

Recognised Investment Exchanges

Chapter 4

Supervision

4.1 Application and purpose

Application

- 4.1.1 **G** ■ REC 4.2 to ■ REC 4.2E, ■ REC 4.3, ■ REC 4.5 and ■ REC 4.6A apply to *UK recognised bodies*. ■ REC 4.2F to ■ REC 4.2G ■ REC 4.4 and ■ REC 4.6 to ■ REC 4.8 apply to all *recognised bodies*. ■ REC 4.8 applies to applicants for recognition as a *recognised body*.

Purpose

- 4.1.2 **G** This chapter sets out the *FCA's* approach to the supervision of *recognised bodies* and contains *guidance* on:
- (1) the arrangements for investigating complaints about *recognised bodies* made under section 299 of the *Act* (Complaints about recognised bodies) (■ REC 4.4);
 - (2) the *FCA's* approach to the exercise of its powers under:
 - (a) (for *RIEs*) section 296 of the *Act* (Appropriate regulator's power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations* to give directions to *recognised bodies* (■ REC 4.6);
 - (b) (for *RIEs*) section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations* to revoke *recognition orders* (■ REC 4.7);
 and the procedure to be followed in those cases and where the *FCA* decides to refuse an application for recognition as a *recognised body* (■ REC 4.8); and
 - (3) the *FCA's* approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the *Companies Act 1989* to give directions to *UK RIEs* in relation to action under their *default rules* (■ REC 4.5).
- 4.1.3 **G** The *FCA's* general approach to supervision is intended to ensure that:
- (1) the *FCA* has sufficient assurance that *recognised bodies* continue at all times to satisfy the *recognised body requirements*; and
 - (2) the *FCA's* supervisory resources are allocated, and supervisory effort is applied, in ways which reflect the actual risks to the *regulatory objectives*.

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- 4.1.4 **G** In applying these principles of risk based supervision to the supervision of *recognised bodies*, the FCA has had particular regard to the special position of *recognised bodies* under the Act as well as to its general duties set out in section 2 of the Act (The FCA's general duties).
- 4.1.5 **G** More information on the supervision of *UK recognised bodies* is given in ■ REC 4.2 and ■ REC 4.3. More information on the supervision of *overseas recognised bodies* is given in ■ REC 6.

4.2 The supervisory relationship with UK recognised bodies

- 4.2.1** **G** The *FCA* expects to have an open, cooperative and constructive relationship with *UK recognised bodies* to enable it to have a broad picture of the *UK recognised body's* activities and its ability to meet the *recognised body requirements*. This broad picture is intended to complement the information which the *FCA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see ■ REC 3). The *FCA* will usually arrange meetings between the Infrastructure and Trading Firms Department and *members of the management body* of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.
- 4.2.2** **G** *UK recognised bodies* are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognised body requirements*.
- 4.2.3** **G** The *FCA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognised body requirements* when considering any changes to its business or operations.
- 4.2.4** **G** However, the *FCA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with their plans and operational initiatives, and will provide it with appropriate assurance that the *recognised body requirements* will continue to be satisfied.



4.2A Publication of information by UK RIEs and RAPs

- 4.2A.1** **G** Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, as the *FCA* may reasonably require.
- 4.2A.2** **G** Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE* which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FCA* may reasonably require.
- 4.2A.3** **G** Under subsection 292A(5) of the *Act*, a *UK RIE* must publish such particulars of any decision it makes to suspend or remove a *financial instrument* from trading on a *regulated market* operated by it, or lift a suspension or readmit the instrument, as the *FCA* may reasonably require.



4.2B Exercise of passport rights by a UK RIE

- 4.2B.1** G Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market, multilateral trading facility, organised trading facility or auction platform* operated by it, it must give the *FCA* written notice of its intention to do so. The notice must:
- (1) describe the arrangements; and
 - (2) identify the *EEA State* in which the *UK RIE* intends to make them.
- [Note: MiFID RTS 3 and MiFID ITS 4, Annex IV provide for the format for notification by the operator of an MTF or OTF to its Home State competent authority of any arrangements to facilitate access to and trading on the trading venue by remote users, members or participants within the territory of another EEA State]**
- 4.2B.2** G The *FCA* must, within one month of receiving the *UK RIE's* notice, send a copy of it to the *Host State regulator*.
- 4.2B.3** G The *UK RIE* may not make the arrangements until the *FCA* has sent a copy of the notice to the *Host State regulator*.
- 4.2B.4** G The requirements that a *UK RIE* must give the *FCA* written notice and the *UK RIE* may not make the arrangements until the *FCA* has sent a copy of it to the *Host State regulator* do not apply to arrangements made by a *UK RIE* on or before 31 October 2007.

 4.2C Control over a UK RIE

- 4.2C.1** **G** Section 301A(1) of chapter 1A of Part XVIII of the *Act* places an obligation on a *person* who decides to acquire or increase control (see sections 301D and 301E of the *Act*) over a *UK RIE* to notify the *FCA*, before making the acquisition. Furthermore, those *persons* are required to obtain the *FCA*'s approval before acquiring control or increasing the level of control held.
- 4.2C.2** **G** The *FCA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*). The reference to any financial market is to be read as including a reference to any *auction platform* as a result of the *RAP regulations*.
- 4.2C.3** **G** If a proposed acquirer has complied with the obligation to notify, the procedure the *FCA* will follow if it approves or does not approve of that *person* acquiring or increasing control is set out in sections 301F and 301G of the *Act*.
- 4.2C.4** **G** [deleted]
- 4.2C.5** **G** [deleted]
- 4.2C.6** **G** The *FCA*'s internal arrangements provide for any decisions to refuse to approve an acquisition or object to an existing control to be taken at an appropriately senior level.
- 4.2C.7** **G** If the *FCA* refuses to approve an acquisition or objects to an existing control, the *person* concerned may refer the matter to the *Tribunal* (see ■ EG 2.39).
- 4.2C.8** **G** The powers the *FCA* can exercise in the event that a *person* acquires or continues to exercise control notwithstanding the *FCA*'s refusal to approve the acquisition of control or the *FCA*'s objection to the exercise of control are set out in sections 301J and 301K of the *Act*.
- 4.2C.9** **G** The offences for which a *person* who fails to comply with the obligations set out in Chapter 1A of Part XVIII of the *Act* is liable are set out in section 301L of the *Act*.

4.2D Suspension and removal of financial instruments from trading by the FCA

- 4.2D.1** **G** (1) Under section 313A of the *Act*, the *FCA* may for the purpose of protecting:
- (a) the interests of investors; or
 - (b) the orderly functioning of the financial markets;
- require a *UK RIE* to suspend or remove a *financial instrument* from trading.
- (2) If the *FCA* exercises this power, the *UK RIE* concerned may refer the matter to the *Tribunal*.
- 4.2D.2** **G** The procedure the *FCA* will follow if it exercises its power to require a *UK RIE* to suspend or remove a *financial instrument* from trading is set out in sections 313B to 313BE of the *Act*. The *FCA*'s internal arrangements provide for decisions to exercise this power to be taken at an appropriately senior level. If the *FCA* exercises this power, the *UK RIE* concerned and the issuer (if any) of the relevant *financial instrument* may refer the matter to the *Tribunal*(see ■ EG 2.39).
- 4.2D.3** **G** [deleted]
- 4.2D.4** **G** [deleted]
- 4.2D.5** **G** [deleted]
- 4.2D.6** **G** [deleted]
- 4.2D.7** **G** Under sections 313CA(2) and (3) of the *Act*, if the *FCA* imposes a requirement to suspend or remove a *financial instrument* from trading, the *FCA* must require any trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or

the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.

- 4.2D.8** **G** Under sections 313CB (2) and (3) of the *Act*, if the *FCA* receives notice that a *person* operating a trading venue has suspended or removed a *financial instrument* from trading on the trading venue because the instrument no longer complies with the venue's rules, the *FCA* must require any other trading venue or *systematic internaliser*, falling under its jurisdiction as defined in section 313D of the *Act*, which trades the same instrument to suspend or remove the instrument if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument, unless such a step would cause significant damage to the interests of investors or the orderly functioning of the financial markets. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*.
- 4.2D.9** **G** The *FCA* receives notice for the purposes of **■ REC 4.2D.8G** when it is informed of the suspension or removal decision by the *RIE*, *investment firm* with a *Part 4A permission* enabling it to carry on *MiFID business*, or *CRD credit institution* that operates the trading venue.
- 4.2D.10** **G** Under sections 313CC (2) and (3) of the *Act*, if the *FCA* receives notice that a *competent authority* of another *EEA State* has suspended or removed a *financial instrument* from trading on a trading venue or *systematic internaliser* pursuant to articles 32.2, 52.2 or 69.2 of *MiFID*, the *FCA* must require any trading venue or *systematic internaliser* falling under its jurisdiction as defined in section 313D of the *Act*, and which trades the same instrument, to suspend or remove the instrument from trading if the suspension or removal was due to suspected market abuse; a take-over bid; or the non-disclosure of *inside information* about the *issuer* or the instrument. The same applies in relation to a derivative which relates to or is referenced to the *financial instrument*. The *FCA* must revoke the requirement if the other *EEA State* informs the *FCA* it has lifted the suspension or removal.
- 4.2D.11** **G** The *FCA* receives notice for the purposes of **■ REC 4.2D.10G** when it is provided by a *competent authority* of another *EEA State* or *ESMA* in accordance with section 313CC(4) of the *Act*.



4.2E Information: compliance of UK recognised bodies with EU requirements

4.2E.1

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Under section 293A of the *Act*, the *FCA* may require a *UK recognised body* to give such information as it reasonably requires in order to satisfy itself that the *UK recognised body* is complying with any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the *Act* by the Treasury.



4.2F Information gathering power on FCA's own initiative

4.2F.1

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- (1) While the *FCA* will seek to obtain information from an *RIE* in the context of an open, cooperative and constructive relationship with the *RIE*, where it appears to the *FCA* that obtaining information in that context will not achieve the necessary results, the *FCA* or (as the case may be) its officers may, under section 165(7) of the *Act*, by notice in writing, require any of the following persons to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require:
 - (a) the *RIE*; or
 - (b) a person who is connected with the *RIE*.
- (2) Under section 165(11) of the *Act*, a person is connected with a *recognised body* if he is or has at any relevant time been:
 - (a) a member of the *RIE*'s group; or
 - (b) a controller of the *RIE*; or
 - (c) any other member of a partnership of which the *RIE* is a member; or
 - (d) a person mentioned in Part I of Schedule 15 of the *Act* (reading references in that Part to the 'authorised person' as references to the *RIE*).

4.2G Reports by skilled persons

4.2G.1

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- (1) Where the *FCA* exercises its power conferred by section 166(1) of the *Act* (Reports by skilled persons), ■ SUP 5.5.1 R, ■ SUP 5.5.5 R and ■ SUP 5.5.9 R (to the extent they relate to the *FCA*'s powers under section 166 of the *Act*) apply to a *RIE* in the same way as they apply to a *firm*.
- (2) The guidance in ■ SUP 5 which relates to the *FCA*'s power in section 166 of the *Act* also applies to a *RIE* in the same way as it applies to a *firm*.

4.3 Risk assessments for UK recognised bodies

- 4.3.1** **G** Information is needed to support the *FCA's* risk based approach to the supervision of all regulated entities. Risk based supervision is intended to ensure that the allocation of supervisory resources and the supervisory process are compatible with the *regulatory objectives* and the *FCA's* general duties under the *Act*. The central element of the process of risk based supervision is a systematic assessment by the *FCA* (a risk assessment) of the main supervisory risks and concerns for each regulated entity.
- 4.3.2** **G** For each *UK recognised body*, the *FCA* will conduct a periodic risk assessment. This assessment will take into account relevant considerations including the special position of *recognised bodies* under the *Act*, the nature of the *UK recognised body's members*, the position of other users of its *facilities* and the business environment more generally.
- 4.3.3** **G** The risk assessment will guide the *FCA's* supervisory focus. It is important, therefore, that there is good dialogue between the *FCA* and the *recognised body*. The *FCA* expects to review its risk assessment with the staff of the *UK recognised body* to ensure factual accuracy and a shared understanding of the key issues, and may discuss the results of the risk assessment with *members of the management body* of the *UK recognised body*. If appropriate, the *FCA* may send a detailed letter to the body's *chief executive*, chairman or both with proposals for further action or work to address particular concerns or issues and seek their comments on the risk assessment.

4.4 Complaints

Recognised body's arrangements

- 4.4.1 **G** *Recognised bodies* may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see ■ REC 2.15 and ■ REC 2.16) or *RAP recognition requirements* (see ■ REC 2A.3.2 G).

The FCA's arrangements

- 4.4.2 **G** The *Act* does not provide a mechanism for appeals to the *FCA* from decisions by *recognised bodies* in relation to complaints. However, the *FCA* is required by section 299 of the *Act* (Complaints about recognised bodies) to have arrangements to investigate complaints (called *relevant complaints* in the *Act*) which it considers relevant to the question of whether a *recognised body* should remain recognised as such. This section describes aspects of the *FCA's* arrangements for investigating *relevant complaints*.
- 4.4.3 **G** Where the *FCA* receives a complaint about a *recognised body*, it will, in the first instance, seek to establish whether the complainant has approached the *recognised body*. Where this is not the case, the *FCA* will ask the complainant to complain to the *recognised body*. Where the complainant is dissatisfied with the handling of the complaint, but has not exhausted the *recognised body's* own internal complaints procedures (in the case of a complaint against a *UK recognised body*, including by applying to that body's *complaints investigator*), the *FCA* will encourage the complainant to do so.
- 4.4.4 **G** The *FCA* will not usually consider a complaint which has not, in the first instance, been made to the *recognised body* concerned, unless there is good reason for believing that it is a *relevant complaint* which merits early consideration by the *FCA*.
- 4.4.5 **G** When it is considering a *relevant complaint*, the *FCA* will make its own enquiries as appropriate with the *recognised body*, the complainant and other *persons*. It will usually ask the *recognised body* and the complainant to comment upon any preliminary or draft conclusions of its review and to confirm any matters of fact at that stage.
- 4.4.6 **G** The *FCA* will communicate the outcome of its review of a *relevant complaint* to the complainant and the *recognised body*, but will normally only discuss

any action which it considers the *recognised body* should take with the *recognised body* itself.

4.5 FCA supervision of action by UK RIEs under their default rules

4.5.1 **G** *UK RIEs* which, under their *rules*, have *market contracts* are required to have *default rules* enabling them (among other things) to take action in relation to a *member* who appears to be unable to meet his obligations in respect of one or more unsettled *market contracts*. The detailed *recognition requirements* relating to the *default rules* are set out in ■ REC 2.17.

4.5.2 **G** The *default rules* are designed to ensure that rights and liabilities between the defaulter and any counterparty to an unsettled *market contract* are discharged, and for there to be paid between the defaulter and each counterparty one net sum. The Companies Act 1989 contains provisions which protect action taken under *default rules* from the normal operation of insolvency law which might otherwise leave this action open to challenge by a *relevant office-holder*.

4.5.3 **G** The Companies Act 1989 also gives the *FCA* powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the appropriate regulator to give directions) (see ■ REC 4.5.4 G), the *FCA* may direct a *UK RIE* to take, or not to take, action under its *default rules*. Before exercising these powers the *FCA* must consult the *UK RIE*. The *FCA* may also exercise these powers if a *relevant office-holder* applies to it under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken) (see ■ REC 4.5.9 G).

4.5.4 **G** **The Companies Act 1989: section 166**

The *FCA* may issue a "positive" direction (to take action) under section 166(2)(a) of the Companies Act 1989:

Where in any case a [UK RIE] has not taken action under its default rules- if it appears to [the FCA] that it could take action, [the FCA] may direct it to do so,

but under section 166(3)(a) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and [the FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that failure to take action would involve undue risk to investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

The *FCA* may issue a "negative" direction (not to take action) under section 166(2)(b) of the Companies Act 1989:

Where in any case a [UK RIE] has not taken action under its default rules - if it appears to the [FCA] that it is proposing to take or may take action, [the FCA] may direct it not to do so.

but under section 166(3)(b) of the Companies Act 1989:

Before giving such a direction the [FCA] shall consult the [UK RIE] in question; and the [FCA] shall not give a direction unless [the FCA] is satisfied, in the light of that consultation that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market, or that the direction is necessary having regard to the public interest in the financial stability of the United Kingdom, or that the direction is necessary to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 or in connection with a particular exercise of a power under that Part.

- 4.5.5 **G** Other than in exceptional circumstances, the *FCA* will consult with the Bank of England before exercising these powers.
- 4.5.6 **G** Under section 166(6) of the Companies Act 1989, a negative direction cannot be given if, in relation to the defaulter, either:
- (1) a bankruptcy order or an award of sequestration of the defaulter's estate has been made, or an interim receiver or interim trustee has been appointed; or
 - (2) a winding-up order has been made, a resolution for voluntary winding-up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;
- and any previous negative direction will cease to have effect on the making or passing of any such order, award or appointment.
- 4.5.7 **G** Under section 166(5) of the Companies Act 1989, a negative direction may be expressed to have effect until a further direction is given, which may either be a positive direction or a revocation of the earlier negative direction.
- 4.5.8 **G** Under section 166(7) of the Companies Act 1989, where a *UK RIE* has taken action either of its own accord or in response to a direction, the *FCA* may direct it to do or not to do specific things subject to these being within the powers of the *UK RIE* under its *default rules*. However,
- (1) where the *UK RIE* is acting in accordance with a direction given by the *FCA* to take action under section 166(2)(a) of the *Act* on the basis that failure to take action would involve undue risk to investors or other participants in the market, the *FCA* will not direct it to do or not to do specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that this will not impede or frustrate the proper and efficient conduct of the default proceedings; and
 - (2) where the *UK RIE* has taken action under its *default rules* without being directed to do so, the *FCA* will not direct it to do or not to do

specific things which the *UK RIE* has power to do under its *default rules*, unless the *FCA* is satisfied that:

- (a) the direction will not impede or frustrate the proper and efficient conduct of the default proceedings; or
- (b) the direction is necessary:
 - (i) having regard to the public interest in the stability of the *UK financial system*;
 - (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime); or
 - (iii) in connection with a particular exercise of a power under Part 1 of the Banking Act 2009.

Section 167 of the Companies Act 1989

4.5.9

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Where, in relation to a *member* (or *designated non-member*) of a *UK RIE* :

- (1) a bankruptcy order; or
- (2) an award of sequestration of his estate; or
- (3) an order appointing an interim receiver of his property; or
- (4) an administration or winding-up order; or
- (5) a resolution for a voluntary winding-up; or
- (6) an order appointing a provisional liquidator;

has been made or passed and the *UK RIE* has not taken action under its *default rules* as a result of this event or of the matters giving rise to it, a *relevant office-holder* appointed in connection with the order, award or resolution may make an application to the *FCA* under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

4.5.10

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The effect of an application under section 167 of the Companies Act 1989 is to require the *UK recognised body* concerned to take action under its *default rules* or to require the *FCA* to take action under section 166 of the Companies Act 1989 (see *REC 4.5.4G*).

4.5.11

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The procedure is that the *FCA* must notify the *UK recognised body* of the application and, unless within three *business days* after receipt of that notice, the *UK recognised body*:

- (1) takes action under its *default rules*; or
- (2) notifies the *FCA* that it proposes to take action forthwith; or
- (3) is directed to take action by the *FCA* under section 166(2)(a) of the Companies Act 1989;

the provisions of sections 158 to 165 of the Companies Act 1989 do not apply in relation to *market contracts* to which the *member* or *designated non-*

member is a party or to anything done by the *UK recognised body* for the purpose of, or in connection with, the settlement of any *market contracts*.

4.6 The section 296 power to give directions

- 4.6.1** G Under section 296 of the *Act* (FCA's power to give directions) and (for *RAPs*) under regulation 3 of the *RAP regulations*, the *FCA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognised body requirements*. In the case of a *UK RIE* (including one which operates an *RAP*) those steps may include granting the *FCA* access to the *UK RIE's* premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.
- 4.6.2** G [deleted]
- 4.6.3** G The *FCA* is likely to exercise its power under section 296 of the *Act* or regulation 3 of the *RAP regulations* if it considers that:
- (1) there has been, or was likely to be, a failure to satisfy one or more of the *recognised body requirements* which has serious consequences;
 - (2) compliance with the direction would ensure that one or more of the *recognised body requirements* is satisfied; and
 - (3) the *recognised body* is capable of complying with the direction.
- 4.6.4** G Under section 298(7) of the *Act* (Directions and revocation: procedure), and (for *RAPs*) regulation 5(7) of the *RAP regulations*, the *FCA* need not follow the consultation procedure set out in the rest of section 298 (see ■ REC 4.8) or may cut short that procedure, if it considers it reasonably necessary to do so. For *RAPs*, the *FCA* need not follow the procedure set out in regulation 5 of the *RAP regulations* or may cut short the procedure, if it considers it essential to do so.

4.6A The section 192C power to direct qualifying parent undertakings

4.6A.1

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- (1) Under section 192C of the *Act* (Power to direct qualifying parent undertaking), the *FCA* has the power to give a direction to the qualifying parent undertaking of a *UK RIE* if the general condition is satisfied.
- (2) For the purposes of section 192C of the *Act*, a parent undertaking of a *UK RIE* is a 'qualifying parent undertaking' if:
 - (a) the parent undertaking is a body corporate which is incorporated in the United Kingdom, or has a place of business in the United Kingdom;
 - (b) the parent undertaking is not itself an *authorised person*, a *RIE* or a *RCH*; and
 - (c) the parent undertaking is a financial institution of a kind prescribed by the Treasury by order.
- (3) For the purposes of section 192C of the *Act*, the general condition is that the *FCA* considers that it is desirable to give the direction in order to advance one of more of its operational objectives.
- (4) In exercising or deciding whether to exercise its power under section 192(c) of the *Act*, the *FCA* will have regard to any statement of policy published under this section and for the time being in force.

[Note:1. Treasury has issued a draft order for consultation prescribing the types of financial institutions which are qualifying parent undertakings. See the draft *Financial Services and Markets Act 2000 (Prescribed Financial Institutions) Order 201**, as published in the Treasury consultation paper titled '*A new approach to financial regulation: draft secondary legislation*': http://www.hm-treasury.gov.uk/d/condoc_fin_regulation_draft_secondary_leg.pdf .

2. The *FCA* has issued a statement of policy with respect to the giving of directions under section 192C. <http://www.fca.org.uk/news/firms/fca-statement-of-policy-on-the-use-of-the-power-to-direct-qualifying-parent-undertakings>]

4.7 The section 297 power to revoke recognition

- 4.7.1** **G** Under section 297 of the *Act* (Revoking recognition) and (for *RAPs*) under regulation 4 of the *RAP regulations*, the *FCA* has the power to revoke a *recognition order* relating to a *recognised body*.
- 4.7.2** **G** The *FCA* will revoke a *recognition order* if:
- (1) [deleted]
 - (2) the *recognised body* has asked the *FCA* to revoke the order.
- 4.7.2A** **G** Where the *FCA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also an *RAP*, the *FCA* will also revoke the *recognition order* relating to its status as an *RAP*.
- 4.7.3** **G** The *FCA* will usually consider revoking a *recognition order* if:
- (1) the *recognised body* is failing or has failed to satisfy one or more of the *recognised body requirements* and that failure has or will have serious consequences; or
 - (2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FCA's* power to give directions) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
 - (3) for some other reason, it would not be appropriate for the *FCA* to give a direction under section 296 or (for *RAPs*) regulation 3 of the *RAP regulations*; or
 - (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange during the 12 *months* beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange at any time during the period of six *months* ending with the day the *recognition order* is revoked; or
 - (5) in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an

auction platform at any time during the period of six *months* ending with the day the *RAP recognition order* is revoked.

4.7.4

G

The *FCA* would be likely to consider the conditions in ■ REC 4.7.3 G (2) or ■ REC 4.7.3 G (3) to be triggered in the following circumstances:

- (1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy one or more of the *recognised body requirements*; or
- (2) the *recognised body* does not appear to be willing to satisfy one or more of the *recognised body requirements*; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies one or more of the *recognised body requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

4.7.5

G

In addition to the relevant factors set out in ■ REC 4.7.4 G, the *FCA* will usually consider that it would not be able to secure an *ROIE's* compliance with the *recognition requirements* or other obligations in or under the *Act* by means of a direction under section 296 of the *Act*, if it appears to the *FCA* that the *ROIE* is prevented by any change in the legal framework or supervisory arrangements to which it is subject in its *home territory* from complying with the *recognition requirements* or other obligations in or under the *Act*.

4.8 The section 298 procedure

4.8.1

G

A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) regulation 4 of the *RAP regulations*; or
- (2) make a direction under section 296 (*FCA's powers to give directions*) or (for *RAPs*) regulation 3 of the *RAP regulations*; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or 290A (Refusal of recognition on ground of excessive regulatory provision) or (for *RAPs*) regulation 2 of the *RAP regulations*;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) and (for *RAPs*) regulation 5 of the *RAP regulations* set out procedures (see ■ REC 4.8.9 G) which the *FCA* will follow unless, in the case of a revocation of a *recognition order*, the *recognised body* concerned has given its consent (see section 297(1) or regulation 4(1) of the *RAP regulations*) or:

- (a) in case where the *FCA* proposes to make a direction under section 296 it considers it is reasonably necessary not to follow, or to cut short, the procedure (see ■ REC 4.8.7 G); or
- (b) (for *RAPs*) in a case where the *FCA* proposes to make a direction under regulation 3 of the *Rap regulations*, it considers it is essential not to follow, or to cut, short, the procedure.

4.8.2

G

The *FCA's* internal arrangements provide for any of these decisions to be taken at an appropriately senior level.

4.8.3

G

In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will have regard to all relevant information and factors including:

- (1) its *guidance to recognised bodies*;
- (2) the results of its routine supervision of the body concerned;
- (3) the extent to which the failure or likely failure to satisfy one or more of the *recognised body requirements* may affect the *statutory objectives*.

4.8.4 **G** In considering whether or not to make a *recognition order*, the *FCA* will have regard to all relevant information and factors, including its *guidance* to *recognised bodies* and applicants and the information provided by applicants. Details of the application processes and other *guidance* for applicants are set out in ■ REC 5 and (for overseas applications) ■ REC 6.

4.8.5 **G** The procedures laid down in section 298 of the *Act* and (for *RAPs*) regulation 5 of the *RAP regulations* are summarised, with the *FCA's* *guidance* about the actions it proposes to take in following these procedures, in the tables at ■ REC 4.8.9 G and ■ REC 4.8.10 G respectively.

4.8.6 **G** Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) regulation 3 or 4 of the *RAP regulations*, the *FCA* will usually discuss its intention, and the basis for this, with the *members of the management body* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.

4.8.7 **G** [deleted]

4.8.8 **G** [deleted]

4.8.9 **G** **Key steps in the section 298 procedure**

| | The <i>FCA</i> will: | <i>Guidance</i> |
|-----|---|---|
| (1) | give written notice to the <i>RIE</i> (or applicant); | The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the period within which representations should be made (unless subsequently extended by the <i>FCA</i>). |
| (2) | receive representations from the <i>RIE</i> or applicant concerned; | The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>RIE</i> (or applicant). It will normally only hear oral representations from the <i>RIE</i> on request. |
| (3) | write promptly to <i>RIE</i> (or applicant) who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations; | The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>RIE</i> (or applicant) further time to respond. |
| (4) | have regard to representations made; | |

| | The <i>FCA</i> will: | Guidance |
|-----|---|----------|
| (5) | (when it has reached its decision) notify the <i>R/E</i> (or applicant) concerned in writing. | |

4.8.10

G

For RAPs, key steps in the regulation 5 procedure

| | The <i>FCA</i> will: | Guidance |
|-----|--|--|
| (1) | give written notice to the <i>RAP</i> (or applicant); | The notice will state why the <i>FCA</i> intends to take the action it proposes to take, and include an invitation to make representations, and the date by which representations should be made. |
| (2) | take such steps as it considers reasonably practicable to bring the notice to the attention of the <i>members</i> of the <i>RAP</i> or of the applicant, as the case may be; | The <i>FCA</i> will also notify <i>persons</i> individually (as far as it considers it reasonably practicable to do so) if it considers that the action it proposes to take would affect them adversely in a way which would be different from its effect on other <i>persons</i> of the same class. |
| (3) | publish the notice so as to bring it to the attention of other <i>persons</i> likely to be affected; | |
| (4) | receive representations from the <i>RAP</i> or applicant concerned, any <i>member</i> of the <i>RAP</i> or applicant, and any other <i>person</i> who is likely to be affected by the action the <i>FCA</i> proposes to take; | The <i>FCA</i> will not usually consider oral representations without first receiving written representations from the <i>person</i> concerned. It will normally only hear oral representations from the <i>RAP</i> (or applicant) itself or of a <i>person</i> whom it has notified individually, on request. |
| (5) | write promptly to any <i>person</i> who requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations; | The <i>FCA</i> will indicate why it will not hear oral representations and the <i>FCA</i> will allow the <i>person</i> concerned further time to respond. |
| (6) | have regard to representations made; | |
| (7) | (when it has reached its decision) notify the <i>RAP</i> (or applicant) concerned in writing; | |
| (8) | (if it has decided to give a direction, or revoke or refuse to make a <i>recognition order</i>) take such steps as it considers reasonably practicable to bring its decision to the attention of <i>members</i> of the <i>RAP</i> or applicant and to other <i>persons</i> likely to be affected. | The <i>FCA</i> will usually give notice of its decision to the same <i>persons</i> and in the same manner as it gave notice of its intention to act. |

4.9 Disciplinary measures

4.9.1

G

- (1) Under sections 312E and 312F of the *Act*, if the *FCA* considers that a *recognised body* has contravened a requirement imposed by the *FCA* under any provision of the *Act* that relates to a *RIE*, or under any provision of the *Act* whose contravention constitutes an offence the *FCA* has power to prosecute, or by a qualifying EU provision specified by the Treasury, it may:
 - (a) publish a statement to that effect; or
 - (b) impose on the body a financial penalty of such amount as it considers appropriate.
- (2) The procedures and policies which the *FCA* will follow if it proposes to publish a statement under section 312E or to impose a penalty under section 312F, and if it decides to publish such statement or impose such penalty, are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power to impose a penalty under section 312F of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[**Note:**The *FCA* has issued a statement of policy for consultation with respect to the exercise of its powers under section 312F of the *Act*.]

4.9.2

G

- (1) Under section 192K of the *Act*, if the *FCA* considers that a qualifying parent undertaking of a *UK RIE* has contravened a requirement of a direction given by the *FCA* under section 192C of the *Act*, or a provision of rules made by the *FCA* under section 192J of the *Act*, it may:
 - (a) impose a penalty of such amount as it considers appropriate on the qualifying parent undertaking of the *UK RIE*, or any person who was knowingly concerned in the contravention; or
 - (b) publish a statement censuring the person.
- (2) The procedures which the *FCA* will follow if it proposes to take action, and if it decides to take action against a *person*, under section 192K are set out in *DEPP*.
- (3) In exercising or deciding whether to exercise its power under section 192K of the *Act*, the *FCA* will also have regard to any statement of policy published under this section and in force at a time when the contravention in question occurred.

[**Note:** The FCA has issued a statement of policy for consultation with respect to the exercise of its powers under section 192K of the Act.]