

Chapter 3

Notification rules for UK recognised bodies

3.1 Application and purpose

Application

- 3.1.1** **R** (1) The *notification rules* in this chapter, which are made under section 293 of the *Act* (Notification requirements), apply to all *UK recognised bodies*.
- (2) The *rules* relating to the form and method of notification in **REC 3.2** also apply to *overseas recognised bodies*.
- 3.1.2** **G** The *notification rules* for *overseas recognised bodies* are set out in **REC 6**. The *guidance* set out at **REC 3.3** in relation to the waiving and modification of *notification rules* also applies to the *notification rules* in this chapter and to the *notification rules* in **REC 6**.
- 3.1.3** **G** The *notification rules* in this chapter are in addition to the requirements on *UK RIEs* to give notice or information to the *FCA* and if applicable, the Bank of England under sub-sections 293(5) and (6) of the *Act*.
- 3.1.3A** **G** The *notification rules* in this chapter which apply to a *RAP* are without prejudice to *notification rules* which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates a *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and a *RAP*.

Purpose

- 3.1.4** **G** The *notification rules* in this chapter are made by the *FCA* in order to ensure that it is provided with notice of events and information which it reasonably requires for the exercise of its functions under the *Act*.



3.2 Form and method of notification

Form of notification

3.2.1 **R** Where a *recognised body* is required to give any notice or information under any *notification rule*, it may do so (unless that *rule* expressly provides otherwise) orally or in writing, whichever is the more appropriate in the circumstances, but, where it gives notice or information orally, it must confirm that notice or information in writing promptly.

Method of notification

3.2.2 **R** Unless otherwise stated in the *notification rule*, a written notification required from a *recognised body* under any *notification rule* must be:

- (1) given to, or addressed for the attention of, the *recognised body's* usual supervisory contact at the *FCA*;
- (2) delivered to the *FCA* by one of the methods in **REC 3.2.3 R**.

3.2.3 **R** **Methods of notification**

| Method of delivery | |
|--------------------|---|
| (1) | Post to the address in REC 3.2.4 R |
| (2) | Leaving the notification at the address in REC 3.2.4 R and obtaining a time-stamped receipt |
| (3) | Electronic mail to an address for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> and obtaining an electronic confirmation of receipt |
| (4) | Hand delivery to the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> |
| (5) | Fax to a fax number for the <i>recognised body's</i> usual supervisory contact at the <i>FCA</i> , provided that the <i>FCA</i> receives a copy of the notification by one of methods (1) - (4) in this table within five <i>business days</i> after the date of the faxed notification |

3.2.4 **R** The address for a written notification to the *FCA* is:
 The Financial Conduct Authority
 12 Endeavour Square
 London, E20 1JN

Timely notification

3.2.5

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If a *notification rule* requires notification within a specified period:

- (1) the *recognised body* must give the notification so as to be received by the *FCA* no later than the end of that period; and
- (2) if the end of that period falls on a *day* which is not a *business day*, the notification must be given so as to be received by the *FCA* no later than the first *business day* after the end of that period.

Service of Notice Regulations

3.2.6

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The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001/1420) do not apply to notifications required under the *notification rules* in this chapter and in ■ REC 6 because of the specific *rules* in this section.



3.3 Waivers

Statutory power

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

Applications

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

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

Waivers

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

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

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

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

Reviews of waivers

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



3.4 Members of the management body and internal organisation

Purpose

- 3.4.1 **G** The purpose of ■ REC 3.4 is to enable the *FCA* to monitor the changes a *UK recognised body* makes in the arrangements for carrying out its *relevant functions*.
- 3.4.2 **R** [deleted]
- 3.4.2A **R** Where, in relation to a *UK RIE* a proposal has been made to appoint or elect a *person* as a *member of the management body*, that *UK RIE* must at least 30 days before the date of the appointment or election give notice of that event, and give the information specified for the purposes of this rule in ■ REC 3.4.4A R to the *FCA*.
[Note: article 45(8) of *MiFID*]
- 3.4.2B **R** Where, in relation to a *UK RIE* a *person* has resigned as, or has ceased to be, a *member of the management body*, that *UK RIE* must immediately give notice of that event, and give the information specified for the purposes of this rule in ■ REC 3.4.4A R to the *FCA*.
[Note: article 45(8) of *MiFID*]
- 3.4.3 **G**
 - (1) *Members of the management body* include the *persons* who, under the operational or managerial arrangements of the *UK recognised body*, are appointed to manage the departments responsible for carrying out its *relevant functions*, whether or not they are members of its *governing body*. A *person* appointed to carry out specific tasks, such as to conduct a particular investigation into a specific set of facts, would not usually be a *member of the management body*.
 - (2) A *member of the management body* need not be an *employee* of a *UK recognised body*. For example, an *employee* of an *undertaking* in the same *group* or a self-employed contractor of a *UK recognised body* might be a *member of the management body*, depending on the role he or she plays in that body.
 - (3) A department of a *UK recognised body* should be regarded as responsible for carrying out a *relevant function* if it is responsible for any activity or activities which form a significant part of a *relevant*

function or which make a significant contribution to the performance of a *relevant function*.

- (4) The *FCA* does not need to be notified where minor changes are made to the responsibilities of a *member of the management body*, but where a major change in responsibilities is made which amounts to a new appointment, the *FCA* should be notified under ■ REC 3.4.2A R.

3.4.4 **R** [deleted]

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

- (1) that *person's* name;
- (2) their date of birth;
- (3) where applicable, a description of the responsibilities which they will have in the post to which they are to be appointed or elected, including for a *UK RIE* which operates a *RAP* where the person has responsibilities both in the *UK RIE* and *RAP*, a description of the responsibilities he or she has they have in respect of each body;
- (4) where applicable, a description of the responsibilities in the post from which they resigned or otherwise ceased to act, including for a *UK RIE* which operates a *RAP* where the person had responsibilities both in the *UK RIE* and the *RAP*, a description of the responsibilities they had in respect of each body; and
- (5) the information necessary for the *FCA* to assess whether the *UK RIE* complies with ■ REC 2.4.1UK, ■ REC 2.4A.1UK and ■ REC 2.4A.2UK in relation to the *member of the management body's* appointment, election, resignation or otherwise ceasing to act.

[Note: article 45(8) of *MIFID*]

Standing committees

3.4.5 **R** Where the *governing body* of a *UK recognised body* delegates any of its functions (which relate to that *UK recognised body's* relevant functions) to a standing committee, or appoints a standing committee to manage or oversee the carrying out of any of that *UK recognised body's* relevant functions, that *UK recognised body* must immediately notify the *FCA* of that event and give the *FCA* the following information:

- (1) the names of the members of that standing committee; and
- (2) the terms of reference of that standing committee (including a description of any powers delegated to that committee and any conditions or limitations placed on the exercise of those powers).

3.4.6 **R** Where:

- (1) there is any change in the composition or the terms of reference of any standing committee referred to in ■ REC 3.4.5 R; or

- (2) any such committee is dissolved;

the *UK recognised body* must immediately notify the *FCA* of that event and give particulars of any change referred to in (1) to the *FCA*.

3.4.7

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- (1) Standing committees include permanent committees with executive, supervisory, policy-making or rule-making responsibilities. Committees appointed for particular tasks or committees established for purely consultative or advisory purposes would not usually be considered to be standing committees.
- (2) Committees which include *persons* who are not members of the *governing body* can be standing committees.

3

3.5 Disciplinary action and events relating to members of the management body

Disciplinary action

- 3.5.1 **R** Where any *member of the management body of a UK recognised body*:
- (1) is the subject of any disciplinary action because of concerns about his or her alleged misconduct; or
 - (2) resigns as a result of an investigation into his or her alleged misconduct; or
 - (3) is dismissed for misconduct;

that body must immediately give the *FCA* notice of that event, and give the information specified for the purposes of this *rule* in **■ REC 3.5.2 R**.

- 3.5.2 **R** The following information is specified for the purposes of **■ REC 3.5.1 R**:
- (1) the name of the *member of the management body* and his or her responsibilities within the *UK recognised body*;
 - (2) details of the acts or alleged acts of misconduct by that *member of the management body*; and
 - (3) details of any disciplinary action which has been or is proposed to be taken by that body in relation to that *member of the management body*.

Other events

- 3.5.3 **R** Where a *UK recognised body* becomes aware that any of the following events has occurred in relation to a *member of the management body*, it must immediately give the *FCA* notice of that event:
- (1) a petition for bankruptcy is presented (or similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom* are commenced) against that *member of the management body*; or
 - (2) a bankruptcy order (or a similar or analogous order under the law of a jurisdiction outside the *United Kingdom*) is made against him or her; or

- (3) he or she enters into a voluntary arrangement (or a similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*) with his or her creditors.

3.6 Constitution and governance

- 3.6.1** **R** Where a *UK recognised body* is to circulate any notice or other *document* proposing any amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution) to:
- (1) its shareholders (or any group or class of them); or
 - (2) its *members* (or any group or class of them); or
 - (3) any other group or class of *persons* which has the power to make that amendment or whose consent or approval is required before it may be made;
- that *UK recognised body* must give notice of that proposed amendment, and give the information specified for the purposes of this *rule* in **REC 3.6.2 R** to the *FCA*, at the same time as that notice or *document* is circulated.
- 3.6.2** **R** The following information is specified for the purposes of **REC 3.6.1 R**:
- (1) the proposed amendments referred to in **REC 3.6.1 R**;
 - (2) the reasons for the proposal; and
 - (3) a description of the group or class of *persons* to whom the proposal is to be circulated.
- 3.6.3** **G** A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with **REC 3.6.1 R** by providing a copy of the notice of special resolution issued to its shareholders.
- 3.6.4** **R** Where a *UK recognised body* makes an amendment to its memorandum or articles of association (or other similar agreement or *document* relating to its constitution), that *UK recognised body* must immediately give the *FCA* notice of that event, and give written particulars of that amendment and of the date on which it is to become or became effective.
- 3.6.5** **G** A *UK recognised body* which is incorporated as a *company* in the *United Kingdom* will, in many circumstances, be able to comply with **REC 3.6.4 R** by providing a copy of the special resolution effecting the amendment.

3.6.6

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Where any change is made to an agreement which relates to the constitution or governance of a *UK recognised body*:

- (1) between that *UK recognised body* and another *person*; or
- (2) between the owners of that *UK recognised body*; or
- (3) between the owners of that *UK recognised body* and another *person*;
or
- (4) between other *persons*;

that *UK recognised body* must give the *FCA* notice of that event as soon as it is aware of it, and give written particulars of that change and of the date on which it is to become or became effective.

3.6.7

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The purpose of **■ REC 3.6.6 R** is to ensure that the *FCA* is informed of changes to agreements which specify the arrangements by which a *UK recognised body* will be governed or by which important decisions will be taken within that body. It is not intended to cover any agreement by which someone is appointed to be a *key individual* or which covers the terms and conditions of service in such an appointment.

3.7 Auditors

3.7.1 **R** Where the auditors of a *UK recognised body* cease to act as such, that *UK recognised body* must immediately give the *FCA* notice of that event, and the following information:

- (1) whether the appointment of those auditors expired or was terminated;
- (2) the date on which they ceased to act; and
- (3) if it terminated, or decided not to renew, their appointment, its reasons for taking that action or decision.

3.7.2 **R** Where a *UK recognised body* appoints new auditors, that body must immediately give the *FCA* notice of that event, and the following information:

- (1) the name and business address of those new auditors; and
- (2) the date of their appointment as auditors.

3.8 Financial and other information

- 3.8.1** **R** A UK recognised body must give the FCA:
- (1) a copy of its *annual report and accounts*; and
 - (2) a copy of the consolidated *annual report and accounts*:
 - (a) of any *group* in which the UK recognised body is a *subsidiary undertaking*; or
 - (b) (if the UK recognised body is not a *subsidiary undertaking* in any *group*) of any *group* of which the UK recognised body is a *parent undertaking*;
- no later than the time specified for the purpose of this *rule* in ■ REC 3.8.2 R.
- 3.8.2** **R** The time specified for the purpose of ■ REC 3.8.1 R is the latest of:
- (1) four months after the end of the financial year to which the *document* which is to be given to the FCA relates; or
 - (2) the time when the *documents* described in ■ REC 3.8.1 R (1) or ■ REC 3.8.1 R (2)(b) are sent to the *members* or shareholders of the UK recognised body; or
 - (3) the time when the *document* described in ■ REC 3.8.1 R (2)(a) are sent to the shareholders in a *parent undertaking* of the *group* to which that *document* relates.
- 3.8.3** **R** Where an audit committee of a UK recognised body has prepared a report in relation to any period or any matter relating to any *relevant function* of that UK recognised body, the UK recognised body must immediately give the FCA a copy of that report.
- 3.8.4** **R** A UK recognised body must give the FCA a copy of:
- (1) its quarterly *management accounts*; or
 - (2) its monthly *management accounts*;
- within one month of the end of the period to which they relate.

3.8.5 **G** A *UK recognised body* is not required to provide quarterly and monthly *management accounts* in respect of the same period, but *management accounts* (whether quarterly or monthly) should be submitted for all periods. A *UK recognised body* may choose whichever method is the more suitable for it, but where it intends to change from providing monthly to quarterly *management accounts* (or from quarterly to monthly *management accounts*), it should inform the *FCA* of that fact.

3.8.6 **R** A *UK recognised body* must give the *FCA*:

- (1) a statement of its anticipated income, expenditure and cashflow for each financial year; and
- (2) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

before the beginning of that financial year.

3.8.7 **R** Where the *accounting reference date* of a *UK recognised body* is changed, that body must immediately give notice of that event to the *FCA* and inform it of the new *accounting reference date*.



3.9 Fees and incentive schemes

- 3.9.1** **G** The purpose of **REC 3.9.2 R** is to enable the *FCA* to obtain information on changes to standard tariffs for matters such as membership and trading and of any scheme introduced by the *UK recognised body* for rebating or waiving fees or charges. A *UK recognised body* is not required to inform the *FCA* of fees or charges for which the *UK recognised body* does not charge according to a standard tariff.
- 3.9.2** **R** A *UK recognised body* must give the *FCA* a summary of:
- (1) any proposal to change the fees or charges levied on its *members* (or any group or class of them), at the same time as the proposal is communicated to those *members*; and
 - (2) any such change, no later than the date when it is published or notified to those *members*.
- 3.9.3** **R** If the proposed change is to introduce, amend or renew a scheme for rebating or waiving fees or charges, the summary referred to in **REC 3.9.2R(1)** must be given in the form specified in **REC 3 Annex 1R**.

3.10 Complaints

3.10.1

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Where a *UK recognised body's complaints investigator* has investigated a complaint arising in connection with the performance of, or failure to perform, any of its *regulatory functions*, and that *complaints investigator* has made a recommendation in respect of that complaint that the *UK recognised body* should:

- (1) make a compensatory payment to any *person*; or
- (2) remedy the matter which was the subject of that complaint;

the *UK recognised body* must immediately notify the *FCA* of that event, and give the *FCA* a copy of the *complaints investigator's* report and particulars of his recommendations as soon as that report or those recommendations are available to it.

3.11 Insolvency events

3.11.1

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On:

- (1) the presentation of a petition for the winding up of a *UK recognised body* (or the commencement of any similar or analogous proceedings under the law of a jurisdiction outside the *United Kingdom*); or
- (2) the appointment of a receiver, administrator, liquidator, trustee or sequestrator of assets of that body (or of any similar or analogous appointment under the laws of a jurisdiction outside the *United Kingdom*); or
- (3) the making of a voluntary arrangement by that body with its creditors (or of any similar or analogous arrangement under the law of a jurisdiction outside the *United Kingdom*);

that body must immediately give the *FCA* notice of that event.

3.12 Legal proceedings

- 3.12.1** **R** If any civil or criminal legal proceedings are instituted against a *UK recognised body*, it must, unless **REC 3.12.2 R** applies, immediately give notice of that event and give the following information to the *FCA*:
- (1) in the case of civil proceedings, the name of the claimant, particulars of the claim, the amount of damages and any other remedy sought by the claimant, and particulars of any allegation that any act or omission of that body was in bad faith; and
 - (2) in the case of criminal proceedings, particulars of the offence with which that body is charged.
- 3.12.2** **R** A *UK recognised body* is not required to give notice of civil legal proceedings or information about them to the *FCA* under **REC 3.12.1 R**, where:
- (1) the amount of damages claimed would not significantly affect that *UK recognised body's* financial resources, if the claim were successful;
 - (2) the claim would not have a significant adverse effect on the reputation and standing of that body, if that claim were successful; and
 - (3) the claim does not relate to that body's *regulatory functions*.



3.13 Delegation of relevant functions

Application

- 3.13.1-2 **R** This section applies to a *UK RIE* where it is outsourcing its operational functions other than in relation to systems allowing or enabling *algorithmic trading*.
- 3.13.1-1 **G** The notification requirements in *MiFID RTS 7*, specifying organisational requirements of *regulated markets* allowing *algorithmic trading* through their systems, apply to a *UK RIE* where those operational functions are to be outsourced.
- 3.13.1 **G**

 - (1) The purpose of **REC 3.13** is to enable the *FCA* to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as permitted under Regulation 6 of the *Recognition Requirements Regulations* or, in relation to a *RAP*, under regulation 13 of the *RAP regulations*. See **REC 2.2** and **REC 2A.2**).
 - (2) The *FCA* does not need to be notified of every instance of outsourcing by a *UK recognised body*, but only where an activity or activities which form a significant part of a *relevant function* or which make a significant contribution to the performance of a *relevant function* are outsourced.
- 3.13.2 **R** Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the *FCA* notice of that event, and:

 - (1) inform the *FCA* of the reasons for that delegation or proposed delegation;
 - (2) inform the *FCA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or (for a *RAP*) *RAP recognition requirements* following that delegation;
 - (3) where it makes such an offer by issuing a written invitation to tender to another body or *person*, give the *FCA* a copy of that invitation to tender; and
 - (4) where it makes such an agreement, give the *FCA* a copy of that agreement.

3.13.3

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A *UK recognised body* must immediately give the *FCA* notice, where it makes an offer or agrees to undertake any *relevant function* of another *UK recognised body*.



3.14 Products, services and normal hours of operation

Purpose

3.14.1 **G** The purpose of **REC 3.14** is to ensure that the *FCA* is informed of planned changes to the services a *UK recognised body* intends to provide and of the normal hours of operation of those services. Unplanned suspensions of those services, unplanned changes in hours of operation and events causing a *UK recognised body* to be unable to provide those services should be notified to the *FCA* under the rules in **REC 3.15**.

Products and services

3.14.2 **R** Where a *UK RIE* proposes to *admit to trading* (or to cease to *admit to trading*) by means of its *facilities*:

- (1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or
- (2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event, and the information specified for the purposes of this rule in **REC 3.14.6 R** to the *FCA*, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.2A **R** When a *UK RIE* removes a *financial instrument* from trading on a *trading venue*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument*, any derivative that is also removed from trading that relates or is referenced to that *financial instrument*, and the reasons for the action taken.

[**Note:** articles 32(2) and 52(2), paragraph 1 of *MiFID*. **REC 2.6.6UK(4)** requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

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

- (1) a *specified investment* (other than a *security* or an *option* in relation to a *security*); or
- (2) a type of *security* or a type of *option* in relation to a *security*;

it must give the *FCA* notice of that event and the information specified for the purposes of this *rule* in ■ REC 3.14.6 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.4 **R** [deleted]

3.14.5 **G** *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

3.14.6 **R** The following information is specified for the purposes of ■ REC 3.14.2 R and ■ REC 3.14.3 R:

- (1) a description of the *specified investment* to which the proposal relates;
- (2) where that *specified investment* is a *derivative*, the proposed terms of that *derivative*; and
- (3) in the case of a *UK RIE* which is admitting that *specified investment* to trading, the name of any *RCH* which will provide clearing services in respect of that *specified investment* under an agreement with that *UK RIE*.

3.14.7 **R** Where:

- (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 RIE* proposes to amend the standard terms relating to any *derivative* in respect of which it provides *clearing facilitation services*;

it must give the *FCA* notice of that event, and written particulars of those proposed amendments, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.8 **R** Where a *UK recognised body* proposes to make (or to cease to make) arrangements for the safeguarding and administration of assets belonging to any other *person* (other than an *undertaking* in the same *group*), that *recognised body* must give the *FCA* notice of that event, and the information specified for the purposes of this *rule* in ■ REC 3.14.9 R, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14.9 **R** The following information is specified for the purposes of ■ REC 3.14.8 R:

- (1) a description of the assets (or types of assets) to which the proposal relates; and

(2) the date or dates on which arrangements referred to in ■ REC 3.14.8 R will be made (or cease to be made).

3.14.10 **G** The *FCA* does not need to be notified of proposals to offer (or to withdraw offers of) safeguarding and administration services for individual assets of the same type. *Specified investments* (other than *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will also normally be regarded as being of the same type.

Hours of operation
.....

3.14.11 **R** Where a *UK recognised body* proposes to change its normal hours of operation or (for *RAPs*) the timing, frequency or duration of its bidding windows, it must give the *FCA* notice of that proposal, and particulars of, and the reasons for, the actions proposed, at the same time as the proposal is first formally communicated to its *members* or shareholders, or any group or class of them.

3.14A Operation of a trading venue

Purpose

3.14A.1 **G** The purpose of **■ REC 3.14A** is to ensure that the *FCA* is informed of planned changes to a *UK RIE's* markets and their regulatory status as either a *regulated market*, *MTF* or *OTF*.

Operation of a regulated market

3.14A.2 **R** Where a *UK RIE* proposes to operate a new *regulated market* or close an existing *regulated market* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in **■ REC 3.14A.3 R**, at the same time as that proposal is first formally communicated to its members or shareholders (or any group or class of them).

3.14A.3 **R** The following information is specified for the purposes of **■ REC 3.14A.2 R**:

- (1) where the *UK RIE* proposes to operate a new *regulated market*:
 - (a) a description of the *regulated market*; and
 - (b) a description of the *specified investments* which will be admitted to trading on that *regulated market*.
- (2) where the *UK RIE* proposes to close a *regulated market*, the name of that *regulated market*.

Operation of an MTF or OTF

3.14A.4 **R** Where a *UK RIE* proposes to operate a new *MTF* or *OTF* or close an existing *MTF* or *OTF* it must give the *FCA* notice of that event and the information specified for the purposes of this rule in **■ REC 3.14A.5 R**, at the same time as that proposal is first formally communicated to its *members* or shareholders (or any group or class of them).

3.14A.5 **R** The following information is specified for the purposes of **REC 3.14A.4 R**:

- (1) [**Note:** **REC 2.16A.1(2)** requires the *FCA* to be provided with a detailed description of the operation of an *MTF* or *OTF*. The description must be provided in the form set out in *MiFID ITS 19*.]
- (2) Where the *UK RIE* proposes to close a *MTF* or *OTF*, the name of that *MTF* or *OTF*.

Operation of a recognised auction platform

3.14A.6 **G** If a *UK RIE* proposes to operate a *RAP*, it will need to make a separate application to be recognised as a *RAP* (see **REC 5** (Applications))

3.14A.6A **G** In accordance with regulation 23(3) of the *UK auctioning regulations*, a *RAP* must submit a detailed exit strategy to the *FCA* within three *months* from the date of its appointment.

3.14A.6B **G** For the form and method of notifications **REC 3.2.2R** applies.

Pre- and post- trade transparency requirements for equity and non-equity instruments: form of waiver and deferral

3.14A.7A **D** A *UK RIE* operating a *trading venue* that proposes to take advantage of a waiver in accordance with articles 4 or 9 of *MiFIR* (in relation to pre-trade transparency for equity or non-equity instruments) must make an application for it to the *FCA* using the form in **MAR 5 Annex 1D**.

[**Note:** articles 4 and 9 of *MiFIR*, and *MiFID RTS 1* and *MiFID RTS 2*]

3.14A.7B **G** [deleted]

3.14A.7C **D** A *UK RIE* operating a *trading venue* that proposes to take advantage of a deferral in accordance with articles 7 or 11 of *MiFIR* in relation to post-trade transparency for equity or non-equity instruments must apply for it in writing to the *FCA*.

[**Note:** articles 7 and 11 of *MiFIR*, and *MiFID RTS 1* and *MiFID RTS 2*]

3.14A.7D **G** A *UK RIE* should have regard to the urgency and significance of a matter and, if appropriate, should also notify its usual supervisory contact at the *FCA* by telephone or by other prompt means of communication, before submitting written notification. Oral notifications should be given directly to its usual supervisory contact at the *FCA*. An oral notification left with another person or left on a voicemail or other automatic messaging service is unlikely to have been given appropriately.

3.15 Suspension of services and inability to operate facilities

Purpose

3.15.1

G

- (1) The purpose of ■ REC 3.15.2 R to ■ REC 3.15.5 G is to enable the *FCA* to obtain information where a *UK recognised body* decides to suspend the provision of its services in relation to particular *investments* or (for a *RAP*) decides to cancel an auction. Planned changes to the provision of services should be notified to the *FCA* under ■ REC 3.14.
- (2) ■ REC 3.15.6 R to ■ REC 3.15.7 R provide for notification to the *FCA* where a *UK recognised body* is unable to operate or provide its *facilities* for reasons outside its control or where it decides to extend its hours of operation in an emergency.
- (3) ■ REC 3.15.8R provides for notification to the *FCA* where a *RAP* has to cancel an auction in specified circumstances.

[Note: ■ REC 2.5.1(8) also requires a *UK RIE* to report its parameters for halting trading to the *FCA*]

Suspension of services

3.15.2

R

Where, for any reason, an *RIE* halts trading in a *financial instrument* on a *trading venue* which is material in terms of liquidity in that *financial instrument*, it must immediately give the *FCA* notice of that event, particulars of that *financial instrument*, and the reasons for the action taken.

[Note: article 48(5) of *MiFID* and *MiFID RTS 12*]

3.15.2A

R

When a *UK RIE* suspends trading on a *trading venue* in any *financial instrument*, it must immediately give the *FCA* notice of that event and relevant information including particulars of that *financial instrument* and the reasons for the action taken.

[Note: articles 32(2) and 52(2), paragraph 1 of *MiFID*. ■ REC 2.6.6UK(4) requires that the *FCA* be notified when a trading suspension for a *financial instrument* is lifted or a *financial instrument* is re-admitted to trading. *MiFID ITS 2* specifies a format for communication by the operator to the *FCA*.]

3.15.3

R

Where a *UK recognised body* suspends providing *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 *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.

3.15.4 **R** Where a *UK recognised body* suspends any arrangements it makes for the safeguarding and administration of any type of asset belonging to any other *person* (other than an *undertaking* in the same *group*), that *UK recognised body* must immediately give the *FCA* notice of that event, particulars of that type of asset and the reasons for the action taken.

3.15.5 **G** *Specified investments* (other than *securities* or *options* in relation to *securities*) falling within the same article in Part III of the *Regulated Activities Order* will normally be regarded as being assets of the same type. *Securities* falling within the same article in Part III of the *Regulated Activities Order* which may be given the same generic description (for example, *shares* admitted to the *UK official list*) will normally be regarded as being of the same type. *Options* in relation to the same type of *security* will normally be regarded as being *options* of the same type.

Inability to operate facilities

3.15.6 **R** Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to operate any of its *facilities* within its normal hours of operation, it must immediately give the *FCA* notice of that inability and inform the *FCA*:

- (1) which *facility* it is unable to operate;
- (2) what event or circumstance has caused it to become unable to operate that *facility* within those hours; and
- (3) what action, if any, it is taking or proposes to take to enable it to recommence operating that *facility*.

Extension of hours of operation

3.15.7 **R** Where, because of the occurrence of any event or circumstances, a *UK recognised body* extends its hours of operation, it must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what event or circumstance has caused it to do so;
- (2) the new hours of operation; and
- (3) the date on which it expects to revert to its normal hours of operation.

Recognised auction platforms - cancellation of auctions

3.15.8 **R** Where a *RAP* has to cancel an auction in the circumstances set out in regulation 11 of the *UK auctioning regulations*, it must immediately give the *FCA* notice of that cancellation.

3.15.9 **G** [deleted]

3.16 Information technology systems

3.16.1 **G** The purpose of **REC 3.16** is to ensure that the *FCA* receives a copy of the *UK recognised body's* plans and arrangements for ensuring business continuity if there are major problems with its computer systems. The *FCA* does not need to be notified of minor revisions to, or updating of, the *documents* containing a *UK recognised body's* business continuity plan (for example, changes to contact names or telephone numbers).

[**Note:** *MiFID RTS 7* requires that the operator of a *trading venue* assess whether the capacity of its trading systems remains adequate when the number of messages has exceeded the historical peak. After each assessment, the operator of the *trading venue* must inform its *competent authority* about any measures planned to expand capacity or add new capabilities, and the timeframe for such measures. *MiFID RTS 7* also requires the operator to report to its *competent authority* any severe trading interruption not due to market volatility and any other material connectivity disruptions.]

3.16.2 **R** Where a *UK recognised body* changes any of its plans for action in the event of a failure of any of its information technology systems resulting in disruption to the operation of its *facilities*, it must immediately give the *FCA* notice of that event, and a copy of the new plan.

3.16.3 **R** Where any reserve information technology system of a *UK recognised body* fails in such a way that, if the main information technology system of that body were also to fail, it would be unable to operate any of its *facilities* during its normal hours of operation, that body must immediately give the *FCA* notice of that event, and inform the *FCA*:

- (1) what action that *UK recognised body* is taking to restore the operation of the reserve information technology system; and
- (2) when it is expected that the operation of that system will be restored.



3.17 Inability to discharge regulatory functions

3.17.1

R

Where, because of the occurrence of any event or circumstances, a *UK recognised body* is unable to discharge any *regulatory function*, it must immediately give the *FCA* notice of its inability to discharge that function, and inform the *FCA*:

- (1) what event or circumstance has caused it to become unable to do so;
- (2) which of its *regulatory functions* it is unable to discharge; and
- (3) what action, if any, it is taking or proposes to take to deal with the situation and, in particular, to enable it to recommence discharging that *regulatory function*.

3.18 Membership

3.18.1

G

- (1) The purpose of ■ REC 3.18 is to enable the FCA to monitor changes in the types of *member* admitted by *UK recognised bodies* and to ensure that the FCA has notice of foreign jurisdictions in which the *members* of *UK recognised bodies* are based. *UK recognised bodies* may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition requirements* or (for *RAPs*) *RAP recognition requirements* continue to be met.
- (2) ■ REC 3.18.2 R focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for a *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. ■ REC 3.18.3 R focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for a *RAP*) *RAP recognition requirements* can be met. In the case of investment firms and *credit institutions*, only *UK* entities will be eligible to bid on a *RAP*.
- (3) The information required under ■ REC 3.18 is relevant to the 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 FCA's broader responsibilities concerning 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* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both ■ REC 3.18.2 R and ■ REC 3.18.3 R, although a single report from the *UK recognised body* covering both notifications would be acceptable to the FCA.

[Note: Paragraph 3A of the Schedule to the Recognition Requirements Regulations (■ REC 2.5.1UK) requires a *UK RIE* to inform the FCA about the content of a written agreement entered into with a member investment firm pursuing a *market making strategy* on a *trading venue* operated by the *UK RIE*]

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 *FCA* notice of that event, and:

- (1) a description of the type of *person* whom it is admitting to membership; and
- (2) (in relation to a *UK RIE*) 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) of the Schedule to the *Recognition Requirements Regulations* which applies to it.
- (3) (in relation to a *RAP*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *RAP recognition requirement* in regulation 20 of the *RAP regulations* (Access to auctions) which applies to it.

3.18.3

R

Where a *UK recognised body* admits for the first time a *member* whose head or registered office is in a jurisdiction from which that *UK recognised body* has not previously admitted *members*, it must immediately give the *FCA* notice of that event, and:

- (1) the name of that jurisdiction;
- (2) the name of any regulatory authority in that jurisdiction which regulates that *member* in respect of activities relating to *specified investments* or (for a *RAP*) relating to *emissions auction products*; and
- (3) particulars of its reasons for considering that, in admitting a *member* from that jurisdiction to membership, it is able to continue to satisfy the *recognition requirements* or (for a *RAP*) the *RAP recognition requirements* which apply to it.

3.18.4

G

A type of *member* means the description of any group of *members* to whom the same generic description could be applied. For example, the description of any group of *members* separately identified or defined in the rules might constitute a type of *member* for the purposes of this section.

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 *FCA* or a *UK recognised body*) to investigate:

- (1) any business transacted by means of its *facilities* or
- (2) any aspect of the *clearing facilitation services* which it provides;

it must immediately give the *FCA* notice of that event.

3.19.2 **G** A *UK recognised body* need not give the *FCA* notice of:

- (1) routine inspections or visits undertaken in the course of regular monitoring, complaints handling or as part of a series of 'theme visits'; or
- (2) routine requests for information; or
- (3) investigations into the conduct of *members* of the *UK recognised body* or of other users of its *facilities* where the use of its *facilities* is a small or incidental part of the subject matter of the investigation.



3.20 Disciplinary action relating to members

3.20.1 **R** Where a *UK recognised body* has taken any disciplinary action against any *member* or any *employee* of a *member*, in respect of a breach of a rule relating to the carrying on by the *UK recognised body* of any of its *regulatory functions*, that body must immediately notify the *FCA* of that event, and give:

- (1) the name of the *person* concerned;
- (2) details of the disciplinary action taken by the *UK recognised body*; and
- (3) the *UK recognised body's* reasons for taking that disciplinary action.

3.20.2 **R** Where an appeal is lodged against any disciplinary action referred to in **REC 3.20.1 R**, the *UK recognised body* must immediately give the *FCA* notice of that event, and:

- (1) the name of the appellant and the grounds on which the appeal is based, immediately; and
- (2) the outcome of the appeal, when known.

3.21 Criminal offences and civil prohibitions

- 3.21.1 **R** Where a *UK recognised body* has evidence tending to suggest that any *person* has:
- (1) been carrying on any *regulated activity* in the *United Kingdom* in contravention of the *general prohibition*; or
 - (2) been engaged in *market abuse*; or
 - (3) committed a criminal offence under the *Act* or subordinate legislation made under the *Act*; or
 - (4) committed a criminal offence under Part V of the Criminal Justice Act 1993 (Insider dealing); or
 - (5) committed a criminal offence under the *Money Laundering Regulations*;
- it must immediately give the *FCA* notice of that event, and full details of that evidence in writing.
- [**Note:** article 31(2), first sentence (part) and article 54(2), first sentence (part) of *MiFID*. The rest of article 31(2), first sentence (in so far as it relates to *market operators* operating an *MTF* or *OTF*) and article 54(2), first sentence of *MiFID* is implemented by ■ REC 3.25.1 R]



3.22 Restriction of, or instruction to close out, open positions

- 3.22.1 **R** Where a *UK RIE* decides to:
- (1) restrict the open position on any of the contracts of a *member*; or
 - (2) issue instructions to a *member* to close out its positions on any contracts;

that *UK RIE* must immediately give the *FCA* notice of that event, and the *member's* name, the nature and size of any position to be restricted or closed out and the reasons for the *UK RIE's* decision.

- 3.22.2 **G** Where a *RAP* proposes to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse*, *financial crime* or anti-competitive behaviour, the *RAP* must give the *FCA* notice of that event and details of the remedial measures proposed, in accordance with regulation 40 of the *UK auctioning regulations*.

3.23 Default

3.23.1

R

Where a *UK RIE* decides to put a *member* into default, it must immediately give notice of that event, and give the following information to the *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:

- (1) the name of the *member* and (where relevant) the class of membership;
- (2) the reasons for that decision; and
- (3) the names of any other exchange, *clearing house* or *auction platform* on which, to the best of that *UK RIE's* knowledge, that *member* clears business or transacts for, or in respect of, its *clients*.

3.24 Transfers of ownership

3.24.1 **R** When a *UK RIE* becomes aware of a transfer of ownership of the *UK RIE* which gives rise to a change in the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (in the case of a *UK RIE* that is also a *RAP*) over the management of the *RAP*, whether directly or indirectly, it must immediately notify the *FCA* of that event, and:

- (1) give the name of the *person(s)* concerned; and
- (2) give details of the transfer.

[Note: article 46(2)(b) of *MiFID*]

3.24.2 **G** The *FCA* may regard a person who falls within any of the cases in section 301(B)(2) of the *Act* as being in a position to exercise significant influence.

3.25 Significant breaches of rules and disorderly trading conditions

3.25.1 **R** A UK RIE and a RAP must immediately notify the FCA of:

- (1) significant breaches of its rules; or
- (2) disorderly trading conditions on any of its markets or auctions; or
- (2) conduct that may indicate behaviour prohibited under the *Market Abuse Regulation*; or
- (4) system disruptions in relation to a *financial instrument*.

[**Note:** article 31(2), first sentence (part) and article 54(2), first sentence (part) of *MiFID*. The rest of article 31(2), first sentence (in so far as it relates to *market operators* operating an *MTF* or *OTF*) and article 54(2), first sentence of *MiFID* is implemented by ■ REC 3.21.1 R (2)]



3.26 Proposals to make regulatory provision

Statutory power.....

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

3.26.2 **G** Under section 300B(2) of the *Act*, the *FCA* may, by rules under section 293 (Notification requirements):

- (1) specify descriptions of *regulatory provision* in relation to which, or circumstances in which, the duty in section 300B(1) does not apply, or
- (2) provide that the duty applies only to specified descriptions of *regulatory provision* or in specified circumstances.

3.26.3 **G** Under section 300B(3) of the *Act*, the *FCA* may also by rules under section 293:

- (1) make provision as to the form and contents of the notice required, and
- (2) require the *UK recognised body* to provide such information relating to the proposal as may be specified in the rules or as the *FCA* may reasonably require.

Disapplication of duty to notify proposal to make regulatory provision.....

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

- (1) any *regulatory provision* which is required under any enactment or rule of law in the *United Kingdom*; or
- (2) (a) the specification of the standard terms of any *derivative* which a *UK RIE* proposes to *admission to trading*, or the amendment of the standard terms of any *derivative* already *admitted to trading*; or
- (b) the specification or any amendment of standard terms relating to the provision of *clearing facilitation services* for any *derivative*; or

- (c) the specification or any amendment of operating procedures which are reasonably consequential on any *regulatory provision* falling within (a) or (b); or
- (3) any *regulatory provision* which is expressed to have effect for no longer than three months which is made by a *UK recognised body* in response to an emergency event (including, without limitation, a war, terrorist attack or labour strike); or
- (4) any *regulatory provision* which does not impose a requirement (including any obligation or burden) on *persons* affected (directly or indirectly) by it; or
- (5) any other *regulatory provision* which has not been excluded under (1), (2), (3) or (4) other than any such provision which (taken together with any other *regulatory provision* not otherwise the subject of a notice under section 300B(1) of the Act):
 - (a) materially increases disclosure, reporting or corporate governance requirements imposed on any *person* (whether directly or indirectly); or
 - (b) imposes a material limitation affecting any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) on the type or nature of *financial instruments* which may be *listed* or the subject of *admission to trading* on the *facilities* operated by the *UK RIE* proposing to make the *regulatory provision*; or
 - (c) materially limits access to, or use by, any *person* (whether directly or indirectly including, without limitation, through an amendment to fees or charges) of the *facilities* operated by the *UK recognised body* proposing to make the *regulatory provision*; or
 - (d) materially limits or restricts the ability of any *person* to supply services (including, without limitation, trading, clearing, settlement or information services) to *persons* who are users of the *facilities* operated by the *UK RIE* proposing to make the *regulatory provision* (whether directly or indirectly, including by the imposition of an obligation or burden on the supplier or on a user of the *UK RIE*); or
 - (e) materially adds to the circumstances in which any *person* (whether directly or indirectly) may be liable to penalties or other sanctions or have liability in damages.

Notice to the FCA

3.26.5

R

A notice under section 300B(1) of the Act of a proposal to make a *regulatory provision* must be in writing and state expressly that it is a notice for the purpose of that section. To be effective, a notice must:

- (1) contain full particulars of the proposal to make a *regulatory provision* which is the subject of that notice; and
- (2) either be accompanied by sufficient supporting information to enable the *FCA* to assess the purpose and effect of the proposed *regulatory provision* or refer to such information in circumstances where such information has already been provided to the *FCA*.

- 3.26.6** **G** In determining whether a *UK RIE* has provided sufficient supporting information, the *FCA* may have regard to the extent to which the information includes:
- (1) clearly expressed reasons for the proposed *regulatory provision*; and
 - (2) an appropriately detailed assessment of the likely costs and benefits of the proposed *regulatory provision*.
- 3.26.7** **R** A *UK RIE* must provide such additional information in connection with a notice under section 300B(1) of the *Act* as the *FCA* may reasonably require.
- 3.26.8** **G** Where a *UK RIE* wishes to give notice to the *FCA* for the purposes of section 300B(1) of the *Act*, it should in the first instance inform its usual supervisory contact at the *FCA*.
- 3.26.9** **G** The *FCA* expects that an advanced draft of any consultation document a *UK RIE* intends to publish in connection with a proposed *regulatory provision* could provide some or all of the information described in **■ REC 3.26.5 R**.

3.27 RAP auction clearing price and adjustment of the auction calendar

3.27.1

G

- (1) In accordance with regulation 7(1)(a) of the *UK auctioning regulations*, the auction clearing price is the price of the bid at which the sum of the volumes bid matches or exceeds the volume of allowances auctioned.
- (2) A *RAP* must decide on the methodology to determine the auction clearing price and the secondary market price in circumstances where the auction clearing price (determined in accordance with (1)) would be significantly below the price on the secondary market prevailing during and immediately before the bidding window, taking into account the short-term volatility of the price of allowances over a defined period preceding the auction. In determining that methodology, the *RAP* must treat the price of the bid which matches or exceeds the secondary market price as the auction clearing price (regulations 7(1)(b), 7(2) and 7(4) of the *UK auctioning regulations*).
- (3) In accordance with regulation 7(4) of the *UK auctioning regulations*, a *RAP* is required to notify the *FCA* the methodology in (2) before an auction is started.
- (4) In accordance with regulation 7(6) of the *UK auctioning regulations*, a *RAP* is required to notify the *FCA* without delay if, in between two bidding windows, it modifies the methodology in (2).
- (5) The notifications referred to in ■ REC 3.27.1G(3) and (4) should be undertaken in accordance with ■ REC 3.2.2R.

3.27.2

G

Form for notifying incentive scheme proposals (REC 3.9.3R(1))

Annex 1 – Incentive Schemes (REC 3.9.3R)

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