

PS12/1

Financial Services Authority

Auctioning of greenhouse gas emission allowances:

Feedback to CP11/14

Contents

	Abbreviations used in this paper	3
1	Overview	5
2	Summary of responses to CP11/14	7
Annex 1:	List of non-confidential respondents	
Appendix 1:	Made rules (legal instrument)	

This Policy Statement reports on the main issues arising from Consultation Paper 11/14 (Auctioning of greenhouse gas emission allowances) and publishes final rules.

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

Abbreviations used in this paper

Acronym	Description
CAR	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
CP	Consultation Paper
EC	European Commission
EU	European Union
PS	Policy Statement
RAP	Recognised Auction Platform
REC	Recognised Investment Exchanges and Recognised Clearing Houses sourcebook
RIE	Recognised Investment Exchange

1

Overview

Introduction

- 1.1 In this Policy Statement (PS), we summarise the responses to our consultation on our approach to the recognition and supervision of Recognised Auction Platforms (RAPs), and set out the changes to our Handbook we are making in light of our consultation and the feedback we received.

Background

- 1.2 In CP11/14, *Auctioning of greenhouse gas emission allowances*, we consulted on measures to complement Her Majesty's Treasury's (HMT's) 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 European Union (EU) procurement processes to select both a common EU auction platform and a number of national auction platforms. Emission auction platforms are set to play a core role in the emissions trading market following an upcoming requirement for Member States to auction the major part of their emission allowance allocations.

Who should read this paper?

- 1.3 This PS is relevant to recognised investment exchanges (RIEs) looking to apply for recognition to conduct auctions of EU carbon emission allowances. It may also be of interest to regulators in other countries and the European Commission (EC).

Next steps

- 1.4 Our rules came into effect on (22 Dec) and were announced through a statement on our website.
- 1.5 There will be a further consultation in the Spring in relation to bidding on an auction platform.

2

Summary of responses to CP11/14

2.1 In CP11/14, we asked the following:

- 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?*

2.2 Respondents were broadly content with our approach but did raise the following issues:

Protections for an RIE's default rules

2.3 Respondents were concerned that a proposed reference in Schedule 2 (Notification requirements) to the Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC), which explained that the Companies Act 1989 does not apply to RAPs, could be read as meaning that those provisions do not apply to RIEs that are also RAPs. Some respondents suggested that we delete that proposed text and one suggested we amend a similar reference to section 300B(1) of FSMA not applying to RAPs so that it was clear this only relates to RAPs in their capacity as an auction platform.

Our response

Schedule 2 of REC summarises the notification requirements applicable for all recognised bodies. The proposed text was designed to make clear that the statutory notification requirements contained in the Companies Act 1989 and section 300B(1) of FSMA do not apply to an RAP in its capacity as such. They would, however, continue to apply to an RIE in its capacity as such.

The text of the summary expressly explains that it is not meant to supersede or alter the meaning of the Companies Act 1989 or FSMA. The purpose was to help RIEs and RAPs understand how the notification requirements applicable to them interact.

However, to address respondents' concerns with the proposed text we have decided to remove it because Schedule 2 is only meant to be a summary. Additionally, we consider the principle that we were explaining was already expressed within the new guidance in REC 3.1.3AG. That guidance explains that the notification rules which apply to an RAP are without prejudice to the notification rules which apply to a UK RIE that is also an RAP.

A UK RIE will need to comply with the notification requirements that apply to UK RIEs. Where a UK RIE is also a RAP, it will need to apply the notification requirements that apply to RAPs.

Please note, though, that this does not require RIEs to send duplicate notifications. REC 3.1.3AG explains that a UK RIE can make a single notification if it is subject to a notification requirement both in its capacity as a UK RIE and in its capacity as an RAP.

Auction products

- 2.4 Respondents thought our proposed definition of ‘auction products’ could be improved. They suggested we make the definition more neutral by referring to the contractual nature of emission allowances subject to an auction, as 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 (CAR) says that auction products may take more than one form.

Our response

The proposed definition reflected the text of article 4(1) of CAR, which provides that ‘allowances shall be offered for sale on an auction platform by means of standardised electronic contracts traded on that auction platform’. But we have decided to take account of respondents’ concerns by more neutrally defining ‘auction products’ as ‘greenhouse gas emission allowances offered for sale on an auction platform’.

This should make it clear that we are not intending to restrict the types of auction products to which CAR apply. Where our rules and guidance refer to auction products, they refer to those auction products to which the requirements of CAR apply.

Language

- 2.5 One respondent suggested several textual amendments designed to clarify the language of the draft instrument and make the application of our rules and guidance to RAPs even more explicit.

Our response

We are grateful for that respondent’s detailed analysis and have incorporated some of the drafting suggestions into our final text.

In other cases, we have adapted the final text to clarify the application of the rules and guidance in REC where we thought this could improve the consultation text. For example, we have included the new defined term ‘recognised body requirement’ to simplify the text in REC so that the definition sets out the different meanings of this term in relation to different types of recognised body.

Additionally, we amended the notification rules applicable to RIEs to clarify how they apply to RAPs which, in the following three respects, may give rise to additional costs for RAPs. These amendments are in:

- REC 3.20 (Disciplinary action against members), which requires a UK recognised body to notify the FSA of any disciplinary action taken against any member, or employee of a member, in respect of a breach of a rule relating to the carrying on of that body of any of its regulatory functions. In the final text, we have clarified the definition of ‘regulatory functions’ by specifying that for an RAP, this includes any function to which it is subject under or by virtue of the recognition requirements that apply to it in its capacity as an RAP.
- REC 3.23 (Default), which requires a UK recognised body which decides to put one of its members into default to immediately give us specified information. We have amended the final text to include in that information a notification to the FSA of (to the best of that body’s knowledge) any other auction platform which that member clears business or transacts for its clients.
- REC 3.24 (Transfers of ownership), which requires a UK RIE to notify us once it becomes aware of a transfer of ownership of that UK RIE which leads to a change in the people in a position to exercise significant influence over the management of that UK RIE. We have amended the final text to clarify that this also includes in the case of a UK RIE that is also an RAP, the management of the RAP.

We believe our amendments will help an RAP understand how the regime applies to it. We consider the change to clarify, rather than add any new, requirements on an RAP.

To the extent that the final provisions differ from the consultation draft, we do not consider that any of those differences give rise to additional costs or, if they do, that they are only of minimal significance. That is because we consider the notifications would already need to be made by an RIE in its capacity as such or, to the extent that the amendments are viewed as giving rise to the need to provide some additional information, that information should be readily available to an RAP if properly complying with the recognition requirements. Even if the notification was being made separately, accessing and notifying that information to the FSA would only give rise to marginal or no extra costs.

Annex 1

List of non-confidential respondents

ICE Futures Europe

Shearman and Sterling (London) LLP

Appendix 1

Made rules (legal instrument)

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).
- 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 22 December 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
Fees manual (FEES)	Annex B
Supervision manual (SUP)	Annex C
Recognised Investment Exchanges and Recognised Clearing Houses sourcebook (REC)	Annex D

Amendments to material outside the Handbook

- E. The Perimeter Guidance manual (PERG) is amended in accordance with Annex E to this instrument.

Citation

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

By order of the Board
21 December 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 an <i>auction platform</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>RAP</i>	a <i>recognised auction platform</i> .
<i>RAP recognition requirements</i>	<ol style="list-style-type: none"> (1) (in relation to an <i>RAP</i>) any of the requirements applicable to an <i>RAP</i> under the <i>RAP regulations</i>, the <i>auction regulation</i> or the <i>MiFID Regulation</i>. (2) (in relation to a <i>UK RIE</i> applying for recognition as an <i>RAP</i>) any of the requirements under the <i>RAP regulations</i>, the <i>auction regulation</i> or the <i>MiFID Regulation</i> which, if its application were successful, would apply to it.
<i>RAP regulations</i>	the Recognised Auction Platforms Regulations 2011 (SI 2011/2699).
<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> .
<i>recognised body requirements</i>	<ol style="list-style-type: none"> (1) (in relation to an <i>RIE</i> or <i>RCH</i>) the <i>recognition requirements</i>; (2) (in relation to a <i>UK RIE</i>) the <i>MiFID implementing requirements</i>; (3) (in relation to an <i>RAP</i>) the <i>RAP recognition requirements</i>; and (4) (in relation to any of the bodies specified in (1) to (3)) any other obligations imposed by or under the <i>Act</i>.

Amend the following definitions as shown.

- complaints investigator* (1) (in relation to a *UK RIE*) the independent *person* appointed under arrangements referred to in paragraph 9(3) of the Schedule to the *Recognition Requirements Regulations* to investigate a complaint and to report on the result of his investigation to that *RIE* and to the complainant.
- (2) (in relation to a *UK RCH*) the independent *person* appointed under arrangements referred to in paragraph 23(3) of the Schedule to the *Recognition Requirements Regulations* to investigate a complaint and to report on the result of his investigation to that *RCH* and to the complainant.
- (3) (in relation to an *RAP*) the independent *person* appointed under arrangements referred to in regulations 22 and 23 of the *RAP regulations* to investigate a complaint and to report on the result of his investigation to that *RAP* and to the complainant.
- facilities* (in relation to a *recognised body*) the facilities and services which it provides in the course of carrying on *exempt activities*, and references to the use of the facilities of an *RIE* or *RAP* are to be construed as follows:
- ~~(1)~~ (a) ~~dealings or transactions on an *RIE* or *RAP*; or (2) transactions on an *RIE*~~ 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)~~ (b) references to the use of the facilities of an *RIE* or *RAP* include use which consists of any such dealings or entering into any such transactions.
- greenhouse gas emissions emission allowance* an allowance, licence, permit, right, note, unit, credit, asset, certificate or instrument (the “allowance”) where:
- (a) the allowance confers or may result in a benefit or advantage to its holder or another *person*; and
- (b) the allowance, or the benefit or advantage in (a), is linked to the emission or non-emission of quantities of carbon dioxide or other greenhouse gases into the environment by the holder of the allowance or ~~someone else~~ another *person*.
- notification rule* (1) ...
- (2) (in relation to a *recognised body*) a *rule* made by the *FSA* under section 293 of the *Act* (Notification requirements) or section 295 of the *Act* (Notification: overseas investment exchanges and overseas clearing houses):

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

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 an *RAP*.

regulatory function (as defined in section 291 of the *Act* (Liability in relation to *recognised body's* regulatory functions)) any function of a *recognised body* so far as relating to, or to matters arising out of, the obligations to which the body is subject under or by virtue of the *Act* and (for an *RAP*) under the *RAP recognition requirements*.

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 an *RAP*.

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

Annex B

Amendments to the Fees manual (FEES)

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

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> ; <u>(i) under section 287 or section 288 of the Act; or</u> <u>(ii) under regulation 2(1) of the RAP regulations</u>	<i>FEES 3 Annex 3R, part 1</i>	On or before the date the application is made
...		

...

3 Annex 3R **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 an RAP</u> <u>(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:		

...		
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...

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

...

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</u>	<u>Due date</u>
<u>An RAP recognised as such by a recognition order made in the period</u>	<u>£50,000</u>	<u>30 days after the date on which the recognition order is made</u>

Annex C

Amendments to the Supervision manual (SUP)

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

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*.

Annex D

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

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

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).

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

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 (other than requirements under the auction regulation which are not reproduced in REC) are set out, with guidance, in REC 2A.

...

1.2 Purpose, status and quotations

Purpose

- 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, other obligations on recognised bodies in or under the Act and the MiFID implementing requirements*~~ *recognised body requirements*. The purpose of the *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.

Status

- 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 is satisfied, or whether there is compliance with another obligation under the Act, or whether a MiFID implementing requirement*~~ *recognised body 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 complies with other obligations in or under the Act, or a UK RIE satisfies the MiFID implementing requirements*~~ *recognised body requirements*, the *FSA* will have regard to any relevant factor, including, but not limited to, the factors specifically discussed in the *guidance*.

Quotations

- 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 Recognition Requirements

2.1 Introduction

- 2.1.1 G This chapter contains the *recognition requirements* for *UK recognised bodies* (other than *RAPs*) and sets out *guidance* on those requirements. This chapter also contains the *MiFID implementing requirements* for *UK RIEs*. (~~The *recognition requirements* for *overseas recognised bodies* are set out in *REC 6*.~~)

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

After REC 2 insert the following new chapter. The text is not underlined.

2A Recognised Auction Platforms

2A.1 Introduction

- 2A.1.1 G This chapter applies to an *RAP* or to a *UK RIE* applying to become an *RAP*. Regulation 2 of the *RAP regulations* provides that 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 an *RAP* applicant for recognition to be granted. These requirements 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 where appropriate and where not otherwise stated.
- 2A.1.3 G The *RAP regulations* apply modified provisions of the *Act* to an *RAP*. For example, an *RAP* is an *exempt person* in respect of its business as an *auction platform* due to the application of section 285 of the *Act* as modified by the *RAP regulations*. Similarly, section 293 of the *Act* is applied and modified by the *RAP regulations* to provide for *notification rules* and notification requirements in relation to *RAPs*.

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

- 2A.2.1 UK Recognised Auction Platforms Regulations, regulation 13

<p>(1) In considering whether [an <i>RAP</i>] or applicant satisfies the [<i>RAP recognition requirements</i>], the [<i>FSA</i>] may—</p> <p>(a) treat compliance by the [an <i>RAP</i>] or applicant with the [<i>recognition requirements</i> or <i>MiFID implementing requirements</i>] applying to it as a [<i>UK RIE</i>] as conclusive evidence that the [an <i>RAP</i>] or applicant satisfies any equivalent [<i>RAP recognition requirements</i>] applying to it under these [<i>RAP regulations</i>], taking into account any arrangements that would be necessary to meet the [<i>RAP recognition requirements</i>], and</p> <p>(b) take into account all relevant circumstances including the constitution of the <i>person</i> concerned.</p>
<p>(2) Without prejudice to the generality of paragraph (1), [an <i>RAP</i>] or</p>

applicant may satisfy [*RAP recognition requirements*] by making arrangements for functions to be performed on its behalf by any other *person*.

(3) Where [an *RAP*] or applicant makes arrangements of the kind mentioned in paragraph (2), the arrangements do not affect the responsibility imposed by these [*RAP regulations*] on the [*RAP*] or applicant to satisfy the [*RAP recognition requirements*], but it is in addition [an *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 *FSA* will request information from an *RAP* or *RAP* applicant in order to determine whether it meets 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 compliance by the *RAP* or *RAP* applicant 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 examining an application to become an *RAP* or as part of its ongoing supervision of an *RAP*, unless there is a specific reason to do so.
- 2A.3.2 G The *guidance* in relation to the *recognition requirements* in the sections of *REC 2* listed in Column A of the table below applies to an *RAP* in relation to the equivalent *RAP recognition requirements* listed in Column C and (if shown) with the modifications in Column B.

Table: Guidance on *RAP* recognition requirements

Column A <i>REC 2</i> guidance which applies to an <i>RAP</i>	Column B Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Column C Relevant <i>RAP</i> recognition requirement
<i>REC 2.2.2G</i> to <i>REC 2.2.7G</i> (Relevant circumstances and Outsourcing)		Reg 13
<i>REC 2.3.3G</i> to <i>REC 2.3.9G</i> (Financial		Reg 14

resources)		
<i>REC 2.4.3G to REC 2.4.6G</i> (Suitability)	In addition to the matters set out in <i>REC 2.4.3G to 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 15
<i>REC 2.5.3G to REC 2.5.20G</i> (Systems and controls and conflicts) and <i>REC 2.5A</i> (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16
<i>REC 2.6.26G to REC 2.6.34G</i> (Safeguards for investors)		Reg 17
<i>REC 2.7.3G to REC 2.7.4G</i> (Access to facilities)	The <i>FSA</i> shall have regard to whether an <i>RAP</i> provides access to bid at auctions only to those <i>persons</i> eligible to bid under article 18 of the <i>auction regulation</i> .	Reg 20
<i>REC 2.8.3G to REC 2.8.4G</i> (Settlement and clearing services)		Reg 17(2)(d) and 21
<i>REC 2.9.3G to REC 2.9.4G</i> (Transaction recording)		Reg 17(2)(e)
<i>REC 2.10.3G to REC 2.10.4G</i> (Financial crime and market abuse)		Reg 17(2)(g)
<i>REC 2.11.3G to REC 2.11.4G</i> (Custody)	<i>REC 2.11.4G</i> is replaced with the following for an <i>RAP</i> : Where an <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	Reg 17(2)(h)

	satisfy the <i>RAP recognition requirement</i> in regulation 17(2)(h) of the <i>RAP regulations</i> (see <i>REC 2A.2.1UK</i>).	
<i>REC 2.12.11G to REC 2.12.12G</i> (Availability of relevant information)	<p><i>REC 2.12.11G to REC 2.12.12G</i> are replaced with the following for an <i>RAP</i>:</p> <p><i>REC 2.12.11G</i></p> <p>In determining whether appropriate arrangements have been made to make <i>relevant information</i> available to persons engaged in dealing in <i>auction products</i>, the <i>FSA</i> may have regard to:</p> <p>(1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>auction 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;</p> <p>(2) what restrictions, if any, there are on the dissemination of <i>relevant information</i> to auction bidders; and</p> <p>(3) whether <i>relevant information</i> is, or can be, kept to restricted groups of persons in such a way as to facilitate or encourage <i>market abuse</i>.</p> <p><i>REC 2.12.12G</i></p> <p>An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>auction products</i> 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.</p>	Reg 17(2)(c)
<i>REC 2.13.3G to REC 2.13.6G</i> (Promotion and maintenance of standards)		Reg 18
<i>REC 2.14.3G to REC 2.14.6G</i>		Reg 19

(Rules and consultation)		
<i>REC 2.15.3G to REC 2.15.6G</i> (Discipline)		Reg 22
<i>REC 2.16.3G to REC 2.16.4G</i> (Complaints)		Reg 23

Amend the following 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 apply to an *RAP* are without prejudice to notification rules which apply to a *UK RIE* which operates the *RAP*. However, a *UK RIE* which operates an *RAP* may make a single notification where a notification is required both in its capacity as a *UK RIE* and an *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 an *RAP* where the *person* has

responsibilities both in the UK RIE and RAP, a description of the responsibilities he has in respect of each body; or

...

...

3.13 Delegation of relevant functions

- 3.13.1 G (1) The purpose of REC 3.13 is to enable the FSA to monitor any significant instances where *UK recognised bodies* outsource their functions to other *persons* (as ~~they are permitted to do~~ under regulation 6 of the *Recognition Requirements Regulations* or, in relation to an RAP, under regulation 13 of the RAP regulations. See REC 2.2 and REC 2A.2).

...

- 3.13.2 R Where a *UK recognised body* makes an offer or agrees to delegate any of its *relevant functions* to another *person*, it must immediately give the FSA notice of that event, and:

...

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

...

...

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 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 recognised auction platform

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

3.15 Suspension of services

Purpose

- 3.15.1 G (1) The purpose of REC 3.15.2R to REC 3.15.5G is to enable the FSA to obtain information where a UK recognised body decides to suspend the provision of its services in relation to particular *investments* or (for an RAP) decides to cancel an auction. Planned changes to the provision of services should be notified to the FSA under REC 3.14.
- (2) ...
- (3) REC 3.15.8R to REC 3.15.9G provide for notification to the FSA where an RAP has to cancel an auction in specified circumstances.

...

Recognised auction platforms - cancellation of auctions

- 3.15.8 R Where an 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, an RAP is required to 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.

...

3.18 Membership

- 3.18.1 G (1) The purpose of REC 3.18 is to enable the FSA to monitor changes in the types of *member* admitted by UK recognised bodies and to ensure that the FSA has notice of foreign jurisdictions in which the *members* of UK recognised bodies are based. UK recognised bodies may admit *persons* who are not *authorised persons* or *persons* who are not located in the *United Kingdom*, provided that the *recognition*

requirements or (for *RAPs*) *RAP recognition requirements* continue to be met.

- (2) *REC 3.18.2R* focuses on the admission of *persons* who are not *authorised persons* (whether or not they are located in the *United Kingdom*) and on whether the specific *recognition requirement* or (for an *RAP*) *RAP recognition requirement* relating to access to *facilities* can still be met. *REC 3.18.3R* focuses on the admission of *members* from outside the *UK* and whether all relevant *recognition requirements* or (for an *RAP*) *RAP recognition requirements* can be met.
- (3) The information required under *REC 3.18* is relevant to the *FSA's* supervision of the *UK recognised body's* obligations in relation to the enforceability of compliance with the *UK recognised body's* rules. It is also relevant to the *FSA's* broader responsibilities concerning market confidence and financial stability and, in particular, its functions in relation to *market abuse* and *financial crime*. It may also be necessary in the case of *members* based outside the *United Kingdom* to examine the implications for the enforceability of *default rules* or collateral and the settlement of transactions, and thus the ability of the ~~*UK recognised body*~~ *UK RIE* or *UK RCH* to continue to meet the *recognition requirements*. It follows that the admission of a *member* from outside the *United Kingdom* who is not an *authorised person* could require notification under both *REC 3.18.2R* and *REC 3.18.3R*, although a single report from the *UK recognised body* covering both notifications would be acceptable to the *FSA*.

- 3.18.2 R Where a *UK recognised body* admits a *member* who is not an *authorised person* of a type of which, immediately before that time, that *UK recognised body* had not admitted to *membership*, it must immediately give the *FSA* notice of that event, and:
- (1) a description of the type of *person* whom it is admitting to *membership*; ~~and~~
 - (2) (in relation to a *UK RIE* or a *UK RCH*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *recognition requirement* in paragraph 4(2)(a) or paragraph 19(2)(a) of the Schedule to the *Recognition Requirements Regulations* which applies to it; and
 - (3) (in relation to an *RAP*) particulars of its reasons for considering that, in admitting that type of *person* to *membership*, it is able to continue to satisfy the *RAP recognition requirement* in regulation 20 (*Access to auctions*) which applies to it.

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

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

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

...

3.19 Investigations

3.19.1 R Where a *UK recognised body* becomes aware that a *person* has been appointed by any *regulatory body* (other than the *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

...

3.22.2 R Where an *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 in accordance with article 57 of the *auction regulation*, the *RAP* must give the *FSA* notice of that event and details of the remedial measures proposed.

3.23 Default

3.23.1 R Where a *UK recognised body* decides to put a *member* into default, it must

immediately give notice of that event, and give the following information to the *FSA*, at the same time as that decision is communicated to that *member* or to any other *member* (or group or class of them) of that body:

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

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

3.24 Transfer of ownership

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

...

...

3.25 Significant breaches of rules and disorderly trading conditions

- 3.25.1 R A *UK RIE* and an *RAP* must immediately notify the *FSA* of:
- (1) significant breaches of its rules; or
 - (2) disorderly trading conditions on any of its markets or auctions;

...

3.26 Proposals to make regulatory provision

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

...

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

4 Supervision

4.1 Application and purpose

...

Purpose

- 4.1.2 G This chapter sets out the *FSA's* approach to the supervision of *recognised bodies* and contains *guidance* on:
- (1) the arrangements for investigating complaints about *recognised bodies* made under section 299 of the *Act* (Complaints about recognised bodies) (*REC 4.4*);
 - (2) the *FSA's* approach to the exercise of its powers under:
 - (a) (for RIEs and RCHs) section 296 of the Act (FSA's power to give directions) or (for RAPs) regulation 3 of the RAP regulations to give directions to *recognised bodies* (*REC 4.6*);
 - (b) (for RIEs and RCHs) section 297 of the Act (Revoking recognition) or (for RAPs) regulation 4 of the RAP regulations to revoke *recognition orders* (*REC 4.7*);

and the procedure to be followed in those cases and where the *FSA* decides to refuse an application for recognition as a *recognised body* (*REC 4.8*); and

- (3) the *FSA's* approach to, and procedures for, the exercise of its powers under sections 166 and 167 of the Companies Act 1989 to give directions to ~~*UK-recognised bodies*~~ *UK RIEs* or *UK RCHs* in relation to action under their *default rules* (*REC 4.5*).

- 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 other obligations imposed by or under the Act*~~ and ~~*UK RIEs*~~ continue at all times to satisfy the ~~*MiFID implementing requirements*~~ *recognised body requirements*; and
- (2) ...
- ...

4.2 The supervisory relationship with UK recognised bodies

- 4.2.1 G The *FSA* expects to have an open, cooperative and constructive relationship with *UK recognised bodies* to enable it to have a broad picture of the *UK recognised body's* activities and its ability to meet the ~~*recognition requirements*~~ *recognised body requirements*. This broad picture is intended to complement the information which the *FSA* will obtain under section 293 of the *Act* (Notification requirements) or under *notification rules* made under that section (see *REC 3*). The *FSA* will usually arrange meetings between the Markets Division and *key individuals* of the *UK recognised body* for this purpose. The frequency and nature of these meetings may vary in accordance with the risk profile of the *UK recognised body*.
- 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 MiFID implementing requirements*~~ (in the case of a *UK RIE*) and other obligations ~~in or under the Act~~ *recognised body requirements*.
- 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 MiFID implementing requirements*~~ (in the case of a *UK RIE*) and other obligations ~~in or under the Act~~ *recognised body requirements* 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~~ their plans and operational initiatives, and will provide it with appropriate assurance that the ~~*recognition requirements and the MiFID implementing requirements*~~ (in the case of a *UK RIE*) *recognised body requirements* will continue to be

satisfied.

4.2A Publication of information by UK RIEs and RAPs

4.2A.1 G Under subsections 292A(1) and (2) of the *Act*, a *UK RIE* must as soon as practicable after a *recognition order* is made in respect of it publish such particulars of the ownership of the *UK RIE*, including the identity and scale of interests of the *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, as the *FSA* may reasonably require.

4.2A.2 G Under subsections 292A(3) and (4) of the *Act*, a *UK RIE* must as soon as practicable after becoming aware of a transfer of ownership of the *UK RIE* which gives rise to a change of *persons* who are in a position to exercise significant influence over the management of the *UK RIE* or (where the *UK RIE* is also an *RAP*) the *RAP*, whether directly or indirectly, publish such particulars of any such transfer as the *FSA* may reasonably require.

...

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.

...

4.2C Control over a UK RIE

...

4.2C.2 G The *FSA* will approve an acquisition or an increase in control if it is satisfied that the acquisition by the *person* seeking approval does not pose a threat to the sound and prudent management of any financial market operated by the *UK RIE* (see section 301F(4) of the *Act*). The reference to any financial market is to be read as including a reference to any *auction platform* as a result of the *RAP regulations*.

...

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 it 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 an *RAP*) the *auction regulation*.

...

4.4 **Complaints**

Recognised body's arrangements

- 4.4.1 G *Recognised bodies* may receive complaints from time to time from their *members* and other people, both about the conduct of *members* and about the *recognised body* itself. A *UK recognised body* will need to have satisfactory arrangements to investigate these complaints in order to satisfy the relevant *recognition requirements* (see *REC 2.15* and *REC 2.16*) or *RAP recognition requirements* (see *REC 2A.3.2G*).

...

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 other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements*~~ *recognised body requirements*. In the case of a *UK RIE* (including one which operates an *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.
- 4.6.2 G The *FSA* must also give a direction to a ~~*recognised body*~~ *RIE* or *RCH* if it is directed to do so by the Treasury under section 308 of the *Act* (Directions by the Treasury).
- 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 one or more of

~~the *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, the *MiFID implementing requirements recognised body requirements* which has serious consequences;~~

- (2) compliance with the direction would ensure that one or more of the *recognition requirements*, or other obligation in or under the Act or, in the case of a UK RIE, the *MiFID implementing requirements*, were *recognised body requirements* is 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:

...

...

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*.

...

4.7.2A G Where the FSA makes a revocation order under section 297 of the Act in relation to a UK RIE which is also an RAP, the FSA will also revoke the *recognition order* relating to its status as an 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 one or more of the *recognition requirements* or other obligations in or under the Act or, in the case of a UK RIE, the *MiFID implementing requirements recognised body 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;

- (4) in the case of a *UK RIE*, it has not carried on the business of an investment exchange 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 at any time during the period of six *months* ending with the day the *recognition order* is revoked; or
- (5) in the case of an *RAP* in relation to its *RAP recognition order*, it has not carried on the business of an *auction platform* during the 12 *months* beginning with the day on which the *RAP recognition order* took effect in relation to it, or it has not carried on the business of an *auction platform* at any time during the period of six *months* ending with the day the *RAP 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 one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body requirements*; or
 - (2) the *recognised body* does not appear to be willing to satisfy one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body 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 one or more of the *recognition requirements* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body 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 290A (Refusal of recognition on ground of excessive regulatory provision) 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 set 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 or (for *RAPs*) under regulation 3 of the *RAP regulations*, 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:

...

- (3) the extent to which the failure or likely failure to satisfy one or more of the *recognition requirements* or other obligations in or under the *Act* or, in the case of a *UK RIE*, the *MiFID implementing requirements recognised body 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 of the *Act* or (for *RAPs*) regulation 5 of the *RAP regulations* in relation to giving a direction under regulation 3, when it considers it essential not to do so. *Guidance* on the circumstances in

which the *FSA* will usually act in this way is given in *REC* 4.6.4G.

- 4.8.8 G ~~Under~~ In relation to a *RIE* and *RCH*, under section 290(6) of the *Act*, the *FSA* need not follow the procedure in section 298 in relation to a refusal to make a *recognition order* if (under section 307) the Treasury has not given its approval for the *recognition order* to be made. Further *guidance* is given in *REC* 5 and *REC* 6 (for overseas applications).
- 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 an *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 an *RAP*.
- 5.1.4 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 an *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*~~ and in the case of a UK *RIE*, the *MiFID* implementing requirements *recognised body requirements* before a *recognition order* can be made. Once it has been recognised, a *recognised body* has to comply with the ~~*recognition requirements*~~ and in the case of a UK *RIE*, the *MiFID* implementing requirements *recognised body requirements* at all times. (*Guidance on the ~~recognition requirements~~ recognised body 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*;
 - (2) in the case of an application under sections 287 or 288 of the *Act*, be accompanied by the applicant's *regulatory provisions* and, in the case of an application under section 287 of the *Act*, information required pursuant to sub-sections 287(3)(c), (d) and (e) of the *Act* (see *REC* 5.2.3AG) (the material specifically prescribed in section 287 or section 288);
 - (3) be accompanied by the information, evidence and explanatory material (including supporting documentation) necessary to demonstrate to the *FSA* that the ~~*recognition requirements* and in the case of a UK RIE, the *MiFID implementing requirements*~~ *recognised body requirements* will be met; and

...

...

- 5.2.5A G A UK RIE applying for recognition as an 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 an RAP.
- 5.2.6 G Under section 289 of the *Act* (Applications: supplementary) or (for an RAP applicant) regulation 2 of the *RAP regulations*, the *FSA* may require the applicant to provide additional information, and may require the applicant to verify any information in any manner. In view of their likely importance for any application, the *FSA* will normally wish to arrange for its own inspection of an applicant's information technology systems.
- 5.2.6A G In the case of an application to become a UK RIE or an RAP, under subsection 290(1B) of the *Act* and (for an RAP applicant) 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 an RAP applicant) are likely to be forwarded by the *FSA* to the Director General of Fair Trading and the Treasury under section 303 of the *Act* (Initial report by Director) (see *REC* 5.1.5G).

...

- 5.2.9 G (1) While the *FSA* is considering ~~the~~ an application under section 287 or 288 of the Act, the Office of Fair Trading will be reviewing the *regulatory provisions* so that the Director General of Fair Trading is able to make the report required by section 303 of the *Act*.
- (2) When the Director General of Fair Trading has issued his report, if the circumstances described in *REC 5.1.4G* apply, the Competition Commission must normally make its own report under section 306 of the *Act*.
- 5.2.10 G ~~Where~~ In relation to an application under section 287 or 288 of the Act, where the *FSA* considers that an applicant satisfies the *recognition requirements* and in the case of an application to become a *UK RIE*, the *MiFID implementing requirements*, and that the Treasury has had an opportunity to consider any reports from the Director General of Fair Trading and the Competition Commission, the *FSA* will then seek the Treasury's approval, under section 307 of the *Act* (Recognition orders: role of the Treasury), to the making of a *recognition order*.
- 5.2.11 G Under section 307 of the *Act*, in relation to an application under section 287 or 288 of the Act, the Treasury will have to follow the advice of the Director General of Fair Trading or the Competition Commission as appropriate unless it considers that there are exceptional circumstances for not doing so. The Treasury will therefore ordinarily give its approval to the making of a *recognition order* if the applicant's *regulatory provisions* are not considered to have a significantly adverse effect on competition or, if they are considered to have that effect, the effect is justified. It will ordinarily refuse its approval if the applicant's *regulatory provisions* are considered to have any significantly adverse effect on competition and that effect is not considered to be justified.
- 5.2.12 G Where the *FSA* considers that it is unlikely to make a *recognition order*, or (in the case of a *UK RIE* or *UK RCH*) to seek the Treasury's approval, it will discuss its concerns with the applicant as early as possible with a view to enabling the applicant to make changes to its rules or guidance, or other parts of the application (see *REC 5.2.7G*). 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 (in the case of an *RAP*) regulation 5 of the *RAP regulations* and described in more detail in *REC 4.8*.
- 5.2.13 G ~~The~~ In relation to an application under section 287 or 288 of the Act, the *FSA* will notify the applicant if the Treasury does not give its approval under section 307 of the *Act* (Recognition orders: role of the Treasury). Under section 290 (Recognition orders), the *FSA* does not have to follow the section 298 procedure (see *REC 4.8*) in this case and will not normally do so. The Treasury is required in those circumstances to follow a similar procedure under section 310 of the *Act* (Procedure on the exercise of certain powers by the Treasury).

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

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

...

6A EEA market operators in the United Kingdom

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

...

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.2.7 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~~ 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*, see *REC* 2.9 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.

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

Sch 2.2 G

<u>Reference to legislation or Handbook reference</u>	Matter to be notified	Contents of notification	Trigger event	Time allowed
UK recognised bodies <u>UK recognised bodies</u>				
The Acts <u>Act</u> 293(5)	Changes to <i>rules</i> and	Details of change	Change to rule or	Without delay

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

<u>s293(6)(a)</u>	<u>arrangements for clearing transactions effected on the auction platform</u>	<u>change</u>	<u>arrangements</u>	<u>delay</u>
<u>The <i>auction regulation</i> article 7(7)</u>	<u>Either a methodology or a modification to that methodology as specified by the <i>auction regulation</i></u>	<u>See <i>REC</i> 3.15</u>	<u>Event concerned</u>	<u>Without delay</u>
...				
<i>Notification rules for UK recognised bodies (see Notification rules for UK recognised bodies)</i>				
...				
<i>REC</i> 3.14	Products, services and normal hours of operation or (for <i>RAPs</i>) <u>the timing, frequency or duration of its bidding windows</u>	See <i>REC</i> 3.14	See <i>REC</i> 3.14	Immediately
<i>REC</i> 3.15	Suspension of services and inability to operate <i>facilities</i> or (for <i>RAPs</i>) <u>the cancellation of an auction</u>	Details of suspension of services, inability to operate facilities and extension of hours of operation in an emergency See <i>REC</i> 3.15	Event concerned	Immediately

...				
REC 3.18	Membership	Information regarding new types of <i>member</i> and reasons for considering <u>the recognition requirements or (for RAPs) the RAP recognition requirement in regulation 20</u> can still be met	Admission of new type of non- <i>authorised person</i> or <i>person</i> from new non-UK jurisdiction to membership	Immediately
...				
REC 3.22	Restriction or instruction to close out, open positions <u>or (for RAPs) restriction on maximum bid size or other remedial measures</u>	Details of decision to restrict member's open position or instruction to close out position <u>or (for RAPs) details of the event and remedial measures proposed</u>	Decision to take action <u>or (for RAPs) proposal to take action</u>	Immediately
...				

Annex E

Amendments to the Perimeter Guidance manual (PERG)

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

2.10 Persons carrying on regulated activities who do not need authorisation

...

Recognised Investment Exchanges, ~~and~~ Recognised Clearing Houses and
Recognised Auction Platforms

- 2.10.6 G Investment exchanges and *clearing houses* can apply for recognition under Part XVIII of the *Act* (Recognised investment exchanges and clearing houses-). *Auction platforms* can apply for recognition under the *RAP Regulations*. See *REC*.

...

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.

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