

SCHEDULE

PART III

Recognition requirements for clearing houses

Financial resources

16.—(1) The clearing house must have financial resources sufficient for the proper performance of its functions as a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house's connection with any person, and any activity carried on by the clearing house, whether or not it is an exempt activity.

Suitability

17.—(1) The clearing house must be a fit and proper person to perform the functions of a recognised clearing house.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 6(1)) take into account all the circumstances, including the clearing house's connection with any person.

Systems and controls

18.—(1) The clearing house must ensure that the systems and controls used in the performance of its 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 clearing house's functions;
- (c) the operation of the matters mentioned in paragraph 19(2)(b) below; and
- (d) (where relevant) the safeguarding and administration of assets belonging to users of the clearing house's facilities.

Safeguards for investors

19.—(1) The clearing house must ensure that its facilities are such as to afford proper protection to investors.

(2) Without prejudice to the generality of sub-paragraph (1), the clearing house must ensure that—

- (a) access to the clearing house's facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;
- (b) 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);

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- (c) satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities;
- (d) appropriate measures are adopted to reduce the extent to which the clearing house's facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their incidence; and
- (e) where the clearing house'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.

Promotion and maintenance of standards

20.—(1) The clearing house 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 clearing house.

(2) The clearing house must be able and willing to cooperate, by the sharing of information or otherwise, with the Authority, with any other authority, body or person having responsibility in the United Kingdom for the supervision or regulation of any regulated activity or other financial service, or with an overseas regulator within the meaning of section 195 of the Act.

Rules

21.—(1) The clearing house 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 clearing house's facilities in appropriate cases.

(3) The clearing house must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with paragraph 22(3) below (or on any changes which it proposes to make to those arrangements).

Discipline

22.—(1) The clearing house 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 clearing house about the conduct of persons in the course of using the clearing house's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the clearing house.

(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 clearing house 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 clearing house in relation to that breach;
- (b) for the benefit of users of the clearing house's facilities;
- (c) for charitable purposes.

Complaints

23.—(1) The clearing house 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 clearing house, 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) above.

(3) The arrangements must include arrangements for a complaint to be fairly and impartially investigated by a person independent of the clearing house, and for him to report on the result of his investigation to the clearing house and to the complainant.

(4) The arrangements must confer on the person mentioned in sub-paragraph (3) the power to recommend, if he thinks it appropriate, that the clearing house—

- (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 clearing house from making arrangements for the initial investigation of a complaint to be conducted by the clearing house.