

# CP11/14\*\*

Financial Services Authority

## Auctioning of greenhouse gas emission allowances

July 2011



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# Contents

Acronyms used in this paper	3
1. Overview	5
2. Background	7
3. Proposed amendments to REC	10
4. Proposed fees for Recognised Auction Platforms	14
<b>Annex 1:</b> Cost benefit analysis	
<b>Annex 2:</b> Compatibility statement	
<b>Annex 3:</b> List of questions	
<b>Appendix 1:</b> Draft Handbook text	
<b>Appendix 2:</b> Draft Recognised Auction Platform Regulations 2011	

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The Financial Services Authority invites comments on this Consultation Paper.  
Comments should reach us by 18 September 2011.

Comments may be sent by electronic submission using the form on the FSA's website at:  
([www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp11\\_14\\_response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2011/cp11_14_response.shtml)).

**Alternatively, please send comments in writing to:**

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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 maybe 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.

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

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# Acronyms used in this paper

<b>CAR</b>	Commission Auction Regulation
<b>CP</b>	Consultation Paper
<b>ETS</b>	Emissions Trading Scheme
<b>EU</b>	European Union
<b>FEES</b>	Fees Manual
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>HMT</b>	The Treasury
<b>MiFID</b>	Markets in Financial Instruments Directive
<b>RAP</b>	Recognised Auction Platform
<b>RB</b>	Recognised Body
<b>RCH</b>	Recognised Clearing House
<b>REC</b>	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
<b>RIE</b>	Recognised Investment Exchange
<b>VoP</b>	Variation of Permission



# 1

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## Overview

- 1.1 In this Consultation Paper (CP), we are inviting comments to amendments to the Handbook. We propose amendments to the *Recognised Investment Exchanges and Recognised Clearing Houses sourcebook* (REC); the *Fees Manual* (FEES); and, related definitions in the *Glossary of definitions*.
- 1.2 We are proposing these changes in order to complement Her Majesty's Treasury's (HMT) implementation of a new regulatory regime applicable to platforms that will conduct auctions in emission allowances. The new regime is being put in place ahead of the start of EU procurement processes to select both a common EU auction platform and one or more national auction platforms. Emission auction platforms are set to play a core role in the emissions trading market following a new requirement for Member States to auction the major part of their emission allowance allocations, rather than distributing them free of charge as at present.
- 1.3 The Handbook amendments we are proposing originate from the introduction of the EU carbon emission allowance auctioning regime that is being implemented by Regulation 1031/2010 (the Commission Auction Regulation or CAR). The latter is given effect by the Recognised Auctions Platforms Regulations 2011 (the Regulations), on which HMT is currently conducting an informal consultation. While that exercise is outside the scope of this CP, HMT's informal consultation document and the draft Regulations can be accessed at HMT's website.<sup>1</sup>
- 1.4 In Chapter 2 we describe the background of the proposed amendments; the proposed amendments to REC are contained in Chapter 3, and the proposed amendments to the FEES manual are set out in Chapter 4. A cost benefit analysis and a statement of the proposals' compatibility with our regulatory objectives and the Principles of Good Regulation are provided as annexes. Appendix 1 to this CP sets out the text of the proposed amendments.

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1 [www.hm-treasury.gov.uk/consult\\_regulating\\_auctions\\_eu\\_emissions\\_allowances.htm](http://www.hm-treasury.gov.uk/consult_regulating_auctions_eu_emissions_allowances.htm)

- 1.5 The deadline for comments on these amendments is 25 September 2011.
- 1.6 This document will be of interest to Recognised Investment Exchanges that wish to apply for recognition to conduct auctions of EU carbon emission allowances. Additional legislative changes will be required to implement other aspects of CAR and we expect to consult on consequential FSA Handbook changes in the first quarter of 2012. The second consultation will also contain any proposals for modifications to our guidance on market abuse, to take account of the requirements of CAR.
- 1.7 In light of consultation responses, and subject to FSA Board approval, the proposals in this CP will be finalised through made rules in December. We plan to publish a Policy Statement, including feedback on the responses to the consultation in the same month that the final rules are approved by the FSA Board or shortly after.



# 2

## Background

### **The greenhouse gas emissions auction regime**

- 2.1 We are proposing these changes in order to implement a new regulatory regime applicable to platforms that will conduct auctions in emission allowances. The new regime is being put in place before the start of an EU procurement processes to select both a common EU auction platform and one or more national auction platforms. Emission auction platforms are set to play a core role in the emissions trading market following a new requirement for Member States to auction the major part of their emission allowance allocations, rather than distributing them free of charge, as at present.
- 2.2 Phase II of the EU Emissions Trading Scheme (ETS), which runs from 1 January 2008 to 31 December 2012, introduced greenhouse gas emission allowance auctioning, subject to a cap restricting Member States from auctioning more than 10% of their total allowances. The Debt Management Office currently conducts auctions of EU Allowances in the UK on behalf of the Department of Energy and Climate Change.
- 2.3 The revised Directive implementing Phase III of the ETS will have effect from 1 January 2013 to 31 December 2020 and will change the scale and operation of emission allowance auctions.
- 2.4 The scale of auctions will increase substantially, with the auctioning rate for electricity generators in 2013 rising to at least 30% of new emission allowances and increasing progressively to 100% no later than 2020. In other sectors free allocations of new allowances will be phased out progressively from 2013, starting with 20% of allowances auctioned in 2013 and increasing to 70% auctioning in 2020.
- 2.5 The operation of auctions, including timing, administration and infrastructure was established by the Commission in November 2010. The Commission Auction Regulation (CAR) specifies the rules and conditions for coordinated auctions by Member States, including: the design of the auctions and their timing; access by market participants; the roles and appointment of the auctioneer and auction monitor; the appointment of a common EU Auction Platform and Auction Platforms by those Member States, such as the UK, that have elected to opt-out of the common Platform; and, further detail on the administration of the auction infrastructure to ensure an efficient, orderly and fair primary market in greenhouse gas emission allowances.

- 2.6 In particular, the CAR requires that an auction platform should be a regulated market that complies with Title III of the Markets in Financial Instruments Directive (MiFID). In this context, it also requires Member States to ensure that their regulatory regimes for regulated markets are applicable to an auction process and to the auctioning of emission allowances by way of two-day spot and five-day futures contracts.
- 2.7 Paragraph 4 of Article 35 of the CAR envisages that we, as the competent national authority, will be responsible for authorising and supervising auction platforms established in the UK. We intend to implement the CAR in a way which is consistent with our proportionate and risk-based approach to regulation. Accordingly, we need to make rules and guidance in REC and FEES by December 2011, establishing the framework for the recognition of auction platforms and their supervision.

## **The Recognised Auction Platforms Regulations 2011**

- 2.8 Action to give effect to the CAR in the UK will take place in two phases:
- a) The first phase, which is the subject of this CP, concerns those aspects of the CAR which relate to recognition and supervision of the new auction platform. Its completion will allow firms to be recognised by us prior to the start of a procurement process to supply the UK auction platform.
  - b) The second phase will address access to the auctions, as set out in Chapter IV of the CAR, any guidance on market abuse in relation to emission allowance auction platforms which may be necessary and any consequential amendments.
- 2.9 Phase 1 is scheduled to be accomplished by the end of 2011 with the passage of the draft Regulations, on which HMT is currently undertaking an informal consultation. The full HMT consultation document can be accessed at HMT's website<sup>2</sup> and the draft Regulations are attached at Appendix 2 but are outside the scope of this CP. Respondents should address any comment on the draft Regulations to HMT and not to the FSA.
- 2.10 The key change, set out in Part 2 of the draft Regulations, is the introduction of the Recognised Auction Platform (RAP) regime to provide a framework for the authorisation and supervision of auction platforms auctioning emissions allowances.
- 2.11 The draft Regulations specify the RAP as a new kind of Recognised Body (RB) alongside the existing definitions of Recognised Investment Exchange (RIE) and Recognised Clearing House (RCH). According to Article 35(1) of the CAR, auctions can only be conducted on a RAP which is authorised as a Regulated Market under MiFID, and the draft Regulations therefore specify that only an RIE is eligible to apply for recognition to become a RAP.

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<sup>2</sup> [www.hm-treasury.gov.uk/consult\\_regulating\\_auctions\\_eu\\_emissions\\_allowances.htm](http://www.hm-treasury.gov.uk/consult_regulating_auctions_eu_emissions_allowances.htm)

- 2.12** The second phase relating to access to auctions is outside the scope of this CP and we intend to consult on any further changes required to the FSA Handbook in the first quarter of 2012.

# 3

## Proposed changes to REC

### Objectives and approaches

- 3.1 In this chapter we set out our proposed amendments to REC. Our main objective has been to draft rules and guidance which will facilitate the operation of the new RAP regime, whilst ensuring that the operation of the regime is consistent with our proportionate and risk-based approach to regulation.
- 3.2 We have drafted a new Chapter 2A of REC to describe the purpose of the new RAP regime; the effect of recognition as a RAP; the method of satisfying the RAP Recognition Requirements; and further guidance on these requirements. As the RAP Recognition Requirements follow the recognition requirements for RIEs and RCHs closely, we have where possible applied the relevant guidance on those recognition requirements to RAPs, with the appropriate modifications where necessary to reflect the activities of a RAP.
- 3.3 Elsewhere, in REC 3-5, we have sought to rely, wherever possible, on an expanded definition of ‘Recognised Body’ which includes RAPs, and we have made other amendments only where necessary in the interests of clarity.
- 3.4 Where appropriate, we have inserted explicit references to clarify that the rules and guidance applicable to RAPs are derived from the draft Regulations and not directly from FSMA; or from the CAR in place of the MiFID implementing requirements.
- 3.5 As the Regulations specify that an applicant for recognition as a RAP must already be an RIE (and will by definition not be a separate legal entity), we have drafted amendments in a way which preserves the separation between RIE and RAP functions. For example, any secondary market activities defined in Article 3 of the CAR will be deemed to be provided by a RAP operator in its capacity as an RIE and hence subject to REC 2 rather than the new Chapter 2A. To avoid doubt, an RIE will not be required to be recognised as a RAP in order to carry out secondary market activities in relation to carbon emission allowances. We expect that RBs will be comfortable with this clear separation between primary and secondary market functions.

**Q1:** Do you have any comments on our approaches to the proposed changes to REC?

### **Satisfying the recognition requirements**

- 3.6** We have drafted guidance in REC 2A on how an RIE seeking recognition as a RAP might approach the task of demonstrating compliance with the RAP Recognition Requirements set out in Part 2 of the draft Regulations. An RIE proposing to operate a RAP will need to make a full application, including information set out in REC 5.
- 3.7** We have adopted the approach set out in clause 13(1)(a) of the draft Regulations that, in assessing compliance with the RAP Recognition Requirements, we are entitled to take full account of an applicant's existing compliance with the RIE recognition requirements.<sup>3</sup> In other words, when assessing a RAP application, the FSA will seek to avoid any duplication of the RIE recognition process and will not reassess the applicant's compliance with its existing obligations as a RIE.
- 3.8** We have therefore not chosen to copy out the RAP recognition requirements from the draft Regulations. In assessing compliance with the RAP recognition requirements we will have regard to guidance provided on any equivalent RIE recognition requirement as set out in REC 2, subject to the modifications. A mapping table of modifications has been provided and we are confident that Recognised Bodies will find this approach both simple and clear.
- 3.9** We have drafted a series of general modifications to the guidance provided in REC 2 when it is read with reference to the RAP recognition requirements. For example, we have made clear that references to *members* used in REC 2 guidance should be read as including auction bidders for RAPs. We have also amended the definition of *market abuse* (used in REC 2.10) so that it includes the behaviours covered by Articles 38-41 of the CAR.<sup>4</sup>
- 3.10** We have also drafted several specific modifications to the guidance in REC 2 when being read in relation to RAPs, in order to reflect the requirements of the CAR. These are set out briefly below:

<sup>3</sup> In considering whether a recognised auction platform or applicant satisfies recognition requirements applying to it under these Regulations (the 'auction requirements'), the Authority may treat compliance by the auction platform or applicant with the recognition requirements applying to it as a recognised investment exchange as conclusive evidence that the auction platform or applicant satisfies any equivalent recognition requirements applying to it under these Regulations, taking into account any arrangements that would be necessary to meet the auction requirements.

<sup>4</sup> As implemented in the RAP Regulations through modification of Section 118 FSMA.

- a) We have drafted guidance that, in demonstrating compliance with the 'suitability' recognition requirement, a RAP should nominate at least one key individual to be responsible for the auction activity. This follows our general approach to implementation in separating responsibility for RAP and RIE functions even although their governance will be shared.
- b) We have drafted guidance noting that, under Article 18 of the CAR, legal restrictions are placed on the persons eligible to apply for admission to bid and that, when assessing compliance with the RAP Recognition Requirements we will have regard to whether a RAP enables access to bid at auctions only to those *persons* eligible to bid. The way in which the restrictions on eligibility to bid are given effect will be the subject of our second phase of consultation.

**Q2:** Do you have any comments on our approach to drafting guidance on the RAP Recognition Requirements and how they may be satisfied?

## Notification Rules

**3.11** We have proposed amendments to Chapter 3 of REC where inclusion of the RAP regime within the definition of *Recognised Body* is not sufficient. The amendments are proportionate and mirror the existing notification rules as closely as the RAP regime permits. We have made three additional notification rules to reflect explicit requirements in the CAR, which are set out below:

- a) We have added a requirement to notify us when a RAP has to cancel an auction as a result of circumstances set out in Articles 7.5-7.7 of CAR: either where there are fewer bids submitted than allowances to be auctioned; or, where the auction clearing price is significantly under the secondary market price during and immediately before the bidding window. There is also a requirement for a RAP to notify us of any change, between bidding windows, which it intends to make to its methodology for determining whether an auction should be cancelled.
- b) We have added a requirement to notify us when a RAP proposes to change the timing, frequency and/or duration of its bidding windows, together with the particulars of the change and the reasons for it.
- c) We have added a notification requirement to notify us at the same time as consulting the Commission in accordance with its responsibilities under the CAR if a RAP intends to utilise Article 57 of the CAR, which allows RAPs to impose a maximum bid size or take other remedial measures to mitigate risks of *market abuse, financial crime* or anti-competitive behaviour.

- 3.12 We have also added guidance that, where an RIE operating a RAP appoints or removes key individuals, only the RIE need provide the notice but that when providing notification of an individual who has responsibilities for both RIE and RAP functions, it should set out the nature of the responsibilities in respect of each body.

**Q3:** Do you have any comments on our approach to extending the notification rules and guidance to the RAP regime?

### **The FSA's approach to supervision**

- 3.13 We have made amendment to REC 4 to ensure that, where appropriate, it contains references to the RAP Recognition Requirements and to requirements in the CAR. Since continuing recognition as an RIE is a condition of eligibility to operate a RAP, the revocation of RIE status would require the FSA to revoke the RAP's recognition. However, the loss of recognition as a RAP would not automatically result in the loss of RIE status unless the circumstances surrounding the loss of RAP status indicated a breach of the RIE recognition requirements.

**Q4:** Do you have any comments on our approach to drafting guidance on the FSA's approach to RAP supervision?

### **Applicants for Recognition**

- 3.14 We have drafted amendments to Chapter 5 of REC to extend the application process to RAPs and have included guidance:
- a) referring to clause 2(1) of the draft Regulations, specifying that a RAP must be an RIE;
  - b) that the OFT's responsibilities set out in Chapter II of Part XVIII of FSMA will have no application either directly to a RAP or to a RIE in respect of its operation of a RAP; and
  - c) that RAP applicants will have to demonstrate their compliance with the CAR as well as the recognition requirements.

**Q5:** Do you have any comments on our approach to drafting guidance to applicants for recognition?

# 4

## Proposed fees applicable to Recognised Auction Platforms

- 4.1 In this chapter we set out our proposed application fees for recognition as a RAP.
- 4.2 We also set out the proposed methodology for annual periodic fees. Because of the delay between recognition of the RAP and the start of auctioning activities, we have not been able to give anything more than indicative figures for the periodic fees which will begin from 2013/14. But we intend to provide firmer figures when we consult on this in our October 2012 fees CP. The final rates will be included for consultation in our annual consultation paper on fee rates in February 2013. In order to minimise additional administrative burdens on firms and on us, and because RAPs must already be recognised as RIEs, we propose to mirror the fees structure for RIEs as closely as possible.

### **Application for recognition as a RAP**

- 4.3 We are proposing that businesses applying to become Recognised Auction Platforms will have to pay an application fee of £35,000. This reflects our assessment of the complexity and the amount of work we anticipate in processing their application for recognition.
- 4.4 The draft Regulations specify that applicants for recognition as a RAP are required to be RIEs. Since recognition as a Recognised Body is not a Part IV permission, an application for recognition as a RAP will be treated as a new application rather than as a Variation of Permission (VoP). Firms will therefore not be eligible for the 50% discount applicable to VoP applicants under FEES 2.3.7(p)(1).



**Q6:** Do you have any comments on our proposed approach to RAP application fees?

### **Periodic fees payable by RAPs**

- 4.5** We recover our costs from firms by allocating them to a series of fee-blocks which represent groupings of related regulated business activities that they have permission to undertake. All RAPs will be placed in fee-block B. This covers Market Infrastructure Providers including RIEs. We propose to add RAPs to the definition of *Recognised Bodies* and set annual periodic fees in line with the approach we take to the existing recognised bodies. These are set on an individual basis for each body and are based on the amount of regulatory resources required. They are payable in two instalments during the year – an initial payment by 30 April, equivalent to half the previous year’s fee, and a balancing payment by 30 September, based on our final estimate of the cost of regulating them. We consult on the April figure in our February CP and set the September figure in our May PS. Inevitably, RAPs’ fees for the first year will be based on limited experience of the resources needed to regulate them but any difference between projected and actual supervisory costs will be adjusted the following year.
- 4.6** Since the new regime comes into force from 1 January 2013, we will start to levy periodic fees in the 2012/13 financial year. We anticipate that we will charge RAPs £12,500 for January-March 2013. This is a rough estimate which we are quoting to help firms with their business planning. It may change once we are in a better position to assess the resources we will actually need. This figure is derived from our current estimate for periodic fees due from RAPs recognised within the financial year – £50,000 – as modified by our fees rules at FEES 4.2.6R.
- 4.7** We will consult on the actual rate in our October 2012 fees CP. To maintain price stability, the first instalment of 2013/14 fees, on which we will consult in February and invoice in April, will be based on the January-March fee. The figures will be balanced off in the September invoice, when we recover the balance of the full-year charge set in our May 2013 Policy Statement. We may not be able to take a definitive view of the costs of regulating RAPs until 2014/15 when we will have a full year’s experience to work from. Any under- or over-estimate from the previous year will be factored into the calculation.
- 4.8** Although RAPs will also be required to be recognised as RIEs, their invoices will quote a single figure combining their RIE and RAP fees.

**Q7:** Do you have any comments on our proposed approach to RAP annual periodic fees?



## Annex 1:

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# Cost benefit analysis

### Introduction

1. When proposing new rules, we are obliged (under section 155 of the Financial Services and Markets Act 2000 (FSMA)) to publish a cost benefit analysis (CBA), unless we expect there to be no costs or only a minimal increase. As a matter of policy, we also provide a CBA for significant proposed guidance relating to rules. The purpose of a CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a proposed policy.

### Baseline

2. The proposed rules are brought forward in response to primary legislation that envisages the creation of a new category of Recognised Body, a Recognised Auction Platform (RAP). The proposals in this consultation largely reflect the changes in primary legislation, rather than a response to an existing market or regulatory failure. For the purposes of the CBA, we take the changes in primary legislation as given and compare the costs and benefits of the proposals against this baseline.

### Costs and benefits

3. We expect the costs of the changes proposed to be of minimal significance. The modifications to the recognition requirements (REC 2A), supervision (REC 3) and applications for recognition (REC 5) mirror the equivalent REC provisions in respect of other Recognised Bodies. The modifications to the notification rules (REC 4) are likely to bring only minor incremental costs to RAPs (i.e. ongoing compliance costs) and/or to the FSA (i.e. monitoring costs). Also, the new rules allow firms to provide a single notification in respect of both RIE and RAP functions where the relevant provisions overlap, minimising incremental costs.
4. We expect the proposals to generate small benefits. The proposed rules shall provide safeguards for both the RAP and market participants on the functioning of this new market, which should enhance market confidence.



## Annex 2:

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# Compatibility statement

1. This section sets out our assessment of the compatibility of the proposals outlined in this CP with our general duties under Section 2 of FSMA and our regulatory objectives.

### **Compatibility with our regulatory objectives – market confidence**

2. Our proposed rules in this CP, and the accompanying draft Handbook text, aim to take account of our regulatory objective of market confidence.
3. The CAR and the draft Regulations will give us new powers under FSMA to regulate emission allowance auction platforms. The European Commission's objective was that the auction process should be predictable; facilitate full, fair and equitable access; encourage transparency; prevent participants from committing market abuse; and, operate cost-efficiently. Our responsibility is to implement the CAR, and the domestic Regulations which flow from it, so as to enhance market confidence.

### **Principles of good regulation**

4. 5.4 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to specific matters. Those matters which are relevant to this CP are set out below.

#### *The need to use our resources in the most efficient and economic way*

5. The proposed rules and guidance mirror the existing provisions applicable to Recognised Investment Exchanges insofar as is consistent with the new Recognised Auction Platform regime set out in the CAR and with a proportionate risk-based approach to regulation. The proposed rules also seek to minimise the costs involved for new applications for recognition

by the FSA and with respect to the ongoing supervisory relationship. The proposals are consistent with the need to use our resources in the most efficient and economic way.

*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.*

6. Similar to the position with respect to our efficiency and economy, the proposed rules seek to reduce any burden or restriction imposed by the CAR on RAPs by closely mirroring the existing provisions applicable to RIEs.
7. We have provided a cost benefit analysis, as set out in Annex 1, to inform this consultation.

*The international character of financial services and markets and the desirability of maintaining the competitive position of the United Kingdom.*

8. The failure to implement the provisions set out in this CP before the start of the EU procurement process to provide the common European auction platform would adversely impact the UK's international competitiveness. The CAR and draft Regulations, together with its implementation by us through the proposed rules and Handbook provisions, should enhance the confidence of market participants that a proportionate risk-based approach to regulation will continue to operate in the UK in relation to the market in emission trading allowances. Those markets are international in their scope. As a result, those rules and Handbook provisions are consistent with the aim of maintaining the UK's competitive position in relation to those markets.

*Equality and diversity*

9. We have assessed the equality and diversity impact of our proposals. We do not believe that our proposals will give rise to any issues. However, we would welcome any comments respondents may have on this.

## Annex 3:

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# List of questions

- Q1:** Do you have any comments on our approaches to the proposed changes to REC?
- Q2:** Do you have any comments on our approach to drafting guidance on the RAP Recognition Requirements and how they may be satisfied?
- Q3:** Do you have any comments on our approach to extending the notification rules and guidance to the RAP regime?
- Q4:** Do you have any comments on our approach to drafting guidance on the FSA's approach to RAP supervision?
- Q5:** Do you have any comments on our approach to drafting guidance to applicants for recognition?
- Q6:** Do you have any comments on our proposed approach to RAP application fees?
- Q7:** Do you have any comments on our proposed approach to RAP annual periodic fees?





## Appendix 1

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# Draft Handbook text

## RECOGNISED AUCTION PLATFORMS INSTRUMENT 2011

### Powers exercised

A. The Financial Services 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 157(1) (Guidance);
- (2) section 293(1) (Notification requirements); and
- (3) paragraph 17(1) (Fees) of Schedule 1 (The Financial Services Authority),

and the related provisions in the [Recognised Auction Platforms Regulations 2011] modifying the Act in relation to recognised auction platforms.

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

### Commencement

C. This instrument comes into force on [ ] 2011.

### Amendments to the Handbook

D. The modules of the FSA'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
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex B
Fees manual (FEES)	Annex C
Perimeter Guidance Manual (PERG)	Annex D
Supervision (SUP)	Annex E

### Citation

E. This instrument may be cited as the Recognised Auction Platforms Instrument 2011.

By order of the Board  
[ ] 2011

## 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>auction platform</i>	a platform on which auctions of <i>greenhouse gas emission allowances</i> are held in accordance with the <i>auction regulation</i> .
<i>auction products</i>	<i>greenhouse gas emission allowances</i> which are offered for sale on a <i>RAP</i> by means of standardised electronic contracts traded on that <i>RAP</i> .
<i>auction regulation</i>	Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community.
<i>auction regulation requirements</i>	<ol style="list-style-type: none"><li>(1) (in relation to a <i>RAP</i>) any of the requirements applicable to that body under the <i>auction regulation</i>.</li><li>(2) (in relation to a body applying for recognition as a <i>RAP</i>) any of the requirements under the <i>auction regulation</i>, which, if its application was successful, would apply to it.</li></ol>
<i>RAP</i>	a <i>recognised auction platform</i> .
<i>RAP recognition requirements</i>	any of the requirements applicable to a <i>RAP</i> under the <i>RAP regulations</i> .
<i>RAP regulations</i>	the Financial Services and Markets Act 2000 (Recognised Auction Platforms) Regulations 2011 (SI 2011/[ ]).
<i>recognised auction platform</i>	a <i>recognised investment exchange</i> which is declared by a <i>recognition order</i> for the time being in force to be a <i>recognised auction platform</i> .

Amend the following definitions as shown.

<i>facilities</i>	(in relation to a <i>recognised body</i> ) the facilities and services which it provides in the course of carrying on <i>exempt activities</i> , and references to the use of the facilities of an <i>RIE</i> <u>or <i>RAP</i></u> are to be construed as follows:
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- (1) dealings on an *RIE* or *RAP*; or
- (2) transactions on an *RIE* or *RAP* are
- (3) references to dealings or transactions which are effected by means of the *RIE*'s or *RAP*'s facilities; or
- (4) which are governed by the rules of the *RIE* or *RAP*; and
- (5) 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.

*market abuse* in accordance with section 118 of the *Act* (Market abuse)) *behaviour* (whether by one *person* alone or by two or more *persons* jointly or in concert) which:

- (a) ...
- (b) falls within any one or more of the types of *behaviour* set out in section 118(2) to (8) of the *Act* as modified by [Schedule 1 Paragraph 1(1)] of the *RAP* regulations.

*recognised body* an *RIE*, *RAP* or an *RCH*.

*recognition order* (in accordance with section 313 of the *Act* (Interpretation of Part XVIII)) an order made under section 290 or 292 of the *Act* which declares an investment exchange or *clearing house* to be a *recognised body* or (for *RAPs*) an order made under Regulation [2] of the *RAP* regulations which declares a *UK RIE* to be a *RAP*.

*relevant information* (1) ...

(2) (in *REC*) (in relation to an *investment*) information which is relevant to determining the current value of that *investment* or (in relation to *RAPs*) information on the terms of *auction products* and the terms on which they will be auctioned on a *RAP*.

*UK recognised body* a *UK RIE*, *RAP* or *UK RCH*

## Annex B

### 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.

#### 1 Introduction

##### 1.1 Application

1.1.1 G The *rules* and *guidance* in this sourcebook apply to *recognised bodies* and to applicants for recognition as *recognised bodies* under Part XVIII of the *Act* (Recognised Investment Exchanges and Clearing Houses) and (for *RAPs*) under the *RAP regulations*.

...

1.1.2 G (1) *Recognised bodies* are *exempt persons* under section 285 of the *Act* (Exemption for recognised investment exchanges and clearing houses). Section 285 of the *Act* is modified to include *RAPs* by the *RAP regulations*.

(2) *UK recognised bodies* must satisfy *recognition requirements* and/or *RAP recognition requirements* prescribed by the Treasury (in certain cases with the approval of the Secretary of State) in the *Recognition Requirements Regulations* and *RAP regulations*. *UK RIEs* and *RAPs* must also satisfy the *MiFID implementing requirements* in the *MiFID Regulation* and *auction regulation requirements* in the *auction regulation*. *Overseas recognised bodies* must satisfy *recognition requirements* laid down in section 292 of the *Act* (Overseas investment exchanges and overseas clearing houses).

(3) *Recognised bodies* must also comply with notification requirements in, and with *notification rules* made under, sections 293 (Notification requirements) and 295 (Notification: overseas investment exchanges and clearing houses) of the *Act*. Section 293 of the *Act* is modified to include *RAPs* by the *RAP regulations*.

1.1.3 G (1) The *recognition requirements* for *UK recognised bodies* and the *MiFID implementing requirements* are set out, with *guidance*, in REC 2. The *RAP recognition requirements* are set out, with *guidance*, in *REC 2A*. The *auction regulation requirements* are not set out in *REC*.

(2) ...

##### 1.2 Purpose, status and quotations

1.2.1 G The purpose of the *guidance* (other than in REC 6A) in this sourcebook is to give information on the *recognition requirements* and *RAP recognition*

requirements, other obligations on *recognised bodies* in or under the *Act* and the *MiFID implementing requirements and auction regulation requirements*. The purpose of the ~~guidance~~ guidance in REC 6A is to give *EEA market operators* information about their passporting rights in the *United Kingdom*. Explanations of the purposes of the *rules* in this sourcebook are given in the chapters concerned.

- 1.2.2 G (1) ...
- (2) Where the *guidance* states that the *FSA* may have regard to any factor in assessing or determining whether a *recognition requirement or RAP recognition requirement* is satisfied, or whether there is compliance with another obligation under the *Act*, or whether a *MiFID implementing requirement or an auction regulation requirement* is satisfied, it means that the *FSA* will take that factor into account so far as it is relevant.
- (3) In determining whether a *recognised body* satisfies the *recognition requirements or RAP recognition requirements* or complies with other obligations in or under the *Act*, or a *UK RIE or RAP* satisfies the *MiFID implementing requirements or (where relevant) the auction regulation requirements*, the *FSA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.
- 1.2.3 G (1) This sourcebook contains quotations from the *Act*, the *Recognition Requirements Regulations*, the *RAP regulations* and the Companies Act 1989 and the *MiFID Regulation* and, where necessary, words have been added to, or substituted for, the text of these provisions to facilitate understanding.
- (2) ...

## 2 Recognition Requirements

### 2.1 Introduction

2.1.1 ...

2.1.1A G Guidance on the *RAP recognition requirements* which apply to *RAPs* is set out in REC 2A (*Recognised Auction Platforms*).

...

The following text is new and is not underlined.

### Recognised Auction Platforms (REC 2A)

## 2A.1 Introduction

- 2A.1.1 G This chapter applies to a *UK RIE* which is also a *RAP* or is applying for *RAP* status. An entity must have *UK RIE* status before it can apply for *RAP* status.
- 2A.1.2 G The *RAP recognition requirements* must be satisfied by applicants for *RAP* status before recognition is granted and by all *RAPs* at all times while they are recognised. In addition, the *auction regulation requirements* must be satisfied by applicants for *RAP* status before recognition is granted and by all *RAPs* at all times while they are recognised. The same standards apply both on initial recognition and throughout the period that *RAP* status is held. Therefore, the term *RAP* in the *guidance* should be understood to also refer to an applicant when appropriate.

## 2A.2 Method of satisfying the RAP recognition requirements

### 2A.2.1 UK Recognised Auction Platforms Regulations, Regulation [12]

(1) In considering whether a [*RAP*] or applicant satisfies [*RAP recognition requirements*] applying to it under these [*RAP regulations*], the [*FSA*] may—

(a) treat compliance by the [*RAP*] or applicant with the [*recognition requirements*] applying to it as a [*UK RIE*], as conclusive evidence that the [*RAP*] or applicant satisfies any equivalent [*RAP recognition requirements*] applying to it under these [*RAP regulations*], taking into account any arrangements that would be necessary to meet the [*RAP recognition requirements*], and

(b) take into account all relevant circumstances, including the constitution of the *person* concerned.

(2) Without prejudice to the generality of paragraph (1), a [*RAP*] or applicant may satisfy [*RAP recognition requirements*] applying to it under these [*RAP regulations*] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where a [*RAP*] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by the *Act* on the [*RAP*] or applicant to satisfy [*RAP recognition requirements*] applying to it under these [*RAP regulations*], but it is an additional [*RAP recognition requirement*] applying to the [*RAP*] or applicant that the *person* who performs (or is to perform) the functions is a fit and proper *person* who is able and willing to perform them.

- 2A.2.2 G The *guidance* in REC 2.2.2G to 2.2.7G also applies to the equivalent provisions of the *RAP regulations*.
- 2A.2.3 G The *FSA* will request information from a *RAP* or applicant in order to establish whether it meets the *auction regulation requirements*, as well as the *RAP recognition requirements*.

## 2A.3 Guidance on RAP recognition requirements

- 2A.3.1 G In assessing compliance with the *RAP recognition requirements*, the *FSA* will have regard to relevant guidance in *REC 2* on the equivalent requirements set out in the *Recognition Requirement Regulations*. The *FSA* may also take into account the *RAP*'s or applicant's compliance with the *recognition requirements* (see *REC 2A.2.1UK*). The *FSA* will not make a separate assessment of compliance with the *recognition requirements* during the course of an application for *RAP* status or as part of ongoing supervision of a *RAP*, unless there is a specific reason to do so.
- 2A.3.2 G The *guidance* in the sections of *REC 2* listed in Column A of the table below applies to a *RAP* with the modifications in Column B.

Table: Guidance on RAP recognition requirements

Column A	Column B	Column C
<b><i>REC 2</i> guidance which applies to a <i>RAP</i></b>	<b>Modification to <i>REC 2</i> guidance for a <i>RAP</i></b>	<b>Relevant <i>RAP</i> recognition requirement</b>
<i>REC 2.3.3G</i> – <i>2.3.9G</i> (Financial resources)		Reg [13]
<i>REC 2.4.3G</i> – <i>REC 2.4.6G</i> (Suitability)	In addition to the matters set out in <i>REC 2.4.3G</i> – <i>REC 2.4.6G</i> , the <i>FSA</i> will have regard to whether a <i>key individual</i> has been allocated responsibility for overseeing the <i>auction platform</i> of the <i>UK recognised body</i> .	Reg [14]
<i>REC 2.5.3G</i> – <i>REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg [15]
<i>REC 2.6.26G</i> – <i>REC 2.6.34G</i> (Safeguards for investors)		Reg [16]
<i>REC 2.7.3G</i> – <i>REC 2.7.4G</i> (Access to	References to <i>members</i> in the relevant guidance in <i>REC 2.7</i> include auction bidders	Reg [19]



facilities)	who use the <i>RAP's facilities</i> .	
	The <i>FSA</i> shall have regard to whether a <i>RAP</i> enables access to bid at auctions only to those <i>persons</i> eligible to bid under Article 18 of the <i>auction regulations</i> .	
<i>REC 2.8.3G</i> – <i>REC 2.8.4G</i> (Settlement and clearing services)	References to <i>members</i> in the relevant guidance in <i>REC 2.8</i> include auction bidders who use the <i>RAP's facilities</i> .	Reg [16(2)d and 20]
<i>REC 2.9.3G</i> – <i>2.9.4G</i> (Transaction recording)		Reg [16(2)e]
<i>REC 2.10.3G</i> – <i>REC 2.10.4G</i> (Financial crime and market abuse)		Reg [16(2)g]
<i>REC 2.11.3G</i> – <i>REC 2.11.4G</i> (Custody)	<i>REC 2.11.4G</i> is modified as follows for a <i>RAP</i> :	Reg [16(2)h]
	Where a <i>RAP</i> arranges for other <i>persons</i> to provide services for the safeguarding and administration services of assets belonging to users of its <i>facilities</i> , it will also need to satisfy the <i>RAP recognition requirement</i> in Regulation [16(2)(h)] of the <i>RAP regulations</i> (see <i>REC 2.2A2.1UK</i> ).	
<i>REC 2.12.11G</i> – <i>REC 2.12.12G</i> (Availability of relevant information)	<i>REC 2.12.11G</i> is modified as follows for a <i>RAP</i> :	Reg [16(2)c]
	In determining whether appropriate arrangements have been made to make <i>relevant information</i> available to <i>persons</i> engaged in dealing in <i>auction products</i> , the <i>FSA</i> may have regard to:	
	(1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>auctioned products</i> and the terms on which they will be auctioned, either through accepted channels for dissemination of information or through other regularly and widely accessible communication media;	

(2) what restrictions, if any, there are on the dissemination of *relevant information* to auction bidders; and

(3) whether *relevant information* is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage *market abuse*.

*REC 2.12.12G* is modified as follows for a *RAP*:

A *RAP* does not need to maintain its own arrangements for providing information on the terms of *auctioned products* to auction bidders where it has made adequate arrangements for other persons to do so on its behalf or there are other effective and reliable arrangements for this purpose.

*REC 2.13.3G –  
REC 2.13.6G*  
(Promotion and maintenance of standards)      References to *members* in the relevant *guidance* in *REC 2.13* include auction bidders who use the *RAP's facilities*.      Reg [17]

*REC 2.14.3G –  
REC 2.14.6G*  
(Rules and consultation)      Reg [18]

*REC 2.15.3G –  
REC 2.15.6G*  
(Discipline)      References to *members* in the relevant *guidance* in *REC 2.15* include auction bidders who use the *RAP's facilities*.      Reg [21]

*REC 2.16.3G –  
REC 2.16.4G*  
(Complaints)      Reg [22]

Amend the following text as shown.

### **3 Notification rules for UK recognised bodies**

#### **3.1 Application and purpose**

Application

3.1.1 R ...

...

3.1.3A    G    The notification rules in this chapter which have specific application to a RAP are without prejudice to notification rules which apply to a UK RIE which operates the RAP.

...

### **3.2        Form and method of notification**

Form of notification

...

3.2.1A    G    A UK RIE which operates a RAP may make a single notification in respect of overlapping notification requirements which apply both in its capacity as a UK RIE and RAP.

...

### **3.4        Key individuals and internal organisation**

...

Key individuals

...

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 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 has in respect of each body; or

(2)    ...

...

### **3.13       Delegation of relevant functions**

...

3.13.2     G       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 *FSA* notice of that event, and:

- (1) ...
  - (2) inform the *FSA* of the reasons why it is satisfied that it will continue to meet the *recognition requirements* or *RAP* recognition requirements following that delegation;
  - (3) ...
- ...

### **3.14 Products, services and normal hours of operation**

...

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 and/or duration of its bidding windows, it must give the *FSA* 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 regulated market or MTF**

...

Operation of a regulated 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)*).

### **3.15 Suspension of services**

...

Regulated auction platforms - cancellation of auctions

- 3.15.8 R Where a *RAP* has to cancel an auction in the circumstances set out in Articles 7(5) or 7(6) of the *auction regulation*, it must immediately give the *FSA* notice of that cancellation.

- 3.15.9 G Under Article 7(7) of the *auction regulation*, a *RAP* must notify the *FSA* of:

- (1) the methodology used to determine the application of Article 7(6) of the *auction regulation*; and
- (2) modifications to that methodology made between bidding windows.

...

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

(1) any business transacted by means of its *facilities*, if it is an *RIE* or *RAP*; or

(2) any aspect of the clearing services which it provides;

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

...

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

3.22.1 R ...

3.22.2 R 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 pursuant to Article 57 of the *auction regulation*, the *RAP* must give the *FSA* notice of that event and details of the remedial measures proposed.

...

### **3.25 Significant breaches of rules and disorderly trading conditions**

3.25.1 R A *UK RIE* and (where relevant) a *RAP* must immediately notify the *FSA* of:

(1) significant breaches of its rules; or

(2) disorderly trading conditions on any of its markets;

...

## **4 Supervision**

### **4.1 Application and purpose**

...

Purpose

...

4.1.3 G The *FSA's* general approach to supervision is intended to ensure that:

(1) the *FSA* has sufficient assurance that *recognised bodies* continue at all

times to satisfy the *recognition requirements*, and (where relevant) the *RAP recognition requirements*, and other obligations imposed by or under the *Act* and *UK RIEs* and *RAPs* continue at all times to satisfy the *MiFID implementing requirements*, and (where relevant) *auction regulation requirements*; and

(2) ...

...

## 4.2 The supervisory relationship with UK recognised bodies

...

4.2.2 G *UK recognised bodies* are likely to develop and adapt their businesses in response to customer demand and new market opportunities. Where such developments involve changes to the way the *UK recognised body* operates, they are likely to involve changes to the way it satisfies the *recognition requirements*, the *RAP recognition requirements* (where relevant), the *MiFID implementing requirements* (in the case of a *UK RIE*) or *auction regulation requirements* (in the case of a *RAP*) and other obligations in or under the *Act*.

4.2.3 G The *FSA* expects a *UK recognised body* to take its own steps to assure itself that it will continue to satisfy the *recognition requirements*, the *RAP recognition requirements* (where relevant), the *MiFID implementing requirements* (in the case of a *UK RIE*) or *auction regulation requirements* (in the case of a *RAP*) and other obligations in or under the *Act* when considering any changes to its business or operations.

4.2.4 G However, the *FSA* also expects that *UK recognised bodies* will keep it informed of all significant developments and of progress with its plans and operational initiatives, and will provide it with appropriate assurance that the *recognition requirements*, the *RAP recognition requirements* (where relevant), ~~and~~ the *MiFID implementing requirements* (in the case of a *UK RIE*) or *auction regulation requirements* (in the case of a *RAP*) will continue to be satisfied.

...

### 4.2B Exercise of passport rights by a UK RIE

4.2B.1 G Under section 312C of the *Act*, if a *UK RIE* wishes to make arrangements in an *EEA State* other than the *UK* to facilitate access to or use of a *regulated market* or *multilateral trading facility* or *auction platform* operated by it, it must give the *FSA* written notice of its intention to do so. The notice must:

(1) describe the arrangements; and

(2) identify the *EEA State* in which the *UK RIE* intends to make them.

...

#### 4.2E **Information: compliance of UK RIEs with the MiFID Regulation and Auction Regulation**

- 4.2E.1 G Under section 293A of the *Act*, the *FSA* may require a *UK RIE* to give such information as it reasonably requires in order to satisfy itself that the *UK RIE* is complying with the *MiFID Regulation*, and (if the *UK RIE* operates a *RAP*) the *auction regulation*.

...

#### 4.6 **The section 296 power to give directions**

- 4.6.1 G Under section 296 of the *Act* (FSA's power to give directions) and (for *RAPs*) under Regulation [3] of the *RAP regulations*, the *FSA* has the power to give directions to a *recognised body* to take specified steps in order to secure its compliance with the *recognition requirements* or (where relevant) *RAP recognition requirements*, or other obligations in or under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or *auction regulation requirements*. In the case of a *UK RIE* (including one which operates a *RAP*) those steps may include granting the *FSA* access to the *UK RIE*'s premises for the purposes of inspecting those premises or any documents on the premises and the suspension of the carrying on of any *regulated activity* by the *UK RIE* for the period specified in the direction.

...

- 4.6.3 G The *FSA* is likely to exercise its power under section 296 of the *Act* or Regulation [3] of the *RAP regulations* if it considers that:
- (1) there has been, or was likely to be, a failure to satisfy the *recognition requirements* or *RAP recognition requirements*, or there has been a failure to comply with any other obligation in or under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements* which has serious consequences;
  - (2) compliance with the direction would ensure that the *recognition requirements* or *RAP recognition requirements*, or other obligation in or under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements*, were satisfied; and
  - (3) the *recognised body* is capable of complying with the direction.

- 4.6.4 G Under section 298(7) of the *Act* (Directions and revocation: procedure) and (for *RAPs*) Regulation [5(7)] of the *RAP regulations*, the *FSA* 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 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) ...

#### 4.7 The section 297 power to revoke recognition

4.7.1 G Under section 297 of the *Act* (Revoking recognition) and (for RAPs) under Regulation [4] of the RAP regulations, the *FSA* has the power to revoke a *recognition order* relating to a *recognised body*.

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

(1) ...

(2) the *recognised body* has asked the *FSA* to revoke the order; or

(3) where the *FSA* makes a revocation order under section 297 of the *Act* in relation to a *UK RIE* which is also a *RAP*, the *FSA* shall also revoke the *recognition order* relating to its status as a *RAP*.

4.7.3 G The *FSA* will usually consider revoking a *recognition order* if:

(1) the *recognised body* is failing or has failed to satisfy the *recognition requirements*, *RAP recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements* and that failure has or will have serious consequences; or

(2) it would not be possible for the *recognised body* to comply with a direction under section 296 of the *Act* (*FSA's* power to give directions) or (for *RAPs*) Regulation [3] of the *RAP regulations*; or

(3) for some other reason, it would not be appropriate for the *FSA* to give a direction under section 296 or (for *RAPs*) Regulation [3] of the *RAP regulations* ~~or~~; or

(4) in the case of a *UK RIE* (including one which is a *RAP*), it has not carried on the business of an investment exchange or (in relation to its *RAP recognition order*) an *auction platform* during the 12 months beginning with the day on which the *recognition order* took effect in relation to it, or it has not carried on the business of an investment exchange or (in relation to its *RAP recognition order*) an *auction platform* at any time during the period of six months ending with the day the *recognition order* is revoked.

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

(1) the *recognised body* appears not to have the resources or management to be able to organise its affairs so as to satisfy the *recognition requirements*, *RAP recognition requirements* or other obligations in or



under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements*; or

- (2) the *recognised body* does not appear to be willing to satisfy the *recognition requirements*, *RAP recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements*; or
- (3) the *recognised body* is failing or has failed to comply with a direction made under section 296 of the *Act* or (for *RAPs*) Regulation [3] of the *RAP regulations*; or
- (4) the *recognised body* has ceased to carry out *regulated activities* in the *United Kingdom*, or has so changed the nature of its business that it no longer satisfies the *recognition requirements*, *RAP recognition requirements* or, in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) *auction regulation requirements* in respect of the *regulated activities* for which *recognised body* status is relevant.

...

#### 4.8 The section 298 procedure

4.8.1 G A decision to:

- (1) revoke a *recognition order* under section 297 of the *Act* (Revoking recognition) or (for *RAPs*) Regulation [4] of the *RAP regulations*; or
- (2) make a direction under section 296 (FSA's powers to give directions) or (for *RAPs*) Regulation [3] of the *RAP regulations*; or
- (3) refuse to make a *recognition order* under section 290 (Recognition orders) or (for *RAPs*) Regulation [2] of the *RAP regulations*;

is a serious one and section 298 of the *Act* (Directions and revocation: procedure) and (for *RAPs*) Regulation [5] of the *RAP regulations* sets out a procedure (see *REC* 4.8.9G) which the *FSA* 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, in a case where the *FSA* proposes to make a direction under section 296, it considers it is essential not to follow, or to cut short, the procedure (see *REC* 4.6.4G and *REC* 4.8.7G).

...

4.8.3 G In considering whether it would be appropriate to exercise the powers under section 296 or section 297 of the *Act* or (for *RAPs*) Regulation [3] or [4] of the *RAP regulations*, the *FSA* will have regard to all relevant information and

factors including:

- (1) ...
- (3) the extent to which the failure or likely failure to satisfy the *recognition requirements*, RAP recognition requirements or other obligations in or under the *Act* or, in the case of a UK RIE or RAP, the MiFID implementing requirements or (where relevant) auction regulation requirements may affect the *regulatory objectives*.

...

- 4.8.5 G The procedures laid down in section 298 of the *Act* and (for *RAPs*) Regulation [5] of the *RAP regulations* are summarised, with the *FSA's* guidance about the actions it proposes to take in following these procedures, in the table at *REC* 4.8.9G.
- 4.8.6 G Before exercising its powers under section 296 or section 297 of the *Act* or (for *RAPs*) Regulation [3] or [4] of the *RAP regulations*, the *FSA* will usually discuss its intention, and the basis for this, with the *key individuals* or other appropriate representatives of the *recognised body*. It will usually discuss its intention not to make a *recognition order* with appropriate representatives of the applicant.
- 4.8.7 G 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 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.
- ...
- 4.8.9 G [Table] Key steps in the section 298 and (for *RAPs*) Regulation [5] procedure.

...

## **5 Applications for Recognition (UK recognised bodies)**

### **5.1 Introduction and legal background**

- 5.1.1 G ...
- 5.1.1A G A UK RIE may apply to the FSA for recognition as a RAP under Regulation [2] of the *RAP regulations*.
- ...
- 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 a RAP.

5.1.4 G (1) ...

G (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 a RAP) can be made. (See also *REC* 5.2.11G.)

...

## 5.2 Application process

5.2.1 G An applicant for *recognised body* status needs to demonstrate to the *FSA* that it is able to meet the *recognition requirements* or (where relevant) RAP recognition requirements and in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) auction regulation requirements before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the *recognition requirements* or (where relevant) RAP recognition requirements and in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) auction regulation requirements at all times. (*Guidance* on the *recognition requirements* and *RAP recognition requirements* applicable to *UK recognised bodies* (and applicants) is given in *REC* 2 and *REC* 2A).

...

5.2.3 G An application should:

(1) be made in accordance with any directions the *FSA* may make under section 287 (Application by an investment exchange) or section 288 (Application by a clearing house) of the *Act* or (for RAPs) Regulation [2] of the RAP regulations;

...

(3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the *recognition requirements* or RAP recognition requirements and in the case of a *UK RIE* or *RAP*, the *MiFID implementing requirements* or (where relevant) auction regulation requirements will be met; and

...

5.2.5A G A UK RIE applying for recognition as a RAP may wish to consult the FSA about the extent to which information which it has already supplied in connection with its status as a UK RIE can be used to support an application to be recognised as a RAP.

...

5.2.6A G In the case of an application to become a *UK RIE* or a *RAP*, under subsection 290(1B) of the *Act* and (for *RAPs*) Regulation [2(8)] of the *RAP regulations*, the application must be determined by the *FSA* before the end of the period of six *months* beginning with the date on which it receives the completed application.

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*. Any amendments or additional information (except in relation to *RAPs*) 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*).

...

5.2.8A G *REC 5.2.9G* to *REC 5.2.11G* and *REC 5.2.13G* do not apply to applications for recognition as a *RAP*.

...

5.2.12 G Where the *FSA* considers that it is unlikely to make a *recognition order*, or (where relevant) 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 5.2.7G*). If the *FSA* 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 (for *RAPs*) Regulation [5] of the *RAP regulations* and described in more detail in *REC 4.8*.

...

5.2.14 G Table: Information and supporting documentation (see *REC 5.2.4 G*).

- |     |   |
|-----|---|
| (1) | Details of the applicant's constitution, structure and ownership, including its memorandum and articles of association (or similar or analogous <i>documents</i> ) and any agreements between the applicant, its owners or other <i>persons</i> relating to its constitution or governance (if not contained in the information listed in <i>REC 5.2.3AG</i> ). <u>An applicant for <i>RAP</i> status must provide details of the relationship between the governance arrangements in place for the <i>UK RIE</i> and the <i>RAP</i>.</u> |
| (2) | ...   |
| (3) | Details of the <i>facilities</i> which the applicant plans to operate, including details of the trading platform or (for <i>RAPs</i> ) <i>auction platform</i> , settlement arrangements, clearing services and <i>custody</i> services which it plans to supply. <u>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>auction products</i> which it operates or plans</u>   |

		<u>to operate.</u>
(4)	...	
(18)		Details of membership selection criteria, rules and procedures, <u>including (for RAPs) details of how the rules of the UK RIE will change in order to reflect RAP status.</u>
(19)	...	

...

## 6A EEA market operators in the United Kingdom

### 6A.1 Exercise of passport rights by EEA market operator

6A.1.1 G ...

6A.1.4 G In accordance with the RAP regulations, references in section 312A of the Act to specified regulated market and market are to be read as including reference to a specified auction platform and an auction platform as applicable.

...

### 6A.2 Removal of passport rights from EEA market operator

6A.2.1 G ...

6A.2.7 G In accordance with the RAP regulations, references in section 312B of the Act to regulated market are to be read as including reference to an auction platform and references to MiFID are to be read as including reference to the auction regulation.

...

## Schedule 1 Record keeping requirements

Sch 1.1 G

There are no record keeping requirements as such in REC.

~~UK recognised bodies have obligations under the Recognition Requirements Regulations~~ UK recognised bodies have obligations under the Recognition Requirements Regulations to ensure that satisfactory arrangements are made for recording transactions effected by, or cleared through, their facilities. See REC 2.9 for guidance (in the case of RAPs, as applied by REC 2A.3.2G).

RAPs also have separate record keeping obligations under the auction regulation.

...

**Schedule 2**    **Notification requirements**

Sch 2.1    G

The following table summarises the notification requirements applicable 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* under its powers nor that the following summary supersedes or alters the meaning of these provisions. The Companies Act 1989 and s.300B(1) of the *Act* do not apply to *RAPs*.

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

...

## Annex C

### Amendments to the Fees manual (FEES)

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

#### 3.2 Obligation to pay fees

...

##### 3.2.7 R Table of application, notification and vetting fees

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

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

Description of applicant	Amount payable	Due date
Part 1 (UK recognised bodies)		
...		
Applicant for recognition as a <i>UK RCH</i>	£100,000	Date the application is made
<u>Applicant for recognition as a <i>RAP</i> (payable in addition to any other application fee due under this part)</u>	<u>£35,000</u>	<u>Date the application is made</u>
Additional fees for a <i>UK RIE</i> or <i>UK RCH</i>		

applicant who proposes to:		
...		

## 4.2 Obligation to pay periodic fees

### 4.2.11 R Table of periodic fees

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			
<i>UK recognised body</i>	<p>(1) <i>FEES 4 Annex 6R, part 1 for a <u>UK RIE</u> or <u>UK RCH</u>; and</i></p> <p>(2) <i>FEES 4 Annex 6R, part 1A for a <u>UK RIE</u> that is also a <u>RAP</u></i></p>	<p>(1) Unless (2) applies, by the due dates set out in <i>FEES 4 Annex 6R, part 1 and 1A as relevant</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>	<p><i>Recognition order</i> is made. The modified periodic fee is specified in <i>FEES 4 Annex 6R, Part 1 and Part 1A as relevant.</i></p>

...

### 4 Annex 6 R Periodic fees for recognised investment exchanges, ~~and~~ recognised clearing houses and recognised auction platforms payable in relation to the period 1 April 2011 to 31 March 2012

...			
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### Part 1 – Periodic fees for UK ~~recognised bodies~~ recognised clearing houses and recognised investment exchanges

...			
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Part 1A – Periodic fees for recognised auction platforms

<u>Name of recognised auction platform</u>	<u>Amount payable [indicative]</u>	<u>Due date</u>
[ ]	[£30,000]	<u>30 April 2011</u>
	[£20,000]	<u>1 September 2011</u>
<u>Any other RAP recognised as such by a recognition order made in the period</u>	[50,000]	<u>30 days after the date on which the recognition order is made</u>

## Annex D

### Amendments to the Perimeter Guidance Manual (PERG)

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

...

#### 8.12 Exemptions applying to all controlled activities

...

Exempt persons (article 16)

- 8.12.12 G This exemption covers two distinct situations. Article 16(1) applies to all *exempt persons* where they make *financial promotions* for the purpose of their exempt activities. These *persons* would include *appointed representatives*, *recognised investment exchanges*, *recognised clearing houses*, *recognised auction platforms* and those who are able to take advantage of the *Exemption Order*. So, it allows *exempt persons* both to promote that they have expertise in certain *controlled activities* and to make *financial promotions* in the course of carrying them on. Article 16(1) does not apply to *unsolicited real time financial promotions*. *Persons* to whom the *general prohibition* does not apply because of Part XX (Provision of financial services by members of the professions) or Part XIX (Lloyd's members and former underwriting members) of the *Act* are not, for the purposes of article 16, *exempt persons* for their Part XX or Part XIX activities.

...

## Annex E

### Amendments to Supervision (SUP)

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

...

#### 13.4 Providing cross border services into another EEA State

- 13.4.2D G A *MiFID investment firm* that wishes to obtain a passport for the activity of *operating an MTF* should follow the procedures described in this chapter. A *UK market operator* that operates a *recognised investment exchange, a recognised auction platform* (pursuant to the *RAP regulations*, the definition of *regulated market* in the *Act* is read for these purposes as including a *recognised auction platform*) or an *MTF* and wishes to provide *cross border services* into another *EEA State* should follow the procedure described in *REC 4.2B*.

...



## Appendix 2

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# Draft Recognised Auction Platform Regulations 2011

**2011 No.**

**FINANCIAL SERVICES AND MARKETS**

**Recognised Auction Platforms Regulations 2011**

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures relating to the operation of regulated markets and clearing or settlement systems and in relation to insider dealing and market manipulation.

The Treasury, in exercise of the powers conferred on them under section 2(2) of the European Communities Act 1972, make these Regulations.

**PART 1**

**General**

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Recognised Auction Platforms Regulations 2011.

(2) These Regulations come into force—

- (a) for the purpose of regulations 1 to 6, and 8 to 23 of, and Schedules 2 and 3 to, the Regulations, on [            ];
- (b) for the purpose of regulation 7 of, and Schedule 1 to, the Regulations, on [            ].

(3) In these Regulations—

“the Act” means the Financial Services and Markets Act 2000<sup>(3)</sup>;

“auction platform” means a platform on which auctions of emissions allowances are held in accordance with the emission allowance auctioning regulation;

“bid” means an offer in an auction of emission allowances to acquire a given volume of allowances at a specified price;

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<sup>(1)</sup> S.I. 1993/2661; S.I. 2004/2642.

<sup>(2)</sup> 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7). By virtue of the amendment of section 1(2) made by section 1 of the European Economic Area Act 1993 (c. 51) regulations may be made under section 2(2) to implement obligations of the United Kingdom created by or arising under the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (Cm 2073, OJ No L 1, 3.11.1994, p. 3) and the Protocol adjusting that Agreement signed at Brussels on 17th March 1993 (Cm 2183, OJ No L 1, 3.1.1994, p. 572).

<sup>(3)</sup> 2000 c.8.

“emission allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which is valid for the purposes of meeting the requirements of the emission allowance trading directive, and which is transferable in accordance with the provisions of that directive;

“emission allowance trading directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>(4)</sup>;

“emission allowance auctioning regulation” means Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to the emission allowance trading directive<sup>(5)</sup>;

“recognised auction platform” means a recognised investment exchange in relation to which a recognition order has been made;

“recognition order” means an order made under regulation 2;

“recognition requirements” mean the requirements set out in Part 5 of these Regulations together with any requirements set out in the emission allowance auctioning regulation.

(4) In these Regulations—

- (a) unless the contrary intention appears, expressions which are also used in the Financial Services and Markets Act 2000 have the same meaning as in that Act;
- (b) expressions which are also used in the emission allowance trading directive or the emission allowance auctioning regulation have the same meaning as in that directive or regulation; and
- (c) reference to a numbered section, unless otherwise stated, is a reference to a section in the Act.

## PART 2

### Recognised Auction Platforms

#### Recognition orders

2.—(1) A recognised investment exchange may apply to the Authority for an order declaring it to be a recognised auction platform for the purposes of these Regulations.

(2) The application must be made in such manner as the Authority may direct and must, to the extent required by the Authority, be accompanied by—

- (a) a copy of the rules for the auction platform;
- (b) a copy of any guidance for the auction platform issued by the applicant;
- (c) particulars of the way in which the exchange satisfies the requirements set out in Part 5 of these Regulations; and
- (d) such other information as the Authority may reasonably require for the purpose of determining the application.

(3) If it appears to the Authority that the applicant satisfies the recognition requirements set out in Part 5 of these Regulations, and any requirements set out in the emission allowance auctioning regulation, the Authority may make a recognition order declaring the applicant to be a recognised auction platform.

(4) At any time after receiving an application and before determining it, the Authority may require the applicant to provide such further information as it reasonably considers necessary to enable it to determine the application.

(5) Information which the Authority requires in connection with an application must be provided in such form, or verified in such manner, as the Authority may direct.

(6) Different directions may be given, or requirements imposed, by the Authority with respect to different applications.

(7) In considering an application, the Authority may have regard to any information which it considers relevant to the application.

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<sup>(4)</sup> O.J. L 275 p 32, 25.10.2003.

<sup>(5)</sup> O.J. L302 p 1, 18.11.2010.

(8) The application must be determined by the Authority before the end of the period of six months beginning with the date on which it receives the completed application.

(9) A recognition order must specify a date on which it is to come into effect.

### **Authority's power to give directions**

3.—(1) This regulation applies if it appears to the Authority that a recognised auction platform—

- (a) has failed, or is likely to fail, to satisfy the recognition requirements;
- (b) has failed, or is likely to fail, to comply with any obligation imposed on it by the emission allowance auctioning regulation or by any directly applicable Community regulation made under the markets in financial instruments directive; or
- (c) has failed to comply with any other obligation imposed on it by or under these Regulations.

(2) The Authority may direct the body to take specified steps for the purpose of securing the body's compliance with—

- (a) the recognition requirements; or
- (b) any obligation of the kind in question.

(3) Those steps may include—

- (a) the granting to the Authority of access to the premises of the auction platform for the purpose of inspecting—
  - (i) those premises; or
  - (ii) any documents on the premises which appear to the Authority to be relevant for the purpose mentioned in paragraph (2);
- (b) the suspension of the carrying on of any regulated activity by the auction platform for the period specified in the direction.

(4) A direction under this regulation is enforceable, on the application of the Authority, by an injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

(5) The fact that a rule made by a recognised auction platform has been altered in response to a direction given by the Authority does not prevent it from being subsequently altered or revoked by the auction platform.

### **Revoking recognition**

4.—(1) A recognition order made under regulation 2 may be revoked by an order made by the Authority at the request, or with the consent, of the recognised auction platform.

(2) If it appears to the Authority that a recognised auction platform—

- (a) is failing, or has failed, to satisfy the recognition requirements;
- (b) has not carried on the business of an auction platform during the period of twelve months beginning with the day on which the recognition order declaring it to be a recognised auction platform took effect in relation to it;
- (c) has not carried on the business of an auction platform at any time during the period of six months ending with the relevant day; or
- (d) has failed, or is likely to fail, to comply with any obligation imposed on it by these Regulations, or by the emission allowance auctioning regulation,

it may make an order revoking the recognition order which declared that body to be a recognised auction platform, even though that body does not wish the order to be made.

(3) Where the Authority makes a revocation order under section 297 of the Act in relation to a recognised investment exchange which is also a recognised auction platform, the Authority shall also make an order revoking the recognition order which declared that body to be a recognised auction platform.

(4) The “relevant day”, for the purposes of paragraph (2)(c), is the day on which the power to make an order under paragraph (1) is exercised.

(5) An order under this regulation (“a revocation order”) must specify the date on which it is to take effect.

(6) In the case of a revocation order made under paragraph (2) or (3), the specified date must not be earlier than the end of the period of three months beginning with the day on which the order is made.



(7) An order under paragraph (1) or (2) does not affect that body's recognition as a recognised investment exchange.

### **Procedure**

5.—(1) Before refusing to make a recognition order, giving a direction under regulation 3 or making a revocation order under regulation 4, the Authority must—

- (a) give written notice of its intention to do so to the body which would be affected by the proposed refusal, direction or revocation order;
- (b) take such steps as it considers reasonably practicable to bring the notice to the attention of members (if any) of that body; and
- (c) publish the notice in such manner as it thinks appropriate for bringing it to the attention of other persons who are, in its opinion, likely to be affected.

(2) A notice under paragraph (1) must—

- (a) state why the Authority intends to refuse to make the recognition order, to give the direction or to make the revocation order; and
- (b) draw attention to the right to make representations conferred by paragraph (3).

(3) Before the end of the period for making representations—

- (a) the body which would be affected by the proposed refusal, direction or revocation order,
- (b) any member of that body, and
- (c) any other person who is likely to be affected by the proposed refusal, direction or revocation order,

may make representations to the Authority.

(4) The period for making representations is—

- (a) two months beginning—
  - (i) with the date on which the notice is served on the body which would be affected by the proposed refusal, direction or revocation order; or
  - (ii) if later, with the date on which the notice is published; or
- (b) such longer period as the Authority may allow in the particular case.

(5) In deciding whether to—

- (a) refuse a recognition order,
- (b) give a direction, or
- (c) make a revocation order,

the Authority must have regard to any representations made in accordance with paragraph (3).

(6) When the Authority has decided whether to refuse a recognition order, give the proposed direction or make the proposed revocation order, it must—

- (a) give written notice of its intention to do so to the body affected by its decision;
- (b) if it has decided to refuse a recognition order, give a direction or make a revocation order, take such steps as it considers reasonably practicable for bringing its decision to the attention of members of the body or of other persons who are, in the Authority's opinion, likely to be affected.

(7) If the Authority considers it essential to do so, it may give a direction under regulation 3—

- (a) without following the procedure set out in this regulation; or
- (b) if the Authority has begun to follow that procedure, regardless of whether the period for making representations has expired.

(8) If the Authority has, in relation to a particular matter, followed the procedure set out in paragraphs (1) to (5), it need not follow it again if, in relation to that matter, it decides to take action other than that specified in its notice under paragraph (1).

### **Market abuse on auction platforms**

6. Part 8 of the Act (penalties for market abuse) applies in relation to an auction platform as it applies in relation to a prescribed market, but subject to the modifications set out in Schedule 1.

### **Application of certain provisions of the Act with modifications**

7.—(1) In its application to a recognised investment exchange that is also a recognised auction platform, Part 18 of the Act, apart from Chapter 3A, has effect with the modifications set out in Schedule 2.

(2) Sections 152 to 156 of the Act shall apply to rules made by the Authority under section 293 in relation to a recognised investment exchange in its capacity as a recognised auction platform as they apply to rules made under that section in relation to any recognised investment exchange.

### **Application of Chapter 3A of Part 18 of the Act with modifications**

8. In its application to—

- (a) an EEA market operator (as defined in section 312D of the Act) which operates an auction platform, or
- (b) a recognised investment exchange which is a recognised auction platform,

Chapter 3A of Part 18 of the Act has effect with the modifications set out in Schedule 3.

## **PART 3**

### **The Authority**

#### **Functions of the Authority**

9.—(1) The Authority is to have the functions conferred on it by these Regulations.

(2) Reference in an enactment to—

- (a) functions conferred on the Authority by or under the Act (or any part of it), or
- (b) functions of the Authority,

includes a reference to functions conferred on the Authority by these Regulations.

## **PART 4**

### **Amendments to secondary legislation**

#### **Amendment of the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001**

10.—(1) The Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001<sup>(6)</sup> is amended as follows.

(2) In article 3, insert after the definition of “the Act”—

““auctioned products” has the meaning given in Article 4 of Commission Regulation (EU) No 1031/2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community<sup>(7)</sup>;

“recognised auction platform” means a body corporate or unincorporated association in respect of which there is in effect a recognition order made under regulation 2 of the Recognised Auction Platforms Regulations 2011 (application for recognition as auction platform);”.

(3) In article 4—

- (a) in the heading, insert at the end “and auction platforms”;
- (b) after paragraph (2), insert—

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<sup>(6)</sup> S.I. 2001/996, amended by S.I. 2005/381; 2008/3053.

<sup>(7)</sup> OJ No L 302, p.1, 18.11.2010.

“(3) There are prescribed, as auction platforms to which subsections (2), (3), (5), (6), and (7) of section 118 apply, all recognised auction platforms, and all other auction platforms which have been appointed under the emission allowances auctioning regulation;

(4) There are prescribed, as auction platforms to which subsections (4) and (8) of section 118 apply, all recognised auction platforms;

(5) There are prescribed, as auction platforms to which subsection (8A) of section 118 as modified by the Recognised Auction Platforms Regulations 2011 applies, all auction platforms which have been appointed under the emission allowance auctioning regulation.”.

(4) In article 5—

(a) renumber the existing provision as paragraph (1);

(b) after paragraph (1), insert—

“(2) There are prescribed, as qualifying investments in relation to the auction platforms prescribed by article 4(1A), all auctioned products which are financial instruments within the meaning given in Article 4.1(17) of the market in financial instruments directive.

(3) There are prescribed, as qualifying investments in relation to the auction platforms prescribed by article 4(1B), all auctioned products which are not financial instruments within the meaning given in Article 4.1(17) of the market in financial instruments directive.”.

## PART 5

### Recognition Requirements for Auction Platforms

#### Interpretation

11. In this Part—

“bidders” means persons who have been admitted to bid at auctions conducted by the recognised auction platform;

“investor” means any person making a bid at an auction conducted by a recognised auction platform, and any person on whose behalf such a bid is made.

#### Method of satisfying recognition requirements

12.—(1) In considering whether a recognised auction platform or applicant satisfies recognition requirements applying to it under these Regulations (the “auction requirements”), the Authority may—

(a) treat compliance by the auction platform or applicant with the recognition requirements applying to it as a recognised investment exchange as conclusive evidence that the auction platform or applicant satisfies any equivalent recognition requirements applying to it under these Regulations, taking into account any arrangements that would be necessary to meet the auction requirements, and

(b) 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) of the Act.

(2) Without prejudice to the generality of paragraph (1), a recognised auction platform or applicant may satisfy recognition requirements applying to it under these Regulations by making arrangements for functions to be performed on its behalf by any other person.

(3) Where a recognised auction platform or applicant makes arrangements of the kind mentioned in paragraph (2) the arrangements do not affect the responsibility imposed by these Regulations on the recognised auction platform or applicant to satisfy recognition requirements applying to it under these Regulations, but it is in addition a recognition requirement applying to the recognised auction platform or applicant that the person who performs (or is to perform) the functions is a fit and proper person who is able and willing to perform them.

#### Financial resources

13.—(1) The auction platform must have financial resources sufficient for the proper performance of its functions as a recognised auction platform.

(2) In considering whether this requirement is satisfied, the Authority must (without prejudice to the generality of regulation 12(1)) take account of all the circumstances, including the auction platform's connection with any person, and any activity carried on by the auction platform, whether or not it is an exempt activity.

### **Suitability**

**14.—**(1) The auction platform must be a fit and proper person to perform the functions of a recognised auction platform.

(2) In considering whether this requirement is satisfied, the Authority may (without prejudice to the generality of regulation 12(1)) take into account all the circumstances, including the auction platform's connection with any person.

(3) The persons who effectively direct the business and operations of the auction platform must be of sufficiently good repute and sufficiently experienced to ensure the sound and prudent management and operation of the auction platform.

(4) The persons who are in a position to exercise significant influence over the management of the auction platform, whether directly or indirectly, must be suitable.

### **Systems and controls**

**15.—**(1) The auction platform 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) Paragraph (1) applies in particular to systems and controls concerning—

- (a) the transmission of information;
- (b) the assessment, mitigation and management of risks to the performance of the auction platform's functions;
- (c) the monitoring of bids made by, and transactions effected by, persons admitted to bid at auctions conducted by the auction platform;
- (d) the technical operation of the auction platform, including contingency arrangements for disruption to its facilities;
- (e) the operation of the arrangements mentioned in regulation 16(2)(d) below; and
- (f) (where relevant) the safeguarding and administration of assets belonging to users of the auction platform's facilities.

### **Safeguards for investors**

**16.—**(1) The auction platform must ensure that business conducted at auctions or otherwise by means of its facilities is conducted in an orderly manner and so as to afford proper protection to investors.

(2) Without prejudice to the generality of paragraph (1), the auction platform must ensure that—

- (a) access to the auction platform's facilities, including access to bid at auctions conducted by the auction platform, is subject to criteria designed to protect the orderly functioning of—
  - (i) such auction, and
  - (ii) the interests of investors;
- (b) it has transparent and non-discretionary rules and procedures—
  - (i) to provide for fair and orderly auctions, and
  - (ii) to establish objective criteria for the efficient execution of transactions;
- (c) appropriate arrangements are made for relevant information to be made available to participants in auctions conducted by the auction platform;
- (d) satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions executed under systems operated by the auction platform;
- (e) satisfactory arrangements are made for recording transactions executed by persons admitted to bid at auctions conducted by the auction platform and any other transactions which are cleared or to be cleared by means of its facilities;

- (f) appropriate arrangements are made to—
  - (i) identify conflicts between the interests of the auction platform, its owners and operators and the interests of bidders, investors and other persons who make use of its facilities or the interests of any market operated by the auction platform in its capacity as a recognised investment exchange;
  - (ii) manage such conflicts so as to avoid adverse consequences for the operation of the auctions conducted by, or markets operated by, the auction platform in its capacity as a recognised investment exchange and for the persons who use its facilities;
- (g) appropriate measures (including the monitoring of transactions executed under systems operated by the auction platform) are adopted to reduce the extent to which the auction platform’s facilities can be used for a purpose connected with market abuse or financial crime, and to facilitate their detection and monitor their influence; and
- (h) where the auction platform’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.

(3) In paragraph (2)(c), “relevant information” means information on the terms of the emission allowance, and the terms on which it will be offered for sale at auction.

### **Promotion and maintenance of standards**

**17.**—(1) The auction platform 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 auction platform.

(2) The exchange must be able and willing to co-operate, 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 and consultation**

**18.**—(1) The auction platform must ensure that appropriate procedures are adopted for it to make rules, for keeping the rules under review and for amending them.

(2) The procedures must include procedures for consulting users of the auction platform’s facilities in appropriate cases.

(3) The auction platform must consult users of its facilities on any arrangements it proposes to make for dealing with penalty income in accordance with regulation 22(3).

### **Access to auctions**

**19.**—(1) The auction platform must make transparent and non-discriminatory rules, based on objective criteria, governing access to auctions conducted by it or other facilities offered by it.

(2) In particular those rules must specify the obligations for bidders and users or members of its facilities arising from—

- (a) the constitution and administration of the auction platform;
- (b) rules relating to bids made at auctions conducted by the auction platform, or other transactions executed under systems operated by the auction platform;
- (c) its professional standards for staff of any bidders; and
- (d) the rules and procedures for clearing and settlement of transactions executed by bidders;

(3) Rules of the auction platform about access to bid at auctions conducted by it must permit the auction platform to give access only to those persons who are eligible to be given access to bid directly in auctions under Article 18 of the emission allowance auctioning regulation.

(4) Rules under this Regulation must enable—

- (a) an investment firm authorised under Article 5 of the markets in financial instruments directive, or
- (b) a credit institution authorised under the banking consolidation directive,

by the competent authority of another EEA State (including a branch established in the United Kingdom of such a firm or institution) to apply for access to bid in auctions conducted by the auction platform on the same terms as a UK firm.

(5) The auction platform must make arrangements regularly to provide the Authority with a list of bidders.

(6) This regulation is without prejudice to the generality of regulation 16.

### **Choice of settlement facilities**

**20.**—(1) The rules of the auction platform must permit a bidder to use whatever settlement facility that person chooses for a transaction.

(2) Paragraph (1) only applies where—

- (a) such links and arrangements exist between the chosen settlement facility and any other settlement facility as are necessary to ensure the efficient and economic settlement of the transaction, and
- (b) the auction platform is satisfied that the smooth and orderly functioning of the auction platform will be maintained.

### **Discipline**

**21.**—(1) The auction platform must have—

- (a) effective arrangements (which include the monitoring of transactions executed under systems operated by the auction platform) for monitoring and enforcing compliance with its rules;
- (b) effective arrangements for monitoring and enforcing compliance with the arrangements made by it as mentioned in regulation 16(2)(d); and
- (c) effective arrangements for monitoring transactions effected under systems operated by the auction platform in order to identify disorderly trading conditions.

(2) Arrangements made pursuant to paragraph (1) must include procedures for—

- (a) investigating complaints made to the auction platform about the conduct of persons in the course of using the auction platform's facilities; and
- (b) the fair, independent and impartial resolution of appeals against decisions of the auction platform.

(3) Where arrangements made pursuant to paragraph (1) 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 auction platform 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 auction platform in relation to that breach;
- (b) for the benefit of users of the auction platform's facilities;
- (c) for charitable purposes.

### **Complaints**

**22.**—(1) The auction platform 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 paragraph (1) does not extend to—

- (a) complaints about the content of rules made by the platform, or
- (b) complaints about a decision against which the complainant has the right to appeal under procedures of the kind mentioned in regulation 21(2)(b).

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

(4) The arrangements must confer on the person mentioned in paragraph (3) the power to recommend, if it is considered appropriate, that the auction platform—

- (a) makes a compensatory payment to the complainant,
- (b) remedies the matter complained of,

or takes both of these steps.

(5) Sub-paragraph (3) is not to be taken as preventing the platform from making arrangements for the initial investigation of a complaint to be conducted by the platform.

## PART 6

### Review

#### Review

**23.**—(1) Before the end of each review period, the Treasury must—

- (a) carry out a review of regulations 2 to 22,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Treasury must, so far as is reasonable, have regard to how the emission allowance auctioning regulation is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by regulations 2 to 22,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means—

- (a) the period of five years beginning with the last day on which any of regulations 2 to 22 come into force, and
- (b) subject to paragraph (5), each successive period of five years.

(5) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Lords Commissioners of Her Majesty’s Treasury

## SCHEDULE 1

Regulation 7

### Modifications of Part 8 of the Act in relation to behaviour related to auction platforms

**1.** Section 118<sup>(8)</sup> has effect as if—

- (a) in subsection (1)(a), for sub-paragraphs (i) and (ii) there were substituted—
  - “(i) qualifying investments which are offered for sale on a prescribed auction platform, or”;
- (b) in subsection (1)(b), the reference to subsections “(2) to (8)” were a reference in subsections “(2) to (8A)”;
- (c) in subsection (5)—
  - (i) after “transactions” there were inserted “, bids”,
  - (ii) for “relevant market” there were substituted “relevant auction platform”;
- (d) in subsection (6), after “transactions” there were inserted “bids”;

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<sup>(8)</sup> Section 118 was substituted, together with ss 118A to 118C for the original s. 118 by S.I. 2005/381, regulation 5, Schedule 2, paragraph 1.

(e) in subsection (8), for “or (7)” there were substituted “, (7) or (8A)”;

(f) after that subsection there were inserted—

“(8A) The eighth is where the behaviour contravenes any of the provisions in Articles 38 to 41 of the emission allowance auctioning regulation.”.

**2.** Section 118A has effect as if in subsection (1), for paragraph (b), there were substituted—

“(b) in relation to—

(i) qualifying investments which are offered for sale on a prescribed auction platform,

(ii) in the case of section 118(2) and (3), investments which are related investments in relation to such qualifying investments”.

**3.** Section 118B has effect as if—

(a) the existing provision were subsection (1) of the section;

(b) in paragraphs (a) and (b) of that subsection, for “an issuer of qualifying investments” there were substituted “an auction platform or its operator, an auctioneer or auction monitor”;

(c) after subsection (1) there were inserted—

“(2) For the purposes of this section—

“auctioneer” has the same meaning as in paragraph 20 of Article 3 of the emission allowance auctioning regulation;

“auction monitor” means the person appointed pursuant to Article 24 of the emission allowance auctioning regulation to act as auction monitor of auctions conducted under the emission allowance auctioning regulation.”.

**4.** Section 118C has effect as if—

(a) in subsection (2)(c), for “the price of the qualifying investments” there were substituted “the price at which bids would be made for the qualifying investments”;

(b) in subsection (4)—

(i) for “orders” there were each time substituted “bids”;

(ii) in paragraph (d), for “the price of those qualifying investments” there were substituted “the price at which bids would be made for those qualifying investments”;

(c) in subsection (5)(b), for “the price of qualifying investments” there were substituted “the price at which bids would be made for qualifying investments”.

**5.** Section 119(9) has effect as if in subsection (2)(d) and (e), after “specified markets” there were inserted “or specified auction platforms”.

**6.** Section 124 has effect as if in subsection (2), after “the market” there were inserted “or auction platform”.

**7.** Section 130A<sup>(10)</sup> has effect as if—

(a) in subsection (1)—

(i) in paragraph (a), for “the markets which are prescribed markets” there were substituted “the auction platforms which are prescribed auction platforms”, and

(ii) in paragraph (b), for “the prescribed markets” there were substituted “the prescribed auction platforms”;

(b) in subsection (2), for “markets or descriptions of market” there were substituted “auction platforms or descriptions of auction platform”;

(c) in subsection (3)—

(i) for the definition of “accepted market practices” there were substituted—

““accepted market practices” means practices that are reasonably expected on the auction platform or platforms in question, and are accepted by the Authority or, in the case of an auction

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<sup>(9)</sup> Paragraphs (d) and (e) were inserted into section 119(2) by S.I. 2005/381, regulation 5, Schedule 2, paragraph 2(1), (2).

<sup>(10)</sup> Section 130A was inserted by S.I. 2005/381, regulation 5, Schedule 2, paragraph 3.



platform situated in another EEA State, the competent authority of that EEA State, within the meaning of Article 35.5 of the emission allowance auctioning regulation;”;

(ii) for the definition of “dealing”, there were substituted—

““dealing”, in relation to an investment, means bidding or withdrawing a bid for the investment, or agreeing to bid or withdraw a bid for the investment,”

(iii) for the definition of “regular user”, there were substituted—

““regular user” in relation to a particular auction platform, means a reasonable person who regularly bids for qualifying investments on that platform.”

## SCHEDULE 2

Regulation 8

### Modifications of Part 18 of the Act in relation to recognised auction platforms

**8.** In section 285(2), reference to the exchange’s business as an investment exchange includes a reference to its business as an auction platform.

**9.** In section 291(3), reference to the obligations to which the body is subject under or by virtue of the Act is to be read as including a reference to the obligations to which it is subject under these Regulations or under the emission allowance auctioning regulation.

**10.** In section 292A<sup>(11)</sup>—

(a) in subsection (1) reference to a recognition order is to be read as including a reference to a recognition order under regulation 2 of these Regulations;

(b) in subsections (2) and (4) references to the management of the exchange are to be read as including references to the management of the auction platform.

**11.** In section 293, in subsection (6)(a), reference to transactions effected on the exchange is to be read as including a reference to transactions effected on the auction platform.

**12.** In section 293A<sup>(12)</sup>, reference to any directly applicable Community regulation made under the markets in financial instruments directive is to be read as including a reference to any requirements under the emission allowance auctioning regulation to which the recognised investment exchange is subject as the operator of an auction platform.

**13.** In section 299(2), reference to whether the body concerned should remain a recognised body is to be read as including whether it should remain a recognised auction platform.

**14.** In section 300—

(a) in subsection (1)(a), reference to a recognition order under section 290 of the Act is to be read as including a reference to a recognition order under regulation 2 of these Regulations;

(b) in subsection (4), reference to the rules of an investment exchange is to be read as including a reference to rules made in relation to an auction platform.

**15.** In section 301F(4), reference to any financial market operated by the recognised investment exchange is to be read as including a reference to any auction platform operated by it.

**16.** Sections 300A to 300E, and sections 302 to 310 do not apply to a recognised investment exchange in its capacity as a recognised auction platform.

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<sup>(11)</sup> Section 292A was inserted by S.I. 2007/126, regulation 3(2), Schedule 2, paragraphs 1 and 5.

<sup>(12)</sup> Section 293A was inserted by S.I. 2007/126, Schedule 2, paragraphs 1 and 6.

## Modifications to Chapter 3A of Part 18 of the Act in relation to recognised auction platforms and EEA market operators of auction platforms

**17.** In section 312A<sup>(13)</sup>—

- (a) in subsection (1), reference to a specified regulated market is to be read as including a reference to a specified auction platform;
- (b) in subsection (2), reference to a market is to be read as including a reference to an auction platform.

**18.** In section 312B—

- (a) in subsection (1), reference to a regulated market is to be read as including a reference to an auction platform;
- (b) in subsection (2), references to the markets in financial instruments directive are to be read as including references to the emission allowance auctioning regulation.

**19.** In section 312C—

- (a) in subsection (1), reference to a regulated market is to be read as including a reference to an auction platform;
- (b) in subsection (5)(b), reference to the third sub-paragraph of Article 42.6 of the markets in financial instruments directive (in the case of relevant arrangements relating to a regulated market) is to be read as including a reference to that provision as applied to auction platforms by Article 35 of the emission allowance auctioning regulation (in the case of arrangements relating to a recognised auction platform).

**20.** In section 312D, the definition of “applicable provision” shall be read as including, in addition to the cases set out in paragraphs (a) and (b)—

- “(c) in the case of arrangements relating to an auction platform, the first sub-paragraph of Article 42.6 of the market in financial instruments directive as applied to auction platforms under Article 35 of the emission allowance auctioning regulation.”.

### EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement the obligations in Articles 35, 36 and 43 of Commission Regulation (EU) 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances (O.J. L302/1, 18.11.2010) (the emission allowance auctioning regulation) to ensure that UK law implementing provisions of the Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments of 21 April 2004 (OJ L145, p1, 20.4.2004) in relation to regulated markets, and of Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation of 28 January 2003 (OJ L96, 12.4.2003, p16) apply to auction platforms auctioning emission allowances under the emission allowance auctioning regulation.

Regulation 2 of these Regulations sets out the procedure for applications to be recognised as a recognised auction platform. Only recognised investment exchanges will be eligible to make such an application.

Regulation 3 gives the Authority power to make directions in relation to a recognised auction platform where that platform appears to the Authority to be failing to comply with the recognition requirements or other obligations applying to it.

Regulation 4 provides for the revocation of a recognition order made under regulation 2.

Regulation 5 provides for the procedure to be followed where the Authority refuses to make a recognition order, proposes to give a direction under regulation 3 or to make a revocation order under regulation 4.

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<sup>(13)</sup> Sections 312A to 312D were inserted by S.I. 2007/126, Schedule 2, paragraphs 1 and 15.

Regulation 6 of, and Schedule 1 to, the Regulations apply the provisions of Part 8 (penalties for market abuse) of the Financial Services and Markets Act 2000 (“the Act”) to auction platforms with the modifications set out in the Schedule.

Regulation 7 of, and Schedule 2 to, the Regulations ensure that the provisions in Part 18 (recognised investment exchanges and clearing houses) of the Act will apply to a recognised investment exchange which is also a recognised auction platform with the modifications which are set out in Schedule 2. Regulation 7 also clarifies the application of sections 152 to 156 of the Act in relation to rules made by the Authority under section 293 in relation to recognised auction platforms.

Regulation 8 of, and Schedule 3 to, the Regulations modify the provisions of Chapter 3A (passport rights) of Part 18 of the Act in their application to recognised auction platforms, and EEA operators of auction platforms.

Regulation 9 ensures that any reference in legislation to functions of the Authority under the Act is understood to include the functions given to the Authority under these Regulations. This ensures that the powers given to the Authority for the performance of its functions under the Act will also apply in relation to the performance of its functions under these Regulations.

Regulation 10 amends the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 to prescribe auction platforms and make emission allowances qualifying investments for the purposes of Part 8 (penalties for market abuse) of the Act.

Part 5 of the Regulations set out the requirements which will have to be satisfied by any recognised investment exchange which wishes to be recognised as a recognised auction platform. Regulation 11 contains definitions relevant to Part 5. Regulation 12 indicates the factors which the Authority may take into account in assessing compliance with the requirements in Part 5. Those requirements are set out in detail in regulations 13 to 22, and cover matters ranging from the financial resources required by an auction platform to the arrangements it must have for investigating complaints.

Regulation 23 requires the Treasury to review the operation and effect of these Regulations within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An Impact Assessment of the effect that these Regulations will have on the costs of business and the voluntary sector is available on HM Treasury’s website ([hm-treasury.gov.uk](http://hm-treasury.gov.uk)) and is published with the Explanatory Memorandum alongside these Regulations on the [legislation.gov.uk](http://legislation.gov.uk) website.

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