

Guidance consultation

Special member controls edition

April 2013

Contents

- Here, we give an overview of the approach we expect recognised investment exchanges (RIEs) and firms operating multilateral trading facilities (MTFs) to take to ensure an on-going oversight of the systems and controls, which their member firms operate to comply with the RIE's or MTF operator's rulebook. This guidance is effective from the date we publish this Market Watch article.
- We are setting out the approach we expect because our supervision work showed that recognised investment exchanges and MTF operators are currently defining and implementing their oversight responsibilities very differently.

Introduction

We set out guidance in REC on how RIEs monitor compliance of their members with their respective rules. REC 2.6.27G provides that we may have regard to the extent to which the RIE's rules, procedures and the arrangements for monitoring and overseeing the use of its facilities include the following:

- Appropriate measures to prevent the use of its facilities for abusive or improper purposes (REC 2.6.27G (1); and
- Appropriate arrangements to reduce risk that those facilities will be used in ways which are incompatible with relevant regulatory or legal requirements REC 2.6.27G (6).

Similarly, we set out rules in MAR on how a firm operating an MTF should monitor compliance by its users; specifically, that a firm operating an MTF must have effective arrangements and procedures, relevant to the MTF, for the regular monitoring of the compliance by its users with its rules (MAR 5.5.1R (1)).

Background

Discussions with RIEs and firms operating MTFs have shown there are widely differing approaches to oversight of member firm controls under these provisions. While we would expect there to be some differences due to the variety of platforms, we are now setting out our high-level expectations under these provisions.

All RIEs and firms operating MTFs should have in place an effective and proportionate framework, with documented processes and procedures, sufficient to enable them to determine that their members' systems and controls can be reasonably expected to ensure compliance with the respective platform's rules and trading procedures. This framework should cover both assessments of new members and ongoing procedures for retaining assurance.

Risk-based approach

We expect the monitoring system of either an RIE or a firm operating an MTF to be both proportionate and risk-based.

So a platform operator may choose to concentrate its efforts on member firms that it deems to be riskier, or whose failure to operate adequate operational controls would have a bigger impact on the market than others (e.g. because of the nature or scale of the activity that the firm undertakes), while still ensuring that it exercises adequate oversight of other members that are deemed to pose less risk. Any assessment of the level of risk that each member poses should be based on well-defined criteria; this could include the scale or complexity of the member's trading activity and whether the member has sponsored access or DMA clients. The platform operator could tailor the exact level of monitoring differently for each member and their platform.

Proactive approach

The oversight that a platform operator exercises over its members does not necessarily have to involve a programme of on-site visits if this would be disproportionate. However, we expect a platform operator's approach to be proactive and go beyond a reactive examination of member-level systems and controls failures once they have occurred. It is important that proportionate effort is made to engage with members before there is any evidence of system and control deficiencies.

When a platform operator discovers evidence of inadequate systems and controls amongst one of its members, we expect it to take appropriate and swift action, even if these have not yet had a negative impact on the market. This may include a physical visit to the relevant member.

What does this mean for RIEs and operators of MTFs?

As the UK authority responsible for supervising trading platforms, we will expect RIEs or firms operating MTFs to demonstrate that the active oversight outlined in this article is in place.