

Recognised Investment Exchanges

Chapter 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 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

(1) In considering whether [an *RAP*] or applicant satisfies the [*RAP recognition requirements*], the [*FCA*] may-

(a) treat compliance by the [*RAP*] or applicant with the [*recognition requirements or MiFID implementing 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), [an *RAP*] or 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 *FCA* 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 *FCA* will have regard to relevant guidance in ■ **REC 2** on the equivalent requirements set out in the *Recognition Requirement Regulations*. The *FCA* may also take into account compliance by the *RAP* or *RAP* applicant with the *recognition requirements* (see ■ **REC 2A.2.1 UK**). The *FCA* 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	Column B	Column C
<i>REC 2</i> guidance which applies to an <i>RAP</i>	Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Relevant <i>RAP recognition requirement</i>
REC 2.2.2 G to REC 2.2.7 G (Relevant circumstances and Outsourcing)		Reg 13
REC 2.3.3 G to REC 2.3.9 G (Financial resources)		Reg 14
REC 2.4.3 G to REC 2.4.6 G (Suitability)	In addition to the matters set out in REC 2.4.3 G to REC 2.4.6 G, the <i>FCA</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
REC 2.5.3 G to REC 2.5.20 G (Systems and controls and conflicts) and REC 2.5A (Guidance on Public Interest Disclosure Act: Whistleblowing)		Reg 16 and 17(2)(f)

Column A	Column B	Column C
<i>REC 2 guidance which applies to an RAP</i>	<i>Modification to REC 2 guidance for an RAP</i>	<i>Relevant RAP recognition requirement</i>
REC 2.6.26 G to REC 2.6.34 G (Safeguards for investors)		Reg 17
REC 2.7.3 G to REC 2.7.4 G (Access to facilities)	The FCA shall have regard to whether an RAP provides access to bid at auctions only to those persons eligible to bid under article 18 of the auction regulation.	Reg 17(2)(a) and 20
REC 2.8.3 G to REC 2.8.4 G (Settlement and clearing services)		Reg 17(2)(d) and 21
REC 2.9.3 G to REC 2.9.4 G (Transaction recording)		Reg 17(2)(e)
REC 2.10.3 G to REC 2.10.4 G (Financial crime and market abuse)		Reg 17(2)(g)
REC 2.11.3 G to REC 2.11.4 G (Custody)	REC 2.11.4 G is replaced with the following for an RAP: Where an RAP arranges for other persons to provide services for the safeguarding and administration services of assets belonging to users of its facilities, it will also need to satisfy the RAP recognition requirement in regulation 17(2)(h) of the RAP regulations (see REC 2A.2.1 UK).	Reg 17(2)(h)
REC 2.12.11 G to REC 2.12.12 G (Availability of relevant information)	REC 2.12.11 G to REC 2.12.12 G are replaced with the following for an RAP: REC 2.12.11 G In determining whether appropriate arrangements have been made to make relevant information available to persons engaged in dealing in emissions auction products the FCA may have regard to:	Reg 17(2)(c)

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Column A <i>REC 2 guidance which applies to an RAP</i>	Column B Modification to <i>REC 2</i> guidance for an <i>RAP</i>	Column C Relevant <i>RAP recognition requirement</i>
	<p>(1) the extent to which auction bidders are able to obtain information in a timely fashion about the terms of those <i>emissions 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>REC 2.12.12 G</p> <p>An <i>RAP</i> does not need to maintain its own arrangements for providing information on the terms of <i>emissions 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>	
<p>REC 2.13.3 G to REC 2.13.6 G (Promotion and maintenance of standards)</p>		<p>Reg 18</p>
<p>REC 2.14.3 G to REC 2.14.6 G (Rules and consultation)</p>		<p>Reg 19</p>
<p>REC 2.15.3 G to REC 2.15.6 G (Discipline)</p>		<p>Reg 22</p>
<p>REC 2.16.3 G to REC 2.16.4 G (Complaints)</p>		<p>Reg 23</p>

2A.4 Power and procedure for RAP penalties and censures

2A.4.1 **G** Under regulation 5A (Power to impose civil penalties) of the *RAP Regulations*, where the *FCA* considers that an *RAP* has contravened any requirement in articles 19, 20(7), 21(1) or (2), or 54 of the *auction regulation*, the *FCA* has the power to impose a civil penalty on that *RAP*.

2A.4.2 **G** Where the *FCA* is entitled to impose a penalty on an *RAP*, it may instead publish a statement censuring it.

2A.4.3 **G** The provisions of the *auction regulation* referred to in **■ REC 2A.4.1 G** are directly applicable to an *RAP* and require it to, in summary:

- (1) only grant admission to bid to applicants that comply with the conditions set out in article 19 of the *auction regulation*, including the prerequisite that the applicants are eligible to bid in accordance with article 18 of the *auction regulation*;
- (2) require an applicant for admission to bid to ensure that its clients, and the clients of its clients, are able to comply with information requirements, interviews, investigations and verifications carried out or required by the *RAP*;
- (3) refuse to grant admission to bid, or revoke or suspend that admission, to any person:
 - (a) that is not, or is no longer, eligible to bid (under article 18 of the *auction regulation*); does not meet, or no longer meets, the requirements of articles 18, 19 or 20 of the *auction regulation*; or is wilfully or repeatedly in breach of the *auction regulation*, the terms and conditions of its admission to bid or other related instructions or agreements; or
 - (b) where the *RAP* suspects the person is involved with money laundering, terrorist financing, criminal activity or market abuse, provided that such refusal, revocation or suspension is unlikely to frustrate efforts by the competent national authorities under the *auction regulation* to pursue or apprehend the perpetrators of those activities; and
- (4) monitor the relationship with bidders admitted to bid in its auctions.

2A.4.4 **G** The power in regulation 5A of the *RAP Regulations* to impose a civil penalty or publish a statement adds to the *FCA*'s other supervisory powers in relation

to *RAPs* (see ■ REC 4) and its power to impose penalties on an *RAP* under the *Money Laundering Regulations*. The *FCA* will use this power under the *RAP Regulations* where it is appropriate to do so and with regard to the relevant factors listed in ■ DEPP 6.2.1 G. In deciding between a civil penalty or a public statement, the *FCA* will also have regard to the relevant factors listed in ■ DEPP 6.4.

- 2A.4.5** **G** The *FCA* will notify the subject of the investigation that it has appointed officers to carry out an investigation under either or both the *RAP Regulations* or the *Money Laundering Regulations* and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The *FCA* expects to carry out a scoping visit early on in the enforcement process in most cases.
- 2A.4.6** **G** Where the *FCA* uses the power to impose a penalty, it will be for an amount that is effective, proportionate and dissuasive and with regard to relevant factors listed in ■ DEPP 6.5 to ■ DEPP 6.5D in determining the appropriate level of financial penalty.
- 2A.4.7** **G** The *FCA* will also have regard to whether the person followed any of the *FCA's* guidance and will not take action under regulation 5A where there are reasonable grounds for it to be satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement was complied with.
- 2A.4.8** **G** When the *FCA* proposes or decides to take action against an *RAP* in exercise of its power in regulation 5A of the *RAP Regulations*, it must give the *RAP* a *warning notice* or a *decision notice* respectively. Those notices must state the amount of the penalty or set out the terms of the statement, as applicable. On receiving a *warning notice*, the *RAP* has a right to make representations on the *FCA's* proposed decision.
- 2A.4.9** **G** Where the *FCA* is proposing or deciding to publish a statement censuring an *RAP* or impose a penalty on the *RAP* under regulation 5A of the *RAP Regulations*, the *FCA's* decision maker will be the *RDC*. This is to ensure that the *FCA's* power to censure or impose a penalty on an *RAP* has the same layer of separation in the decision making process, and is exercised consistently with, similar penalty and censure powers of the *FCA* under other legislation. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3. An *RAP* that receives a *decision notice* under regulation 5A of the *RAP Regulations* may refer the matter to the *Tribunal*.
- 2A.4.10** **G** Sections 393 and 394 of the *Act* apply to notices referred to in this section. See ■ DEPP 2.4 (Third party rights and access to *FCA* material).
- 2A.4.11** **G** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases to assist it to exercise its functions in the most efficient and economic way. The settlement discount scheme set out in ■ DEPP 6.7 applies to penalties imposed under the *RAP Regulations*.

2A.4.12 **G** The *FCA* will apply the approach to publicity that it has outlined in **■ EG 6**.

