

CP12/37**

Financial Services Authority

The Financial Services Bill:

Implementing markets powers, decision
making procedures and penalties policies



Contents

Abbreviations used in this paper	3
1. Overview	5
2. Sponsors	10
3. Notices regarding cancellations/suspensions of an issuer's securities at the issuer's request	18
4. Primary information providers	20
5. Recognised Investment Exchanges	26
6. Decision Procedures and Penalties	32
 Annex 1:	 Compatibility statement
Annex 2:	List of questions
 Appendix 1:	 Listing Rules (Sponsors) (Amendment No 4) Instrument 2013
Appendix 2:	Listing Rules (Cancellation and Suspension Notices) Instrument 2013
Appendix 3:	Listing and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2013
Appendix 4:	Recognised Investment Exchanges and Recognised Auction Platforms Legal Cutover Instrument 2013
Appendix 5:	Decision Procedure and Penalties Manual (Amendment) Instrument 2013
Appendix 6:	Designation of Handbook Provisions

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 1 February 2013.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12-37-response.shtml.

Alternatively, please send comments in writing to:

Chapters 2, 3, 4 & 5:	Emma O'Hanlon	Telephone: 020 7066 8426
Chapter 6:	Mark Lewis	Telephone: 020 7066 4244

All responses to the above people should be sent to them at:
Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Email: cp12_37@fsa.gov.uk

It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an email message will not be regarded as a request for non-disclosure.

A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

CBA	Cost benefit analysis
CP	Consultation Paper
DEPP	The Decision Procedure and Penalties Manual
DTR	Disclosure and Transparency Rules sourcebook
EG	The Enforcement Guide
EMIR	European Market Infrastructure Regulation
FCA	Financial Conduct Authority
FSA	Financial Services Authority
FSMA	Financial Services and Markets Act 2000
LCO	Legal Cutover (1 April 2013)
LR	Listing Rules sourcebook
PRA	Prudential Regulation Authority
RAP	Recognised Auction Platform
RCH	Recognised Clearing House
RDC	Regulatory Decisions Committee
REC	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
RIE	Recognised Investment Exchange
The Bill	The Financial Services Bill

1

Overview

- 1.1 This Consultation Paper (CP) is part of a series of papers setting out proposed changes to the regulatory requirements needed to create the new rulebooks and policies for the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA). These changes are intended to be in place when the new regulators acquire their legal powers in 2013.

Regulatory reform and changes to existing requirements

- 1.2 The background to the proposed changes is set out in the following CPs and a number of other papers recently published by the government, the FSA and the Bank of England¹:
- o CP12/24², *PRA and FCA regimes relating to aspects of authorisation and supervision*;
 - o CP12/26³, *PRA and FCA regimes for Approved Persons*;
 - o CP12/28⁴, *Regulatory fees and levies: policy proposals for 2013/14*; and
 - o CP12/34⁵, *FCA Handbook updates relating to supervision and threshold conditions and statement on the FCA's new power of direction over qualifying parent undertakings*.
- 1.3 The Financial Services Bill (the Bill) that has been considered by Parliament, and the necessary secondary legislation that will support it, will establish the new UK regulatory architecture. This includes creating the PRA and the FCA.
- 1.4 The PRA, a subsidiary of the Bank of England, will prudentially supervise deposit takers, insurers and a small number of significant investment firms. The FCA will regulate conduct in retail and wholesale markets; supervise the trading infrastructure that supports those markets; and, prudentially regulate firms not regulated by the PRA.

¹ Please see the FSA's webpages on Regulatory Reform at www.fsa.gov.uk/about/what/reg_reform.

² www.fsa.gov.uk/library/policy/cp/2012/12-26.shtml

³ www.fsa.gov.uk/library/policy/cp/2012/12-24.shtml

⁴ www.fsa.gov.uk/library/policy/cp/2012/12-28.shtml

⁵ www.fsa.gov.uk/library/policy/cp/2012/12-34.shtml

- 1.5** The Bill proposes changes to a number of existing Acts of Parliament, most notably the Financial Services and Market Act 2000 (FSMA), the Bank of England Act 1998 and the Banking Act 2009.
- 1.6** The FSA is helping the FCA and PRA create their new rulebooks, which will come into effect when the new regulators acquire their legal powers – a point we refer to as ‘legal cutover’ (LCO). In October 2012, the Treasury announced its intention that the new regime be fully established and operational on 1 April 2013. The overall approach to amending the rulebook ready for LCO is based on only making the changes that are required properly to implement the Bill and support the creation of the new regulatory structure. This approach aims to control the degree of change for the regulators, firms and others at LCO.
- 1.7** As we have explained in the previous regulatory reform CPs, a key element of this approach is that when the FCA and PRA acquire their new powers, provisions in the existing FSA Handbook will be adopted, or ‘designated’ by the FCA, the PRA or by both regulators, to form the basis of the new FCA and PRA rulebooks. There is more information in our ‘One Minute Guide’ to designation, first published in June 2012.⁶
- 1.8** In addition to designation, some more substantive changes to the existing FSA Handbook are required to align the new rulebooks with the future objectives and functions of the FCA and PRA, as set out in the Bill, and the resulting adjustments to the regulatory procedures of the new regulators. It is this category of substantive changes on which this paper primarily consults.
- 1.9** This paper covers only changes to certain parts of the FCA’s new Handbook, not the PRA’s. A separate consultation is being published setting out the proposed PRA enforcement policies and procedures.

Structure of this Consultation Paper

- 1.10** This paper is structured as follows:
- Chapter 2 explains our proposed amendments to the Listing Rules sourcebook (LR) arising from the new statutory powers that the FCA will acquire at LCO to supervise and discipline sponsors.
 - Chapter 3 explains our proposed amendments to the Listing Rules sourcebook (LR) regarding the notification requirements regarding suspensions or cancellations of an issuer’s securities at the request of an issuer, which arise from the new statutory powers that the FCA will acquire at LCO.
 - Chapter 4 sets out our proposed amendments to the Disclosure and Transparency Rules sourcebook (DTR) regarding the approval of primary information providers, their continuing obligations and supervision.

⁶ www.fsa.gov.uk/smallfirms/resources/one_minute_guides/about_fsa/handbook-pra-fca.shtml

- Chapter 5 explains our proposed amendments to Recognised Investment Exchanges and Recognised Clearing House sourcebook (REC) to reflect relevant changes in the FCA's role and powers from LCO.
- Chapter 6 explains our proposed amendments to DEPP arising from new statutory notice powers that the FCA will acquire at LCO. These amendments will fulfil the requirements that the FCA issue policy statements setting out: the FCA's decision-making procedures for giving statutory notices (i.e. warning notices, decision notices and supervisory notices); the FCA's decision-making procedures for refusing consent to the PRA granting applications for authorisation or approval; the FCA's decision-making procedures for publishing information about warning notices; the FCA's policy regarding the imposition and amount of penalties under FSMA; and the FCA's policy regarding the imposition of suspensions or restrictions, and the period for which those suspension or restrictions are to have effect, under FSMA.

- 1.11** The proposed amended FCA Handbook text in the Appendices to this CP does not reproduce all the relevant Handbook chapters in full (unless it is helpful to do so), but only those provisions that are wholly new or substantively changed from what is currently in the existing FSA Handbook. In addition, for clarity, the intended designation of the provisions is set out in Appendix 6 and is also indicated against each provision in the draft Handbook. We are not formally consulting on the proposed designation of the individual instruments, but only on the content of the changes.
- 1.12** We have indicated in this CP the areas where we expect there to be transitional arrangements (to be confirmed by the legislation). We will make details of the expected transitional arrangements available over the coming months before LCO.

Minor amendments

- 1.13** As with the previous regulatory reform policy proposals, we will need to make a number of associated minor amendments. These include (but are not limited to):
- replacing references to the 'FSA' with references to the FCA or the appropriate regulator as relevant;
 - updating references to the FSA's website, address, departments, teams or contact details to give the website, address or contact details of the FCA, as appropriate; and
 - updating cross-references to other parts of the FCA's Handbook, to FSMA or to other legislation, where changes to numbering or headings have occurred.
- 1.14** For Handbook provisions included in this CP, we have already applied as many of these minor changes as we can, to allow respondents to understand all the proposed changes to each section. We have not undertaken an exercise to update all cross references to the new

provisions included in this CP. This will be done when the instruments are made, but will not be sent out for consultation.

Timetable and next steps

- 1.15** Comments on this CP should reach us by 1 February 2013. We will review all responses, and final rule instruments and Policy Statements will be issued by the FCA once it acquires its legal powers.⁷
- 1.16** Because the Bill is still going through the late stages of the parliamentary process, and secondary legislation has not been agreed, our rules and guidance may be affected by the finalisation of this legislation. If any aspects have a significant policy effect on proposed FCA Handbook text on which we have already consulted, it is possible that we may need to re-consult on some points.
- 1.17** There will be some further FCA and PRA Handbook consultations driven by regulatory reform over the coming months, notably covering our policy proposals for the FCA's use of its warning notice publicity power and transitional provisions for the new FCA and PRA Handbooks. Feedback on previous consultations will also be published.
- 1.18** We intend to publish a designated version of the existing Handbook before legal cutover, to indicate the way in which the Handbook contents are being transitioned to the PRA and FCA.

Equality and diversity

- 1.19** We have considered whether equality and diversity issues arise from the proposals in this CP. We have concluded that the proposals do not give rise to discrimination and are of low relevance to the equality agenda.
- 1.20** We would welcome any comments respondents may have on any equality and diversity issues they believe arise from our proposals.

Who should read this Consultation Paper?

- 1.21** This CP should be read by all sponsors, issuers, regulated information services, prospective primary information providers and recognised investment exchanges or prospective recognised investment exchanges. These parties should also read the proposals for decision-making in Chapter 6.

⁷ Where other FSA consultations also cover changes to these Handbook provisions or sections, unrelated to regulatory reform, the various changes will be reconciled at the appropriate point.

CONSUMERS

The proposals may be of general interest to consumers. In particular, they will be of interest to consumers who use the services of sponsors and primary information providers.

SPONSORS

The proposals in Chapter 2 will be of particular interest to sponsors, as they concern the way in which they are supervised. The proposals in Chapter 6 will also be of interest to sponsors, as they concern the way in which statutory decisions regarding sponsors will be taken.

ISSUERS

The proposals in Chapter 3 will be of particular interest to issuers as they concern changes to the Listing Rules regarding the form of notices issued by the FCA when an issuer has requested the suspension or cancellation of its listing. The proposals in Chapter 4 will also be of interest to issuers, as issuers are required to use the services of a regulatory information service to disseminate regulated information.

REGULATED INFORMATION SERVICES AND PROSPECTIVE PRIMARY INFORMATION PROVIDERS

The proposals in Chapter 4 will be of particular interest to existing regulated information services as they concern the proposed statutory regime for primary information providers. The proposals in Chapter 4 will also be of interest to prospective primary information providers. The proposals in Chapter 6 will also be of interest, as they concern the way in which statutory decisions regarding primary information providers will be taken.

RECOGNISED INVESTMENT EXCHANGES

The proposals in Chapter 5 on changes to REC will be of particular interest to recognised investment exchanges and prospective recognised investment exchanges, as they concern the way in which they are regulated.

2

Sponsors

Introduction

- 2.1** Part VI of FSMA provides for the official listing of securities and related matters. Section 88 of FSMA makes provision for requiring the appointment of a sponsor and allows the FSA, as the competent authority, to approve persons as sponsors and to make rules applying to sponsors.
- 2.2** Sponsors have a fundamental role to play in ensuring that both applicants for premium listing and premium listed companies understand and comply with the regulatory obligations to which they are subject.
- 2.3** Our reliance on the assurances given to us by sponsors means they play a critical part in the structure of the primary markets both in terms of providing investor protection and maintaining confidence in the UK's premium listing regime.
- 2.4** Despite the importance of sponsors to the UK's premium listing regime, we currently have limited tools to regulate the sponsor community effectively and proportionately. For example, where we consider that a sponsor has failed, on an ongoing basis, to meet the criteria for approval set out in LR 8.6.5R, we can cancel a sponsor's approval but we have no power to suspend it. Similarly, where a sponsor has breached relevant rules relating to sponsors, our only recourse is to publicly censure the sponsor (section 89 FSMA). We are currently unable to impose a financial penalty on a sponsor or impose limitations or restrictions on a sponsor's approval.
- 2.5** The Bill will update and extend the relevant provisions to provide the FCA with a number of new powers with which to supervise and discipline the sponsor community. Given the role sponsors play, we believe it is important that we have tools which will enable us to regulate sponsors proportionately and effectively.

Background

- 2.6** As noted above, our current range of powers over sponsors under the Listing Rules and FSMA is limited. While we can, in certain circumstances, cancel a sponsor's approval or publicly censure a sponsor, we cannot:
- formally restrict or limit the services of a sponsor in a supervisory context, either at the approval stage or otherwise, where it might be considered proportionate to do so (for example, where a sponsor has never undertaken a certain type of transactional work or has not done so for some time and is not therefore considered by us to have the relevant up-to-date experience and expertise in a particular area); or
 - impose a financial penalty on a sponsor in a disciplinary context, where it has breached a provision of the Listing Rules relating to sponsors.
- 2.7** In relation to the rights of sponsors, the Listing Rules currently allow a sponsor to request that its approval be cancelled (LR8.7.21R). A sponsor will typically request this where, for example, it has not acted as sponsor for some time and therefore concludes it no longer complies with the competence component of the sponsor approval criteria (LR 8.6.5R). However, under FSMA, the sponsor cannot currently ask for its approval to be suspended, despite the fact that there may be circumstances where a sponsor may consider this preferable to cancellation.
- 2.8** Circumstances where it may be appropriate for a sponsor to request a suspension of its approval include where the sponsor is undergoing a re-organisation or other corporate event which introduces an element of uncertainty around its future. A suspension at the sponsor's request may enable a sponsor to take remedial steps to ensure that it can comply with the approval criteria on an ongoing basis (LR 8.6.6R).
- 2.9** Given the irrevocable nature of a cancellation and the fact that, should the firm subsequently wish to restore its sponsor status, it would incur administrative and financial costs in re-applying for approval, we consider it appropriate and proportionate for a sponsor to have the right to request a suspension of its sponsor approval.
- 2.10** Therefore, the Bill will amend FSMA and update the supervisory and disciplinary framework surrounding sponsors in a number of important areas:
- it will allow the FCA to make Listing Rules providing for the limitation or restriction of services performed by sponsors, both on approval and after a firm is approved as a sponsor (section 88(3)(e) FSMA);
 - it will allow the FCA to make Listing Rules providing for a sponsor to request its approval be suspended (section 88(3)(f) FSMA);
 - it will extend the FCA's range of disciplinary sanctions so that the FCA can fine, suspend, limit or restrict the sponsor's range of services for a maximum period of

12 months and/or publicly censure the sponsor if it has contravened the Listing Rules relating to sponsors (section 88A(1) & (2) FSMA); and

- it will allow the FCA to suspend a sponsor's approval or limit or restrict the services a sponsor may perform, for such a period as it considers appropriate, if the FCA considers such action desirable in order to advance one or more of the FCA's 'operational objectives' (section 88E(1) & (2) FSMA).

2.11 The Bill will also amend FSMA by inserting or amending detailed procedural provisions relating to the exercise of the FCA's supervisory and disciplinary powers in relation to sponsors. These statutory provisions will be addressed in the Decision Procedure and Penalties Manual ('DEPP') and are discussed in more detail in Chapter 6.

Listing Rule amendments

Limitation/restriction of services – section 88(3)(e) FSMA

2.12 The Bill will introduce section 88(3)(e) FSMA, which will give the FCA the power to make Listing Rules that provide for restrictions or limitations to be placed on the services which a sponsor may provide, whether or not a sponsor's approval has already been granted.

On approval

2.13 We propose to insert a new rule in LR 8.6.5AR which will give us the ability to impose restrictions or limitations on sponsors at the time of approval. This means that sponsors can be approved on condition that they comply with certain restrictions or limitations which may, for example, relate to the type of sponsor services a sponsor is able to offer.

2.14 The imposition of a restriction or limitation at the approval stage could occur where we consider that the applicant does not have the requisite relevant competence (LR 8.6.5(2)R) or, in other words, relevant experience and expertise to provide sponsor services in relation to the complete range of sponsor services. For example, a sponsor may be approved on the basis that it will only provide sponsor services on investment fund (LR 15 and LR 16) transactions and not commercial company transactions.

2.15 A further instance of when we may impose a restriction or limitation at the approval stage could be where we consider that the applicant meets the eligibility criteria (LR 8.6.5R) but we have concluded that the applicant's systems and controls are appropriate for certain types of sponsor services only. In assessing the appropriateness of a sponsor's systems and controls, we take into account the factors set out in LR 8.6.13G including, amongst other things, the nature, scale and complexity of the business, the volume and size of transactions the firm anticipates undertaking and the degree of risk associated with the transactions it

undertakes. Hence we may conclude that the applicant's systems and controls (for instance, in relation to staffing) are appropriate for certain types of transactions (for instance, low risk transactions with no complex features) but not others.

- 2.16 The ability to impose restrictions or limitations on an applicant at the approval stage will bring added flexibility to the sponsor regime by enabling us to approve an applicant as a sponsor which would otherwise fail to meet the sponsor approval criteria.
- 2.17 We propose to insert guidance in LR 8.6.5BG regarding the circumstances in which we may exercise this power.

Post approval

- 2.18 We will also have the ability to make Listing Rules which impose restrictions or limitations on existing sponsors. We consider this power will be a valuable addition to the tools we use to supervise sponsors on an ongoing basis and we propose to insert a new rule in LR 8.7.2AR.
- 2.19 We are likely to seek to use this power where it has come to our attention via our usual supervisory processes that a sponsor is not competent or, in other words, does not have the requisite relevant experience and expertise to provide sponsor services in relation to a particular type or size of transaction. An example could be where a sponsor wishes to provide sponsor services on a large and complex commercial company transaction but has previously operated in the investment fund sector and/or has limited relevant experience of sponsoring transactions of this nature.
- 2.20 We may also seek to use this power in circumstances where we consider the sponsor's systems and controls are appropriate for certain types of sponsor services only. As noted above, in assessing the appropriateness of a sponsor's systems and controls we take into account the factors set out in LR 8.6.13G including, amongst other things, the nature, scale and complexity of the business, the volume and size of transactions the firm anticipates undertaking and the degree of risk associated with the transactions it undertakes. For example, we may seek to impose a restriction or limitation on a sponsor where we consider the sponsor's systems and controls are appropriate for relatively low risk/low value transactions in a particular sector but the sponsor is seeking to undertake a larger and more complex transaction in a different sector.
- 2.21 While the Bill will grant the FCA these important new powers, it should be noted that we do not intend to restrict a sponsor's ability to provide sponsor services on a transaction by transaction basis. We will continue to interact with sponsors using our general supervisory powers and will use our new statutory powers in a proportionate and reasonable manner. Our ability to impose limitations or restrictions on an approved sponsor will bring added flexibility to the sponsor regime in that, where we have concerns that the sponsor is not competent to provide the full range of sponsor services or does not have appropriate systems and controls for the types of work it wishes to

undertake, we may seek to restrict a sponsor to providing certain types of services rather than seeking to cancel a sponsor's approval.

- 2.22** We propose to insert guidance in LR 8.7.2BG regarding the circumstances in which we may exercise this power.
- 2.23** Where we are proposing to impose limitations or restrictions either on approval or post approval of a sponsor pursuant to section 88(3)(e), we will be required to follow the statutory notice procedure. Our proposals for the decision making process that will be followed when imposing limitations or restrictions under section 88(4)(aa) and section 88(6)(aa) will be set out in DEPP. This is discussed in more detail in Chapter 6.

Q1: Do you have any comments on our proposed policy for imposing restrictions or limitations on sponsors under section 88(3)(e) FSMA?

Suspensions/Limitations/Restrictions of Services in Order to Advance Operational Objectives – section 88E FSMA

- 2.24** The Bill will introduce section 88E FSMA, which will enable the FCA to suspend the approval of a sponsor or impose limitations or restrictions on the services which a sponsor may provide, if the FCA considers it desirable to do so to advance one or more of its operational objectives. This power applies to *approved sponsors only* and not new sponsor applicants. The Bill currently does not limit the length of time the restriction, limitation or suspension can be imposed. As the FCA's power will derive directly from FSMA, we will not have the power to make new Listing Rules under this section. However we do propose to insert LR 8.7.27G which gives guidance as to where information regarding the exercise of this power can be found.
- 2.25** We envisage invoking this power in circumstances where we need to act urgently to either prevent a sponsor from continuing to provide sponsor services on a particular transaction (or, exceptionally, all transactions) or to prevent a sponsor from agreeing to provide sponsor services on a particular transaction (or, exceptionally, all transactions).
- 2.26** We are likely to invoke these powers where we have already made our concerns clear to the sponsor and the sponsor proceeds to provide sponsor services despite these concerns. In such circumstances, we may intervene on the basis that consumer protection or the integrity of the UK financial system may be jeopardised if the sponsor insists on going ahead.
- 2.27** Situations where we may seek to intervene mid-transaction are likely to be rare but could include, for example, where a sponsor's key staff leave in the midst of a transaction and we consider it is appropriate to suspend a sponsor's approval to protect investors while remedial action to meet the competence requirements is taken. Another example of where we may intervene could be where we have serious concerns that a sponsor's systems and

controls are not appropriate, for example where the sponsor cannot or has not managed a conflict of interest in accordance with its obligations and is unwilling to decline to act on the transaction as required by LR 8.3.11R. Other circumstances where it might be appropriate to suspend a sponsor's operations pending cancellation would include where the sponsor is in financial distress and about to enter into insolvency proceedings.

- 2.28** Where we propose to impose limitations, restrictions or suspensions pursuant to section 88E FSMA, we must follow a statutory notice procedure. Our proposals for the decision making process that will be followed when imposing limitations, restrictions or suspensions under section 88F FSMA will be set out in DEPP. This is discussed in more detail in Chapter 6.

Q2: Do you have any comments on our proposed policy for imposing restriction, or limitations on sponsors or suspending a sponsor's approval under section 88E FSMA?

Disciplinary sanctions – section 88A FSMA

- 2.29** Under section 89 FSMA, we currently have the power to make Listing Rules regarding the public censure of sponsors (LR 8.7.19R). However, the Bill will delete section 89 FSMA and, in doing so, make some important changes to the mechanism through which we can impose disciplinary sanctions. The Bill will insert section 88A FSMA which, instead of allowing the FCA to make Listing Rules regarding disciplinary sanctions for sponsors, directly gives the FCA the power to impose a range of disciplinary sanctions on sponsors, including suspending the approval of a sponsor (for a period not exceeding 12 months), imposing financial penalties, imposing limitations or restrictions on the services which a sponsor may provide (for a period not exceeding 12 months) in the event of a breach by a sponsor of the Listing Rules and publicly censuring a sponsor. As a result of this change, we propose to delete LR 8.7.19R as it will no longer be applicable.
- 2.30** Our policy on when and how we will use the disciplinary sanctions provided for in section 88A FSMA will be included in the proposed amendments to DEPP. The disciplinary powers are discussed in Chapter 6. We intend to amend the guidance in LR 8.7.20G to make this clear.

Q3: Do you have any comments on our proposed approach for imposing disciplinary sanctions on sponsors under section 88A FSMA?

Sponsor's request for suspension – section 88(3)(f) FSMA

- 2.31** As noted above, under the existing Listing Rules, a sponsor can request its approval as a sponsor to be cancelled, but not suspended. Section 88(3)(f) FSMA allows the FCA to make rules to grant sponsors the right to request that their approval be suspended. We therefore

propose to insert a new rule in LR 8.7.25R and new guidance in LR 8.7.27G to accommodate the ability for a sponsor to request a suspension.

2.32 However, sponsors should be aware of the ramifications of a suspension on their ability to comply on an ongoing basis with the sponsor approval criteria set out in LR8.6.5R, as required by LR8.6.6R. To meet the competence criteria in LR8.6.5(2)R, we expect sponsors to demonstrate that they have carried out sponsor services in order to maintain the relevance of their experience. Should a sponsor have its approval suspended, this may result in the sponsor being unable to comply with LR8.6.6R since it will not be able to carry out sponsor services for the duration of the suspension. This could lead to us seeking to cancel the sponsor's approval unless the sponsor has been able to take remedial steps.

2.33 Where a sponsor's approval has been suspended under section 88(3)(f) FSMA and the sponsor subsequently wishes to have the suspension lifted, it will need to apply for the withdrawal of the suspension under section 88(8)(c) FSMA. Should we propose to refuse the sponsor's application to have its suspension lifted, the statutory notice procedure must be followed. Our proposals for the decision making process that will be followed when refusing an application for the suspension of an approval as a sponsor or for the withdrawal of such a suspension (under section 88(4)(a), section 88(6)(a), section 88(8)(b), and section 88(8)(c) FSMA) will be addressed in DEPP. This is discussed in more detail in Chapter 6.

Q4: Do you have any comments on our proposed approach in relation to a sponsor requesting the suspension of its approval under section 88(3)(f) FSMA?

Cost benefit analysis

2.34 The proposed changes to the Listing Rules simply reflect the changes proposed to FSMA and associated secondary legislation, pursuant to the Bill. These changes will result in a regime which is more flexible for sponsors. We do not believe that the way in which we propose to reflect these legislative changes in the Listing Rules will lead to any additional costs.

Competition duty

2.35 The FCA must, so far as is compatible with acting in a way which advances its consumer protection or integrity objective, discharge its general functions (including rule-making, guidance and general policies) in a way which promotes effective competition in the interests of consumers (section 1B(4) of FSMA). In proposing the amendments to the Listing Rules set out in this chapter, we have had regard to this competition duty.

- 2.36** The new powers given to the FCA to suspend sponsors or impose restrictions or limitations on a sponsor's approval will allow the FCA to take a more flexible and proportionate approach to the supervision of sponsors. This will promote competition by allowing the FCA to maintain an appropriate depth of choice in the sponsor market while continuing to ensure the integrity of the market for sponsor services. Similarly, granting a sponsor's request for a suspension (rather than a cancellation) of its approval, will in some circumstances be a more flexible and proportionate response which will avoid a potentially undesirable restriction in the availability of choice and expertise in the market for sponsor services. In addition it avoids the significant administrative and financial costs involved in seeking re-approval which might otherwise deter a sponsor from re-applying.

3

Notices regarding cancellations/suspensions of an issuer's securities at the issuer's request

Introduction

- 3.1 Section 78A of FSMA relates to the procedure to be followed regarding a cancellation or suspension by the FSA of an issuer's securities at the issuer's request.
- 3.2 Section 78A(2) currently provides that the FSA must give written notice to an issuer if we agree to suspend or cancel their securities at their request. The written notice given by the FSA under this section is a statutory notice and therefore the decision making procedures set out in DEPP are relevant. Section 78A(3) provides that the notice given by the FSA must include details of the cancellation or suspension, the date on which the cancellation or suspension took effect or will take effect, and the right of the issuer to apply for the cancellation of the suspension.
- 3.3 The Bill will amend several provisions of section 78A regarding both the form and content of the notice given by the FCA in such circumstances.
- 3.4 In terms of form, under the revised section 78A(2), instead of being required to give an issuer written notice, the FCA will be able to give a written or oral notification to an issuer. Regardless of how the notification is given by the FCA, it will continue to be classified as a statutory notice. Therefore the decision making procedures which the FCA will follow when it decides whether to agree to the issuer's request for suspension or cancellation and issue this notification (and in relation to any consequential applications or decisions) will continue to be set out in DEPP 2.

- 3.5 In terms of content, under the revised section 78A(3), the only statutory requirement is that the notification given by the FCA must specify the effective date on which the cancellation or suspension took effect or will take effect, leaving it for the Listing Rules to specify what further details 'if any' the notification should contain.

Listing Rule amendments

- 3.6 We believe that the existing provisions of section 78A(3) FSMA work well and are understood by the market and therefore we are not proposing to change the content of the notification.
- 3.7 However, as the Bill will enable the FCA to make Listing Rules on the content of the notification, we are proposing to insert new guidance in LR 5.3.8G which will reflect the provisions of the existing section 78A(3) FSMA. This means that, regardless of the form of the notification, it will continue to give details of the cancellation or suspension, the date on which the cancellation or suspension took effect or will take effect and, where relevant, the right of the issuer to apply for the cancellation of the suspension.

Q5: Do you have any comments regarding our proposed approach to the contents of the notification given when securities are cancelled or suspended at the issuer's request?

Cost benefit analysis

- 3.8 We do not believe that the proposed changes to the Listing Rules will lead to any increase in costs for issuers. The new guidance reflects the changes to FSMA, pursuant to the Bill. The main impact is on the form of the notification to the issuer rather than the content or its status.

Competition duty

- 3.9 The FCA must, so far as is compatible with acting in a way which advances its consumer protection or integrity objective, discharge its general functions (including rule-making, guidance and general policies) in a way which promotes effective competition in the interests of consumers (section 1B(4) of FSMA). In considering the changes proposed we have had regard to this competition duty. However, the changes we are proposing to the Listing Rules merely reflect the existing provisions of section 78A(3) FSMA and current market practice.

4

Primary information providers

Introduction

- 4.1 In this chapter we set out proposals for the use of the powers being given to us under the Bill in relation to primary information providers. Currently, a primary information provider is known as a regulated information service.

Background

- 4.2 Regulated information services play an important role in the dissemination of regulated information by passing announcements in a timely and effective way to news vendors (secondary information providers) on behalf of listed companies, as required by the Listing Rules (LR) and Disclosure and Transparency Rules (DTR).
- 4.3 The current framework for our approval and oversight of regulated information services is set out in our May 2010 document *Criteria for Regulated Information Services (Criteria)*.⁸ Under the Criteria, which are not part of the FSA Handbook, we may approve an application from a person to become a regulated information service, and be included on the FSA's list of Regulated Information Services, subject to the provision of factual information (for example, details of media connections, details of fees charged for the dissemination of regulated information etc) and an auditor's report (confirming that the proposed regulated information service will be able to meet specified initial criteria and on-going obligations and other notification requirements). The existing Criteria principally cover operational issues (e.g. use of headline categories), requirements to have adequate systems and controls to ensure the certainty, accuracy and security of in-coming regulated information, requirements to disseminate regulated information on a timely basis, and requirements to provide certainty to recipients about the source of that regulated information (e.g. that it has been provided by a regulated information service and recovery provisions).

⁸ www.fsa.gov.uk/pubs/ukla/ris.pdf

- 4.4 The continuing obligations and notification requirements include the provision to us of an annual report prepared by a reporting accountant (confirming that the regulated information service has met all the Criteria in the preceding 12 months), requirements to notify us of specified events (e.g. a breach of security), and requirements in relation to record-keeping.
- 4.5 The Bill amends FSMA by introducing sections 89P-89V, giving us powers in relation to the approval of primary information providers, their continuing obligations, and their supervision, including powers of limitation, restriction and suspension. These are summarised below. We propose to set out the rules implementing these powers in the DTR in an introductory chapter (DTR IC) and in a substantive new chapter (DTR 8).

Overall approach

- 4.6 Our assessment is that the current system has worked effectively, and while there have been some relatively minor operational issues from time to time there have been no major failures of systems and controls or other significant disruptions either to individual regulated information services or as a group. Given this, we propose to base our new regime on the existing framework. We have also taken this opportunity to review the current requirements, and so are proposing in a number of areas changes to update, simplify or enhance them. Where we are proposing such changes we indicate this below.
- 4.7 DTR 8 does not propose a radical overhaul of the existing Criteria, rather a modification of various aspects of the regime. As the existing Criteria are quite dated, many of the changes in DTR 8 involve updating or modernising the existing Criteria to make it more relevant to today's electronic methods of receiving, handling and disseminating regulated information. The proposed rules are set out in Appendix 3. Below is a summary of the main provisions of these proposed rules:
- DTR IC introduces the proposed DTR 8.
 - DTR 8.1 sets out the proposed scope of the rules and requires the FCA to maintain a list of primary information providers.
 - DTR 8.2 sets out the proposed application and approval process for a primary information provider. These rules set out the information and other material that a person wishing to be approved as a primary information provider must provide to the FCA, including a report by a reporting accountant. The proposed rules also allow the FCA to impose restrictions or limitations on the services a primary information provider may provide at the time of approval (as provided for in proposed section 89P(4)(d) FSMA).
 - DTR 8.3 sets out the proposed criteria for approval as a primary information provider. We have included here a reference to the Transparency Directive (2004/109/EC) requirement that regulated information must be disseminated in a manner ensuring fast access to the information on a non-discriminatory basis.

- DTR 8.4 sets out the proposed continuing obligations for primary information providers. In drafting the proposed rules, we have made a number of updates to the existing Criteria to reflect more modern information dissemination techniques and to address some practical difficulties with the Criteria which have been highlighted to us. For example, we have added some wording to the rule which sets time limits for the onward dissemination of regulated information, to reflect that primary information providers sometimes receive unformatted regulated information which requires some work before it can be disseminated.

- 4.8** We are also proposing guidance (DTR 8.4.31G) to clarify that in assessing whether a primary information provider is meeting its obligations, the FCA will consider whether the primary information provider has in place appropriate measures to identify new and emerging risks which would be likely to prevent its compliance with DTR 8.4.10R (security of information), DTR 8.4.18R (validation of submissions), or DTR 8.4.19R (data corruption during submission, handling and dissemination of information). This guidance is intended to reflect that primary information providers rely on robust information systems yet security risks may evolve rapidly and, as such, it is appropriate for them to have arrangements in place to identify emerging risks.
- 4.9** The proposed continuing obligations also introduce provisions consistent with other current FSA Handbooks, such as a requirement to ensure that the FCA is kept informed of any matters which may reflect the primary information provider's ability to perform its core functions and to be open and co-operative with the FCA.
- 4.10** DTR 8.5 sets out the proposed arrangements for the supervision of primary information providers. The proposed rules set out the requirements for a primary information provider to submit an annual audit report to the FCA. The proposed rules also allow the FCA to impose limitations/restrictions on the activities of the primary information provider post-approval (as provided for in proposed section 89P(4)(d) FSMA). Finally, DTR 8.5 also refers to the FCA's ability to use disciplinary powers in relation to a primary information provider (as set out in section 89Q FSMA) and to the FCA's ability to take action in relation to a primary information provider if it considers that it is desirable to do so to advance one or more of its operational objectives (as set out in proposed section 89U FSMA).
- 4.11** We will consult on the application fee and annual fee for primary information providers in the February 2013 Quarterly Consultation Paper.

Q6: Do you have any comments on our proposals to base the new regime for primary information providers on the existing framework?

Transitional arrangements

- 4.12** From legal cutover (LCO), new primary information providers approved under the new statutory regime, existing Regulated Information Services approved under the current Criteria and ‘incoming’ EEA information society services which act in accordance with the minimum standard set out in Article 12 of the Directive 2007/14/EC (as defined in the Listing Rules) can act as an RIS. We are proposing that an existing Regulated Information Service (e.g. one that has been approved by the FSA as an Regulated Information Service on the day before LCO) can continue to act as an RIS for a transitional period of six months after LCO in accordance with the existing Criteria.
- 4.13** New primary information providers applying for approval will be subject to the new approval process in DTR 8. Within the transitional period (LCO plus six months), existing Regulated Information Services may apply for approval as a primary information provider under the new system. If an existing Regulated Information Service does not obtain approval as a primary information provider under the new system, then on the day after LCO plus six months, they will no longer be able to act as an RIS. All approvals of existing regulated Information Services to be a primary information provider under the new system will take effect on the day after LCO plus six months, regardless of when they apply. We have proposed this to ensure that early applicants for approval as a primary information provider under the new system will not be placed at either a regulatory or cost disadvantage.
- 4.14** Depending on the feedback received in relation to our proposed transitional provision, we plan to write to existing regulated information services informing them that they do not need to submit an annual report on the date it would fall due in 2013 under the current Criteria. We anticipate that existing Regulated Information Services will instead apply for approval by, among other requirements, submitting an audit report under the new system. The proposed transitional provision should therefore avoid the need for a regulated information service that wishes to apply for approval as a primary information provider under the new system to produce two audit reports in quick succession.

Q7: Do you have any comments on our proposals for the transitional arrangements for primary information providers?

Suspension of approval at the primary information provider’s request

- 4.15** The FCA will also have a new power to suspend a primary information provider’s approval when requested by the primary information provider under proposed 89P(4)(e) FSMA. We propose to include rules on the process for a primary information provider’s request to suspend approval, namely that it must provide a clear explanation of the reason for its request and be made in writing.
- 4.16** The decision making process that will be followed when refusing an application for the suspension of an approval as a primary information provider or for the withdrawal of such

a suspension under section 89P(4)(e) FSMA will be addressed in DEPP. This is discussed in more detail in Chapter 6 entitled ‘Decision Procedures and Penalties’.

Limits or other restrictions (on and after approval) and cancellation of approval

- 4.17** Under the proposed section 89P(4)(d) FSMA, we have new powers to impose limitations or other restrictions on a primary information providers at any time following the granting of approval. We therefore propose to insert a rule to this effect and have also proposed guidance, giving examples of the situations we would consider relevant when using this power. In practice, we believe the use of limitations and restrictions will be rare.
- 4.18** Where the FCA proposes to impose limitations or restrictions on a primary information provider’s approval or cancel the approval under proposed section 89P(5) FSMA, it must follow a statutory notice procedure. The decision-making process in relation to these powers is discussed in more detail in Chapter 6.

Disciplinary sanctions

- 4.19** The FCA will have new disciplinary powers in relation to primary information providers under the proposed 89Q FSMA. These disciplinary powers include the power to impose a penalty, suspend a primary information provider’s approval for up to 12 months and to limit or restrict a primary information provider’s approval for up to 12 months. The decision making process in relation to these powers is discussed in more detail below in Chapter 6.

Cost benefit analysis (CBA)

- 4.20** We believe that our proposed approach to using our new powers in relation to the supervision of primary information providers is proportionate and provides legal clarity to a previously non-formal oversight arrangement. This in turn helps the FCA to meet its three operational objectives given the important role that primary information providers play in disseminating information to the market.
- 4.21** Although we will be consulting on an application fee and annual fee in due course, we do not foresee any significant incremental costs arising from the new regime. Our discussions with auditors of primary information providers suggest that our proposals for the annual report should not result in increased auditors fees for primary information providers. We believe that the further proposed measures outlined above (such as the renewed focus on the identification of new and emerging risks to compliance) can be accommodated by

primary information providers within current resource and system capabilities and so should not result in further costs.

- 4.22 We therefore consider that the proposals will give rise to an increase in costs of minimal significance. We view the proposed approach to the oversight of primary information providers as the most efficient way to exercise these powers with minimal costs to the industry.

Competition duty

- 4.23 The FCA must, so far as is compatible with acting in a way which advances its consumer protection or integrity objective, discharge its general functions (including rule-making, guidance and general policies) in a way which promotes effective competition in the interests of consumers (section 1B(4) of FSMA). In proposing the amendments to the DTR set out in this chapter, we have had regard to this competition duty.
- 4.24 Our approach supports competition by establishing a proportionate approach to the approval process for primary information provider status and for effective supervision of primary information providers once approved. These measures ensure that participants in the market are operating on a level playing field with clearly defined regulatory standards, such that consumers of the service can select a provider with clarity as to the regulatory standards that apply to all providers in the sector.
- 4.25 We do not believe the proposals will lead to significantly increased costs of entry or of increased costs to customers of the existing regulated information services. Therefore, we believe that the proposals are consistent with the FCA's duty to discharge its general functions in a way that promotes effective competition in the interests of consumers.

5

Recognised Investment Exchanges

Introduction

- 5.1** In this chapter, we explain our proposed revisions to the Recognised Investment Exchanges and Recognised Clearing Houses (REC) sourcebook. The purpose of the proposed revisions is to bring REC into line with the changes to FSMA and associated secondary legislation, resulting from the Bill. There are also consequential revisions to our Handbook Glossary and to the Fees Manual (FEES).
- 5.2** The text of the proposed revisions is set out in the draft instrument at Appendix 4.
- 5.3** As explained in Chapter 1, the final rules and guidance in REC may be subject to change to take account of the final form of FSMA and associated secondary legislation. The proposed REC text in Appendix 4 includes those amendments we expect to be necessary to reflect consequential changes to the Recognition Requirements Regulations⁹, which have yet to be confirmed. We may need to review our proposals to ensure REC is compatible with the final form of those Regulations.
- 5.4** REC currently provides rules and guidance for Recognised Investment Exchanges (RIEs), Recognised Clearing Houses (RCHs) and Recognised Auction Platforms (RAPs), and for those applying for recognition. REC will be carried forward as Handbook material only by the FCA. Under s.285A, the Bank of England will be the appropriate regulator of RCHs, and so REC, as revised, will apply only to UK and overseas RIEs and RAPs.
- 5.5** In summary, the proposed revisions to REC deal with the following legislative changes as they apply to the regulation of RIEs and RAPs by the FCA:
- The transfer of responsibility for the supervision of RCHs to the Bank of England, and the change in regulated activities for which RIEs will be exempt under s.285 of FSMA.

⁹ The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)

- The introduction of new supervisory powers over RIEs, which relate, among other things, to information gathering and investigation and skilled persons reports (under s.165 and s.166 of FSMA), and, with respect to UK RIEs, the ability to direct qualifying parent undertakings (under s.192C).
- The ability to impose disciplinary measures on RIEs (s.312E to s.312K).
- The modification of existing powers and roles, including streamlined procedures for giving directions to RIEs (s.296 to s.298) and the removal of the Office of Fair Trading's and HM Treasury's roles in the making of recognition orders (by the deletion of Chapter 2 of Part 18 of FSMA).

5.6 The proposals set out in this paper take into account changes to REC which have already been made by the FSA and are expected to come into force before LCO. However, they do not cover any changes to REC that may be necessary during the period leading up to LCO as part of the UK's implementation of the European Market Infrastructure Regulation (EMIR).¹⁰ Changes to REC as a result of EMIR implementation before LCO have been subject to a separate consultation.¹¹

5.7 In the case of an RIE which currently provides a clearing service for which it is exempt by virtue of section 285(2)(b) of FSMA, we expect the Treasury to make transitional arrangements allowing such entities to continue to provide these services without needing to seek recognition as an RCH, during any period leading up to the point where such recognition may be necessary under EMIR. In particular, we expect that an RIE currently providing a service under section 285(2)(b) which would constitute a clearing service under the new regulatory framework will be treated as if it had been granted recognition as an RCH by the Bank of England, and would be regulated as both an RIE and RCH.

Our proposals

Recognised Clearing Houses (RCHs)

5.8 As explained, in future, the Bank of England will be responsible for the recognition of clearing houses, and the activities for which an RIE is exempt will be amended (to cover, in the future, an exchange's business as an investment exchange and services designed to facilitate the provision of clearing services by another person). Our proposals accordingly delete or modify provisions of REC that refer or relate to RCHs, or that refer to an RIE's provision of clearing services (as opposed to clearing facilitation services). The amendments to the Glossary and FEES in Appendix 4 also reflect this change in responsibility.

¹⁰ EU Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories – <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF>

¹¹ See Chapter 9 and Appendix 9 of CP 12/27 – www.fsa.gov.uk/static/pubs/cp/cp12-27.pdf

- 5.9** Among these changes, we are proposing to remove from REC 2.17.2G references to paragraph 12 of the Schedule to the Recognition Requirement Regulations¹², with consequential changes to REC 2.17.5G and the Glossary definition of ‘market contracts’. This is on the view that, given RIEs will no longer be exempt for the provision of clearing services, they will no longer be party to contracts of a type falling within s.155(2)(b) or s.155(2)(c) of the Companies Act 1989.

Q8: Do you have any comments on our proposals to amend REC 2.17, to reflect that RIEs will no longer be party to market contracts of the type envisaged by s.155(2)(b) or s.155(2)(c) of the Companies Act 1989?

- 5.10** Under the new regulatory framework, the Bank and the FCA will cooperate on the supervision of recognised bodies, including in the case of groups which include both an RCH and an RIE, on the basis of a Memorandum of Understanding, which is expected to be published in draft shortly.

New supervisory powers

Information gathering

- 5.11** Under FSMA, the FCA will be permitted to use powers under s.165 to require, by written notice, specified information or documents (or information or documents of a specified description), from RIEs and persons connected to RIEs. This is reflected in the new REC 4.2F of the annexed draft instrument, which includes FSMA’s definition of who is a connected person for this purpose. For recognised overseas investment exchanges (ROIEs), the power is referred to in proposed additions to REC 6.8.1G.

Reports by ‘skilled persons’

- 5.12** The FCA will also be permitted for the first time to use powers under s.166 of FSMA to require a report by a skilled person regarding RIEs. In September 2012 we consulted on appropriate revisions to the Supervision Manual (SUP), which sets out the main Handbook provisions on use of the power to require a report by a skilled person generally, and consequential changes to the Fees Manual (FEES).¹³ In REC, we propose to include an appropriate cross-reference to SUP in new REC 4.2G.

¹² The Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001 (SI 2001/995)

¹³ FSA Consultation Paper 12/24: Regulatory Reform: PRA and FCA regimes relating to aspects of authorisation and supervision – www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf

Qualifying parent undertakings

- 5.13 Under FSMA, the FCA will be able to give a direction to the qualifying parent undertaking of an RIE, if it considers that certain statutory conditions are satisfied. The criteria for treatment as a qualifying parent undertaking and the nature of the statutory conditions are set out at s.192A to 192N of FSMA. We propose to refer to this power in new REC 4.6A. Use of the power is contingent on our issuing a statement of policy, and our draft statement in this regard is currently out for consultation.¹⁴

Disciplinary measures

- 5.14 Under FSMA, the FCA will have the power to impose certain disciplinary measures upon RIEs for contravention of a relevant requirement as set out in Chapter 3B of Part 18. The FSA will also have the power to sanction the qualifying parent undertaking of a UK RIE for contravention of a direction or any rules made by the FCA under s.192K of FSMA (see following section). In REC we propose to refer to disciplinary measures which may be imposed on RIEs and qualifying parent undertakings of UK RIEs, and include a cross-reference to the Decision Procedure and Penalties Manual (DEPP), in new REC 4.9.
- 5.15 Under FSMA, the FCA must prepare and issue a statement of policy regarding the imposition of financial penalties on RIEs, and with respect to the imposition of censures or financial penalties on qualifying parent undertakings of UK RIEs. The FCA's policy on when and how it will use these disciplinary sanctions will be reflected in the proposed amendments to DEPP. The DEPP amendments and draft statement of policy are discussed in more detail in Chapter 6.

Modification of existing powers*Streamlining of power to issue directions*

- 5.16 FSMA makes a number of procedural changes to the FCA's power to give directions to RIEs. These include:
- the FCA will no longer be required to give written notice of a proposal to issue a direction to persons other than the RIE;
 - the period for making representations to the FCA will be as specified in the notice given to the RIE (replacing the two month notice period previously prescribed); and
 - the condition for setting aside the procedure will no longer be that the FCA considers it 'essential', but the FCA considers it 'reasonably necessary'.
- 5.17 The changes to the power are reflected in amendments to REC 4.6 and REC 4.8.

14 CP12/34, accessible at www.fsa.gov.uk/static/pubs/cp/cp12-34.pdf

Roles of OFT and the Treasury

- 5.18** Under FSMA, prior to amendment, both the Office of Fair Trading (OFT) and the Treasury had a role in scrutinising the competition aspects of applications for recognition as an RIE. As amended, FSMA will no longer confer this role on the OFT or the Treasury.
- 5.19** The removal of OFT and the Treasury's roles is reflected in the proposed deletion of REC 5.1.3G to 5.1.7G, REC 5.2.9G to 5.2.11G, REC 5.2.13G, REC 6.4 and REC 6.5.3G.

Q9: Do you have any comments on the way in which we propose to amend REC to reflect the legislative changes affecting recognised bodies?

Cost benefit analysis

- 5.20** The proposed changes to REC will have the benefit of aligning FCA rules and guidance with respect to RIEs with the changes to FSMA set out in the Bill. Given our proposed approach simply reflects these changes in legislation, and is necessary to give effect to the new or modified statutory provisions set out above, we do not believe that they will lead to any additional costs.

Competition duty

- 5.21** The FCA must, so far as is compatible with acting in a way which advances its consumer protection or integrity objective, discharge its general functions (including rule-making, guidance and general policies) in a way which promotes effective competition in the interests of consumers (section 1B(4) of FSMA). In proposing the amendments to REC set out in this chapter, we have had regard to this competition duty.
- 5.22** REC elaborates upon the requirements applicable to RIEs under the Recognition Requirements Regulations, which in turn give effect to relevant provisions of FSMA and the Markets in Financial Instruments Directive (MiFID). FSMA¹⁵ confers power on the FSA (and, in future, the FCA) to disallow a proposed regulatory provision which is excessive (within the meaning of FSMA), while MiFID sets requirements aimed at ensuring, among other things, that market operators provide their participants with non-discriminatory access to their facilities.¹⁶ In addition, RIEs are subject to directly applicable requirements under MiFID's implementing measures which, among other things, set consistent pre- and post-trade transparency requirements for trading venues in relation to shares admitted to trading on EU Regulated Markets.

¹⁵ As amended by the Investment Exchanges and Clearing Houses Act 2006.

¹⁶ As specified by Paragraph 7B of the Schedule to the Recognition Requirements.

- 5.23** In the context of this framework, our approach supports competition by establishing a proportionate approach to the making and consideration of applications for RIE status, and by allowing effective supervision of RIEs once recognised, while at all times ensuring that RIEs offer fair and orderly markets in line with the FCA's objectives.

6

Decision Procedures and Penalties

Introduction

- 6.1** In this chapter, we explain our proposed amendments to the Decision Procedure and Penalties Manual (DEPP) arising from new powers that the FCA will acquire at LCO.
- 6.2** The text of the proposed amendments is set out at Appendix 5.

Overview of Bill changes

Decision-making procedures

- 6.3** The FSA is currently required by FSMA to issue a number of policy statements relating to the exercise of its powers. These policy statements, which are set out in DEPP, include:
- the FSA's decision-making procedures for giving statutory notices (i.e. warning notices, decision notices and supervisory notices);
 - the FSA's policy regarding the imposition and amount of penalties under FSMA; and
 - the FSA's policy regarding the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under FSMA.
- 6.4** The FCA will be subject to the same requirements to issue these policy statements. Where the FCA's powers are the same as the FSA's, the FCA will adopt the existing provisions of DEPP, with any necessary consequential amendments. However, the FCA will also have the following additional powers which involve the issuing of a statutory notice:
- the powers in respect of sponsors and primary information providers which are described in Chapters 2 and 4;

- disciplinary powers against RIEs (amended FSMA s.312F), qualifying parent undertakings (amended FSMA s.192K), auditors and actuaries (amended FSMA s.249 and s.345);
- a separate own-initiative requirement power (amended FSMA s.55L); and
- a financial promotions direction power (amended FSMA s.137Q).

6.5 The FCA will be required by FSMA to issue the following statements relating to these statutory notice powers:

- A statement of the procedure that it proposes to follow in deciding whether to exercise each power (amended FSMA s.395(1)(b)(i)). For each power, in accordance with the existing policy in DEPP, the responsibility for these decisions will be allocated either to FCA staff under executive procedures or to the RDC.
- For the new disciplinary powers, a statement of its policy with respect to the imposition of penalties, suspensions or restrictions, the amount of penalties and the period for which suspensions or restrictions are to have effect (amended FSMA s.88C, s.89S, 192N, 312J and 345D).

6.6 The FCA will also be required by FSMA to issue a statement of the procedure that it proposes to follow when:

- proposing or deciding to refuse consent to the PRA giving permission to a firm to carry on regulated activities, varying a permission at the firm's request or approving an individual to hold controlled functions (amended FSMA s.395(1)(b)(ii)); and
- deciding whether to publish information about the matter to which a warning notice relates (amended FSMA s.395(1)(d)).

Penalty and suspension policies

6.7 FSMA will require the FCA to prepare and issue the following policy statements regarding its new disciplinary powers:

- statements of policy with respect to (a) the imposition of penalties against sponsors, primary information providers, qualifying parent undertakings, RIEs, auditors and actuaries under amended FSMA s.88A, s.89Q, s.192K, s.249, s.312F and s.345; and (b) the amount of penalties under those sections; and
- statements of policy with respect to (a) the imposition of suspensions or restrictions against sponsors and primary information providers under amended FSMA s.88A and s.89Q; (b) the period for which suspensions or restrictions under those sections are to have effect; and (c) for primary information providers only, the matters in relation to which suspensions or restrictions under s.89Q are to have effect.

Summary of key Handbook changes

Decision-making procedures

- 6.8** Our proposals for the decision-making processes regarding the FCA's new powers are set out below.

Sponsor powers

- 6.9** The FSA currently has the power to refuse a person's application for approval as a sponsor and the power to cancel a person's approval as a sponsor. It also has the disciplinary power to publish a statement censuring a sponsor. As explained in Chapter 2 above, the FCA will have the following new statutory notice powers for sponsors:
- the power to impose limitations or other restrictions on the services to which a sponsor's approval relates (amended FSMA s.88(4)(aa));
 - the power to refuse an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates (amended FSMA s.88(4)(a) and s.88(8)(d));
 - the power to refuse an application for the suspension of an approval as a sponsor (amended FSMA s.88(4)(a) and s.88(8)(b));
 - the power to refuse an application for the withdrawal of the suspension of an approval as a sponsor (amended FSMA s.88(4)(a) and s.88(8)(c));
 - the power to suspend a sponsor's approval or limit or restrict the services a sponsor may perform, for such period as it considers appropriate, if the FCA considers such action desirable in order to advance one or more of the FCA's operational objectives (amended FSMA s.88E); and
 - the power to fine a sponsor or, for a period of up to 12 months, suspend a sponsor's approval or limit or restrict the services a sponsor may perform, if the FCA considers that the sponsor has contravened a requirement or restriction imposed on it by Listing Rules (amended FSMA s.88A).
- 6.10** The RDC currently decides whether to refuse a person's application for approval as a sponsor or to cancel a person's approval as a sponsor under FSMA s.88 (by giving a warning notice and a decision notice). This will remain the case after LCO.
- 6.11** In relation to the power to impose limitations or other restrictions on the services to which a sponsor's approval relates (amended FSMA s.88(4)(aa)), we propose that where the limitation or other restriction is being imposed on the sponsor either on approval or after it has been approved, the RDC should decide whether to give a warning notice and decision notice. Where a limitation or restriction is requested or agreed to by a sponsor either on approval or after it has been approved, FCA staff under executive procedures should decide

whether to give a warning notice and decision notice. DEPP 2.5.11A G and DEPP 2 Annex 1 have been amended to reflect this.

Q10: Do you agree that the RDC should decide whether to impose a limitation or restriction on a sponsor under amended FSMA s.88(4)(aa), except where the sponsor has requested or otherwise agrees to the limitation or restriction in which case FCA staff under executive procedures should decide to give a warning notice and decision notice?

6.12 We propose that a decision to refuse an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates (amended FSMA s.88(4)(a) and s.88(8)(d)) should be taken by the decision-maker that decided to impose the limitation or other restriction in the first place. DEPP 2.5.11B G and DEPP 2 Annex 1 have been amended to reflect this.

Q11: Do you agree that the decision to refuse an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates should be taken by the same decision-maker that decided to impose the limitation or other restriction?

6.13 We propose that decisions to refuse an application for the suspension of an approval as a sponsor (amended FSMA s.88(4)(a) and s.88(8)(b)) and decisions to refuse an application for the withdrawal of the suspension of an approval as a sponsor (amended FSMA s.88(4)(a) and s.88(8)(c)) be taken by FCA staff under executive procedures. FSA staff already take decisions under executive procedures in respect of a number of suspension powers in FSMA Part VI, for example deciding whether to suspend the listing of a security (FSMA s.78(2)/(5)), deciding whether to suspend or prohibit an offer to the public or admission to trading on a regulated market (FSMA s.87O(2)/(5)), and deciding whether to suspend trading in a financial instrument (FSMA s.96C). DEPP 2 Annex 1 has been amended to reflect this.

Q12: Do you agree that the decisions to refuse an application for the suspension of an approval as a sponsor and decisions to refuse an application for the withdrawal of such suspensions should be taken by FCA staff?

6.14 Under amended FSMA section 88E, if the FCA considers that it is desirable in order to advance one or more of its operational objectives, it will be able to:

- suspend, for such period as it considers appropriate, a sponsor's approval, or

- impose, for such period as it considers appropriate, such limitations or other restrictions in relation to the performance of services to which a sponsor's approval relates as it considers appropriate.

6.15 We propose that FCA staff under executive procedures should decide whether to exercise these new suspension powers. These powers are not disciplinary in nature, but are intended to be used as supervisory measures, often at short notice, where the FCA has serious concerns as to whether a sponsor continues to meet the approval criteria in particular circumstances. The FCA is likely to invoke these powers where it has already made its concerns clear to the sponsor and the sponsor proceeds to provide sponsor services notwithstanding these concerns. In such circumstances, the FCA may intervene on the basis that consumer protection or the integrity of the UK financial system may be jeopardised if the sponsor insists on going ahead. Examples of where the FCA may intervene are set out above in paragraphs 2.25 to 2.27. As mentioned above, FSA staff already make decisions under executive procedures in respect of a number of suspension powers in FSMA Part VI. DEPP 2 Annex 2 has been amended to reflect this.

Q13: Do you agree that FCA staff under executive procedures should decide whether to impose a suspension, limitation and or other restriction on sponsors under amended FSMA s.88E?

6.16 Our proposals for decision-making in respect of the new disciplinary powers against sponsors are set out in paragraphs 6.21 to 6.23 below.

Primary information provider powers

6.17 As explained in Chapter 4 above, the Bill amends FSMA to formalise our current approach to primary information provider. FSMA will provide the FCA with a similar set of statutory notice powers for primary information providers to those that it will have for sponsors.

6.18 We propose that the same decision-making procedures proposed for sponsor powers apply to the corresponding powers for primary information providers:

- decisions to refuse an application for approval as a primary information provider should be taken by the RDC (amended FSMA s.89P(5)(a) and s.89P(9)(a));
- decisions to impose a limitation or other restriction on the giving of information to which a primary information provider's approval relates (amended FSMA s.89P(5)(b)) should be taken by the RDC except where the primary information provider has requested or otherwise agrees to the limitation or restriction in which case the decision should be taken by FCA staff;
- decisions to refuse an application for the withdrawal or variation of a limitation or other restriction on the giving of information to which a primary information

provider's approval relates should be taken by the same decision-maker that decided to impose the limitation or other restriction (amended FSMA s.89P(5)(a) and s.89P(9)(d));

- decisions to refuse an application for the suspension of an approval as a primary information provider should be taken by FCA staff under executive procedures (amended FSMA s.89P(5)(a) and s.89P(9)(b));
- decisions to refuse an application for the withdrawal of the suspension of an approval as a primary information provider should be taken by FCA staff under executive procedures (amended FSMA s.89P(5)(a) and s.89P(9)(c));
- decisions to suspend a primary information provider's approval or to impose such limitations or other restrictions in relation to the giving by the primary information of information as it considers appropriate should be taken by FCA staff under executive procedures (amended FSMA s.89U); and
- decisions to cancel a primary information provider's approval other than at the primary information provider's request should be taken by the RDC (amended FSMA s.89P(5)(c)).

6.19 DEPP 2.5.11C G, DEPP 2.5.11D G, DEPP 2 Annex 1 and DEPP 2 Annex 2 have been amended to reflect this.

Q14: Do you agree that the same decision-making procedures proposed in respect of the sponsor powers should also apply to the corresponding powers in respect of primary information providers?

6.20 Our proposals for decision-making in respect of the new disciplinary powers against primary information providers are set out in paragraphs 6.21 to 6.23 below.

Disciplinary powers

6.21 FSMA will grant new disciplinary powers to the FCA to impose sanctions on a number of different entities:

- the FCA will be able to censure, impose penalties on, suspend the approval of or impose limitations or other restrictions on sponsors under amended FSMA s.88A and primary information providers under amended FSMA s.89Q;¹⁷ and
- the FCA will be able to censure and impose penalties on qualifying parent undertakings under amended FSMA s.192K, RIEs under amended FSMA s.312F, auditors under amended FSMA s.249 and auditors and actuaries under amended FSMA s.345.

6.22 The RDC takes warning notice and decision notice decisions on behalf of the FSA in respect of all existing disciplinary powers and will continue to take such decisions for the

¹⁷ The FSA already has the power to censure sponsors under FSMA s.89.

FCA at LCO. Therefore, we propose that decisions to issue warning and decision notices for these new disciplinary powers also ought to be made by the RDC.

6.23 DEPP 2 Annex 1 has been amended to reflect this.

Q15: Do you agree that the RDC should decide whether to exercise these new disciplinary powers?

6.24 Our proposals for how we will apply these disciplinary powers are set out in paragraphs 6.40 to 6.41 below.

Own-initiative requirement power

6.25 The FSA can currently, under FSMA s.45, vary a firm's permission on its own-initiative. The Bill amends FSMA to narrow the concept of 'variation of permission' by establishing a new, separate own-initiative power for dealing with 'requirements'. The FCA's power to impose, vary or cancel requirements on its own initiative is set out in amended FSMA s.55L. The FCA has the power to impose a new requirement on a firm, or to vary or cancel a requirement it has previously imposed on a firm.

6.26 Currently, when the FSA is exercising its own-initiative power to vary a firm's Part IV permission, it must issue a supervisory notice. Where the firm agrees not to contest the FSA's exercise of its power, FSA staff under executive procedures make the decision (DEPP 2.5.7A G). Where the firm does not agree, FSA staff, under executive procedures, make the decision unless the action involves a fundamental change to the nature of the firm's permission, in which case the decision is taken by the RDC (DEPP 2.5.7 G). A 'fundamental change' is defined in DEPP 2.5.8 G.

6.27 We propose that this existing procedure should continue to apply to decisions to exercise the FCA's own-initiative variation power. However, we propose that FCA staff under executive procedures decide whether to exercise the own-initiative requirement power. The own initiative requirement power is likely to play a significant part in achieving success in the FCA's early intervention strategy. To that end the use of the requirement power will be one of a range of measures, only some of which involve the issue of a statutory notice, which the FCA will consider when making supervisory judgments about firms.

6.28 To reflect this, DEPP 2.5.7 G – 2.5.8A G and DEPP 2 Annex 2 have been amended. Similarly, we also propose adding DEPP 2.5.3 G (3A) and DEPP 2.5.3 G (3B) so that FCA staff under executive procedures will decide whether to:

- refuse an application to vary a requirement imposed under section 55L of FSMA, or to impose a new requirement; and
- exercise its power under section 55L(1) of FSMA in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission.

Q16: Do you agree with our proposals regarding decision-making for own-initiative variations of permission and own-initiative requirements?

Financial promotion rules: directions given by FCA

- 6.29** The FCA will have the power under amended FSMA s.137Q to give a direction if (a) an authorised person has made, or proposes to make, a communication or has approved, or proposes to approve, another person's communication; and (b) the FCA considers that there has been, or is likely to be, a contravention of financial promotion rules in respect of the communication or approval.
- 6.30** A direction under this section may require the authorised person: (a) to withdraw the communication or approval; (b) to refrain from making the communication or giving the approval (whether or not it has previously been made or given); (c) to publish details of the direction; and (d) to do anything else specified in the direction in relation to the communication or approval.
- 6.31** If it decides to give a direction under this section, the FCA must give a supervisory notice to the person concerned. The recipient of the notice will then have the right to make representations, following which the FCA will decide whether to confirm or amend the original direction by giving a second supervisory notice or to revoke the first supervisory notice.
- 6.32** We consider that decisions to exercise this power ought to be taken by FCA staff under executive procedures at both stages. This is a supervisory, rather than a disciplinary, power, the purpose of which is to prevent consumer detriment arising from a promotion (it does not preclude concurrent or subsequent disciplinary action being taken against the firm regarding the contravention).
- 6.33** To reflect this, DEPP 2 Annex 2 has been amended.

Q17: Do you agree that FCA staff under executive procedures should decide whether to exercise the financial promotions directions power?

Authorisation of dual-regulated firms

- 6.34** The PRA will need to seek the FCA's consent before it grants an application:
- for permission to carry on regulated activities (amended FSMA s.55F);
 - to vary a permission (amended FSMA s.55I); and
 - for an individual to perform a controlled function (amended FSMA s.59).

- 6.35** The FCA can either refuse to give consent or, where a firm is applying for or seeking a variation of a permission, give consent which is conditional on the PRA imposing limitations or specifying the permission is for certain regulated activities only. In all of these cases, the PRA rather than the FCA will issue the warning notice and decision notice. The PRA's notice will however have to state that the FCA has withheld consent or given conditional consent, and give the reasons for the FCA's decision (amended FSMA s.387(1A) and s.388(1A)).
- 6.36** FSMA will require the FCA to determine the procedure that it proposes to follow when proposing or deciding to refuse consent to the PRA in respect of the above applications made to the PRA (amended FSMA s.395(1)(b)(ii)).
- 6.37** The current decision making procedure for contested authorisation and approval decisions will remain unchanged for firms that will be authorised solely by the FCA.¹⁸ However, this procedure may be unnecessarily complex for dual-regulated firms as in many cases it will involve three decision-makers, i.e. the PRA decision-maker, FCA staff at the warning notice stage and the RDC at the decision notice stage. There may also be practical difficulties in introducing a new decision-maker at the decision notice stage, particularly to hear representations alongside the PRA's decision-maker.
- 6.38** We therefore propose that the FCA staff decide whether to refuse consent at both warning notice and decision notice stage in respect of dual-regulated firms.
- 6.39** We have amended DEPP 2.5.6A G and DEPP 4 to reflect this.

Q18: Do you agree that FCA staff under executive procedures should decide whether to refuse consent to the PRA in respect of applications for permission, variation and approval in relation to dual-regulated firms at both the warning notice stage and the decision notice stage?

Publishing information about warning notices

- 6.40** The FCA will have the power to publish the information about the matter to which a warning notice relates that it considers appropriate (this is under amended FSMA section 391(1).)
- 6.41** The power only applies to the warning notices listed under amended FSMA section 391(1ZB). There are disciplinary outcomes, e.g. where we are proposing to censure, fine or suspend a firm or individual. The power does not apply to non-disciplinary outcomes such as proposals to prohibit an individual, withdraw the approval of an individual or cancel the permission of a firm.
- 6.42** The FCA must consult those persons to whom the warning notice is given or copied before publishing any information.

¹⁸ The current procedure is set out at DEPP 2.5.3 G to 2.5.6 G.

- 6.43** The FCA must not publish information if it believes that publishing it would be:
- unfair to the person about whom the action was proposed to be taken;
 - prejudicial to the interests of consumers; or
 - detrimental to the stability of the UK financial system.
- 6.44** The FCA must issue a statement of the procedure that it proposes to follow when deciding to publish information about the matter to which a warning notice relates (this is under amended FSMA section 395(1)(d).)
- 6.45** We intend to amend DEPP 3 (The nature and procedure of the RDC) to make it clear that the RDC will decide on behalf of the FCA whether to publish information about the matter to which a warning notice relates.
- 6.46** We propose that the Chairman of the RDC Panel which issued the warning notice shall take these decisions. If they are unavailable, either the Chairman of the RDC or a Deputy Chairman of the RDC (if different to the Panel Chairman) will make these decisions.
- 6.47** The proposed amendments to DEPP 3 set out a process for deciding whether to exercise the power, for consulting with those to whom the warning notice is given or copied and for dealing with any responses received to the consultation before making a final decision.
- 6.48** The consultation with the recipients of warning notices before the FCA publishes any statement will allow a reasonable period of time, normally seven days, for recipients to respond. We will not usually agree to meet a recipient of a warning notice statement in person for this.
- 6.49** We will publish a further consultation paper before LCO covering our policy proposals for the FCA's use of this power.

Q19: Do you agree with our proposed amendments to DEPP 3?

Penalty and suspension policies

- 6.50** We propose to apply the existing policies in DEPP 6 (penalties) and DEPP 6A (suspensions) to these new disciplinary powers. These policies (which were introduced in March and August 2010 respectively) are intended to be flexible and to cover all enforcement cases. For this reason, we consider that they can be applied in cases brought against the entities listed above and that it is unnecessary to add more specific sections to DEPP to deal with particular types of cases.
- 6.51** DEPP 6.1.1 G, DEPP 6.5.1 G and DEPP 6A have been amended to reflect this.

Q20: Do you agree with our proposal to apply the existing penalties and suspensions policies in DEPP to the FCA's new disciplinary powers?

Other amendments

6.52 We propose to make other changes to DEPP to reflect amendments to FSMA made by the Bill:

- We have amended DEPP 1.2.1 G, DEPP 4.1.2 G, DEPP 4.1.2A G and DEPP 5.1.1 G to reflect the changes made to s.395(2) FSMA.
- We have amended the time periods in DEPP 3.2.15 G (1), DEPP 3.2.16 G (1) and DEPP 5.1.6 G (3)(c) to reflect the reduction of the minimum period for giving representations to a warning notice from 28 days to 14 days (amended FSMA s.387(2)).
- We have deleted references in DEPP 2 Annex 1 to powers that the FCA will not have (e.g. references to powers under the Building Societies Act 1986 or requirements imposed under s.320 FSMA).

6.53 We have also used this opportunity to correct the text, for example:

- We have removed an extraneous reference to 'DEPP 2.5.3 G' in DEPP 2.5.6 G.
- We have changed the reference to 'decision notice' in DEPP 2.5.7 G to 'supervisory notice'.
- When the FSA is exercising its powers to vary a person's authorisation on its own initiative under regulation 11 of the Payment Services Regulations, it must issue supervisory notices rather a warning and decision notice. We have therefore moved this power from DEPP 2 Annex 1 to Annex 2.

Cost benefit analysis (CBA)

6.54 The changes we are proposing to DEPP are directly a result of the changes imposed by the current draft of the Bill. There will be an additional burden on FCA staff and the RDC in making the additional decisions required as a result of the Bill. The FCA only has discretion in whether these additional decisions are made by either the RDC or FCA staff. In this CBA we are only therefore considering the difference in costs of either using FCA staff or the RDC to make these additional decisions. The impact on our costs of these two alternatives is difficult to quantify as it is difficult to predict the number and type of additional decisions that will be required as a result of our new powers. However, we do not envisage that there

will be material differences between the cost of using FCA staff or the RDC in making these additional decisions.

- 6.55** We believe that the regulatory outcomes under the two alternative decision-making processes will be similar.

Annex 1

Compatibility statement

Introduction

1. In this section we describe how the proposed rules and guidance in Chapters 2 to 5 of this Consultation Paper (CP) are compatible with our proposed general duties under Section 1B of FSMA (as amended by the Bill). This section also outlines how our proposals are consistent with the proposed principles of good regulation (in proposed Section 3B FSMA) which also must be considered by us (under proposed Section 1B(5)(a) FSMA).

Compatibility with the proposed FCA statutory and regulatory objectives

2. The policy proposals and draft rules and guidance in Chapters 2 to 5 of this CP contribute to proposed statutory and regulatory objectives of the FCA in the ways set out below.

Ensuring that the relevant markets function well

- Our proposals in Chapters 2 to 4 of this CP will generally improve the functioning of the markets used by issuers and investors. They will help ensure that sponsors discharge their responsibilities in an appropriate manner and that primary information providers continue to disseminate regulated information in a timely fashion.
- Our proposals in Chapter 5 of this CP will help clarify the requirements that RIEs and prospective RIEs need to meet in order to be granted recognised status and to function as an investment exchange carrying out regulated activities in the UK.

Consumer protection objective

- We expect the draft rules and guidance in Chapters 2 to 4 of this CP to support our consumer protection objective by helping to ensure that investors and other market participants receive timely, comprehensive and accurate information from issuers and by providing a more effective regime for the supervision and discipline of sponsors, who in turn provide services to issuers.

- We would expect the proposals in Chapter 5 of this CP to encourage RIEs to comply with recognition requirements aimed at ensuring proper protection is afforded to investors. In addition, REC, as we propose to amend it, sets out our supervisory approach in relation to the new and modified powers conferred on the FCA by or under FSMA, which we expect to exercise in a manner which enhances consumer protection.

Integrity objective

- We would expect the draft rules and guidance in Chapters 2 to 4 of this CP to strengthen professional standards and regulatory accountability of primary information providers and to provide a more effective regime for the supervision and discipline of sponsors. In doing so, we would expect the proposed rules to protect and enhance the integrity of the UK financial system, in particular by improving orderliness and transparency.
- We would expect the proposals in Chapter 5 of this CP to encourage RIEs to comply with recognition requirements aimed at ensuring exchanges' business and facilities are operated in a way which protects and enhances the integrity of the UK financial system. In addition, REC, as we propose to amend it, sets out our supervisory approach in relation to the new and modified powers conferred on the FCA by or under FSMA, which we expect to exercise in a manner which enhances market integrity.

Competition objective

3. We believe that the rules we propose in these chapters balance the requirement for a regime that helps assure a high level of investor protection while remaining compatible with the FCA's proposed competition objective. The rules we propose to introduce do not raise the barriers to entry for sponsors or RIEs. For primary information providers, our objective has been to place the regime on a firm legal footing without adding to the substantive requirements in the existing criteria. While this consultation paper does not consult on the approval or annual fee that primary information providers will be required to pay, we will be proportionate in how we apply it and ensure that it covers only costs necessary to perform our supervisory function. These proposed rules increase the tools that we have at our disposal so that we can supervise in a more proportionate and effective manner. Proportionate supervision will promote competition within these sectors.
4. The requirements in REC disallow RIEs from making excessive regulatory provisions, and reflect MiFID requirements for market operators to provide non-discriminatory access to their facilities for participants. In this context, we believe REC establishes a proportionate approach for the making and consideration of applications for RIE status, and for supervision of RIEs, which in turn supports competition.
5. If sponsors', issuers', primary information providers' or RIEs behaviour falls short of our consumer protection and market integrity objective, supervisory interventions may be necessary and our new powers allow for this. We believe this will result in more effective

competition by ensuring that firms operating in regulated markets do so on a level footing. The FCA will seek to ensure supervisory action does not unduly raise barriers to entry or impose unjustifiable costs on firms that operate in regulated markets.

Compatibility with the revised principles of good regulation in FSMA as amended by the Bill

6. In carrying out its general functions the FCA must have regard to the regulatory principles set out in the Act (proposed section 1B(5)(a) FSMA).
7. We have had regard to the principles set out in section 3B of the amended FSMA. We believe all the proposed changes are compatible with these principles:

The need to use the resources of each regulator in the most efficient and economic way

8. The proposals set out in Chapters 2 to 5 the CP are consistent with an efficient and economic use of our resources.

The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction

9. We consider that our proposals in Chapters 2 to 5 of the CP are consistent with this principle. The rules and guidance we are proposing add greater proportionality to the supervision of primary information providers, sponsors and RIEs.

The general principle that consumers should take responsibility for their decisions

10. We believe the draft rules and guidance in Chapters 2 to 5 of the CP are in keeping with this principle. In providing greater legal clarity around the supervision of primary information providers and RIEs, and flexibility to the supervision of sponsors, it enables consumers to make informed decisions on the use of these services and facilities.

The responsibilities of the senior management of persons subject to requirements imposed by or under this Act, including those affecting consumers, in relation to compliance with those requirements

11. We believe the draft rules and guidance in Chapters 2 to 5 of the CP are in keeping with this principle. In providing greater legal clarity around the supervision of primary information providers and RIEs, and flexibility to the supervision of sponsors, it helps

senior management of primary information providers, RIEs and sponsors to understand their responsibilities and comply with requirements imposed by or under FSMA.

The desirability in appropriate cases of each regulator publishing information relating to persons on whom requirements are imposed by or under this Act, or requiring such persons to publish information as a means of contributing to the advancement by each regulator of its objectives

12. The rules and guidance proposed in Chapters 2 to 5 of the CP do not undermine this principle.

The principle that the regulators should exercise their functions as transparently as possible

13. The rules and guidance proposed in Chapters 2 to 5 of the CP help to clarify, and increase the transparency of, the manner in which the FCA will supervise RIEs, primary information providers and sponsors. The proposals therefore support this principle.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

14. As stated above, we believe that our proposals in Chapters 2 to 5 of the CP will generally improve the functioning of UK financial markets. This will in turn support this principle.

The desirability where appropriate of each regulator exercising its functions in a way that recognises differences in the nature of, and objectives of, businesses carried on by different persons subject to requirements imposed by or under this Act

15. The rules and guidance proposed in Chapters 2 to 5 help to create supervision regimes with increased flexibility. This enables us to act more proportionately in the supervision of sponsors, RIEs and primary information providers and therefore is in keeping with this principle.

Annex 2

List of questions

- Q1:** Do you have any comments on our proposed policy for imposing restrictions, limitations on sponsors or suspending a sponsor's approval under section 88(3)(e) FSMA?
- Q2:** Do you have any comments on our proposed policy for imposing restrictions or limitations on sponsors or suspending a sponsor's approval under section 88E FSMA?
- Q3:** Do you have any comments on our proposed approach for imposing disciplinary sanctions on sponsors under section 88A FSMA?
- Q4:** Do you have any comments on our proposed approach in relation to a sponsor requesting the suspension of its approval under section 88(3)(f) FSMA?
- Q5:** Do you have any comments regarding our proposed approach to the contents of the notification given when securities are cancelled or suspended at the issuer's request?
- Q6:** Do you have any comments on our proposals to base the new regime for primary information providers on the existing framework?
- Q7:** Do you have any comments on our proposals for the transitional arrangements for primary information providers?

- Q8:** Do you have any comments on our proposals to amend REC 2.17, to reflect that RIEs will no longer be party to market contracts of the type envisaged by s.155(2)(b) or s.155(2)(c) of the Companies Act 1989?
- Q9:** Do you have any comments on the way in which we propose to amend REC to reflect the legislative changes affecting recognised bodies?
- Q10:** Do you agree that the RDC should decide whether to impose a limitation or restriction on a sponsor under amended FSMA s.88(4)(aa), except where the sponsor has requested or otherwise agrees to the limitation or restriction in which case FCA staff under executive procedures should decide to give a warning notice and decision notice?
- Q11:** Do you agree that the decision to refuse an application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor's approval relates should be taken by the same decision-maker that decided to impose the limitation or other restriction?
- Q12:** Do you agree that the decisions to refuse an application for the suspension of an approval as a sponsor and decisions to refuse an application for the withdrawal of such suspensions should be taken by FCA staff?
- Q13:** Do you agree that FCA staff under executive procedures should decide whether to impose a suspension, limitation and or other restriction on sponsors under amended FSMA s.88E?
- Q14:** Do you agree that the same decision-making procedures proposed in respect of the sponsor powers should also apply to the corresponding powers in respect of Primary information providers?
- Q15:** Do you agree that the RDC should decide whether to exercise these new disciplinary powers?

- Q16:** Do you agree with our proposals regarding decision-making for own-initiative variations of permission and own-initiative requirements?
- Q17:** Do you agree that FCA staff under executive procedures should decide whether to exercise the financial promotions directions power?
- Q18:** Do you agree that FCA staff under executive procedures should decide whether to refuse consent to the PRA in respect of applications for permission, variation and approval in relation to dual-regulated firms at both the warning notice stage and the decision notice stage?
- Q19:** Do you agree with our proposed amendments to DEPP 3?
- Q20:** Do you agree with our proposal to apply the existing penalties and suspensions policies in DEPP to the FCA's new disciplinary powers?

Appendix 1

Listing Rules (Sponsors) (Amendment No 4) Instrument 2013

LISTING RULES (SPONSORS) (AMENDMENT NO 4) INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:
- (1) section 73A (Part 6 Rules);
 - (2) section 88 (Sponsors);
 - (3) section 137A (General rule-making power);
 - (4) section 137R (General supplementary powers); and
 - (5) section 139A (Guidance).

Commencement

- B. This instrument comes into force on *[date]* 2013.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Notes

- E. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 4) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

*operational
objectives*
[FCA/PRA] as defined in section 1B(3) of the *Act*.

Annex B

Amendments to Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8.6 Criteria for approval as a sponsor

...

Criteria for approval as a sponsor

8.6.5 R The *FCA* will approve a *person* as a *sponsor* only if it is satisfied that the
[FCA] *person*:

- (1) is an *authorised person* or a *member* of a *designated professional body*;
- (2) is competent to perform *sponsor services*; and
- (3) has appropriate systems and controls in place to ensure that it can carry out its role as a *sponsor* in accordance with this chapter.

8.6.5A R The *FCA* may impose restrictions or limitations on the services a *sponsor*
[FCA] can provide at the time of granting a *sponsor's* approval.

When the *FCA* may impose restrictions or limitations

8.6.5B G Situations when the *FCA* may impose restrictions or limitations on the
[FCA] services a *sponsor* can provide include (but are not limited to) where it
appears to the *FCA* that:

- (1) the employees of the *person* applying to be a *sponsor* whom it is
proposed will perform *sponsor services* have no or limited relevant
experience and expertise of providing certain types of *sponsor*
services or of providing *sponsor services* to certain types of *company*;
or
- (2) the *person* applying to be a *sponsor* does not have systems and
controls in place which are appropriate for the nature of the *sponsor*
services which the *person* applying to be a *sponsor* proposes to
undertake.

[Note: The decision-making procedures that the *FCA* will follow when it
imposes restrictions or limitations on the services a *sponsor* can provide and
in relation to any consequential applications or decisions are set out in
DEPP.]

...

8.7 Supervision of sponsors

...

Supervisory tools

8.7.2 G The *FCA* uses a variety of tools to monitor whether a *sponsor*:
[FCA]

(1) continues to satisfy the criteria for approval as a *sponsor* as set out in *LR* 8.6.5R; and

(2) remains in compliance with all applicable *listing rules*.

8.7.2A R The *FCA* may impose restrictions or limitations on the services a *sponsor* can provide at any time following the grant of a *sponsor's* approval.
[FCA]

8.7.2B G Situations when the *FCA* may impose restrictions or limitations on the services a *sponsor* can provide include (but are not limited to) where it appears to the *FCA* that:
[FCA]

(1) the *sponsor* has no or limited relevant experience of providing certain types of *sponsor services* or of providing *sponsor services* to certain types of *company*; or

(2) the *sponsor* does not have systems and controls in place which are appropriate for the nature of the *sponsor services* which the *sponsor* is undertaking or proposing to undertake.

[Note: The decision-making procedures that the *FCA* will follow when it imposes restrictions or limitations on the services a *sponsor* can provide and in relation to any consequential applications or decisions are set out in *DEPP*.]

...

Discipline of sponsors

8.7.19 R ~~If the *FCA* considers that a *sponsor* has breached any provision of the *listing rules* and considers it appropriate to impose a sanction it will publish a statement censuring the *sponsor*.~~ [deleted]
[FCA]

8.7.20 G *EG* sets out the *FCA's* policy on when and how it will use its disciplinary powers, including in relation to a *sponsor*. ~~This includes, at *EG* 18, its approach to cancellation of a *sponsor's* approval on the *FCA's* own initiative.~~ The decision-making procedures that the *FCA* will follow when it exercises its disciplinary powers in relation to a *sponsor* are set out in *DEPP*.
[FCA]

...

Suspension of a sponsor's approval at the sponsor's request

8.7.25 R A request by a *sponsor* for its approval as a *sponsor* to be suspended must be
[FCA] in writing and must include:

- (1) the *sponsor's* name;
- (2) a clear explanation of the background and reasons for the request;
- (3) the date on which the *sponsor* requests the suspension to take effect;
- (4) a signed confirmation that the *sponsor* will not provide any *sponsor*
services as of the date the request is submitted to the *FCA*; and
- (5) the name and contact details of the *person* at the *sponsor* with whom
the *FCA* should liaise with in relation to the request.

[Note: The decision-making procedures that the *FCA* will follow when it
considers a *sponsor's* request for suspension of its approval and in relation
to any consequential applications or decisions are set out in *DEPP*.]

8.7.26 G A *sponsor* may withdraw its request at any time before the suspension takes
[FCA] effect. The withdrawal request should initially be made by telephone and
then confirmed in writing as soon as possible, with an explanation of the
reasons for the withdrawal.

Sponsors: advancing the FCA's operational objectives

8.7.27 G The *FCA* may impose restrictions or limitations on the services a *sponsor*
[FCA] can provide or suspend a *sponsor's* approval under section 88E of the *Act* if
the *FCA* considers it desirable to do so in order to advance one or more of its
operational objectives. The decision-making procedures that the *FCA* will
follow when it imposes such restrictions or limitations or suspends a
sponsor's approval and in relation to any consequential applications or
decisions are set out in *DEPP*.

Appendix 2

Listing Rules (Cancellation and Suspension Notices) Instrument 2013

**LISTING RULES (CANCELLATION AND SUSPENSION NOTICES)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Services Authority makes this instrument in the exercise of the powers in section 139A (Guidance) of the Financial Services and Markets Act 2000.

Commencement

- B. This instrument comes into force on [*date*] 2013.

Amendments to the Handbook

- C. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Notes

- D. In the Annex to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- E. This instrument may be cited as the Listing Rules (Cancellation and Suspension Notices) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[*date*]

Annex

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

Notice of cancellation or suspension

- 5.3.8 G If an *issuer* requests the *FCA* to suspend or cancel the *listing* of its *securities*
[FCA] under LR 5.3.1R and the *FCA* agrees to do so, the notification given by the
 FCA to the *issuer* will include the following information:
- (1) the date on which the suspension or cancellation took effect or will take effect;
 - (2) details of the suspension or cancellation; and
 - (3) in relation to requests for suspension, details of the *issuer's* right to apply for the suspension of its *listed securities* to be cancelled.

[Note: The decision-making procedures that the *FCA* will follow when it decides whether to agree to an *issuer's* request for the suspension or cancellation of its *listed securities*, and in relation to any consequential applications or decisions, are set out in *DEPP*.]

Appendix 3

Listing and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2013

LISTING AND DISCLOSURE AND TRANSPARENCY RULES (PRIMARY INFORMATION PROVIDERS) INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority (“FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 89P (Primary Information Providers);
 - (3) section 137A (General rule-making power);
 - (4) section 137R (General supplementary powers); and
 - (5) section 139A (Guidance).

Commencement

- B. This instrument comes into force on *[date]* 2013.

Amendments to the Handbook

- C. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

Notes

- D. In Annex C to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- E. This instrument may be cited as the Listing and Disclosure and Transparency Rules (Primary Information Providers) Instrument 2013.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>FCA short name</i> [FCA/PRA]	the abbreviated name allocated to an <i>issuer</i> or organisation by the <i>FCA</i> .
<i>headline information</i> [FCA/PRA]	the headline codes and headline categories for use with the announcement of <i>regulated information</i> that are listed in <i>DTR 8 Annex 2R</i> .
<i>list of primary information providers</i> [FCA/PRA]	the list of <i>primary information providers</i> maintained by the <i>FCA</i> in accordance with section 89P(4)(a) of the <i>Act</i> .
<i>medium</i> [FCA/PRA]	a news vendor that receives, via an information feed, <i>regulated information</i> from a <i>regulatory information service</i> and then disseminates that information to the public as soon as possible.
<i>operational objectives</i> [FCA/PRA]	as defined in section 1B(3) of the <i>Act</i> .
<i>primary information provider</i> [FCA/PRA]	a <i>person</i> approved by the <i>FCA</i> under section 89P of the <i>Act</i> .
<i>regulatory body</i> [FCA/PRA]	an organisation listed in <i>DTR 8 Annex 1R</i> .

Amend the following definitions as shown.

<i>Regulated Information Service</i>	a Regulated Information Service that is approved by the FSA as meeting the Criteria for Regulated Information Services and that is on the list of Regulated Information Services maintained by the FSA.
<i>regulatory information service or RIS</i> [FCA/PRA]	either: (a) a Regulated Information Service <u>primary information provider</u> ; or

(b) an incoming *information society service* that has its *establishment* in an *EEA State* other than the *United Kingdom* and that disseminates *regulated information* in accordance with the minimum standards set out in [article 12 of the *TD implementing Directive*]; or

(c) a person to whom *DTR TP 22* applies, for as long as *DTR TP 22* remains in force.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Appendix 1 Relevant definitions

[FCA]

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>E-Commerce Directive</i>	the Council Directive of 8 June 2002 on legal aspects of <i>information society services</i> , in particular electronic commerce, in the Internal Market (No 2000/31/EC).
<i>information society service</i>	an information society service, as defined by article 2(a) of the <i>E-Commerce Directive</i> and article 1(2) of the Technical Standards and Regulations Directive (98/34/EC), which is in summary any service normally provided for remuneration, at a distance, by means of electronic equipment for the processing (including the digital compression) and storage of data at the individual request of a service recipient.
<i>primary information provider</i>	a <i>person</i> approved by the <i>FCA</i> under section 89P of the <i>Act</i> .

Amend the following definitions as shown.

<i>regulatory information service</i> or <i>RIS</i>	a Regulatory Information Service that is approved by the FSA as meeting the Primary Information Provider criteria and that is on the list of Regulatory Information Services maintained by the FSA.
	<u>(a) a <i>primary information provider</i>; or</u>
	<u>(b) an incoming <i>information society service</i> that has its <i>establishment</i> in an <i>EEA State</i> other than the <i>United Kingdom</i> and that disseminates <i>regulated information</i> in accordance with the minimum standards set out in [article 12 of the <i>TD implementing Directive</i>] ; or</u>
	<u>(c) a <i>person</i> to whom <i>DTR TP 22</i> applies, for as long as <i>DTR TP 22</i> remains in force.</u>

...

Appendix 3 ~~List of Regulatory Information Services~~ [deleted]

~~App 3.1.1 R The following are approved *Regulatory Information Services*:~~

~~Business Wire Regulatory Disclosure provided by Business Wire~~

~~FirstSight provided by Cision~~

~~Announce provided by Hugin ASA~~

~~News Release Express provided by Marketwire~~

~~PR Newswire Disclose provided by PRNewswire~~

~~RNS provided by the London Stock Exchange~~

~~marCo—Market Communication Office provided by Tensid Ltd of Switzerland~~

~~DGAP-IR-COCKPIT provided by EquityStory AG~~

Annex C

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

After DTR 1B insert the following new section.

1C Introduction (Primary information providers)**1C.1 Application and purpose (Primary information providers)**

1C.1.1 R The requirements in DTR 8 apply to a primary information provider and a person that is applying for approval as a primary information provider.

[FCA]

1C.1.2 G The purpose of the requirements in DTR 8 is to make the Part 6 rules permitted under section 89P of the Act in relation to primary information providers and persons applying for approval as primary information providers.

[FCA]

1C.2 Modifying rules and consulting the FCA

Modifying or dispensing with rules

1C.2.1 R (1) The FCA may dispense with, or modify, a requirement in DTR 8 in such cases and by reference to such circumstances as it considers appropriate (subject to the Act).

[FCA]

(2) A dispensation or modification may be either unconditional or subject to specified conditions.

(3) If a primary information provider or a person that is applying for approval as a primary information provider has applied for, or been granted, a dispensation or modification, it must notify the FCA immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.

(4) The FCA may revoke or modify a dispensation or modification.

1C.2.2 R (1) An application to the FCA to dispense with or modify, a requirement in DTR 8 must be in writing.

[FCA]

(2) The application must:

(a) contain a clear explanation of why the dispensation or modification is requested

- (b) include details of any special requirements, for example, the date by which the dispensation or modification is required;
- (c) contain all relevant information that should reasonably be brought to the FCA's attention;
- (d) contain any statement or information that is required by DTR 8 to be included for a specific type of dispensation or modification;
and
- (e) include copies of all documents relevant to the application.

1C.2.3 R An application to dispense with or modify a requirement in DTR 8 should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect.
[FCA]

Early consultation with FCA

1C.2.4 R A *primary information provider* or a *person* applying for approval as a *primary information provider* should consult with the FCA at the earliest possible stage if they:
[FCA]

- (1) are in doubt about how a requirement in DTR 8 applies in a particular situation; or
- (2) consider that it may be necessary for the FCA to dispense with or modify a requirement in DTR 8.

1C.2.5 R Where a requirement in DTR 8 refers to consultation with the FCA, submissions should be made in writing other than in circumstances of exceptional urgency.
[FCA]

Address for correspondence

Note: The FCA's address for correspondence in relation to DTR 8 is:

[to be confirmed post consultation]

6.3 Dissemination of information

...

6.3.5 R (1) *Regulated information*, other than regulated information described in paragraph (2), must be communicated to the ~~media~~ *media* in unedited full text.
[FCA]

[Note: article 12(3) of the *TD implementing directive***]**

- (2) (a) An annual financial report that is required by DTR 4.1 to be made public is not required to be communicated to the ~~media~~ *media* in

unedited full text except for the information described in paragraph (b).

- (b) If information is of a type that would be required to be disseminated in a half-yearly financial report then information of such a type that is contained in an annual financial report must be communicated to the ~~media~~ media in unedited full text.

...

- 6.3.6 [FCA] R *Regulated information* must be communicated to the ~~media~~ media in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the *regulated information*. Security of receipt must be ensured by remedying as soon as possible any failure or disruption in the communication of *regulated information*. An *issuer* or *person* is not responsible for systemic errors or shortcomings at the ~~media~~ media to which the *regulated information* has been communicated. [Note: article 12(4) of the *TD implementing directive*]

...

- 6.3.8 [FCA] R Upon request, an *issuer* or other *person* must be able to communicate to the *FCA*, in relation to any disclosure of *regulated information*:
- (1) the name of the *person* who communicated the *regulated information* to the *RIS*;
 - (2) the security validation details;
 - (3) the time and date on which the *regulated information* was communicated to the *RIS*;
 - (4) the ~~medium~~ form in which the *regulated information* was communicated; and

...

After DTR 7 insert the following new section. The text is not underlined.

8 Primary Information Providers

8.1 Application

Primary information providers and applicants

- 8.1.1 [FCA] R This chapter applies to a *primary information provider* and a *person* that is applying for approval as a *primary information provider*.

List of primary information providers

- 8.1.2 R The *FCA* will maintain a list of *primary information providers* on its
[FCA] website.

8.2 Approval as a primary information provider

Application for approval as a primary information provider

- 8.2.1 R A *person* wishing to be included on the *list of primary information*
[FCA] *providers*, must apply to the *FCA* for approval as a *primary information*
provider by submitting the following to the *FCA*:
- (1) the name, registered office address, registered number and the names and addresses of the directors and company secretary of the *person* applying for approval and, where applicable, the corporate group to which the *person* belongs;
 - (2) details of all the connections that it has established or it intends to establish with *media* in the *United Kingdom* and other *EEA States*;
 - (3) names, addresses, dates of birth and, where applicable, national insurance numbers, of its senior management;
 - (4) details of the fees it proposes to charge *persons* in relation to the dissemination of *regulated information*;
 - (5) a report by a reporting accountant qualified to act as an auditor confirming that in their opinion the *person* applying for approval as a *primary information provider* will be capable of satisfying the continuing obligations set out in *DTR* 8.4; and
 - (6) the application fee set out in *FEES* [•].
- 8.2.2 G The report provided under *DTR* 8.2.1R(5) should state:
- (1) the opinion of the reporting accountant qualified to act as auditor as to the matters set out in *DTR* 8.4;
 - (2) the significant areas tested in reaching that opinion; and
 - (3) a summary of the work undertaken to address these areas and reach that opinion.
- 8.2.3 R A *person* wishing to be included on the *list of primary information*
[FCA] *providers* must also submit to the *FCA*:
- (1) all additional documents, explanations and information that the *FCA* may reasonably require to decide whether to grant an application for approval as a *primary information provider*; and

- (2) verification of any documents, explanations and information provided to the *FCA* in such a manner as the *FCA* may reasonably require under (1).

8.2.4 [FCA] G When considering an application for approval as a *primary information provider* the *FCA* may carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators.

[**Note:** The decision-making procedures that the *FCA* will follow when it considers whether to refuse an application for approval as a *primary information provider* are set out in *DEPP*.]

8.2.5 [FCA] G Approval as a *primary information provider* becomes effective when the *person* is informed in writing by the *FCA*. The *FCA* will as soon as possible add the name of the *person* who has been approved as a *primary information provider* to the *list of primary information providers*.

Restrictions or limitations on approval

8.2.6 [FCA] R The *FCA* may impose restrictions or limitations on the services a *primary information provider* may provide at the time of granting a *primary information provider's* approval.

[**Note:** The decision-making procedures that the *FCA* will follow when it imposes restrictions or limitations on the services that a *primary information provider* can provide and in relation to any consequential applications or decisions are set out in *DEPP*.]

8.3 Criteria for approval as a primary information provider

8.3.1 [FCA] R The *FCA* will approve a *person* as a *primary information provider* only if it is satisfied that the *person* will be able to:

- (1) disseminate *regulated information* in a manner ensuring fast access to *regulated information* on a non-discriminatory basis; and
- (2) satisfy the continuing obligations set out in *DTR* 8.4.

8.3.2 [FCA] G In determining whether a *person* applying for approval as a *primary information provider* satisfies the requirements in *DTR* 8.3.1R, the *FCA* will consider, amongst other things, the report of the reporting accountant provided under *DTR* 8.2.1R(5).

8.4 Continuing obligations

Media connections

- 8.4.1 [FCA] R A *primary information provider* must establish and maintain adequate connections to *media* in the *United Kingdom* and other *EEA States*.
- 8.4.2 [FCA] G The purpose of *DTR 8.4.1R* is to ensure that a *primary information provider* can disseminate *regulated information* to as wide a public as possible, as close to simultaneously as possible, in the *United Kingdom* and other *EEA States*. In considering whether a *primary information provider* has satisfied the requirements in *DTR 8.4.1R*, the *FCA* will consider the number and nature of connections to *media* that the *primary information provider* has in place.

Handling regulated information: timing and prioritisation

- 8.4.3 [FCA] R Unless the *regulated information* is embargoed by the *person* who submitted it or by the *FCA*, a *primary information provider* must disseminate all *regulated information* that it receives as soon as possible and disseminate at least 95% of all *regulated information* that it receives which does not require reformatting within 5 minutes.
- 8.4.4 [FCA] R A *primary information provider* must prioritise the order of dissemination of pending *regulated information* according to the *headline information*, except that a *primary information provider* must prioritise the dissemination of *regulated information* that is submitted by the *FCA* if the *FCA* requests it.

Handling regulated information: fees

- 8.4.5 [FCA] R A *primary information provider* must publish on its website:
- (1) the services it provides in relation to the dissemination of *regulated information*; and
 - (2) the fees it charges for the provision of those services.
- 8.4.6 [FCA] R A *primary information provider* must not charge a *regulatory body* listed in *DTR 8 Annex 1R* for the dissemination of *regulated information*.

Handling regulated information: operational hours and support

- 8.4.7 [FCA] R A *primary information provider* must:
- (1) disseminate *regulated information* at least between the hours of 7:00 am and 6:30 pm on any *business day*;
 - (2) be able to receive *regulated information* at all times;
 - (3) provide service support to any *person* who has requested the dissemination of *regulated information* and to any *media* to which the *primary information provider* is connected at least between the hours of 7.00 am and 6.30 pm on any *business day*; and

- (4) have staff available to assist the *FCA* exercise its functions in relation to the dissemination of *regulated information* by the *primary information provider* at least between the hours of 7.00 am and 6.30 pm on any *business day*.

Handling regulated information: business continuity

- 8.4.8 [FCA] R A *primary information provider* must ensure that if circumstances arise which prevent it from disseminating and continuously receiving *regulated information*, it has adequate arrangements in place to ensure that it can continue to satisfy its obligations as a *primary information provider*.
- 8.4.9 [FCA] G In considering whether a *primary information provider* satisfies the requirements of *DTR* 8.4.8R, the *FCA* will consider, among other things, whether the *primary information provider* has arrangements in place for an alternative *primary information provider* to receive and disseminate *regulated information* on its behalf.

Handling regulated information: security

- 8.4.10 [FCA] R A *primary information provider*:
- (1) must ensure that *regulated information* is handled securely; and
 - (2) provide *persons* wishing to disseminate *regulated information* with a secure means of communicating *regulated information* to the *primary information provider*.
- 8.4.11 [FCA] R A *primary information provider* must have arrangements in place to prevent the misuse of *regulated information* by any of its staff.

Handling regulated information: amendments

- 8.4.12 [FCA] R A *primary information provider* must not make substantive changes to the *regulated information* it receives, unless requested by the *issuer* or other organisation who submitted the *regulated information* for dissemination.
- 8.4.13 [FCA] G In determining whether a *primary information provider* has satisfied the requirement in *DTR* 8.4.12R, the *FCA* will consider whether the changes made by the *primary information provider* would be likely to affect the import of the *regulated information*.

Handling regulated information: record keeping

- 8.4.14 [FCA] R A *primary information provider* must record the following information for each announcement of *regulated information* it disseminates:
- (1) the name of any *person* who communicates *regulated information* on behalf of an *issuer* or other organisation to the *primary information provider*;

- (2) the name of the *issuer* or organisation on whose behalf the *regulated information* is communicated;
- (3) the security validation details of the *issuer* or organisation;
- (4) the date and time the *regulated information* is received by the *primary information provider*;
- (5) details of the form in which the *regulated information* is received by the *primary information provider*;
- (6) if applicable, details of any embargo placed by the *issuer*, organisation or the *FCA* on the *regulated information*;
- (7) details of all *persons* who are authorised by the *primary information provider* to have access to the *regulated information*;
- (8) if applicable, details of, and reasons for, any substantive change made to the *regulated information* in accordance with *DTR* 8.4.12R; and
- (9) the date and time the *primary information provider* disseminates the *regulated information* to the *media*.

8.4.15 R A primary information provider must retain the records required under *DTR*
[FCA] 8.4.14R for 3 years.

8.4.16 R Records must be capable of timely retrieval.
[FCA]

8.4.17 R A *primary information provider* that has had its approval cancelled should
[FCA] continue to comply with its record keeping obligations in *DTR* 8.4.14R to
DTR 8.4.16R.

Receiving regulated information: validation of submissions

8.4.18 R A *primary information provider* must ensure that there is certainty about
[FCA] the:

- (1) identity of any *person* who submits *regulated information* on behalf of an *issuer* or organisation to the *primary information provider*;
- (2) authority of the *person* to submit the *regulated information* on behalf of the *issuer* or organisation; and
- (3) identity of the *issuer* or organisation on whose behalf the *regulated information* is submitted.

8.4.19 R A *primary information provider* must ensure that there is no significant risk
[FCA] of data corruption during the submission, handling and dissemination of
regulated information.

Disseminating regulated information: scope

- 8.4.20 [FCA] R A *primary information provider* must disseminate *regulated information* that has been submitted by:
- (1) an *issuer*; or
 - (2) an *person* acting as agent for an *issuer*; or
 - (3) any *regulatory body* listed in DTR 8 Annex 1R; or
 - (4) any other *person* required to submit *regulated information*.

Disseminating regulated information: format

- 8.4.21 [FCA] R A *primary information provider* must disseminate *regulated information* to any *media* it is connected to in:
- (1) unedited full text as submitted to the *primary information provider*; and
 - (2) an industry standard output format.
- 8.4.22 [FCA] R *Regulated information* disseminated to the *media* by a *primary information provider* must contain the following:
- (1) identification of the information as *regulated information* which has been disseminated by a *primary information provider*;
 - (2) the unique identification number for the item of *regulated information*;
 - (3) the sequence number of the *regulated information*;
 - (4) a clear indication of the start of the *regulated information*;
 - (5) the name of the *issuer* or organisation concerned;
 - (6) the *FCA short name* of the *issuer* or organisation concerned;
 - (7) the *headline information* relevant to the *regulated information*;
 - (8) a headline capturing the subject matter of the *regulated information*;
 - (9) the time and date the *regulated information* was submitted to the *primary information provider*;
 - (10) the time and date the *regulated information* was disseminated by the *primary information provider*; and
 - (11) a clear indication of the end of the *regulated information*.

Disseminating regulated information: use of headline information

- 8.4.23 R A *primary information provider* must add the appropriate *FCA headline information* to *regulated information* it disseminates to any *media* to which it is connected.
[FCA]
- 8.4.24 R *DTR 8.4.23R* does not apply when a *primary information provider* disseminates information it has received from a *Recognised Investment Exchange*.
[FCA]

Disseminating regulated information: dissemination to the media

- 8.4.25 R A *primary information provider* must ensure that all *regulated information* it receives is disseminated successfully to all *media* to which it is connected.
[FCA]
- 8.4.26 R If a *primary information provider* becomes aware that the dissemination of *regulated information* has failed, it must disseminate the specified *regulated information* immediately.
[FCA]

Disseminating regulated information: embargo of regulated information

- 8.4.27 R If requested by the *person* who has submitted the *regulated information* for dissemination, a *primary information provider* must place an embargo on the *regulated information* for release at the date and time specified by the *person* who submitted the *regulated information*.
[FCA]
- 8.4.28 R If requested by the *FCA*, a *primary information provider* must:
[FCA]
- (1) place an embargo on *regulated information*; or
 - (2) cancel any embargo placed on *regulated information* by the *person* that has submitted the *regulated information* and disseminate the *regulated information*; or
 - (3) cancel any embargo placed on *regulated information* by the *FCA* and disseminate the *regulated information*.

Disseminating regulated information: output feed to the FCA

- 8.4.29 R A *primary information provider* must supply free of charge an output feed of *regulated information*, exclusive of all other information, to the *FCA* or an agent appointed by the *FCA* to act on its behalf.
[FCA]

Systems and controls

- 8.4.30 R A *primary information provider* must have effective systems and controls in place to ensure that it can comply with its continuing obligations in *DTR 8.4.1R* to *DTR 8.4.29R*.
[FCA]
- 8.4.31 G In considering whether a *primary information provider* satisfies the requirements of *DTR 8.4.30R*, the *FCA* will consider, among other things,

[FCA] whether the *primary information provider* has in place appropriate measures to identify new and emerging risks which would be likely to prevent its compliance with *DTR 8.4.10R*, *DTR 8.4.18R* or *DTR 8.4.19R*.

Relations with the FCA

8.4.32 R A *primary information provider* must at all times:
[FCA]

- (1) deal with the *FCA* in an open and cooperative manner; and
- (2) deal with all enquiries raised by the *FCA* as soon as possible.

Requirement to provide information

8.4.33 R A *primary information provider* must provide to the *FCA* as soon as possible
[FCA] any information or explanations which the *FCA* reasonably requires in connection with the performance of its functions regarding the dissemination of *regulated information*.

General notifications

8.4.34 R A *primary information provider* must notify the *FCA* immediately if:
[FCA]

- (1) there is change to the names and contact details of staff who are available to assist the *FCA* exercise its functions in relation to the dissemination of *regulated information* by the *primary information provider*; or
- (2) any contractual arrangement between the *primary information provider* and a *medium* regarding the dissemination of *regulated information* is terminated; or
- (3) any changes are proposed to the fees the *primary information provider* charges in relation to the dissemination of *regulated information*; or
- (4) it becomes aware of any matter which in its reasonable opinion would be likely to affect its ability to satisfy its obligations in *DTR 8.4*.

8.4.35 R If a *primary information provider* learns of a breach of its security it must:
[FCA]

- (1) notify the *FCA* immediately; and
- (2) provide the *FCA* as soon as possible with a report containing details of the security breach and the steps taken to rectify it.

8.4.36 R A *primary information provider* must notify the *FCA*, *regulatory bodies* and
[FCA] its clients immediately if its ability to disseminate or continuously receive *regulated information* is disrupted.

8.4.37 R If a *primary information provider* has its approval cancelled it must
[FCA] immediately notify its clients, *regulatory bodies* and any *media* to which it is connected that it is no longer approved as a *primary information provider*.

8.4.38 R (1) Notifications must be made in writing.
[FCA] (2) Notifications to the *FCA* must be sent to the Primary Markets Monitoring Team at the *FCA*'s address.

Annual fee

8.4.39 R A *primary information provider* must pay the annual fee set out in *FEES* [•]
[FCA] in order to remain on the list of *primary information providers*.

8.5 Supervision of primary information providers

Annual report

8.5.1 R A *primary information provider* must submit to the *FCA* an annual report
[FCA] prepared by a reporting accountant qualified to act as auditor which states that the *primary information provider* has satisfied its continuing obligations in *DTR* 8.4 in the preceding 12 months.

8.5.2 G The annual report provided under *DTR* 8.5.1R should state:
[FCA] (1) the opinion of the reporting accountant qualified to act as auditor as to the matters set out in *DTR* 8.5.1R;
(2) the significant areas tested in reaching that opinion; and
(3) a summary of the work undertaken to address these areas and reach that opinion.

8.5.3 R The annual report must be sent to the *FCA* within 3 months of the
[FCA] anniversary of the date of the *primary information provider*'s approval as a *primary information provider*.

Restrictions or limitations on approval

8.5.4 R The *FCA* may impose restrictions or limitations on the services a *primary*
[FCA] *information provider* can provide at any time following the grant of a *primary information provider*'s approval.

8.5.5 G Situations when the *FCA* may impose restrictions or limitations on the
[FCA] services a *primary information provider* can provide include (but are not limited to) where it appears to the *FCA* that:

- (1) the *primary information provider's* ability to satisfy its obligations in *DTR* 8.4 would be likely to be compromised; or
- (2) the *primary information provider* is proposing to make changes to its systems and controls or operations which would be likely to prevent it from satisfying any of its obligations in *DTR* 8.4; or
- (3) the *primary information provider* is proposing to make changes to the services offered or fees charged which would be likely prevent it from satisfying its obligation in *DTR* 8.3.1R(1).

[**Note:** The decision-making procedures that the *FCA* will follow when it imposes restrictions or limitations on the services a *primary information provider* can provide and in relation to any consequential applications or decisions are set out in *DEPP*.]

Discipline of primary information providers

- 8.5.6 [FCA] G The decision-making procedures that the *FCA* will follow when it uses its disciplinary powers in relation to a *primary information provider* are set out in *DEPP*.

Suspension of a primary information provider's approval at the primary information provider's request

- 8.5.7 [FCA] R A request by a *primary information provider* for its approval as a *primary information provider* to be suspended must be in writing and must include:
- (1) the *primary information provider's* name;
 - (2) a clear explanation of the background and reasons for the request;
 - (3) the date on which the *primary information provider* requests the suspension to take effect; and
 - (4) the name and contact details of the *person* at the *primary information provider* with whom the *FCA* should liaise with in relation to the request.

- 8.5.8 [FCA] G A *primary information provider* may withdraw its request at any time before the suspension takes effect.

Cancellation of a primary information provider's approval at the primary information provider's request

- 8.5.9 [FCA] R A request by a *primary information provider* for its approval as a *primary information provider* to be cancelled must be in writing and must include:
- (1) the *primary information provider's* name;
 - (2) a clear explanation of the background and reasons for the request;

- (3) the date on which the *primary information provider* requests the cancellation to take effect; and
- (4) the name and contact details of the *person* at the *primary information provider* with whom the *FCA* should liaise with in relation to the request.

8.5.10 G A *primary information provider* may withdraw its request at any time before
[FCA] the cancellation takes effect.

Primary information providers: advancing the *FCA*'s operational objectives

8.5.11 G The *FCA* may impose restrictions or limitations on the services a *primary*
[FCA] *information provider* can provide or suspend a *primary information provider's* approval if the *FCA* considers it desirable to do so in order to advance one or more of its *operational objectives*. The decision-making procedures that the *FCA* will follow when it imposes such restrictions or limitations or suspends a *primary information provider's* approval and in relation to any consequential applications or decisions are set out in *DEPP*.

8 Annex 1R List of regulatory bodies [FCA]

	(1)	the <i>FCA</i>
	(2)	The Panel on Takeovers and Mergers
	(3)	the Competition Commission
	(4)	the Civil Aviation Authority
	(5)	the Department for Business, Innovation and Skills
	(6)	the Environment Agency
	(7)	the Gambling Commission
	(8)	the PRA
	(9)	the Office of the Gas and Electricity Markets
	(10)	the Office of the Rail Regulator
	(11)	the National Lottery Commission
	(12)	the Water Services Regulation Authority
	(13)	the Office of Communications

	(14)	the Office of Fair Trading
	(15)	the Financial Reporting Review Panel
	(16)	the House of Commons Department of Chamber and Committee Services

8 Annex 2R Headline categories
[FCA]

Headline code	Headline category	Description
Urgent priority		
SUS	Temporary Suspension	Submitted to indicate that a security has been temporarily suspended from the Official List
SRS	Statement re. Suspension	Statement regarding the suspension of listing/trading of a company's listed securities
REN	Restoration of Listing	Submitted to indicate that a security has been admitted/cancelled from the Official List
NOT	Official List Notice	Submitted to indicate that a security has been admitted to/cancelled from the Official List
MSC	Miscellaneous	Miscellaneous urgent priority announcements
High priority		
QRF	1st Quarter Results	First quarter financial results
QRT	3rd Quarter Results	Third quarter and nine months financial results
ACQ	Acquisition	Statement regarding an acquisition of a company or assets
AGM	AGM Statement	Statement made at a company's AGM
ACS	Annual Financial Report	Publication of a company's annual financial report
CAR	Capital Reorganisation	Notification of the restructuring of a company's existing share capital
CON	Conversion of Securities	Notification of the details of a conversion of securities (e.g. warrants/convertible loan stock)
TAB	Disclosure Table	Notification of companies currently in offer period
DIS	Disposal	Statement regarding the disposal of a company or assets
DRL	Drilling Report	Report given by mineral, oil and natural gas companies
EGM	EGM Statement	Statement made at a company's EGM

FR	Final Results	Announcement of full year/4th quarter financial results
FEE	Form 8 (OPD) [Insert name of offeree or offeror]	Opening position disclosure by a party to an offer
FEO	Form 8.5 (EPT/NON-RI)	Opening position disclosure/dealing disclosure by an exempt principal trader without recognised intermediary (“RI”) status or where RI status is not applicable
FER	Form 8.5 (EPT/RI)	Dealing disclosure by an exempt principal trader with recognised intermediary (“RI”) status dealing in a client-serving capacity
FON	Formal Notice	Notification of the issue of a debt instrument programme and publication of relevant listing particulars
FUR	Further re (insert appropriate text)	Announcement made following an initial, related announcement
IR	Half-year Report	Announcement of half-year/second quarter financial results
IMS	Interim Management Statement	A twice-yearly statement of material events and transactions during the period
IOD	Issue of Debt	Notification of an issue of debentures, debenture or loan stock, bonds and notes, whether secured or unsecured
IOE	Issue of Equity	Notification of an issue of equity shares e.g. offer for subscription/offer for sale/rights issue
LOI	Letter of Intent Signed	Statement regarding a letter of intent signed between entities
MER	Merger Update	Statement regarding decision whether a takeover/merger has been referred for investigation to the Competition Commission/Secretary of State for Trade and Industry
OFB	Offer by [add offeror’s name]	Statement giving details of an offer announced by the offeree.
OFF	Offer for [add offeree’s name]	Statement giving details of an offer announced by the offer or

OLA	Offer Lapsed	Statement declaring that the required acceptances for an offer to be successful have not been obtained and that the offer has lapsed
ORE	Offer Rejection	Statement that an offer has been rejected
OTT	Offer Talks Terminated	Statement that a company's offer discussions have been terminated without an offer being made
OUP	Offer Update	Statement giving an update on an offer e.g. offer acceptances/offer extension/offer becoming wholly unconditional
PNM	Prior Notice of Merger	Statement regarding proposed mergers
PRL	Product Launch	Statement regarding the launch of a new product by a company
AGR	Re Agreement	Statement regarding an alliance between entities
SAL	Re Alliance	Statement regarding an alliance between entities
CNT	Re Contract	Statement regarding a contract entered into/awarded/signed
JVE	Re Joint Venture	Statement regarding a joint venture between entities
RAP	Regulatory Application	Application by a company to a regulatory body for a product or service (e.g. approval to market a pharmaceutical product)
REA	Regulatory Approval	Approval from a regulatory body for a company's product or service (e.g. approval to market a pharmaceutical product)
RES	Research Update	A statement giving an update on research (e.g. clinical trials)
RSP	Response to (insert appropriate text)	Statement submitted in response to a previous statement made another entity
REP	Restructure Proposals	Operational restructuring of a company
RAG	Result of AGM	Notification of the result of any voting at an AGM
REG	Result of EGM	Notification of the results of any voting at an EGM

ROI	Result of Equity Issue	Notification of the result of an issue of equity shares e.g. offer for subscription/offer for sale/ rights issue
ROM	Result of Meeting	Outcome of a meeting other than an AGM or EGM
RTE	Result of Tender Offer	Notification of the result of a tender offer
DCC	Form 8 (DD) - [Insert name of offeree or offeror]	Dealing disclosure by a party to an offer or person acting in concert (including for the account of discretionary investment clients)
RET	Form 8.3 – [Insert name of offerree or offeror]	Opening position disclosure/dealing disclosure by a person with interests in relevant securities representing 1% or more
SOA	Scheme of arrangement	Statement giving details of a scheme of arrangement
STR	Statement re (insert appropriate text)	Statement regarding a particular issue
STC	Statement re (insert appropriate text)	Statement by the Competition Commission regarding the outcome of its investigation of a takeover/merger
OFD	Statement re Possible Offer	Statement that a company is in discussions which may or may not lead to an offer being made
SPC	Statement re Press Comment	Statement regarding press comment
SPM	Statement re Share Price Movement	Statement regarding a movement in the price of a company's listed securities
SYR	Syndicate Results	Statement of results submitted by Lloyd's
TEN	Tender Offer	Notification of a tender offer
TVR	Total Voting Rights	Notification of a change in the total number of voting rights
TST	Trading Statement	Statement regarding a company's trading performance (e.g. profit warning)
POS	Transaction in Own Shares*	Notification of a transaction involving own shares, including a purchase, sale, redemption, cancellation, transfer or allotment

	Miscellaneous	Miscellaneous high priority announcements
Medium priority		
ARI	Announcement re: Rights Issue	Announcement by an issuer confirming the commencement of a Rights Issue period
LIS	Additional Listing	Notification of any addition to a company's existing share capital
AIU	Annual Information Update	Notification referring to or containing all information that has been published or has been made available to the public over the last 12 months
BRC	Base Rate Change	Announcement of a change in bank base rate
BLR	Block listing Interim Review*	Six monthly notification by a company issuing securities on a regular basis. Notification of a company's annual report & accounts
CMC	Compliance with Model Code	Statement by a closed-ended investment fund under LR15.5.1 confirming it is satisfied that all inside information has been previously notified.
CAS	Compulsory Acquisition of Shares	Statement regarding the compulsory acquisition of shares
RDS	Director/PDMR Shareholding*	Notification of issuers, persons discharging managerial responsibilities and their connected persons in respect of transactions conducted in their own account in shares of the issuer
BOA	Directorate change	Notification of any change to a company's board e.g. appointments/resignations/changes to important functions or executive responsibilities of a director
DIV	Dividend Declaration	Declaration of a dividend issued by a company
RC	FRN Variable Rate Fix	Update of interest rate for a floating rate note
GEO	Geographical Distribution	Notification by an investment company/trust of the geographical distribution of its assets
HOL	Holding(s) in Company*	Notification of major interests in shares
NAV	Net Asset Value(s)	Notification by an investment company/trust of

		its Net Asset Value
PFU	Portfolio Update	Periodic notification by an investment company/trust of its investment portfolio as required by Listing Rule 15.4.10 R
PDI	Publication of a prospectus	Publication of a prospectus in accordance with prospectus rules
RTT	Rule 2.10 Announcement	Announcement by an offeree company at the beginning of an offer period regarding details of all relevant securities issued by the company together with the numbers of such securities in issue as required by the Takeover Panel.
TAV	Total Assets Value	Notification by an investment company/trust of its Total Asset Value
TRS	Treasury Stock	Notification of the rate of interest payable on treasury stocks
MSC	Miscellaneous	Miscellaneous medium priority announcements
Low priority		
CAN	Change of Name	Notification of a company's change of name
CIR	Circ re. [insert appropriate document title]	Notification that a document issued to holders of listed securities (including notices of meetings but excluding listing particulars, annual report and accounts, interim reports, proxy cards and dividend or interest vouchers) is available for public inspection
COS	Company Secretary Change	Notification of the appointment/resignation of a company secretary
RDN	Director Declaration	Notification of details of all directorships held by a director in any other publicly quoted company and any details shown in Listing Rule paragraph 9.6.13(2) to (6)
DOC	Doc re. [insert appropriate document title]	Notification that a document issued to holder of listed securities is available for public inspection
NAR	New Accounting Ref Date	Notification of a change in a company's accounting reference date
NOA	Notice of AGM	Notification of a company's annual general meeting

NOE	Notice of EGM	Notification of a company's extraordinary general meeting
NOR	Notice of Results	Notification of the date financial results will be published
ODP	Offer Document Posted	Statement that offer document has been posted to holders of a company's listed securities
MSC	Miscellaneous	Miscellaneous low priority announcements
TSM	Test Message	Message submitted to test announcement system but not published

* Headline category is associated with a standard form, which is available on the *FCA's* website.

Amend the following as shown.

TP1 Transitional Provisions

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
22	<u>DTR 8</u>	<u>R</u>	<p>(1) <u>This rule applies to a person who was approved by the FSA as meeting the Criteria for Regulated Information Services and was on the list of Regulated Information Services maintained by the FSA on [the day before legal cutover 2013].</u></p> <p>(2) <u>A person to whom this rule applies may continue to disseminate regulated information in accordance with the Criteria for Regulated Information Services published on the FSA's website as at [the day before legal cutover</u></p>	<u>[legal cutover 2013 – legal cutover 2013 plus 6 months]</u>	<u>[legal cutover 2013]</u>

			<u>2013].</u> <u>(3) A person to whom this rule applies may apply for approval as a primary information provider to take effect from 6 months after [legal cutover 2013] in accordance with DTR 8.2.</u>		
--	--	--	---	--	--

Appendix 4

Recognised Investment Exchanges and Recognised Auction Platforms Legal Cutover Instrument 2013

RECOGNISED INVESTMENT EXCHANGES AND RECOGNISED AUCTION PLATFORMS LEGAL CUTOVER INSTRUMENT 2013

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137R (General supplementary powers);
 - (3) section 139A (Power of the FCA to give guidance);
 - (4) section 293 (Notification requirements); and
 - (5) paragraph 20(1) (Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purposes of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on *[date]*.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

	(1)	(2)
Glossary of definitions		Annex A
Fees manual (FEES)		Annex B
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)		Annex C

Citation

- E. This instrument may be cited as the Recognised Investment Exchanges and Recognised Auction Platforms Legal Cutover Instrument 2013.

By order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

clearing facilitation service (in relation to a *RIE*) any *regulated activity* carried on by an *RIE* for the purposes of, or in connection with, the provision by the *RIE* of services designed to facilitate the provision of clearing services by another person.

[FCA/PRA]

Amend the following as shown.

facilities (in relation to a *recognised body*) the facilities and services which it provides in the course of carrying on *exempt activities*; ~~and~~ References to the use of the facilities of an *RIE* or *RAP* are to be construed as follows:

[FCA/PRA]

- (a) dealings or transactions on an *RIE* or *RAP* are references to dealings or transactions which are effected by means of the *RIE's* or *RAP's* facilities or which are governed by the rules of the *RIE* or *RAP*; ~~and~~
- (b) references to the use of the facilities of an *RIE* or *RAP* include use which consists of any such dealings or entering into any such transactions.

home territory (in relation to an *overseas investment exchange* ~~or an overseas clearing house~~) the country or territory in which its head office is situated.

[FCA/PRA]

market contract a market contract as described in section 155(2)(a) of the Companies Act 1989 or article 80(2)(a) of the Companies (No2) (Northern Ireland) Order 1990 which is in summary:

[FCA/PRA]

- ~~(a)~~ (a) a contract entered into by a *member* or *designated non-member* of an *RIE* with a person other than the *RIE* which is either:
 - ~~(i)~~ (a) a contract made on the exchange or an exchange to whose undertaking the exchange has succeeded; or
 - ~~(ii)~~ (b) a contract in the making of which the *member* or *designated non-member* was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded;

- ~~(b) — a contract entered into by an *RIE* or *RCH*, in its capacity as such, with one of its *members*, or with an *RCH* or with an *RIE*, for the purpose of:~~
- ~~(i) — enabling the rights and liabilities of that *member*, or clearing house or other investment exchange, under a transaction, to be settled; or~~
 - ~~(ii) — providing central counterparty clearing services (as described in section 155(3A) of the Companies Act 1989) to that *member* or clearing house or other investment exchange.~~

notification rule

[FCA/PRA]

- ...
- (2) (in relation to a *recognised body*) a rule made by the FCA under section 293 of the Act (Notification requirements) or section 295 of the Act (Notification: overseas investment exchanges and overseas clearing houses):
- (a) requiring a *recognised body* to give the FCA:
 - (i) notice of, and specified information regarding, specified events relating to the body;
 - (ii) specified information relating to the body at specified times or in respect of specified periods; and
 - (iii) any other information required to be given by such a rule; or
 - (b) (in relation to an *RIE* ~~or~~ *RCH*):
 - (i) specifying descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty to notify the FCA of such *regulatory provision* in section 300B(1) of the Act does not apply or providing that the duty to notify applies only to specified descriptions of *regulatory provision* or in specified circumstances; or
 - (ii) making provision as to the form and contents of the notice required under (2)(b)(i), and requiring *recognised bodies* to provide specified information in connection with that notification.

~~*overseas clearing house*~~

[FCA/PRA]

~~a clearing house which has neither its head office nor its registered office in the United Kingdom.~~

~~*overseas recognised body*~~

[FCA/PRA]

~~an *ROIE* or *ROCH*.~~

<i>recognised body</i> [FCA/PRA]	an <i>RIE</i> , <u>or</u> <i>RAP</i> or an <i>RCH</i> .
<i>recognised body requirements</i> [FCA/PRA]	<ol style="list-style-type: none"> (1) (in relation to an <i>RIE</i> or <i>RCH</i>) the <i>recognition requirements</i>; (2) (in relation to a <i>UK RIE</i>) the <i>MiFID implementing requirements</i>; (3) (in relation to an <i>RAP</i>) the <i>RAP recognition requirements</i>; and (4) (in relation to any of the bodies specified in (1) to (3)) any other obligations imposed by or under the <i>Act</i>.
<i>recognised clearing house</i> [FCA/PRA]	a <i>clearing house</i> which is declared by a <i>recognition order</i> <u>an order made by the Bank of England under section 290 or 292 of the <i>Act</i> and</u> for the time being in force to be a recognised clearing house.
<i>recognised overseas clearing house</i> [FCA/PRA]	an <i>overseas clearing house</i> which is declared by a <i>recognition order</i> for the time being in force to be a <i>recognised clearing house</i>.
<i>recognition order</i> [FCA/PRA]	(in accordance with section 313 of the <i>Act</i> (Interpretation of Part XVIII)) an order made under section 290 or 292 of the <i>Act</i> which declares an investment exchange or <i>clearing house</i> to be a <i>recognised body</i> <u>to be an <i>RIE</i></u> or (for <i>RAPs</i>) an order made under regulation 2 of the <i>RAP regulations</i> which declares a <i>UK RIE</i> to be an <i>RAP</i> .
<i>recognition requirement</i> [FCA/PRA]	<ol style="list-style-type: none"> (1) (in relation to a <i>UK RIE</i> or <i>UK RCH</i>) any of the requirements applicable to that body under the Recognition Requirements Regulations. (2) (in relation to a body applying for recognition as a <i>UK RIE</i> or <i>UK RCH</i>) any of the requirements under the Recognition Requirements Regulations which, if its application were successful, would apply to it. (3) (in relation to an <i>ROIE</i> or <i>ROCH</i>, or to an applicant for recognition as an <i>ROIE</i> or <i>ROCH</i>) any of the requirements in section 292(3) of the <i>Act</i> (Overseas investment exchanges and overseas clearing houses).
<i>regulatory provisions</i> [FCA/PRA]	(a) (in accordance with section 302 of the <i>Act</i> (Interpretation)) (in relation to an investment exchange or <i>clearing house</i>) <u>the any rules, of or any guidance, arrangements or policy issued by the investment exchange in connection with its business as an investment exchange or <i>clearing house</i> or in connection with the provision by it of <i>clearing facilitation services</i>.</u>

- (b) ~~(in relation to an investment exchange):~~
- (i) ~~arrangements which it has made, or proposes to make, for the provision of clearing services in respect of transactions effected on the exchange; and~~
 - (ii) ~~if it provides, or proposes to provide, clearing services in respect of transactions other than those effected on the exchange, the criteria which it applies, or proposes to apply, when determining to whom it will provide those services;~~
- (c) ~~(in relation to a clearing house):~~
- (i) ~~if it makes, or proposes to make, clearing arrangements with an RIE, those arrangements; and~~
 - (ii) ~~if it provides, or proposes to provide, clearing services for persons other than RIEs, the criteria which it will apply when determining to whom it will provide those services;~~
- (d) ~~(in REC 3.26) (in accordance with section 300E of the Act) regulatory provision means any rule, guidance, arrangements, policy or practice.~~

~~ROCH~~

~~recognised overseas clearing house.~~

[FCA/PRA]

~~UK recognised bod~~

~~a UK RIE; or RAP or UK RCH.~~

[FCA/PRA]y

~~UK RCH~~

~~an RCH that is not an ROCH.~~ a clearing house which is declared by an order made by the Bank of England under section 290 of the Act and for the time being in force to be a recognised clearing house

[FCA/PRA]

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

3 Application, Notification and Vetting Fees

3.2 Obligation to pay fees

3.2.7 R Table of application, notification and vetting fees

[FCA/PRA]

(1) Fee payer	(2) Fee payable	Due date
...		
(g) Any applicant for recognition as a <i>UK recognised body</i> : (i) under section 287 or section 288 of the <i>Act</i> ; or (ii) under regulation 2(1) of the <i>RAP regulations</i>	<i>FEES</i> 3 Annex 3 R, part 1	On or before the date the application is made
(h) Any applicant for recognition as an overseas recognised body <i>ROIE</i> under section 287 or section 288 and section 292 of the <i>Act</i>	<i>FEES</i> 3 Annex 3 R, part 2	On or before the date the application is made

Annex 3 R
[FCA]Application fees payable in connection with Recognised Investment Exchanges, ~~Recognised Clearing Houses~~ and Recognised Auction Platforms

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
Applicant for recognition	100,000	Date the application

as a <i>UK RIE</i>		is made
Applicant for recognition as a <i>UK RCH</i>	100,000	Date the application is made
Applicant for recognition as an <i>RAP</i> (payable in addition to any other application fee due under this part)	35,000	Date the application is made
Additional fees for a <i>UK RIE</i> or <i>UK RCH</i> applicant who proposes to:		
– act as a central counterparty	25,000	Date the application is made
- offer safeguarding and administration services	25,000	Date the application is made
- use substantially new and untested information technology systems in the performance of its relevant functions	25,000	Date the application is made
Part 2 (overseas recognised bodies <i>ROIEs</i>)		
Applicant for recognition as a recognised overseas investment exchange	50,000	Date the application is made
Applicant for recognition as a recognised overseas clearing house	50,000	Date the application is made
Additional fees for applicant who proposes to:		
– act as a central counterparty	25,000	Date the application is made
- offer safeguarding and administration services	25,000	Date the application is made

4 Periodic fees

...

4.2.11 R Table of periodic fees

[FCA/PRA]

...			
<i>UK recognised body</i>	<i>FEES 4 Annex 6 R, part 1 for a UK RIE or UK RCH; and FEES 4 Annex 6 R, part 1A for a UK RIE that is also an RAP</i>	<p>(1) Unless (2) applies, by the due dates set out in <i>FEES 4 Annex 6 R, part 1</i> and (in the case of an <i>RAP</i>) <i>part 1A</i></p> <p>(2) If the event in column 4 occurs during the course of a financial year, 30 <i>days</i> after the occurrence of that event</p>	<i>Recognition order</i> is made. The modified periodic fee is specified in <i>FEES 4 Annex 6 R, Part 1</i> and (in the case of an <i>RAP</i>) <i>Part 1A</i> .
<i>overseas recognised body</i> <i>ROIE</i>	<i>FEES 4 Annex 6 R, part 2</i>	<p>(1), unless (2) applies, 1 July.</p> <p>(2) If the event in column 4 occurs during the course of a financial year, 30 <i>days</i> after the occurrence of that event.</p>	<i>Recognition order</i> is made. The modified periodic fee is specified in <i>FEES 4 Annex 6 R, Part 2</i> .

Annex C

Amendments to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Recognised Investment Exchanges ~~and Recognised Clearing Houses~~

1 Introduction

1.1 Application

1.1.2 G The *guidance* in REC 6A applies to EEA market operators exercising
[FCA] passporting rights in the *United Kingdom*.

(1) ...

(2) ~~UK recognised bodies~~ UK RIEs other than RAPs must satisfy *recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations*. *UK RIEs* must also satisfy the *MiFID implementing requirements* in the *MiFID Regulation*. RAPs must satisfy the *recognition requirements* prescribed by the Treasury in the *RAP regulations*, under the *auction regulation* and must also be *UK RIEs* and so are subject to requirements under the *MiFID Regulation*. ~~Overseas recognised bodies~~ ROIEs must satisfy *recognition requirements* laid down in section 292 of the Act (Overseas investment exchanges and overseas clearing houses).

...

1.1.3 G ...
[FCA]

(5) The *recognition requirements, notification rules, and guidance* for ~~overseas recognised bodies~~ ROIEs and *guidance* for applicants (and potential applicants) for ~~overseas recognised body~~ ROIE status are set out in REC 6.

2 Recognition Requirements

2.1 Introduction

2.1.1 G This chapter contains the *recognition requirements* for ~~UK recognised bodies~~
[FCA] UK RIEs (other than RAPs) and sets out *guidance* on those requirements. Except for REC 2.5A, references to recognised body or UK recognised bodies in the rest of this chapter shall be read as referring to UK RIEs. This chapter

also contains the *MiFID implementing requirements* for *UK RIEs*.

2.1.1 G Guidance on the *RAP recognition requirements* which apply to *RAPs* is set out
A in REC 2A (Recognised Auction Platforms). *Guidance* on the *recognition*
[FCA] *requirements* for ~~overseas recognised bodies~~ *ROIEs* is set out in REC 6
(Overseas Investment Exchanges and ~~Overseas Clearing Houses~~).

2.1.2 G These *recognition requirements* must be satisfied by applicants for ~~recognised~~
[FCA] ~~body~~ *UK RIE* status before recognition is granted and by all ~~UK recognised~~
~~bodies~~ *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 ~~terms~~ *term* *UK RIE*
~~or UK RCH~~ 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*
[FCA] *Regulations* are grouped in this sourcebook in sections which give
guidance on the same subject for ~~both UK RIEs and UK RCHs~~.

...

2.1.4 G Location of recognition requirements and guidance

Recognition Requirements Regulations	Subject	Section in REC 2
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
Paragraph 3	Systems and controls	2.5
Paragraphs 4(1) and 4(2)(aa)	General safeguards for investors	2.6
Paragraph 4(2)(a)	Access to facilities	2.7
Paragraph 4(2)(b)	Proper markets	2.12
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)	Financial crime and market abuse	2.10
Paragraph 4(2)(g)	Custody	2.11
Paragraph 4(3)	Definition of relevant information	2.12
Paragraph 4A	Provision of pre-trade information about share trading	2.6
Paragraph 4B	Provision of post-trade information about share trading	2.6
Paragraph 6	Promotion and maintenance of standards	2.13
Paragraph 7	Rules and consultation	2.14
Paragraph 7A	Admission of financial instruments to trading	2.12
Paragraph 7B and 7C	Access to facilities	2.7
Paragraph 7D	Settlement	2.8
Paragraph 7E	Suspension and removal of financial instruments from trading	2.6
Paragraph 8	Discipline	2.15
Paragraph 9	Complaints	2.16
Paragraph 9A	Operation of a multilateral trading facility	2.16A
Part II of the Schedule	UK RIE default rules in respect of market contracts	2.17

Part III of the Schedule	UK RCH recognition requirements	-
Paragraph 16	Financial resources	2.3
Paragraph 17	Suitability	2.4
Paragraph 18	Systems and controls	2.5
Paragraph 19(1)	General safeguards for investors	2.6
Paragraph 19(2)(a)	Access to facilities	2.7
Paragraph 19(2)(b)	Clearing services	2.8
Paragraph 19(2)(c)	Transactions recording	2.9
Paragraph 19(2)(d)	Financial crime and market abuse	2.10
Paragraph 19(2)(e)	Custody	2.11
Paragraph 20	Promotion and maintenance of standards	2.13
Paragraph 21	Rules	2.14
Paragraph 22	Discipline	2.15
Paragraph 23	Complaints	2.16
Part IV of the Schedule	UK RCH default rules in respect of market contracts	2.17

...

2.2 Method of satisfying the recognition requirements

2.2.1 UK Recognition Requirements Regulations, Regulation 6

[FCA]

(1) In considering whether a [UK recognised body] or applicant satisfies recognition requirements applying to it under these [Recognition Requirements Regulations], the [FSA FCA] may take into account all relevant circumstances including the constitution of the *person* concerned and its *regulatory provisions and practices* within the meaning of section 302(1) 300E of the Act.

(2)...

...

2.3 Financial resources

...

2.3.2 UK ~~Schedule to the Recognition Requirements Regulations, Paragraph 16~~

(1) The [UK RCH] must have financial resources sufficient for the proper performance of its [relevant functions] as a [UK RCH].

(2) In considering whether this requirement is satisfied, the [FSA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the [UK RCH's] connection with any person, and any activity carried on by the [UK RCH], whether or not it is an exempt activity. [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 ~~FSA~~ FCA may have regard to:

...

(7) ~~in relation to a UK RIE~~, the nature and extent of the transactions concluded on the *UK RIE*.

...

2.3.8 G (1) ~~The FSA considers that a UK RCH which at any time holds:~~

(a) ~~eligible financial resources not less than the amount calculated under the standard approach; and~~

(b) ~~net capital not less than the amount of eligible financial resources calculated under (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. [deleted]~~

...

2.3.10 G The ~~FSA~~ FCA would expect to provide a *UK recognised body* with individual guidance 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 in order to satisfy the *recognition requirements*. In formulating its individual guidance, the ~~FSA~~ FCA will ordinarily apply the approach described in ~~REC 2.3.8G, for UK RCHs, and REC 2.3.9G, for UK RIEs.~~

...

- 2.3.17 G The financial risk assessment should be based on a methodology
[FCA] which provides a reasonable estimate of the potential business losses which a *UK RIE* might incur in stressed but plausible market conditions.... The ~~FSA~~ FCA considers that it would be reasonable for a financial risk assessment to proceed in the following way:

...

In designing its stress and scenario testing plan, the ~~FSA~~ 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.

~~The FSA would not expect a UK RIE which undertakes central counterparty clearing activities to include within its range of stress events the potential default of a participant or other entity (such as another central counterparty which is not a participant).~~

...

...

- 2.3.21 G The ~~FSA~~ FCA would normally consider a *UK recognised body* to be failing the
[FCA] *recognition requirements* if it held financial resources less than the amount calculated under ~~REC 2.3.8G (in respect of UK RCHs)~~ and *REC 2.3.9G(1)(a)(i)* (in respect of *UK RIEs*). The ~~FSA~~ 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.

- 2.3.22 G (1) The ~~FSA~~ would normally expect a *UK RCH* to hold, in addition to the
[FCA] minimum amount determined under ~~REC 2.3.8G~~, an operational risk buffer equal to 50% of the amount calculated under ~~REC 2.3.8G(1)~~.
[deleted]

...

2.4 Suitability

...

- 2.4.2 UK Schedule to the Recognition Requirements Regulations, Paragraph 17

(1) The [UK RCH] must be a fit and proper *person* to perform the [relevant functions] of a [UK RCH].

(2) In considering whether this requirement is satisfied, the [FSA] may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances including the [UK RCH's] connection with any *person*. [deleted]

...

2.5 Systems and controls and conflicts

...

2.5.2 U K Schedule to the Recognition Requirements Regulations, paragraph 18

(1)	The [UK RCH] must ensure that the systems and controls used in the performance of its [relevant functions] are adequate, and appropriate for the scale and nature of its business.	
(2)	This requirement applies in particular to systems and controls concerning—	
	(a)	the transmission of information;
	(b)	the assessment and management of risks to the performance of the [UK RCH's relevant functions];
	(c)	the operation of the arrangements mentioned in paragraph 19(2)(b); and
	(e)	(where relevant) the safeguarding and administration of assets belonging to users of the [UK RCH's facilities]. [deleted]

...

2.5.4 G The following paragraphs set out other matters to which the ~~FSA~~ FCA may have regard in assessing the systems and controls used for the transmission of information, risk management, the effecting and monitoring of transactions, the operation of settlement arrangements (the matters covered in paragraphs 4(2)(d) and 19(2)(b) of the Schedule to the Recognition Requirements Regulations) and the safeguarding and administration of assets.

...

2.5.7 G ~~Where the UK recognised body assumes significant counterparty risk (for example, by acting as a central counterparty), the FSA may also have regard to:~~

- (1) ~~the position of the risk management department within the UK recognised body, including its access to the governing body and its relationship with the commercial or marketing departments of the UK recognised body;~~
- (2) ~~the frequency with which all exposures and risks incurred by the UK recognised body are monitored against risk or exposure limits or other appropriate control parameters;~~
- (3) ~~the frequency with which risk or exposure limits (or other control parameters) are reviewed;~~
- (4) ~~the reliability of the arrangements for monitoring and assessing intra-day movements in exposures and risks;~~

- (5) ~~the robustness of the arrangements for calculating, collecting and holding margin payments and the allocation of losses; and~~
- (6) ~~the arrangements for stress testing of the adequacy of the UK recognised body's financial resources to cover its exposures which may arise, for example, with substantial movements in market values or counterparty defaults. [deleted]~~

Effecting and monitoring of transactions and operation of settlement arrangements

2.5.8 G In assessing a *UK RIE's* systems and controls for the effecting and monitoring
[FCA] of transactions, and ~~the systems and controls used by a UK recognised body~~ for the operation of settlement arrangements, the ~~FSA~~ *FCA* may have regard to the totality of the arrangements and processes through which ~~a~~ the UK RIE's transactions ~~is~~ are effected, cleared, and settled, including:

- (1) a *UK RIE's* arrangements under which orders are received and matched, ~~and~~ its arrangements for trade and transaction reporting, and (if relevant) its 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) ~~a UK recognised body's (if relevant), a UK RIE's~~ arrangements under which ~~clearing and settlement instructions~~ instructions relating to arising from a transaction to be cleared by another person by means of a clearing facilitation service are entered into its systems ~~to the point at which any rights or liabilities arising from that transaction are discharged by the relevant other person and transmitted to the other person;~~
- (3) the arrangements made by the ~~UK recognised body~~ *UK RIE* for monitoring and reviewing the operation of these systems and controls.

...

2.5.11 G The ~~FSA~~ *FCA* recognises that a ~~UK RCH~~ *UK RIE* has legitimate interests of its
[FCA] 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*.

...

2.6 **General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading**

...

2.6.25 EU ~~Schedule to the Recognition Requirements Regulations, Paragraph 19(1)~~
[FCA]

The [UK RCH] must ensure that its facilities are such as to afford proper protection to investors. [deleted]
--

2.6.26 G In determining whether:
[FCA]

(1) business conducted by means of a *UK RIE's facilities* is conducted so;
or

(2) ~~a *UK RCH's facilities* are such; [deleted]~~

as to afford proper protection to investors, the ~~FSA~~ FCA 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 *UK recognised body* concerning the operation of its *facilities*.

...

2.6.29 G In determining whether a *UK RIE* is ensuring that business conducted by means
[FCA] of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the ~~FSA~~ FCA may have regard to whether the *UK RIE's* arrangements and practices:

...

(4) if they include arrangements to support or encourage liquidity:

...

(d) alleviate dealing or other identified costs associated with trading on the *UK RIE's* markets and do not subsidise a market position of a user of its *facilities* or subsidise any margin payments (or the provision of collateral) which such a user would have to make.

2.7 Access to facilities

...

2.7.1 U ~~Schedule to the Recognition Requirements Regulations, Paragraph 7C~~
B K
[FCA]

(1)	This paragraph applies to [a <i>UK RIE</i>] which provides central counterparty, clearing or settlement <i>facilities</i>.
(2)	The [UK RIE] must make transparent and non-discriminatory rules based on objective criteria, governing access to those <i>facilities</i>.

(3)	The rules under sub-paragraph (2) must enable an <i>investment firm</i> or a <i>credit institution</i> authorised by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have access to those <i>facilities</i> on the same terms as a <i>UK firm</i> for the purposes of finalising or arranging the finalisation of transactions in <i>financial instruments</i> .
(4)	The [UK RIE] may refuse access to those <i>facilities</i> on legitimate commercial grounds. [deleted]

2.7.2 U Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(a)
K

Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that—
access to the [UK RCH's] facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors; [deleted]

2.7.2 U Schedule to the Recognition Requirements Regulations, Paragraph 21A
A K

(1)	The [UK RCH] must make transparent and non-discriminatory rules, based on objective criteria, governing access to central counterparty, clearing or settlement <i>facilities</i> provided by it.
(2)	The rules under sub-paragraph (1) must enable an <i>investment firm</i> or a <i>credit institution</i> authorised by the <i>competent authority</i> of another <i>EEA State</i> (including a <i>branch</i> established in the <i>United Kingdom</i> of such a firm or institution) to have access to those <i>facilities</i> on the same terms as a <i>UK firm</i> for the purposes of finalising or arranging the finalisation of transactions in <i>financial instruments</i> .
(3)	The [UK RCH] may refuse access to those <i>facilities</i> on legitimate commercial grounds. [deleted]

...

2.8 Settlement and clearing facilitation services

...

2.8.2 U Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(b)
K

Without prejudice to the generality of sub-paragraph [19(1)], the [UK RCH] must ensure that—
--

~~its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services, (being rights and liabilities in relation to those transactions); [deleted]~~

2.8.3 G In determining whether there are satisfactory arrangements for securing the
[FCA] timely discharge of the rights and liabilities of the parties to transactions, the ~~FSA~~ FCA may have regard to the *UK recognised body's*:

(1) rules and practices relating to clearing and settlement including its arrangements with another person for the provision of clearing and settlement services;

...

(3) where relevant, arrangements for making deliveries and payments ~~and, where relevant, for collecting margin and holding collateral~~, in all relevant jurisdictions;

...

...

2.9 Transaction recording

2.9.1 U Schedule to the Recognition Requirements Regulations, Paragraph 4(2)(e)
[FCA] K

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 another person by means of ~~its~~ the *UK RIE's* facilities;

2.9.2 U ~~Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(e)~~
K

~~Without prejudice to the generality of sub-paragraph [19(1)], the [*UK RCH*] must ensure that-~~

~~satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities; [deleted]~~

2.9.3 G In determining whether a *UK recognised body* has satisfactory arrangements
[FCA] for recording the transactions effected on its facilities, or cleared or to be cleared by another person by means of, its facilities, the ~~FSA~~ FCA may have regard to:

...

(2) ...

- (c) if the *UK recognised body's* rules make provision for transactions or clearing facilitation services to be effected, ~~cleared or to be cleared~~ 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, ~~cleared or to be cleared~~; and

...

2.9.4 G Where transactions are effected on an *UK RIE* and cleared through an *UK*
[FCA] *RCH*, the *UK recognised bodies* concerned may agree which information is to be recorded by each *UK recognised body* and need not duplicate each other's records. ~~[deleted]~~

2.10 Financial crime and market abuse

...

2.10.2 U Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(d)
K

Without prejudice to the generality of sub-paragraph [19(1)], the *[UK RCH]* must ensure that-

appropriate measures are adopted to reduce the extent to which the *[UK RCH's] facilities* can be used for a purpose connected with *market abuse* or *financial crime*, and to facilitate their detection and monitor their incidence; ~~[deleted]~~

...

2.11 Custody

...

2.11.2 U Schedule to the Recognition Requirements Regulations, Paragraph 19(2)(e)
K

Without prejudice to the generality of sub-paragraph [19(1)], the *[UK RCH]* must ensure that-

where the *[UK RCH'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. ~~[deleted]~~

...

2.13 Promotion and maintenance of standards

...

2.13.2 U K Schedule to the Recognition Requirements Regulations, Paragraph 20

~~(1) The [UK RCH] 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 RCH].~~

~~(2) The [UK RCH] 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 RCH]. [deleted]~~

...

2.14 Rules and consultation

...

2.14.2 U K Schedule to the Recognition Requirements Regulations, Paragraph 21

~~(1) The [UK RCH] 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 RCH's] facilities in appropriate cases.~~

~~(3) The [UK RCH] must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) ... (or on any changes it proposes to make to those arrangements). [deleted]~~

...

2.15 Discipline

2.15.1 U K Schedule to the Recognition Requirements Regulations, Paragraph 8 [FCA]

(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 <i>clearing facilitation services</i> in respect of transactions other than transactions effected on the [UK RIE]);

	...	
...		

2.15.2 U Schedule to the Recognition Requirements Regulations, Paragraph 22
K

(1)	The [UK RCH] must have effective arrangements for monitoring and enforcing compliance with its rules.	
(2)	The arrangements must include procedures for – (a) investigating complaints made to the [UK RCH] about the conduct of persons in the course of using the [UK RCH's] facilities; and (b) the fair, independent and impartial resolution of appeals against decisions of the [UK RCH].	
(3)	Where the arrangements 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 RCH] 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 RCH] in relation to that breach; (b) for the benefit of users of the [UK RCH's] facilities; (c) for charitable purposes. [deleted]	

2.15.3 G In determining whether a *UK recognised body* has effective arrangements for
[FCA] monitoring and enforcing compliance with its rules ~~(and, in the case of a UK RIE, including its settlement arrangements)~~, the ~~FSA~~ FCA may have regard to:

...

...

2.16 Complaints

...

2.16.2 U Schedule to the Recognition Requirements Regulations, Paragraph 23
K

(1)	The [UK RCH] 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 regulatory functions.	
(2)	But sub-paragraph (1) does not extend to –	
-	(a)	complaints about the content of rules made by the [UK RCH], or
-	(b)	complaints about a decision against which the

		complainant has the right to appeal under procedures of the kind mentioned in paragraph 22(2)(b).
(3)	The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a <i>person</i> independent of the [UK RCH], and for him to report on the result of his investigation to the [UK RCH] 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 it appropriate, that the [UK RCH]—	
-	(a)	makes a compensatory payment to the complainant,
-	(b)	remedies the matter complained of,
-	or takes both of those steps.	
(5)	Sub-paragraph (3) is not to be taken as preventing the [UK RCH] from making arrangements for the initial investigation of a complaint to be conducted by the [UK RCH]. [deleted]	

...

2.17 Recognition requirements relating to the default rules of ~~UK recognised bodies~~ UK RIEs

...

2.17.2 U K Schedule to the Recognition Requirements Regulations, Part II

Paragraph 10 (Default rules in respect of 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].	
...		
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 [<i>default rules</i>] 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 [default rules] ;	
	(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 (a) is a member of the exchange; (b) is a member or participant of AP; and (c) chooses to participate, in accordance with the rules of the exchange, in such agreement.	
(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)	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—	
	(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;
	(b)	the transfer of the defaulter's position under an unsettled <i>market contract</i> to another <i>member</i> of the [<i>UK RIE</i>];
	(c)	the exercise by the <i>UK RIE</i> of any <i>option</i> granted by an unsettled <i>market contract</i> .
(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.	
Paragraph 12A (Content of rules)		
The rules of the [UK RIE] 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).		
Paragraph 13 (Notification to other parties affected)		
The [UK RIE] must have adequate arrangements for ensuring that -		
	(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
	(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.
Paragraph 14 (Cooperation with other authorities)		
The [UK RIE] 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 [UK RIE] or any [<i>designated non-member</i>] or the default of a [<i>recognised clearing house</i>] or another [<i>recognised investment exchange</i>].		
Paragraph 15 (Margin)		
(1)	Where the [UK RIE] provides clearing services, the [<i>default rules</i>] of the [UK RIE] must provide that in the event of a default, margin provided by the defaulter for his own	

	account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.
(2)	This paragraph is without prejudice to the requirements of any <i>rules</i> relating to clients' money made by the [FSA] under sections 138 and 139 of the Act.
(3)	For the purposes of this paragraph, "client account of the defaulter" means an account held by the [UK RIE] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.
(4)	In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991.

2.17.3 U Schedule to the Recognition Requirements Regulations, Part IV

K

Paragraph 24 (Default rules in respect of market contracts)		
(1)	The [UK RCH] must have <i>default rules</i> which, in the event of a <i>member</i> of the [UK RCH] being or appearing to be unable to meet his obligations in respect of one or more <i>market contracts</i> , enable action to be taken to close out his position in relation to all unsettled <i>market contracts</i> to which he is a party.	
(2)	The [<i>default rules</i>] may authorise the taking of the same or similar action where a <i>member</i> appears to be likely to become unable to meet his obligations in respect of one or more <i>market contracts</i> .	
(3)	Sub-paragraph (4) applies where the clearing house has arrangements for transacting business with, or in relation to common members of, a [<i>recognised investment exchange</i>] or another [<i>recognised clearing house</i>].	
(4)	A [UK RCH] must have [<i>default rules</i>] which in the event of the investment exchange or the clearing house being or appearing to be unable to meet its obligations in respect of one or more [<i>market contracts</i>], enable action to be taken in respect of unsettled [<i>market contracts</i>] to which that person is a party.	
Paragraph 25 (Content of rules)		
(1)	The [<i>default rules</i>] 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 clearing house 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 [(1)](b) or, if relevant, the net sum referred to in [(1)](bb)
	(i)	if payable by the defaulter to the clearing house, 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 clearing house may apply under its [<i>default rules</i>];
	-(iii)	if payable by the clearing house 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 [<i>UK RCH</i>] of the sum finally payable or, as the case may be, of

		the fact that no sum is payable.
(1A)	In sub-paragraph (1), "margin set off agreement" means an agreement between the clearing house and AP permitting any eligible position to which the Participant Member is party with the clearing house 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 or by either the clearing house or AP and/or margin to be provided to, either or both, the clearing house and AP.	
(1B)	In sub-paragraph (1A)– "AP" means a [<i>recognised investment exchange</i>] or another [<i>recognised clearing house</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– (a) is a member of the clearing house; (b) is a member or participant of AP; and (c) chooses to participate, in accordance with the rules of the clearing house, in such agreement.	
(1C)	The property, contribution, funds or resources referred to in (1)(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.	
(2)	The reference in sub-paragraph (1) 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–	
	(a)	the effecting by the <i>UK RCH</i> of corresponding contracts in relation to unsettled <i>market contracts</i> to which the defaulter is party;
	(b)	the transfer of the defaulter's position under an unsettled <i>market contract</i> to another <i>member</i> of the [<i>UK RCH</i>];
	(c)	the exercise by the [<i>UK RCH</i>] of any <i>option</i> granted by an unsettled <i>market contract</i> .
(3)	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.
(4)	Sub-paragraph (3) applies with any necessary modifications in relation to a <i>market contract</i> which is not an agreement to sell.
(5)	The reference in sub-paragraph (1) 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.
Paragraph 25A (Content of rules)	
The rules of the [UK RCH] 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 25(1)(c)(i) or (ii).	
Paragraph 26 (Notification to other parties affected)	
The [UK RCH] must have adequate arrangements for ensuring that parties to unsettled <i>market contracts</i> with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the [default rules] in relation to contracts to which they are a party.	
Paragraph 27 (Cooperation with other authorities)	
The [UK RCH] 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 [UK RCH] or the default of a [<i>recognised investment exchange</i>] or another [<i>recognised clearing house</i>].	
Paragraph 28 (Margin)	
(1)	The [default rules] of the [UK RCH] must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.
(2)	This paragraph is without prejudice to the requirements of any <i>rules</i> relating to clients' money made by the [FSA] under sections 138 and 139 of the <i>Act</i>.
(3)	For the purposes of this paragraph, "client account of the defaulter" means an account held by the [UK RCH] in the name of the defaulter in which relevant transactions effected by the defaulter have been recorded.

(4)	In sub-paragraph (3) "relevant transaction" has the same meaning as in regulation 16(1) of the Financial Markets and Insolvency Regulations 1991. [deleted]
-----	---

2.17.4 G ~~UK RIEs which, under their rules, have market contracts and UK RCHs which, under their rules, enter into market contracts~~ are required to have default rules. [FCA] The default rules must enable the ~~UK recognised body~~ UK RIE to take action in relation to a member, an interoperating RIE or RCH and, ~~for an RIE~~, a designated non-member, who appears unable, or likely to become unable, to meet his obligations in respect of one or more unsettled market contracts.

2.17.5 G ~~This action is to~~ The default rules must provide for all rights and liabilities of the defaulter ~~(including a recognised investment exchange or a recognised clearing house)~~ (party as principal to the unsettled market contract) and ~~any the~~ counterparty ~~(also party as principal to an the unsettled market contract)~~ to be discharged and for there to be paid between the defaulter and ~~each the~~ counterparty one such sum (if any) certified by or on behalf of the UK RIE as representing the net amount of all the contracts between them. Property provided by the defaulter as cover for margin or any relevant sum owed under a margin set off arrangement), or any remaining default fund contribution provided by the defaulter, may be set off against any amount owing by the defaulter. At the conclusion of this process, the UK recognised body must certify the sum finally payable in each case.

...

3 Notification rules for UK recognised bodies

3.1 Application and purpose

...

3.1.3 G The notification rules in this chapter are in addition to the requirements on [FCA] ~~UK recognised bodies~~ UK RIEs to give notice or information to the ~~FSA~~ FCA ~~and if applicable, the Bank~~ under sub-sections 293(5) ~~and~~ (6) of the Act.

...

3.3 Waivers

3.3.1 G Under section 294 of the Act (Modification or waiver of rules), the ~~FSA~~ FCA [FCA] may, on the application or with the consent of a recognised body (including an ~~ROIE overseas recognised body~~), 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.

3.4 Key individuals and internal organisation

...

- 3.4.2 R ~~Where, in relation to a *UK RCH*, a *person* has been appointed or elected, has resigned as, or has ceased to be, a *key individual*, that *UK RCH* must immediately give notice of that event, and give the information specified for the purposes of this *rule* in REC 3.4.4 R to the *FSA*. [deleted]~~

...

- 3.4.4 R The following information is specified for the purposes of *REC 3.4.2R*:

(1) ~~where a *person* has been appointed or elected as a *key individual*:~~

(a) ~~that *person*'s name;~~

(b) ~~his date of birth;~~

(c) ~~a description of the responsibilities which he will have in the post to which he has been appointed or elected, including a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body; or~~

(2) ~~where a *person* has resigned as or otherwise ceased to be a *key individual*, that *person*'s name. [deleted]~~

- 3.4.4A R The following information is specified for the purposes of *REC 3.4.2AR*:
[FCA]

(1) that *person*'s name;

(2) his date of birth;

(3) a description of the responsibilities which he will have in the post to which he is to be appointed or elected, including for a *UK RIE* which operates an *RAP* where the *person* has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he has in respect of each body.

...

3.14 Products, services and normal hours of operation

...

- 3.14.3 R Where a *UK recognised body* proposes to provide (or cease to provide) ~~clearing services~~ clearing facilitation services in respect of:
[FCA]

(1)...

- 3.14.4 R ~~A *UK RCH* is not required to give the *FSA* notice or information under REC 3.14.3R where it proposes to offer (or cease to offer) clearing~~

~~services under an agreement with a *UK RIE* in respect of a specified investment for which that *UK RIE* is required to give the *FSA* notice under *REC 3.14.2R*, provided that the *UK RIE* has given the *FSA* the information specified in *REC 3.14.6R(3)*. [deleted]~~

...

3.14.7 R Where:
[FCA]

- (1) a *UK RIE* proposes to amend the standard terms of any *derivative admitted to trading* by means of its *facilities*; or
- (2) a ~~*UK recognised body*~~ *UK RIE* proposes to amend the standard terms relating to ~~the provision of clearing for~~ any *derivative* in respect of which it provides ~~clearing services~~ clearing facilitation services;

...

3.15 Suspension of services and inability to operate facilities

...

3.15.3 R Where a *UK recognised body* suspends providing ~~clearing services~~ clearing facilitation services generally in respect of any *derivative* (other than an *option* in relation to a *security*), type of *security* or type of *option* in relation to a *security*, it must immediately give the ~~*FSA*~~ *FCA* notice of that event, particulars of that *derivative*, type of *security* or type of *option* in relation to a *security*, as the case may be, and the reasons for the action taken.
[FCA]

...

3.18 Membership

...

3.18.1 G ...
[FCA]

- (3) The information required under *REC 3.18* is relevant to the ~~*FSA's*~~ *FCA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the ~~*FSA's*~~ *FCA's* broader responsibilities concerning ~~market confidence and financial stability~~ integrity of the UK financial system and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the *UK RIE* ~~or *UK RCH*~~ to continue to meet the *recognition requirements*... a single report from the *UK recognised body* covering both notifications would be acceptable to the

~~FSA~~ FCA.

- 3.18.2 R Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to *membership*, it must immediately give the ~~FSA~~ FCA notice of that event, and:

[FCA]

...

- (2) (in relation to a *UK RIE* ~~or a UK RCH~~) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) ~~or paragraph 19(2)(a)~~ of the Schedule to the *Recognition Requirements Regulations* which applies to it; and

...

...

3.19 Investigations

- 3.19.1 R Where a *UK recognised body* becomes aware that a *person* has been appointed by any regulatory body (other than the ~~FSA~~ FCA or a *UK recognised body*) to investigate:

[FCA]

- (1) any business transacted by means of its *facilities*, ~~if it is an RIE or RAP~~; or
- (2) any aspect of the ~~clearing services~~ clearing facilitation services which it provides;

it must immediately give the ~~FSA~~ FCA notice of that event.

...

3.23 Default

- 3.23.1 G Where a ~~UK recognised body~~ UK RIE decides to put a *member* into default, it must immediately give notice of that event, and give the following information to the ~~FSA~~ FCA, at the same time as that decision is communicated to that *member* or to any other *member* (or group or class of them) of that body:

[FCA]

...

- (3) the names of any other exchange, *clearing house* or *auction platform* on which, to the best of that ~~UK recognised body's~~ UK RIE's knowledge, that *member* clears business or transacts for, or in respect of, its *clients*;

and as soon as practicable afterwards, give the ~~FSA~~ a summary of the ~~member's open positions, margin liability, and cash and collateral balances in respect of that member's accounts (including client accounts).~~

...

3.26 Proposals to make regulatory provision

- 3.26.1 G Under section 300B(1) of the *Act* (Duty to notify proposal to make regulatory
[FCA] provision), a *UK RIE* ~~or *UK RCH*~~ that proposes to make any regulatory provision must give written notice of the proposal to the ~~*FSA*~~ *FCA* without delay.

...

- 3.26.4 R The duty in section 300B(1) of the *Act* does not apply to any of the
[FCA] following:

...

(2) ...

- (b) the specification or any amendment of standard terms relating to the provision of ~~clearing services~~ clearing facilitation services for any *derivative*; or

...

...

- 3.26.6 G In determining whether a *UK RIE* ~~or *UK RCH*~~ has provided sufficient
[FCA] supporting information, the ~~*FSA*~~ *FCA* may have regard to the extent to which the information includes: ...

- 3.26.7 R A *UK RIE* ~~or *UK RCH*~~ must provide such additional information in
[FCA] connection with a notice under section 300B(1) of the *Act* as the ~~*FSA*~~ *FCA* may reasonably require.

- 3.26.8 G Where a *UK RIE* ~~or *UK RCH*~~ wishes to give notice to the ~~*FSA*~~ *FCA* for the
[FCA] purposes of section 300B(1) of the *Act*, it should in the first instance inform its usual supervisory contact at the ~~*FSA*~~ *FCA*.

- 3.26.9 G The ~~*FSA*~~ *FCA* expects that an advanced draft of any consultation document a
[FCA] *UK RIE* ~~or *UK RCH*~~ intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in *REC 3.26.5R*.

4 Supervision**4.1 Application and purpose**

- 4.1.1 G *REC 4.2 to REC 4.2E, REC 4.3 and, REC 4.5 and REC 4.6A* apply to *UK*
[FCA] *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*.

- 4.1.2 G This chapter sets out the ~~FSA's~~ FCA's approach to the supervision of
[FCA] *recognised bodies* and contains *guidance* on:

...

- (2) the ~~FSA's~~ FCA's approach to the exercise of its powers under:

(a) (for ~~RIEs and RCHs~~) section 296 of the *Act*...

(b) (for ~~RIEs and RCHs~~) section 297 of the *Act*...

...

- (3) the ~~FSA's~~ 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 or UK RCHs~~ in relation to action under their *default rules* (REC 4.5).

...

4.2E Information: compliance of ~~UK RIEs~~ UK recognised bodies with the ~~MiFID Regulation and Auction Regulation~~ EU requirements

- 4.2E.1 G Under section 293A of the *Act*, the ~~FSA~~ FCA may require a ~~UK RIE~~ UK
[FCA] *recognised body* to give such information as it reasonably requires in order to satisfy itself that the ~~UK RIE~~ UK recognised body is complying with the ~~MiFID Regulation, and (if the UK RIE operates an RAP) the auction regulation;~~ any qualifying EU provision that is specified, or of a description specified, for the purposes of section 293A of the *Act* by the Treasury.

After REC 4.2E insert the following new sections. The text is not underlined.

4.2F Information gathering power on FCA's own initiative

- 4.2F.1 G (1) While the *FCA* will seek to obtain information from an *RIE* in the
[FCA] 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 G (1) Where the *FCA* exercises its power conferred by section 166(1) of the *Act* (Reports by skilled persons), SUP 5.5.1R, SUP 5.5.5R and SUP 5.5.9R applies to a *RIE* in the same way as it applies to a *firm*.
- (2) The guidance in SUP 5 which relates to the *FCA's* power in section 166 of the *Act* also apply to a *RIE* in the same way as it applies to a *firm*.

Amend the following as shown.

4.5 ~~FSA~~ FCA supervision of action by ~~UK-recognised bodies~~ UK RIEs under their default rules

- 4.5.1 G ~~UK-recognised bodies~~ 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.

...

- 4.5.3 G The Companies Act 1989 also gives the ~~FSA~~ FCA powers to supervise the taking of action under *default rules*. Under section 166 of the Companies Act 1989 (Powers of the ~~FSA~~ appropriate regulator to give directions) (see REC 4.5.4G), the ~~FSA~~ FCA may direct a ~~UK-recognised body~~ UK RIE to take, or not to take, action under its *default rules*. Before exercising these powers the ~~FSA~~ FCA must consult the ~~recognised body concerned~~ UK RIE. The ~~FSA~~ 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 4.5.9G).

- 4.5.4 G The Companies Act 1989: section 166

[FCA]

The ~~FSA~~ 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] or [UK RCH] has not taken action under its <i>default rules</i>- if it appears to [the FSA FCA] that it could take action, [the FSA FCA] may direct it to do so,
but under section 166(3)(a) of the Companies Act 1989:	
	Before giving such a direction the [FSA FCA] shall consult the [UK RIE] or [UK RCH] in question; and [the FSA FCA] shall not give a direction unless [the FSA 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, <u>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.</u>
The FSA 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] or [UK RCH] has not taken action under its <i>default rules</i> - if it appears to the [FSA FCA] that it is proposing to take or may take action, [the FSA 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 [FSA FCA] shall consult the [UK RIE] or [UK RCH] in question; and the [FSA FCA] shall not give a direction unless [the FSA 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, <u>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.</u>

- 4.5.5 G The FSA's view is that the exercise of these powers will only be justified in exceptional circumstances. Other than in exceptional circumstances, the FCA will consult with the Bank before exercising these powers. The most likely case in which the FSA would consider exercising them is if there were a need to coordinate action by different UK recognised bodies because, for example:

- (1) the likelihood of a default may not be apparent to all UK recognised

~~bodies; or~~

- (2) ~~there was a need to avoid premature default action by one UK recognised body;~~
- (3) ~~significantly different settlement prices had been fixed by different UK recognised bodies.~~

...

4.5.8 G Under section 166(7) of the Companies Act 1989, where a ~~UK recognised body~~ UK RIE has taken action either of its own accord or in response to a direction, the ~~FSA~~ FCA may direct it to do or not to do specific things subject to these being within the powers of the ~~UK recognised body concerned~~ UK RIE under its *default rules*. However, ~~the FSA cannot give such a direction unless it is satisfied that:~~

[FCA]

- (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.

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

[FCA]

...

has been made or passed and the ~~UK recognised body~~ 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 ~~FSA~~ FCA under section 167 of the Companies Act 1989 (Application to determine whether default proceedings to be taken).

...

4.6 The section 296 power to give directions

...

- 4.6.2 G ~~The FSA must also give a direction to a RIE or RCH if it is directed to do so by the Treasury under section 308 of the Act (Directions by the Treasury).~~
[deleted]

...

- 4.6.4 G Under section 298(7) of the *Act* (Directions and revocation: procedure), and
[FCA] (for *RAPs*) regulation 5(7) of the *RAP regulations*, the ~~FSA~~ FCA need not follow the consultation procedure set out in the rest of section 298 (see REC 4.8) ~~or (for RAPs) regulation 5 of the RAP regulations~~, or may cut short that procedure, if it considers it ~~essential~~ 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. The FSA is likely to consider it essential to cut short the procedure if, in the absence of immediate action, there would be:

- (1) ~~a serious risk of substantial losses to investors, particularly retail clients; or~~
- (2) ~~a serious threat to market confidence or to the stability of the UK financial system; or~~
- (3) ~~a serious risk of money laundering or other serious financial crime.~~

...

After REC 4.6 insert the following new section. The text is not underlined.

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

- 4.6A.1 G (1) Under section 192C of the *Act* (Power to direct qualifying parent
[FCA] 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 or more of its operations 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 draft statement of policy for consultation with respect to the giving of directions under section 192C. See Chapter 5 and Appendix 7 of CP 12/34: <http://www.fsa.gov.uk/static/pubs/cp/cp12-34.pdf>

4.7 The section 297 power to revoke recognition

...

4.7.2 G The ~~FSA~~ FCA will revoke a *recognition order* if:

[FCA]

- (1) ~~it is directed to so by the Treasury under section 308 of the Act (Directions by the Treasury); or~~
- (2) the *recognised body* has asked the ~~FSA~~ FCA to revoke the order.

...

4.7.5 G In addition to the relevant factors set out in REC 4.7.4G, the ~~FSA~~ FCA will usually consider that it would not be able to secure an ~~overseas recognised body's~~ ROIE's compliance with the *recognition requirements* or other obligations in or under the *Act* by means of a direction under section 296 of

[FCA]

the *Act*, if it appears to the ~~FSA~~ FCA that the ~~overseas-recognised body~~ 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:
[FCA]

(1) revoke a *recognition order*...

...

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 a procedures (see REC 4.8.9G) which the ~~FSA~~ 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 a case where the ~~FSA~~ FCA proposes to make a direction under section 296 ~~or (for *RAPs*) under regulation 3 of the *RAP regulations*~~; it considers it is ~~essential~~ reasonably necessary not to follow, or to cut short, the procedure (see ~~REC 4.6.4G and REC 4.8.7G~~); 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.

...

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

4.8.7 G Under section ~~298(7)~~ of the *Act* and ~~(for *RAPs*) regulation 5(7)~~ of the *RAP regulations*, the *FSA* need not follow the procedure in section 298 in relation to giving a direction under section 296 of the *Act* or ~~(for *RAPs*) regulation 5 of the *RAP regulations* in relation to giving a direction under regulation 3,~~ when it considers it essential not to do so. Guidance on the circumstances in which the *FSA* will usually act in this way is given in REC 4.6.4G. [deleted]

4.8.8 G ~~In relation to a *RIE* and *RCH*, under section 290(6) of the *Act*, the *FSA* need not follow the procedure in section 298 in relation to a refusal to make a *recognition order* if (under section 307) the Treasury has not given its approval for the *recognition order* to be made. Further guidance is given in REC 5 and REC 6 (for overseas applications).~~ [deleted]

4.8.9 G Key steps in the section 298 and (for *RAPs*) regulation 5 procedure
[FCA]

	The FSA <u>FCA</u> will:	<i>Guidance</i>
(1)	give written notice to the recognised body <u>RIE</u> (or applicant);	The notice will state why the FSA <u>FCA</u> intends to take the action it proposes to take, and include an invitation to make representations, and the date by <u>period within</u> which representations should be made (<u>unless subsequently extended by the FCA</u>).
(2)	take such steps as it considers reasonably practicable to bring the notice to the attention of the members of the recognised body or of the applicant, as the case may be;	The FSA will also notify persons 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 persons of the same class.
(3)	publish the notice so as to bring it to the attention of other persons likely to be affected;	
(4)(2)	receive representations from the recognised body <u>RIE</u> or applicant concerned, any member of the recognised body or applicant, and any other person who is likely to be affected by the action the FSA proposes to take;	The FSA <u>FCA</u> will not usually consider oral representations without first receiving written representations from the person concerned <u>RIE (or applicant)</u> . It will normally only hear oral representations from the recognised body <u>RIE</u> (or applicant) itself or of a person whom it has notified individually, on request.
(5)(3)	write promptly to any person the <u>RIE</u> (or applicant) who	The FSA <u>FCA</u> will indicate why it will not hear oral

	requests the opportunity to make oral representations if it decides not to hear that <i>person's</i> representations;	representations and the FSA <u>FCA</u> will allow the person concerned <u>RIE</u> (or <u>applicant</u>) further time to respond.
(6) <u>(4)</u>	have regard to representations made;	
(7) <u>(5)</u>	(when it has reached its decision) notify the recognised body <u>RIE</u> (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 of the recognised body</i> or applicant and to other <i>persons</i> likely to be affected.	The FSA will usually give notice of its decision to the same persons and in the same manner as it gave notice of its intention to act.

4.8.10 G For RAPs, key steps in the regulation 5 procedure

[FCA]

	<u>The FCA will:</u>	<u>Guidance</u>
<u>(1)</u>	<u>give written notice to the RAP (or applicant);</u>	<u>The notice will state why the FCA 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.</u>
<u>(2)</u>	<u>take such steps as it considers reasonably practicable to bring the notice to the attention of the members of the RAP or of the applicant, as the case may be;</u>	<u>The FCA will also notify persons 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</u>

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

After REC 4.8 insert the following new section. The text is not underlined.

4.9 Disciplinary measures

- 4.9.1 G (1) Under section 312(E) and 312 (F) of the *Act*, if the *FCA* considers that a
[FCA] *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
[FCA] 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 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.

5 Applications for recognition (UK recognised bodies)

5.1 Introduction and legal background

...

- 5.1.2 G This chapter sets out *guidance* for *UK* applicants and for *UK* entities which are considering making an application. *Guidance* for applicants and prospective applicants for ~~overseas recognised body~~ *ROIE* status is given in *REC* 6.
[FCA]
- 5.1.3 G ~~The Director General of Fair Trading, the Competition Commission and the Treasury also have specific roles in relation to competition issues raised by applications to become a recognised body but not in relation to an application by a UK RIE to become an RAP. [deleted]~~
- 5.1.4 G (1) ~~Under section 303 of the Act (Initial report by the Director), the Director General of Fair Trading must issue a report on whether any of the applicant's regulatory provisions have a significantly adverse effect on competition. He must send copies of his report to the Treasury, the Competition Commission and the FSA. [deleted]~~
- (2) ~~If the Director General of Fair Trading concludes that any of the applicant's regulatory provisions have a significantly adverse effect on competition, or if the Director General of Fair Trading concludes that none of the applicant's regulatory provisions has a significantly adverse effect on competition, but he nonetheless asks the Competition Commission to consider his report, the Competition Commission must normally make its own report under section 306 of the Act (Consideration by Competition Commission) on whether any of the applicant's regulatory provisions would have a significantly adverse effect on competition, whether any such effect is justified and, if it is not justified, what action, if any, the Treasury should direct the FSA to take. [deleted]~~
- (3) ~~The Treasury's approval is required under section 307 of the Act (Recognition orders: role of the Treasury) before a recognition order (other than one relating to an RAP)[†] can be made. (See also REC 5.2.11 G.) [deleted]~~
- 5.1.5 G ~~The FSA must therefore send the Director General of Fair Trading copies of any regulatory provisions provided with the application. The FSA must also send to the Director General of Fair Trading such information in its possession as a result of the application, including supplementary information received after the application is made, but before it is determined by the FSA, as the FSA considers will assist the Director General of Fair Trading in discharging his functions in connection with the application. [deleted]~~
- 5.1.6 G ~~The Office of Fair Trading may also make informal requests for further information from an applicant. The Director General of Fair Trading also has powers under section 305 of the Act (Investigations by Director) to obtain~~

~~compulsorily documents or information from the applicant or other persons.~~
~~[deleted]~~

- 5.1.7 G ~~Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules, guidance or clearing arrangements which they consider they may need to discuss with them.~~ ~~[deleted]~~

5.2 Application process

...

- 5.2.1A G In addition, under section 290A of the *Act* (Refusal of recognition on ground of excessive regulatory provision), the ~~FSA~~ FCA must refuse to make a *recognition order* in relation to a body applying for recognition as a *UK RIE* ~~or UK RCH~~ if it appears to the ~~FSA~~ FCA that an existing or proposed *regulatory provision* of the applicant in connection with the applicant's business as an investment exchange or the provision by the applicant of ~~clearing services~~ *clearing facilitation services* imposes, or will impose, an excessive requirement (as defined in section 300A of the *Act*) on *persons* directly or indirectly affected by it.

...

- 5.2.3 G An application should:
- [FCA]
- (1) be made in accordance with any directions the ~~FSA~~ FCA may make under section 287 (Application by an investment exchange), ~~section 288 (Application by a clearing house)~~ of the *Act* or (for *RAPs*) regulation 2 of the *RAP regulations*;
 - (2) in the case of an application under sections 287 ~~or 288~~ of the *Act*, be accompanied by the applicant's *regulatory provisions* and in the case of an application under section 287 of the *Act* information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC* 5.2.3A G) (the material specifically prescribed in section 287 or section 288);
 - (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the ~~FSA~~ FCA that the *recognised body requirements* will be met; and
 - (4) be accompanied by the appropriate fee (see *REC* 7).

...

- 5.2.7 G At any time after making a formal application, the applicant may make amendments to its rules, guidance or any other part of its application submitted to the ~~FSA~~ FCA. ~~Any amendments or additional information~~
- [FCA]

(except in relation to an *RAP* applicant) are likely to be forwarded by the *FSA* to the Director General of Fair Trading and the Treasury under section 303 of the *Act* (Initial report by Director) (see *REC 5.1.5G*).

...

- 5.2.9 G (1) While the *FSA* is considering an application under section 287 or 288 of the *Act*, the Office of Fair Trading will be reviewing the *regulatory provisions* so that the Director General of Fair Trading is able to make the report required by section 303 of the *Act*. [deleted]
- (2) When the Director General of Fair Trading has issued his report, if the circumstances described in *REC 5.1.4 G* apply, the Competition Commission must normally make its own report under section 306 of the *Act*. [deleted]
- 5.2.10 G In relation to an application under section 287 or 288 of the *Act*, where the *FSA* considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a *UK RIE*, the *MiFID implementing requirements*, and that the Treasury has had an opportunity to consider any reports from the Director General of Fair Trading and the Competition Commission, the *FSA* will then seek the Treasury's approval, under section 307 of the *Act* (Recognition orders: role of the Treasury), to the making of a *recognition order*. [deleted]
- 5.2.11 G Under section 307 of the *Act*, in relation to an application under section 287 or 288 of the *Act*, the Treasury will have to follow the advice of the Director General of Fair Trading or the Competition Commission as appropriate unless it considers that there are exceptional circumstances for not doing so. The Treasury will therefore ordinarily give its approval to the making of a *recognition order* if the applicant's *regulatory provisions* are not considered to have a significantly adverse effect on competition or, if they are considered to have that effect, the effect is justified. It will ordinarily refuse its approval if the applicant's *regulatory provisions* are considered to have any significantly adverse effect on competition and that effect is not considered to be justified. [deleted]
- 5.2.12 G Where the *FSA* FCA considers that it is unlikely to make a *recognition order*, or (in the case of a *UK RIE* or *UK RCH*) to seek the Treasury's approval, it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see *REC 5.2.7 G*). If the *FSA* FCA decides that it will not make a *recognition order*, it will follow the procedure set out in section 298 of the *Act* (Directions and revocation: procedure) or (in the case of an *RAP*) regulation 5 of the *RAP regulations* and described in more detail in *REC 4.8*.
- [FCA]
- 5.2.13 G In relation to an application under section 287 or 288 of the *Act*, the *FSA* will notify the applicant if the Treasury does not give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290 (Recognition orders), the *FSA* does not have to follow the

~~section 298 procedure (see REC 4.8) in this case and will not normally do so. The Treasury is required in those circumstances to follow a similar procedure under section 310 of the Act (Procedure on the exercise of certain powers by the Treasury).~~

5.2.14 G Information and supporting documentation (see REC 5.2.4G)

[FCA]

...	
(3)	Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for an <i>RAP</i>) <i>auction platform</i> , settlement arrangements, clearing services <i>clearing facilitation services</i> and <i>custody</i> services which it plans to supply. An applicant for <i>RAP</i> status must provide details on the relationship between the <i>auction platform</i> and any secondary market in <i>emissions auction products</i> which it operates or plans to operate.
...	
(11)	Details of its arrangements for managing any counterparty risks, including details of margining systems, guarantee funds and insurance arrangements.
...	
(16)	A summary of the legal due diligence carried out in relation to ascertaining the enforceability of its rules (including <i>default rules</i>) and arrangements for margin against any of its members based outside the United Kingdom , and the results and conclusions reached.
...	
(21)	Details of criteria, rules and arrangements for selecting <i>specified investments</i> to be admitted to trading on (or cleared by) an <i>RIE</i> , or to be cleared by an <i>RCH</i> and, where relevant, details of how information regarding <i>specified investments</i> will be disseminated to users of its <i>facilities</i> .
...	

6 Overseas Investment Exchanges ~~and Overseas Clearing Houses~~

6.1 Introduction and legal background

6.1.1 G The *Act* prohibits any *person* from carrying on, or purporting to carry on, *regulated activities* in the United Kingdom unless that *person* is an *authorised person* or an *exempt person*. If an *overseas investment exchange* ~~or overseas clearing house~~ wishes to undertake *regulated activities* in the United

[FCA]

Kingdom, it will need to:

...

- (4) obtain exempt persons status by being declared by the ~~FSA~~ FCA to be ~~(in the case of an overseas investment exchange)~~ an ROIE or ~~(in the case of an overseas clearing house)~~ an ROCH.

6.1.2 G Having the status of an ~~overseas recognised body~~ ROIE facilitates the participation of *overseas investment exchanges* and ~~overseas clearing houses~~ in *UK markets*...

6.2 Applications

6.2.1 G (1) *Overseas investment exchanges* and ~~overseas clearing houses~~ which are considering whether to seek *authorisation* or *recognition* should first consider whether they will be carrying on *regulated activities* in the *United Kingdom*. *Overseas investment exchanges* and ~~overseas clearing houses~~ which do not carry on *regulated activities* in the *United Kingdom* need take no action.

...

...

6.2.4 G There is no standard application form for application for recognition as an ~~overseas recognised body~~ ROIE. An application should be made in accordance with any direction the ~~FSA~~ FCA may make under section 287 (Application by an investment exchange) or ~~section 288 (Application by a clearing house)~~ of the *Act*:

...

(7)

...

- (b) any type of *specified investment* dealt in on, or arranged to be cleared ~~by~~ through the applicant;

...

...

6.3 Recognition requirements

6.3.1 G Before making a recognition order, the ~~FSA~~ FCA will need to be satisfied that the *recognition requirements* in section 292(3) of the *Act* (*Overseas investment exchanges* and ~~clearing houses~~) have been met. These requirements are the only *recognition requirements* applicable to ~~overseas recognised bodies~~ ROIEs.

6.3.2 UK Sections 292(3) and 292(4) state:

[FCA]

Section 292(3)	
The requirements are that-	
(a)	investors are afforded protection equivalent to that which they would be afforded if the body concerned were required to comply with <i>recognition requirements</i> , <u>other than such requirements which are expressed in regulations under section 286 not to apply for the purposes of this paragraph</u> ;
(b)	there are adequate procedures for dealing with a <i>person</i> who is unable, or likely to become unable, to meet his obligations in respect of one or more <i>market contracts</i> connected with the [ROIE] or [ROCH] ...;
(c)	the applicant is able and willing to co-operate with the [FSA FCA] by the sharing of information and in other ways; and
(d)	adequate arrangements exist for co-operation between the [FSA FCA] and those responsible for the supervision of the applicant in the country or territory in which the applicant's head office is situated.
Section 292(4)	
In considering whether it is satisfied as to the requirements mentioned in subsections (3)(a) and (b), the [FSA FCA] is to have regard to-	
(a)	the relevant law and practice of the country or territory in which the applicant's head office is situated;
(b)	the rules and practices of the applicant.

6.3.3 G The reference to *recognition requirements* in section 292(3)(a) of the *Act* is a reference to the requirements applicable to *UK RIEs* ~~or *UK RCHs*~~ in the *Recognition Requirements Regulations*. These requirements are set out, together with *guidance*, in *REC 2*.

[FCA]

6.4 Competition scrutiny [deleted]

6.4.1 G Applications from ~~overseas investment exchanges and overseas clearing houses~~ are subject to the same competition scrutiny as applications from prospective *UK recognised bodies* (see *REC 5*). The *FSA* will therefore follow the relevant steps set out in *REC 5.2* and may not make a ~~recognition order~~

without the approval of the Treasury. ~~[deleted]~~

- 6.4.2 G ~~Potential applicants may wish to consult the Office of Fair Trading separately if they have any queries about the competition assessment or there are any aspects of their rules or guidance which they consider they may need to discuss with the Office of Fair Trading. ~~[deleted]~~~~

6.5 FSA FCA decision on recognition

...

- 6.5.3 G ~~The FSA will notify the applicant if the Treasury fails to give its approval under section 307 of the Act (Recognition orders: role of the Treasury). Under section 290, the FSA is not required to follow the procedure under section 298 in this case and will not normally do so. ~~[deleted]~~~~

6.6 Supervision

- 6.6.1 G An ~~overseas recognised body~~ ROIE is required to notify the ~~FSA~~ FCA of certain events and give information to it on a regular basis and when certain specified events occur. Section 295 of the Act (Notification: overseas investment exchanges and overseas clearing houses) requires each ~~overseas recognised body~~ ROIE to provide the ~~FSA~~ FCA, ~~the Treasury and the Director General of Fair Trading~~ with a report (at least once a year) which contains:

- (1) a statement as to whether any events have occurred which are likely:
 - (a) to affect the ~~FSA's~~ FCA's assessment of whether it is satisfied that the ~~overseas recognised body~~ ROIE continues to satisfy the *recognition requirements* set out in section 292(3) of the Act (Overseas investment exchanges and overseas clearing houses) (see REC 6.3); and
 - (b) ~~to have any effect on competition;~~
- (2) the information specified in the ~~FSA's~~ FCA's notification rules for ~~overseas recognised bodies~~ ROIEs (see REC 6.7).

- 6.6.2 G The following events are examples of events likely to affect an assessment of whether an ~~overseas recognised body~~ ROIE is continuing to satisfy the *recognition requirements*, ~~or to have an effect on competition~~:

- (1) significant changes to any relevant law or regulation in its *home territory*, including laws or regulations:
 - (a) governing exchanges or, if relevant to an ROIE's satisfaction of the recognition requirements, clearing houses;

...

- (c) designed to protect the interests of *clients* of *members* of the ~~*overseas recognised body*~~ ROIE, or of a class of bodies which includes the ~~*overseas recognised body*~~ ROIE;
- (d) which affect:
 - (i) the ability of the ~~*overseas recognised body*~~ ROIE to seek information (whether compulsorily or voluntarily) from its *members*, including information relating to the price and volume of transactions, the identity of parties to transactions, and the movement of funds associated with transactions;
 - (ii) ~~which affect~~ the ability of the ~~*overseas recognised body*~~ ROIE to pass such information, on request, to *UK* authorities;

...

- (3) significant changes to the practices of the ~~*overseas recognised body*~~ ROIE applying to any *regulated activities* carried on by it in the *United Kingdom*;
- (4) any other event or series of events in relation to the body which:
 - (a) affects or may significantly affect cooperation between the ~~*overseas recognised body*~~ ROIE, or its supervisor in its *home territory*, and the ~~*FSA*~~ FCA; or...

...

6.6.3 G The period covered by a report submitted under section 295(1) of the Act
[FCA] starts on the day after the period covered by its last report or, if there is no such report, after the making of the recognition order recognising the ~~*overseas recognised body*~~ ROIE as such, and ends on the date specified in the report or, if no date is specified, on the date of the report.

6.6.4 G If an ~~*overseas recognised body*~~ ROIE changes the period covered by its
[FCA] report, it should ensure that the first day of the period covered by a report is the day immediately following the last day of the period covered by the previous report.

...

6.6.6 G Copies of the report should be sent to the ~~*FSA*~~ FCA, ~~the Treasury and the~~
[FCA] ~~Director General of Fair Trading~~ within two months after the end of the period to which it relates.

6.7 Notification rules for overseas recognised bodies

- 6.7.1 R The *notification rules* in this chapter, which are made under sections 293
[FCA] (Notification requirements) and 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses), apply to all ~~overseas recognised bodies~~ ROIEs.
- ...
- 6.7.3 R Where an ~~overseas recognised body~~ ROIE includes in its report made under
[FCA] section 295(1) of the *Act* (Notification: overseas investment exchanges and overseas clearing houses) a statement in compliance with section 295(2)(a) of the *Act* that an event has occurred in the period covered by that report which is likely to affect the ~~FSA's~~ FCA's assessment of whether it is satisfied as to the requirements set out in section 292(3) (Overseas investment exchanges and overseas clearing houses), it must include particulars of that event.
- 6.7.4 R An ~~overseas recognised body~~ ROIE must include in its report submitted in
[FCA] compliance with section 295(1) of the *Act*:
- ...
- 6.7.5 R An ~~overseas recognised body~~ ROIE must include in the first report submitted
[FCA] under section 295(1) of the *Act* after the *recognition order* in relation to that ~~overseas recognised body~~ ROIE is made:
- ...
- 6.7.6 G *Guidance* on the period covered by an ~~overseas recognised body's~~ ROIE's
[FCA] report submitted in compliance with section 295(1) of the *Act* is given in *REC* 6.6.3.
- 6.7.7 R Where an ~~overseas recognised body~~ ROIE proposes to change:
[FCA]
- (1) its address in the *United Kingdom*...; or
 - (2) the address of its head office
- it must give notice to the ~~FSA~~ FCA...
- 6.7.8 R Where an ~~overseas recognised body~~ ROIE has notice that any licence,
[FCA] permission or authorisation which it requires to conduct any *regulated activity* in its *home territory* has been or is about to be:
- (1) revoked; or
 - (2) modified in any way which would materially restrict the ~~overseas recognised body~~ ROIE in performing any regulated activity in its home territory or in the United Kingdom;
- it must immediately notify the ~~FSA~~ FCA of that fact and must give the ~~FSA~~ FCA the information specified for the purposes of this *rule* in *REC* 6.7.9R, as

soon as that information is known to it,

6.7.9 R The following information is specified for the purposes of *REC 6.7.8R*:
[FCA]

- (1) particulars of the licence, permission or authorisation which has been or is to be revoked or modified, including particulars of the ~~overseas recognised body's~~ ROIE's regulated activities to which it relates;
- (2) an explanation of how the revocation or modification restricts or will restrict the ~~overseas recognised body~~ ROIE in carrying on any regulated activity in its home territory or in the United Kingdom;

...

...

6.7.12 R The *rules* relating to the form and method of notification in *REC 3.2* also
[FCA] apply to ~~overseas recognised bodies~~ ROIE.

6.7.13 G ~~Overseas recognised bodies~~ ROIEs may apply to the ~~FSA~~ FCA for a waiver of
[FCA] any of the *notification rules*. The procedure is the same as that for applications from *UK recognised bodies*. Guidance on the procedure is given in *REC 3.3*.

6.8 ~~Powers of direction and revocation of recognition orders to supervise~~

6.8.1 G The ~~FSA~~ FCA has similar powers to supervise ~~overseas recognised bodies~~ ROIEs to those it has to supervise ~~UK recognised bodies~~ UK RIEs. It may (in
[FCA] addition to any other powers it might exercise):

- (1) give directions to an ~~overseas recognised body~~ ROIE under section 296 of the *Act* (Authority's power to give directions) if it has failed, or is likely to fail, to satisfy the *recognition requirements* or if it has failed to comply with any other obligation imposed by or under the *Act*; or
- (2) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) if an ~~overseas recognised body~~ ROIE is failing, or has failed, to comply with the *recognition requirements* or any other obligation in or under the *Act*; or
- (3) require an ROIE or a person connected with the ROIE, under section 165 of the Act, 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; or
- (4) require any of the following persons, under section 166 of the Act, to

provide the *FCA* with a report on any matter, or appoint a skilled person to provide the *FCA* with information or produce documents with respect to any matter:

- (a) the *ROIE*;
- (b) any other member of the *ROIE*'s group;
- (c) a partnership of which the *ROIE* is a member; or
- (d) a person who has at any time been a person falling within (a), (b) or (c).

6.8.2 G The ~~*FSA FCA*~~ will follow the approach in *REC* 4.6, *REC* 4.7 and, *REC* 4.8,
[FCA] *REC* 4.2F and *REC* 4.2G if it is considering exercising these powers in relation to an ~~*overseas recognised body*~~ *ROIE*.

...

Sch 2 Notification requirements

Sch 2.1 G The following table summarises the notification requirements applicable
[FCA] to all *recognised bodies*. The *notification rules* are set out in detail in Notification rules for UK recognised bodies and *REC* 6.7 and, to avoid unnecessary repetition, are not set out in detail here. The *notification rules* for *RAPs* differ in some respects from the *notification rules* for *UK RIEs* (for example, due to requirements contained in the *auction regulation*).

For completeness, summary details of the main notification requirements in the *Act* itself and the *Companies Act* 1989 are also included in the table. The summary of these statutory provisions here should not be taken to imply that these are obligations imposed by the ~~*FSA FCA*~~ under its powers nor that the following summary supersedes or alters the meaning of these provisions.

Guidance on the statutory notification requirements for ~~*overseas recognised bodies*~~ *ROIEs* is given in *REC* 6.6.

Sch 2.2	G	Reference to legislation or Handbook	Matter to be notified	Contents of notification	Trigger event	Time allowed
[FCA]		<i>UK recognised bodies</i> <i>UK RIEs</i>				
		The <i>Act</i> 293(5)	Changes to <i>rules</i> and <i>guidance</i>	Details of change	Change to rule or guidance	Without delay

<i>UK RIEs and UK RCHs</i>				
The Act s300B(1)	Proposal to make <i>regulatory provision</i>	Details of proposal	Proposal to make <i>regulatory provision</i>	Without delay
Companies Act 1989 s157	Proposed changes to <i>default rules</i>	Details of proposed change	Proposal to change <i>default rules</i>	14 days in advance of change
<i>UK RIEs</i>				
The Act s293(6)(a)	Changes to arrangements for clearing <i>clearing facilitation services in respect of on-exchange transactions</i>	Details of change	Change to arrangements	Without delay
The Act s293(6)(b)	Changes to criteria determining to whom it will provide clearing services <i>clearing facilitation services</i>	Details of change	Change to criteria	Without delay
<i>UK RCHs</i>				
The Act s293(7)(a)	Changes to RIEs for whom clearing services provided	Details of change	Change to RIE	Without delay
The Act s293(7)(b)	Changes to criteria determining to whom	Details of change	Change to criteria	Without delay [†]

	(other than <i>RIEs</i>) it will provide clearing services			
<i>RAPs</i>				
The Act s293(6)(a)	Changes to arrangements for clearing transactions effected on the auction platform	Details of change	Change to arrangements	Without delay
...				
<i>Notification rules for UK recognised bodies</i> (see Notification rules for UK recognised bodies)				
...				
<i>Overseas recognised bodies-ROIEs</i>				
The Act s295	Report to FSA <u>FCA</u>	Statement as to whether events have occurred which would affect the FSA's <u>FCA's</u> assessment of whether the <i>recognition requirements</i> are met or which might have an effect on competition	Not applicable	Once a year
<i>Notification rules for overseas recognised bodies</i> <u>ROIEs</u> (see REC 6.7)				
...				

Sch 3 Fees and other required payments

Sch 3.1 G

The aim of the *guidance* in the following table is to give the reader a quick over-all view of the relevant requirements for paying fees.

It is not a complete statement of those requirements and should not be relied on as if it were.

Sch 3.2 G

Type of fee	Trigger event	Date/Time for payment	Amount/rate	Handbook reference
Periodic fee	See <i>REC 7 Annex 1 R Part 1</i>	See <i>REC 7 Annex 1 R Part 1</i>	See <i>REC 7 Annex 1 R, Parts 1 and 2</i>	<i>REC 7.2</i>
Application fee	See <i>REC 7 Annex 1 R, Part 2</i>	On or before making the relevant application	See <i>REC 7 Annex 1 R, Parts 3 and 4</i>	<i>REC 7.3</i>

Sch 6 Rules that can be waivedSch 6.1 G
[FCA]

The *notification rules* in *REC 3* and *REC 6* can be waived by the ~~FSA~~ FCA under section 294 of the Act (Modification or waiver of rules). (The statutory notification requirements, also summarised in Schedule 2 to *REC*, cannot be waived by the ~~FSA~~ FCA.)

The fees *rules* in *REC 7* cannot be waived by the ~~FSA~~.

Appendix 5

Decision Procedure and Penalties Manual (Amendment) Instrument 2013

**DECISION PROCEDURE AND PENALTIES MANUAL (AMENDMENT NO 3)
INSTRUMENT 2013**

Powers exercised by the Financial Conduct Authority

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions of the Financial Services and Markets Act 2000:
- (1) section 88C (Action under s.88A: statement of policy);
 - (2) section 89S (Action under s.89Q: statement of policy);
 - (3) section 192N (Imposition of penalties under section 192K: statement of policy);
 - (4) section 249 (Disciplinary measures);
 - (5) section 312J (Statement of policy);
 - (6) section 345D (Imposition of penalties on auditors or actuaries: statement of policy); and
 - (7) section 395 (The FCA's and PRA's procedures).

Commencement

- B. This instrument comes into force on 1 April 2013.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Decision Procedure and Penalties manual DEPP is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Decision Procedure and Penalties Manual (Amendment No 3) Instrument 2013.

Made by order of the Board of the Financial Conduct Authority
[date]

Annex A

Amendments to the Glossary of definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>own-initiative requirement power</i>	The <i>FCA</i> 's power under section 55L(3) of the <i>Act</i> or the <i>PRA</i> 's power under section 55M(3) of the <i>Act</i> to impose a new <i>requirement</i> on a <i>firm</i> , to vary a <i>requirement</i> that it has imposed on the <i>firm</i> or to cancel any such <i>requirement</i> otherwise than on the application of a <i>firm</i> .
<i>own-initiative variation power</i>	The <i>FCA</i> 's or the <i>PRA</i> 's power under section 55J (Variation or cancellation on initiative of regulator) to vary or cancel a <i>Part 4A permission</i> otherwise than on the application of a <i>firm</i> .

Amend the following definitions as shown. Underlining indicates new text and striking through indicates deleted text.

<i>breach</i>	in <i>DEPP</i> : <ol style="list-style-type: none">(1) misconduct in respect of which the FSA <u>FCA</u> is empowered to take action pursuant to section 66 (Disciplinary powers) of the <i>Act</i>; or(2) a contravention in respect of which the FSA <u>FCA</u> is empowered to impose a penalty pursuant to section 91 (Penalties for breach of listing rules) of the <i>Act</i>; or(3) a contravention for the purposes of Part XIV (Disciplinary Measures); or(4) behaviour amounting to <i>market abuse</i>, or to <i>requiring or encouraging market abuse</i>, in respect of which the FSA <u>FCA</u> takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i>;(5) a contravention of any directly applicable <i>EU</i> regulation made under <i>MiFID</i>; or(6) a contravention in respect of which the FSA <u>FCA</u> is empowered to take action pursuant to section 131G (Breach of short selling regulation: Power to impose penalty or issue censure) of the <i>Act</i>; ;
---------------	---

- (7) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the *Act*;
- (8) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the *Act*;
- (9) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 192K (Power to impose penalty or issue censure) of the *Act*;
- (10) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 249 (Disciplinary measures) of the *Act*;
- (11) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 312E (Public censure) or section 312F (Financial penalties) of the *Act*; or
- (12) a contravention in respect of which the *FCA* is empowered to take action pursuant to section 345 (Disciplinary measures: FCA) of the *Act*.

*own-initiative
powers*

The *FCA*'s or the *PRA*'s *own-initiative variation power* and *own-initiative requirement power*. ~~FSA's power under section 45 of the Act (Variation etc on the Authority's own initiative) to vary or cancel a Part IV permission otherwise than on the application of a firm.~~

Annex [B]

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Application and Purpose

1.1 Application and Purpose

Application

- 1.1.1 G This manual (*DEPP*) is relevant to *firms, approved persons* and other *persons*, whether or not they are regulated by the ~~FSA~~ FCA. It sets out:
- [FCA]
- (1) the ~~FSA~~ FCA's decision-making procedure for giving *statutory notices*. These are *warning notices, decision notices* and *supervisory notices* (*DEPP* 1.2 to *DEPP* 5);
 - (1A) the FCA's decision-making procedure in cases where the PRA is required to seek the FCA's consent before approving an application (a) for Part 4A permission; (b) for the variation of a Part 4A permission; or (c) to perform a controlled function.
 - (2) the ~~FSA~~ FCA's policy with respect to the imposition and amount of penalties under the *Act* (see *DEPP* 6);
 - (2A) the ~~FSA~~ FCA's policy with respect to the imposition of suspensions or restrictions, and the period for which those suspensions or restrictions are to have effect, under the *Act* (see *DEPP* 6A);
 - (3) the ~~FSA~~ FCA's policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator (*DEPP* 7).

Purpose

- 1.1.2 G The purpose of *DEPP* is to satisfy the requirements of sections 63C(1), 69(1), 88C(1), 89S(1), 93(1), 124(1), ~~134FA~~, 131J(1), 169(9), ~~192N(1)~~, 210(1), 312J(1), 345D(1) and 395 of the *Act* that the ~~FSA~~ FCA publish the statements of procedure or policy referred to in *DEPP* 1.1.1G.
- [FCA]

1.2 Introduction to statutory notices

Statutory and related notices

- 1.2.1 G Section 395 of the *Act* (The ~~FSA~~ FCA's and PRA's procedures) requires the ~~FSA~~ FCA to publish a statement of its procedure for the giving of *statutory notices*.

[FCA] The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a *statutory notice* is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence. The types of *statutory notices* and related notices, and the principal references to them in the *Act* and *DEPP* are set out in *DEPP* 1.2.2G.

...

Decisions relating to applications for authorisation or approval made to the PRA

1.2.4A G Section 395 of the *Act* also requires the *FCA* to publish a statement of its procedure for decisions which gives rise to an obligation for the *PRA* to include a statement under section 387(1A) in a *warning notice* or a statement under section 388(1A) in a *decision notice*, as follows:
[FCA]

(1) Section 387(1A) provides that where the *FCA* proposes to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *warning notice* given by the *PRA* must (a) state that fact, and (b) give the reasons for the *FCA*'s proposal.

(2) Section 388(1A) provides that where the *FCA* has decided to refuse consent for the purposes of section 55F, 55I or 59 of the *Act*, or to give conditional consent as mentioned in section 55F(5) or 55I(8), the *warning notice* given by the *PRA* must (a) state that fact and (b) give the reasons for the *FCA*'s decision.

1.2.4B G Where an application for *Part 4A permission* is made to the *PRA* as the appropriate regulator (see section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (see section 55F of the *Act*). *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.
[FCA]

1.2.4C G Where an application to vary a *Part 4A permission* is made to the *PRA* as the appropriate regulator (see section 55A(2)(a) of the *Act*), the *PRA* may only give permission with the consent of the *FCA* (see section 55I of the *Act*). The *FCA* may withhold its consent to a proposed variation if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives. *FCA* consent can be conditional on the *PRA* imposing limitations or specifying the permission is for certain regulated activities only.
[FCA]

1.2.4D G Where an application to perform a controlled function is made to the *PRA* as the appropriate regulator, the *PRA* can only approve a person to perform a controlled function with the consent of the *FCA* (see section 59(4)(b) of the *Act*).
[FCA]

1.2.4E G The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not
[FCA]

directly involved in establishing that evidence.

2 Statutory notices and the allocation of decision making

...

2.5 Provision for certain categories of decision

...

Decisions relating to applications for authorisation or approval where the FCA is the appropriate regulator

- 2.5.3 G ~~FSA~~ FCA staff under *executive procedures* will take the decision to give a
[FCA] *warning notice* if the ~~FSA~~ FCA proposes to:

...

(3A) refuse an application to vary a *requirement* imposed under section 55L of the Act, or to impose a new *requirement*;

(3B) exercise its power under section 55L(1) of the Act in connection with an application to the PRA for a *Part 4A permission* or the variation of a *Part 4A permission*;

...

...

- 2.5.5A G If representations are made in response to a *warning notice* proposing the
[FCA] action set out at ~~DEPP 2.5.3G(3A)~~ or ~~DEPP 2.5.3G(3B)~~, *FCA* staff under *executive procedures* will take the decision to give a *decision notice*.

- 2.5.6 G If representations are made in response to a *warning notice* proposing the
[FCA] action set out at ~~DEPP 2.5.3G(1)~~, *DEPP 2.5.3G(2)*, *DEPP 2.5.3G(3)* or *DEPP 2.5.3G(6)*, then the *RDC* will take the decision to give a *decision notice* if the action involves a fundamental change (see *DEPP 2.5.8G*) to the nature of a *permission*. Otherwise, the decision to give the *decision notice* will be taken by ~~FSA~~ FCA staff under *executive procedures*.

Decisions relating to applications for authorisation or approval where the PRA is the appropriate regulator

- 2.5.6A G *FCA* staff under *executive procedures* will take the decision where the *FCA* is
[FCA] proposing or deciding to:

(1) refuse its consent to the granting by the PRA of an application for a *Part 4A permission*, or give its consent subject to conditions;

(2) refuse its consent to the granting by the PRA of an application for the

variation of a *Part 4A permission*, or give its consent subject to conditions; or

- (3) refuse its consent to the granting by the *PRA* of an application to perform a *controlled function*.

~~FSA~~ FCA's own-initiative powers

2.5.7 G The *RDC* will take the decision to give a *supervisory notice* exercising the
[FCA] ~~FSA~~ FCA's own-initiative *variation* power (by removing a regulated activity;
~~by imposing a limitation or requirement~~ or by specifying a narrower
description of regulated activity) if the action involves a fundamental change
(see *DEPP* 2.5.8G) to the nature of a *permission*. Otherwise, the decision to
give the ~~decision~~ *supervisory notice* will be taken by ~~FSA~~ FCA staff under
executive procedures.

2.5.7A G Notwithstanding *DEPP* 2.5.7G, ~~FSA~~ FCA staff under *executive procedures*
[FCA] will be the decision maker whenever a *firm* agrees not to contest the ~~FSA~~
FCA's exercise of its own-initiative *variation* power, including where the ~~FSA~~
FCA's action involves a fundamental change to the nature of a *permission*.

2.5.8 G A fundamental change to the nature of a *permission* means:
[FCA]

...

- (2) refusing an application to include a type of activity or *investment*; ~~or~~
- (3) ~~restricting a *firm* from taking on new business, dealing with a particular category of *client* or handling *client money* by imposing a limitation or requirement, or refusing an application to vary or cancel such a limitation or requirement; or~~
- (4) ~~imposing or varying an assets requirement (as defined in section 48(3) of the *Act* (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.~~

2.5.8A G FCA staff under *executive procedures* will take the decision to give a
[FCA] *supervisory notice* exercising the *FCA's own-initiative requirement power*.

...

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers

2.5.11A G Under section 88(4)(aa) of the *Act*, if the *FCA* proposes to impose limitations
[FCA] or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the *FCA* decides to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *decision notice*. Where the *sponsor* has requested

or otherwise agrees to the limitation or other restriction, FCA staff under executive procedures will take the decision to give the warning notice and decision notice. Otherwise, the RDC will take the decision to give the warning notice and decision notice.

- 2.5.11B G If the FCA is proposing or deciding to refuse a *sponsor's* application for the withdrawal or variation of a limitation, or other restriction on the services to which a *sponsor's* approval relates under section 88(8)(d) of the Act, the decision maker will be FCA staff under *executive procedures* where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the *warning notice* and *decision notice*.
[FCA]
- 2.5.11C G Under section 89P(5)(b) of the Act, if the FCA proposes to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the FCA decides to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *decision notice*. Where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction, FCA staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice*. Otherwise, the RDC will take the decision to give the *warning notice* and *decision notice*.
[FCA]
- 2.5.11D G Under section 89P(9)(d) of the Act, if the FCA is proposing or deciding to refuse a *primary information provider's* application for the withdrawal or variation of a limitation, or other restriction on the dissemination of *regulated information* to which a *primary information provider's* approval relates, the decision maker will be FCA staff under *executive procedures* where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the *warning notice* and *decision notice*.
[FCA]

...

- 2.5.13 G The decisions referred to in DEPP 2.5.12G are:

...

- (4) the decision to give a *warning notice* or *decision notice* pursuant to regulation 24 or regulation 28 of the *OEIC regulations*;
- (5) the decision to give a direction under section 42B(1) of the Building Societies Act 1986 that a building society transfers all its engagements to one or more other building societies or that it transfers its business to an existing company (under section 94 or section 97 respectively of the Building Societies Act 1986); and
- (6) the decision to give a decision notice under section 93(6) of the Building Societies Act 1986 (permission for successor society on amalgamation) where the terms of the permission have been agreed with the successor building society.

...

Notices under the Building Societies Act 1986 and other enactments

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:
- (1) ~~Building Societies Act 1986, section 36A: There is no right to refer a decision to issue a prohibition order under section 36A to the Tribunal. Accordingly, a *decision notice* under section 36A(5A) is not required to give an indication of whether any such rights exists. A *decision notice* under section 36A(5A) may only relate to the issue of a prohibition order under section 36A. Where such a *decision notice* is given, no *final notice* is required under section 390 of the *Act* and the FSA may issue the order at the same time as or after giving the *decision notice*. For the purposes of section 391 of the *Act* (Publication), the *decision notice* is treated as if it were a *final notice*.~~
 - (2) ~~Building Societies Act 1986, section 93(6): the FSA notifies the successor of the *permission* by giving it a *decision notice*. The *decision notice* is not preceded by the giving of a *warning notice*. No *final notice* is required under section 390 of the *Act* and for the purposes of section 391 of the *Act* (Publication, the *decision notice* is treated as if it were a *final notice*. The giving of *permission* is treated for the purposes of section 55 of the *Act* (Right to refer matters to the Tribunal as if it were the determination of an application made by the successor under Part IV of the *Act*. Part IX of the *Act* (Hearings and appeals) accordingly applies, but with the omission of section 133(9), which would otherwise prevent the FSA from giving the permission on the terms notified in the *decision notice* until after any reference and appeal.~~

~~(3)=~~

2 Warning notices and decision notices under the Act and certain other Annex enactments 1G

[FCA] Note: Third party rights and access to ~~FSA~~ FCA material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

Section of the Act	Description	Handbook reference	Decision maker
52(6)(a) <u>55X(1)(a)</u>	when the FSA <u>FCA</u> is proposing to grant an application for a Part	SUP 6	<i>Executive procedures</i>

<u>55X(1)(b)</u>	IV <u>Part 4A</u> permission with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for		
52(6)(b) <u>55X(1)(c)</u> <u>55X(1)(d)</u>	when the FSA <u>FCA</u> is proposing to grant an application to vary a <i>firm's</i> Part IV <u>Part 4A</u> permission but, other than as part of the application, to restrict the Part IV <u>Part 4A</u> permission (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)		<i>Executive procedures</i>
<u>55X(1)(e)</u>	when the <u>FCA</u> is proposing to exercise its power under section 55L(1) of the <u>Act</u> in connection with an application to the <u>PRA</u> for a <u>Part 4A</u> permission or the variation of a <u>Part 4A</u> permission		<i>Executive procedures</i>
52(7) <u>55X(2)</u>	when the FSA <u>FCA</u> is proposing to refuse an application for a Part IV <u>Part 4A</u> permission		<i>Executive procedures</i>
52(7) <u>55X(2)</u>	when the FSA <u>FCA</u> is proposing to refuse an application to vary a <i>firm's</i> Part IV <u>Part 4A</u> permission	SUP 6	<i>Executive procedures</i>
52(7)	when the FSA <u>FCA</u> is proposing to refuse an	SUP 6	<i>Executive</i>

<u>55X(2)</u>	application to cancel a firm's Part IV <u>Part 4A</u> permission		<i>procedures</i>
<u>55X(2)</u>	when the <i>FCA</i> is proposing to refuse an application for the variation of a requirement imposed under section 55L of the <i>Act</i> or for the imposition of a new requirement		<i>Executive procedures</i>
52(9)(a) <u>55X(4)(a)</u> <u>55X(4)(b)</u>	when the FSA <i>FCA</i> is deciding to grant an application for a Part IV <u>Part 4A</u> permission with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for		<i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.6G
52(9)(b) <u>55X(4)(c)</u> <u>55X(4)(d)</u>	when the FSA <i>FCA</i> is deciding to grant an application to vary a firm's Part IV <u>Part 4A</u> permission but, other than as part of the application, to restrict the Part IV <u>Part 4A</u> permission (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)	<i>SUP 6</i>	<i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.6G
<u>55X(4)(e)</u>	when the <i>FCA</i> is deciding to exercise its power under section 55L(1) of the <i>Act</i> in connection with an application to the <i>PRA</i> for a <i>Part 4A</i>		<i>Executive procedures</i>

	<u>permission or the variation of a Part 4A permission</u>		
52(9)(e) <u>55X(4)(f)</u>	when the FSA <u>FCA</u> is deciding to refuse an application for a Part IV <u>Part 4A</u> permission		<i>RDC or executive procedures</i> See DEPP 2.5.5G
52(9)(e) <u>55X(4)(f)</u>	when the FSA <u>FCA</u> is deciding to refuse an application to vary a firm's Part IV <u>Part 4A</u> permission	SUP 6	<i>RDC or executive procedures</i> See DEPP 2.5.6G
<u>55X(4)(f)</u> 52(9)(e)	when the FSA <u>FCA</u> is deciding to refuse an application to cancel a firm's Part IV <u>Part 4A</u> permission	SUP 6	<i>RDC or executive procedures</i> See DEPP 2.5.5G
<u>55X(4)(f)</u>	<u>When the FCA is deciding to refuse an application for the variation of a requirement imposed under section 55L of the Act or for the imposition of a new requirement</u>		<u>Executive procedures</u>
54(1)/(2) <u>55Z(1)</u> <u>55Z(2)</u>	when the FSA <u>FCA</u> is proposing or deciding to cancel a firm's Part IV <u>Part 4A</u> permission otherwise than at its request *		<i>RDC</i>
...			
88(4)/(6) <u>88(4)(a)</u> <u>88(6)(a)</u> <u>88(8)(a)</u>	when the FSA <u>FCA</u> is proposing or deciding to (1) refuse a person's application for approval as a sponsor; or (2) on its own initiative, cancel a person's approval as	LR 8	<i>RDC</i>

	a sponsor		
<u>88(4)(a)</u> <u>88(6)(a)</u> <u>88(8)(b)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the suspension of an approval as a <i>sponsor</i>		<u>Executive procedures</u>
<u>88(4)(a)</u> <u>88(6)(a)</u> <u>88(8)(c)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal of the suspension of an approval as a <i>sponsor</i>		<u>Executive procedures</u>
<u>88(4)(a)</u> <u>88(6)(a)</u> <u>88(8)(d)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal or variation of a limitation or other restriction on the services to which a <i>sponsor's</i> approval relates		<u>RDC or executive procedures</u> <u>See DEPP 2.5.11BG</u>
<u>88(4)(aa)</u> <u>88(6)(aa)</u>	when the <i>FCA</i> is proposing or deciding to impose limitations or restrictions on the services to which a <i>sponsor's</i> approval relates		<u>RDC or executive procedures</u> <u>See DEPP 2.5.11AG</u>
<u>88(4)(b)</u> <u>88(6)(b)</u>	when the <i>FCA</i> is proposing or deciding to cancel a <i>sponsor's</i> approval as a <i>sponsor</i> otherwise than at the <i>sponsor's</i> request*		<u>RDC</u>
<u>88B(1)</u> <u>88B(5)</u>	when the <i>FCA</i> is proposing or deciding to take action against a <i>sponsor</i> by exercising the disciplinary powers		<u>RDC</u>

	conferred by section <u>88A of the Act*</u>		
89(2)/(3)	when the <i>FSA</i> is proposing or deciding to publish a statement censuring a <i>sponsor</i>*	-	<i>RDC</i>
<u>89P(5)(a)</u> <u>89P(7)(a)</u> <u>89P(9)(a)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as a <i>primary</i> <i>information provider</i>		<i>RDC</i>
<u>89P(5)(a)</u> <u>89P(7)(a)</u> <u>89P(9)(b)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary</i> <i>information provider's</i> application for the suspension of an approval as a <i>primary</i> <i>information provider</i>		<i>Executive procedures</i>
<u>89P(5)(a)</u> <u>89P(7)(a)</u> <u>89P(9)(c)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary</i> <i>information provider's</i> application for the withdrawal of the suspension of an approval as a <i>primary</i> <i>information provider</i>		<i>Executive procedures</i>
<u>89P(5)(a)</u> <u>89P(7)(a)</u> <u>89P(9)(d)</u>	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary</i> <i>information provider's</i> application for the withdrawal or variation of a limitation or other restriction on the dissemination of <i>regulated information</i> to which a <i>primary</i> <i>information provider's</i> approval relates		<i>RDC or executive procedures</i> <i>See DEPP 2.5.11DG</i>

<u>89P(5)(b)</u> <u>89P(7)(b)</u>	when the <i>FCA</i> is proposing or deciding to impose <i>limitations</i> or other restrictions on the dissemination of <i>regulated information</i> to which a <i>primary</i> <i>information provider's</i> approval relates.		<u>RDC or</u> <u>executive</u> <u>procedures</u> <u>See DEPP</u> <u>2.5.11AG</u>
<u>89P(5)(c)</u> <u>89P(7)(c)</u>	when the <i>FCA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>primary</i> <i>information provider</i> otherwise than at the <i>primary information</i> <i>provider's</i> request		<u>RDC</u>
<u>89R(1)</u> <u>89R(5)</u>	when the <i>FCA</i> is proposing or deciding to take action against a <i>primary information</i> <i>provider</i> by exercising the disciplinary powers conferred by section 89Q of the <i>Act</i>		<u>RDC</u>
...			
<u>192L(1)</u> <u>192L(4)</u>	when the <i>FCA</i> is proposing or deciding to take action against a <i>qualifying parent</i> <i>undertaking</i> by exercising the disciplinary powers conferred by section 192K of the <i>Act</i> *		<u>RDC</u>
...			
<u>249</u> <u>345B(1)/(4)</u>	when the <i>FCA</i> is proposing or deciding to take action against an auditor by exercising the disciplinary powers conferred by section		<u>RDC</u>

	<u>249 of the Act*</u>		
...			
<u>312G(1)</u> <u>312H(1)</u>	when the <i>FCA</i> is proposing or deciding to take action against a <i>recognised investment</i> <i>exchange</i> by exercising the disciplinary powers conferred by sections 312E and 312F of the <i>Act*</i>		<u>RDC</u>
...			
321(8)/(9)	when the <i>FSA</i> is proposing or deciding to refuse an application for variation or revocation of a direction or a requirement imposed on a former underwriting member of Lloyd's*		<u>RDC</u>
...			
345(2)/(3) <u>345B(1)</u> <u>345B(4)</u>	when the FSA <i>FCA</i> is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any <i>authorised person</i> or class of <i>authorised</i> <i>person</i> or from being the auditor of any <i>AUT</i> or <i>ICVC*</i>		<u>RDC</u>
<u>345B(1)</u> <u>345B(4)</u>	when the <i>FCA</i> is proposing or deciding to disqualify an auditor from being the auditor of any <i>recognised investment</i> <i>exchange</i> or any class		<u>RDC</u>

	<u>of recognised investment exchange*</u>		
<u>345B(1)</u> <u>345B(4)</u>	<u>when the FCA is proposing or deciding to take action against an auditor or actuary by exercising the disciplinary powers conferred by sections 345(2)(c) or (d) of the Act*</u>		<u>RDC</u>
...			

Section of the Building Societies Act 1986	Description	Handbook reference	Decision-maker
36A(5)/(5A)	when the FSA is proposing or deciding to issue a prohibition order under section 36A prohibiting the continuance or carrying on of an activity and requiring the disposal of assets acquired or otherwise in a building society's possession by virtue of the activity, where the society has failed to carry into effect a restructuring plan which it has been directed to carry out by the FSA under section 36(8)	See DEPP 2.5.18G(1)	RDC
46A(1)(a)/(3)(a)	when the FSA is proposing or deciding to give a direction under section 36(3), (5), (6), (7) or (10) requiring a building society to submit for its approval a restructuring plan or to submit to the society's members the requisite		RDC

	transfer resolutions for a transfer of the society's business to a company or (if such a direction is given) imposing limitations on the issue of shares, acceptance of deposits or making of loans or requiring the society to take certain steps or refrain from certain action or requiring the removal of a director or other officer*		
46A(1)(b)/(3)(b)	when the FSA is proposing or deciding to give a direction under section 42B(1) (other than a direction varying a previous direction with the agreement of the <i>building society</i> concerned) that a <i>building society</i> transfers all its engagements to one or more other <i>building societies</i> under section 94 or that it transfers its business to an existing company under section 97*		<i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.12G
93(6)	when the <i>FSA</i> , on an amalgamation between <i>building societies</i> , each of which has a <i>Part IV permission</i> to accept deposits, notifies the successor society of the terms of its <i>Part IV permission</i>	See <i>DEPP</i> 2.5.18G(2)	<i>RDC or executive procedures</i> See <i>DEPP</i> 2.5.12G

...

Payment Services Regulations	Description	Handbook reference	Decision maker
...			
Regulations 11(6), 11(9), 11(10)(b)	When the <i>FSA</i> is exercising its powers to vary a person's authorisation on its own	-	<i>RDC or executive procedures</i>

and 14	initiative		See also <i>DEPP 3.4</i> (Note 1)
...			
<p>Notes:</p> <p>(1) The <i>RDC</i> will take the decision to give a notice exercising the FSA own initiative power if the action involves:</p> <p>(a) removing a type of activity from an authorisation or registration; or</p> <p>(b) refusing an application to include a type of activity in an authorisation or registration; or</p> <p>(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or</p> <p>(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.</p> <p>For all other types of action the decision to give a notice will be taken by FSA staff under <i>executive procedures</i>.</p> <p>...</p>			

2 Supervisory notices

Annex 2G

[FCA]

Section of the Act	Description	Handbook reference	Decision maker
53(4)/(7)/(8)(b) <u>55Y(4)</u> <u>55Y(7)</u> <u>55Y(8)(b)</u>	when the FSA <i>FCA</i> is exercising its <i>own-initiative variation power</i> to vary a firm's Part IV <i>Part 4A permission</i>	<i>SUP 7</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.7G</i>
<u>55Y(4)</u> <u>55Y(7)</u> <u>55Y(8)(b)</u>	when the <i>FCA</i> is exercising its <i>own-initiative requirement power</i>		<i>Executive procedures</i>
...			
<u>88F(2)</u> <u>88F(5)</u> <u>88F(6)(b)</u>	when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>sponsor's approval under section 88E of the Act</i>		<i>Executive procedures</i>

89V(2) 89V(5) 89V(6)(b)	<u>when the <i>FCA</i> is proposing or deciding to take action to suspend, limit or restrict a <i>primary information provider's</i> approval under section 89U of the <i>Act</i></u>		<u><i>Executive procedures</i></u>
...			
137Q(5) 137Q(8)(a)	<u>when the <i>FCA</i> gives a direction under section 137Q of the <i>Act</i></u>		<u><i>Executive procedures</i></u>
...			

<u>Payment Services Regulations</u>	<u>Description</u>	<u>Handbook reference</u>	<u>Decision maker</u>
11(6) 11(9) 11(10)(b) 14	<u>When the <i>FCA</i> is exercising its powers to vary a person's authorisation on its own initiative</u>		<u><i>RDC</i> or <i>executive procedures</i></u> See also <u><i>DEPP 3.4</i></u> (Note 1)
<p>Notes:</p> <p><u>(1) The <i>RDC</i> will take the decision to give a notice exercising the <i>FCA's</i> own-initiative power if the action involves:</u></p> <p><u>(a) removing a type of activity from an authorisation or registration; or</u></p> <p><u>(b) refusing an application to include a type of activity in an authorisation or registration; or</u></p> <p><u>(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or</u></p> <p><u>(d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.</u></p> <p><u>For all other types of action the decision to give a notice will be taken by <i>FCA</i> staff under <i>executive procedures</i>.</u></p>			

After DEPP 3.2.14G insert the following new guidance. The text is all new and is not underlined.

- 3.2.14A G If *FCA* staff consider that it is appropriate to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates, they will make a recommendation to the *RDC* that such information should be published.
[FCA]
- 3.2.14B G The *RDC* will consider whether it is appropriate in all the circumstances to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates. The *FCA*'s policy on publishing such information is set out in Chapter 6 of *EG*.
[FCA]
- 3.2.14C G If the *RDC* proposes that the *FCA* should publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the *Act* relates:
[FCA]
- (1) the *RDC* will settle the wording of the statement it proposes the *FCA* should publish (warning notice statement);
 - (2) the *RDC* staff will make appropriate arrangements for the warning notice statement it proposes the *FCA* should publish to be given to the persons to whom the *warning notice* was given or copied;
 - (3) the proposed warning notice statement will specify the time allowed for the recipient to respond in writing to the *RDC*. This will normally be seven days;
 - (4) the recipient of a proposed warning notice statement may request an extension of the time allowed for its response. Such a request must normally be made within two days of the proposed warning notice statement being given; and
 - (5) the *RDC* will not normally grant a request by a person to whom the warning notice statement was given to make his response in person.
- 3.2.14D G If no response to the proposed warning notice statement is received, the *FCA* will make appropriate arrangements to publish the warning notice statement.
[FCA]
- 3.2.14E G However, if the *RDC* receives a response from the person to whom the proposed warning notice statement was given, the *RDC* will consider their response and decide whether it is appropriate in all the circumstances to publish information about the matter to which the *warning notice* relates.
[FCA]
- 3.2.14F G If the *RDC* decides that the *FCA* should publish a warning notice statement:
[FCA]
- (1) the *RDC* will settle the wording of the warning notice statement; and
 - (2) the *FCA* will make appropriate arrangements for the warning notice statement to be published.
- 3.2.14G G If the *RDC* decides that the *FCA* should not publish a warning notice

[FCA] statement the *RDC* staff will notify the relevant parties (including the relevant *FCA* staff) in writing of that decision.

3.2.14H G References to the *RDC* in *DEPP* 3.2.14AG to *DEPP* 3.2.14GG are to the
[FCA] Chairman of the *RDC* panel which issued the *warning notice* or, if he is unavailable, either the Chairman of the *RDC* or a Deputy Chairman of the *RDC*.

Amend the following provisions. Underlining indicates new text and striking through indicates deleted text.

Procedure: representations

3.2.15 G (1) A *warning notice* or a first *supervisory notice* will (as required by the
[FCA] *Act*) specify the time allowed for making representations. This will not be less than ~~28~~14 days.

(2) The ~~FSA~~FCA will also, when giving a *warning notice* or a *first supervisory notice*, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.

3.2.16 G (1) The recipient of a *warning notice* or a first *supervisory notice* may
[FCA] request an extension of the time allowed for making representations. Such a request must normally be made within ~~14~~ seven days of the notice being given.

...

...

4 Decisions by ~~FSA~~ FCA staff under executive procedures

4.1 Executive decision maker

Who takes the decision

4.1.1 G All *statutory notice decisions* under *executive procedures* and decisions
[FCA] referred to in DEPP 2.5.6AG will be taken either by a *senior staff committee* or by an individual ~~FSA~~ FCA staff member.

4.1.2 G In ~~either the case of~~ a senior staff committee, the decision will be taken by
[FCA] ~~FSA~~ FCA staff who have not been directly involved in establishing the evidence on which the decision is based, or by two or more FCA staff who include a person not directly involved in establishing that evidence, except in accordance with section 395(3) of the *Act*.

4.1.2A G In the case of an individual FCA staff member, the decision will be taken by
[FCA] someone who has not been directly involved in establishing the evidence on which the decision is based, except in accordance with section 395(3) of the

Act.

Decisions by senior staff committee

- 4.1.3 G The ~~FSA~~ FCA's senior executive committee will from time to time determine
[FCA] that particular categories of *statutory notice decision* to be taken under *executive procedures* and decisions referred to in DEPP 2.5.6AG will be taken by a *senior staff committee*.

...

Decisions by individual ~~FSA~~ FCA staff members

- 4.1.7 G *Statutory notice decisions* to be taken under *executive procedures*, and
[FCA] decisions referred to in DEPP 2.5.6AG, and not falling within the responsibility of a *senior staff committee*, will be taken by an individual ~~FSA~~ FCA staff member. The decision will be:

- (1) made by an executive director of the ~~FSA~~ FCA Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an ~~FSA~~ FCA staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an ~~FSA~~ FCA staff member of at least the level of associate.

...

- 4.1.9 G An ~~FSA~~ FCA staff member who considers that a *statutory notice decision*, or a
[FCA] decision referred to in DEPP 2.5.6AG, should be taken above his own level is free to refer that decision to a more senior level. If an ~~FSA~~ FCA staff member consults another staff member about a decision, the decision remains the independent decision of the ~~FSA~~ FCA staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.

...

Procedure

...

- 4.1.14 G Broadly, FCA staff responsible for taking decisions referred to in DEPP
[FCA] 2.5.6AG will follow a procedure similar to that described at DEPP 3.2.7G to DEPP 3.2.27G for the RDC (subject to the exceptions in DEPP 4.1.13G(1) to (5)) which also reflects that these decisions are not statutory notice decisions.

...

5 Settlement decision procedure

5.1 Settlement decision makers

Introduction

5.1.1 G ...

[FCA]

- (4) At least one of the *settlement decision makers* will not be from the Enforcement and Financial Crime Division. The other *settlement decision maker* will usually be, but need not be, from the Enforcement and Financial Crime Division. ~~Consistent with section 395(2) of the Act, a~~ A *settlement decision maker* will not have been directly involved in establishing the evidence on which the decision is based.

...

...

5.1.6 G The terms of any proposed settlement:

[FCA]

...

- (3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the *person* concerned to:

...

- (c) not object to the giving of a *decision notice* before the expiry of the ~~28~~ 14 day period after the giving of a *warning notice* specified under section 387 of the *Act*;

...

...

6 Penalties

6.1 Introduction

- 6.1.1 G *DEPP* 6 includes the ~~FSA~~ FCA's statement of policy with respect to the imposition and amount of penalties under the *Act*, as required by sections 63C(1), 69(1), 88C, 89S, 93(1), 124(1), 131J(1), 192N, ~~and~~ 210(1), 312J and 345D of the *Act*.

...

6.2 Deciding whether to take action

- 6.2.1 G The ~~FSA~~ FCA will consider the full circumstances of each case when
[FCA] determining whether or not to take action for a financial penalty or *public*
censure. Set out below is a list of factors that may be relevant for this purpose.
The list is not exhaustive: not all of these factors may be applicable in a
particular case, and there may be other factors, not listed, that are relevant.

...

- (4) *FSA/FCA guidance* and other published materials:

The ~~FSA~~ FCA will not take action against a person for *behaviour* that it considers to be in line with *guidance*, other materials published by the ~~FSA~~ or FCA in support of the *Handbook* or ~~FSA~~ FCA-confirmed Industry Guidance which were current at the time of the *behaviour* in question. (The manner in which *guidance* and other published materials may otherwise be relevant to an enforcement case is described in *EG 2*.)

- (5) Action taken by the ~~FSA~~ FCA in previous similar cases.

...

6.5 Determining the appropriate level of financial penalty

- 6.5.1 G For the purpose of *DEPP 6.5* to *DEPP 6.5D* and *DEPP 6.6.2G*, the term "firm"
[FCA] means *firms*, sponsors, primary information providers, recognised investment
exchanges, qualifying parent undertakings, actuaries, auditors and those
unauthorised persons who are not individuals.

...

6A The power to impose a suspension or restriction

6A.1 Introduction

- 6A.1.1 G *DEPP 6A* sets out the ~~FSA's~~ FCA's statement of policy with respect to the
[FCA] imposition of suspensions or restrictions, and the period for which those
suspensions or restrictions are to have effect, under the *Act*, as required by
sections 69(1), 88C(1), 89S(1) and 210(1) of the *Act*.

- 6A.1.2 G For the purposes of *DEPP 6A*:

[FCA] (1) "suspension" refers ~~both~~ to the suspension of any *permission* which an
authorised person has to carry on a *regulated activity* (under section 206A of
the *Act*), ~~and~~ the suspension of any approval of the performance by an
approved person of any function to which the approval relates (under section
66 of the *Act*), the suspension of a sponsor's approval (under section
88A(2)(b) of the Act), and the suspension of a *primary information provider's*
approval (under section 89Q(2)(b) of the Act); and

(2) "restriction" refers ~~both~~ to limitations or other restrictions in relation to the

carrying on of a *regulated activity* by an *authorised person* (under section 206A of the *Act*), ~~and~~ to limitations or other restrictions in relation to the performance by an *approved person* of any function to which any approval relates (under section 66 of the *Act*), to limitations or other restrictions in relation to the performance of services to which a *sponsor's* approval relates (under section 88A(2)(c) of the *Act*), and to limitations or other restrictions in relation to the dissemination of *regulated information* by a *primary information provider* (under section 89Q(2)(c) of the *Act*).

...

- 6A.1.4 G ~~As the power~~ The powers to impose a suspension or a restriction in relation to
[FCA] *authorised persons* and *approved persons* is a disciplinary measure, are
disciplinary measures; where the ~~FSA~~ FCA considers it necessary to take
action, for example, to protect *consumers* from an *authorised person*, the ~~FSA~~ FCA
will seek to cancel or vary the *authorised person's* permissions. If the
~~FSA~~ FCA has concerns with a *person's* fitness to be approved, and considers it
necessary to take action, the ~~FSA~~ FCA will seek to prohibit the *approved*
person or withdraw its approval. While the powers to impose a suspension or
a restriction in relation to *sponsors* and *primary information providers* under
sections 88A(2)(b) and (c) and 89Q(2)(b) and (c) of the *Act* are disciplinary
measures, the *FCA* can impose suspensions, limitations or other restrictions in
relation to *sponsors* and *primary information providers* in other
circumstances.

6A.2 Deciding whether to take action

...

- 6A.2.5 G For the purposes of section 89S(1)(d) of the *Act*, the *FCA* expects usually to
[FCA] suspend the approval of a *primary information provider*.

6A.3 Determining the appropriate length of the period of suspension or restriction

...

- 6A.3.2 G The following factors may be relevant to determining the appropriate length
[FCA] of the period of suspension or restriction to be imposed on a *person* under the
Act:

...

(3) Aggravating and mitigating factors

The ~~FSA~~ FCA will have regard to factors that may aggravate or mitigate
a *breach*. Where the breach was committed by an *authorised person*,
sponsor or *primary information provider*, relevant factors may include

those listed in *DEPP* 6.5A.3G(2). Where the *breach* was committed by an *approved person*, relevant factors may include those listed in *DEPP* 6.5B.3G(2). There may also be other factors, not listed in these sections, that are relevant.

(4) The impact of suspension or restriction on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an *authorised person, sponsor or primary information provider*:

- (a) the *authorised person's, sponsor's or primary information provider's* expected lost revenue and profits from not being able to carry out the suspended or restricted activity;
- (b) the cost of any measures the *authorised person, sponsor or primary information provider* must undertake to comply with the suspension or restriction;

...

- (d) the effect on other areas of the *authorised person's, sponsor's or primary information provider's* business; and
- (e) whether the suspension or restriction would cause the *authorised person, sponsor or primary information provider* serious financial hardship.

...

...

...

6A.3.3 G The ~~FSA~~ FCA may delay the commencement of the period of suspension or
[FCA] restriction. In deciding whether this is appropriate, the ~~FSA~~ FCA will take into account all the circumstances of a case. Considerations that may be relevant in respect of an *authorised person, sponsor or primary information provider* include:

...

- (2) any practical measures the *authorised person, sponsor or primary information provider* needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;
- (3) the impact of the suspension or restriction on other costs incurred by the *authorised person, sponsor or primary information provider*, for example, cancelling suppliers or suspending employees.

...

Sch 3 Fees and other required payments

...

Sch 3.2 G

The FSA's power to impose financial penalties is contained in:	
	<u>Section 63A (Power to impose penalties) of the Act</u>
	<u>Section 66 (Disciplinary powers) of the Act</u>
	<u>Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the Act</u>
	<u>Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the Act</u>
	<u>Section 91 (Penalties for breach of Part 6 Rules) of the Act</u>
	<u>Section 123 (Power to impose penalties in cases of market abuse) of the Act</u>
	<u>Section 131G (Power to impose penalty or issue censure) of the Act</u>
	<u>Section 192(K) (Power to impose penalty or issue censure) of the Act</u>
	<u>Section 206 (Financial penalties) of the Act</u>
	<u>Section 249 (Disciplinary measures) of the Act</u>
	<u>Section 312F (Financial penalties) of the Act</u>
	<u>Section 345 (Disciplinary measures: FCA) of the Act</u>
	...

Sch 4- **Powers Exercised**

Sch 4.1 G

	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :
-	Section 63C (statement of policy)
-	Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the <i>Payment Services Regulations</i> and by paragraph 1 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i>)
-	Section 93(1) (Statement of policy)
-	Section 124(1) (Statement of policy)
-	Section 131J (Impositions of penalties under section 131G: statement of policy)
-	Section 157(1) (Guidance)
-	Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the <i>Payment Services Regulations</i>)
-	Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the <i>Payment Services Regulations</i> and by paragraph 3 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i>)
-	Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the <i>Payment Services Regulations</i> and by paragraph 5 of the Schedule to the <i>Cross-Border Payments in Euro Regulations</i>)
-	Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)

Sch 4.2 G

	The following additional powers and related provisions have been exercised by the <i>FSA</i> to make the statements of policy in <i>DEPP</i> :
-	Regulation 42 (Guidance) of the <i>RCB Regulations</i>
-	Regulation 44 (Warning notices and decision notices) of the <i>RCB Regulations</i>
-	Regulation 86 (Proposal to take disciplinary measures) of the <i>Payment Services Regulations</i>
-	Regulation 93 (Guidance) of the <i>Payment Services Regulations</i>
-	Regulation 14 (Guidance) of the <i>Cross-Border Payments in Euro Regulations</i>

Appendix 6:

Designation of Handbook Provisions

FSA Handbook provisions will be ‘designated’ to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website¹ for further details about this process.

We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as FCA provisions, with the exception of amendments to the Glossary and FEES which shall be designated as shared provisions.

Handbook Provision	Designation
Glossary	FCA/PRA
FEES 3.2.7	FCA/PRA
FEES Annex 3	FCA
FEES 4.2.11	FCA/PRA
LR	FCA
DTR	FCA
REC	FCA
DEPP	FCA

¹ One-minute guide <http://media.fsahandbook.info/latestNews/One-minute%20guide.pdf>

PUB REF: 003117

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7066 1000 Fax: +44 (0)20 7066 1099
Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.