

Recognised Investment Exchanges

Chapter 2A

Recognised Auction Platforms

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 a *RAP* has contravened any requirement in regulations 17, 18(8), 19(1) or (2), or 37 of the *UK auctioning regulations*, 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 a *RAP*, it may instead publish a statement censuring it.

2A.4.3 G The provisions of the *UK auctioning regulations* referred to in ■ REC 2A.4.1G are applicable to a *RAP* and require it to, in summary:

- (1) only grant admission to bid to applicants that comply with the conditions set out in regulation 17 of the *UK auctioning regulations*, including the prerequisite that the applicants are eligible to bid in accordance with regulation 16 of the *UK auctioning regulations*;
- (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 regulation 16 of the *UK auctioning regulations*); does not meet, or no longer meets, the requirements of regulations 16, 17 and 18 of the *UK auctioning regulations*; or is wilfully or repeatedly in breach of the *UK auctioning regulations*, 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 law enforcement authorities 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 a *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 6.2.1G. 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 of the *RAP Regulations* 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 a 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 a 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 a 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. A 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.