criteria would be met if the *FCA* gave a *waiver* under section 294 subject to any condition, particulars of the kind of condition contemplated.

3.3.6 G The FCA may request further information from the applicant, before deciding whether to give a *waiver* under section 294 of the Act.

Waivers

3.3.7 G Any *waiver* given by the FCA under section 294 of the Act will be made in writing, stating:

- (1) the name of the *recognised body* in respect of which the *waiver* is made;
- (2) the *notification rules* which are to be waived or modified in respect of that body;
- (3) where relevant, the manner in which any *rule* is to be modified;
- (4) any condition or time limit to which the *waiver* is subject; and
- (5) the date from which the *waiver* is to take effect.

3.3.8 G Where the FCA considers that it will not give the *waiver* which has been applied for, the FCA will give reasons to the applicant for its decision. The FCA will endeavour, where practicable, to inform an applicant in advance where it seems that an application is likely to fail unless it is amended or expanded, so that the applicant will have the opportunity to make any necessary amendments or additions before the application is considered.

3.3.9 G Where the FCA wishes to give a *waiver* under section 294 of the Act with the consent of a *recognised body* (rather than on the application of a *recognised body*), the FCA will correspond or discuss this with that body in order to agree an appropriate *waiver*.

Reviews of waivers

3.3.10 G The FCA will periodically review any *waiver* it has given. The FCA has the right to revoke a *waiver* under section 294(6) of the Act. This right is likely to be exercised in the event of a material change in the circumstances of the *recognised body* or in any fact on the basis of which the *waiver* was given.